

# HOUSE BILL No. 1359

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 13-11-2-142.9; IC 13-17-16; IC 13-30-3-11.5.

**Synopsis:** Air pollution. Defines "odor nuisance" as a situation in which the repeated or persistent discharge into the outdoor atmosphere of air contaminants causes an odor that: (1) substantially obstructs the free use of property; or (2) is injurious to human health. Requires the environmental rules board (board) to adopt administrative rules that: (1) establish a means of determining when an odor nuisance exists; and (2) identify practical and economically feasible methods of eliminating odor nuisances at their source. Sets forth certain: (1) means of determining when an odor nuisance exists; and (2) methods of eliminating odor nuisances; that the board may include in the rules. Authorizes the commissioner of the department of environmental management (department) to order a person that creates an odor nuisance in a city to implement one or more of the methods of eliminating the odor nuisance. Provides that a person who violates an order of the commissioner is subject to a civil penalty. Authorizes the department to bring a civil action to enjoin a person's violation of an order of the commissioner. Provides that one or more persons adversely affected by a purported odor nuisance in a city may bring an action to abate the purported odor nuisance. Provides that if the commissioner of the department issues an order under the air pollution control laws directing a person to cease and desist, imposing a monetary penalty, mandating corrective action, or revoking or modifying a permit, and if the commissioner's order is stayed during an administrative appeal, the stay of the order expires not more than 180 days after it begins. Provides that if the commissioner's order is later determined to have been an abuse of discretion, arbitrary and capricious, contrary to substantial or reliable evidence, or contrary to law, the effects of the order will be reversed.

**Effective:** July 1, 2021.

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January 14, 2021, read first time and referred to Committee on Environmental Affairs.

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First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

## HOUSE BILL No. 1359

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 13-11-2-142.9 IS ADDED TO THE INDIANA  
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2021]: **Sec. 142.9. "Odor nuisance", for**  
4 **purposes of IC 13-17-16, has the meaning set forth in**  
5 **IC 13-17-16-2.**

6 SECTION 2. IC 13-17-16 IS ADDED TO THE INDIANA CODE  
7 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
8 JULY 1, 2021]:

9 **Chapter 16. Odor Nuisances**

10 **Sec. 1. (a) This chapter applies only to a source of odor that is**  
11 **located within the boundaries of:**

- 12 (1) a first class city;  
13 (2) a second class city; or  
14 (3) a third class city.

15 (b) This chapter does not apply to odor from a wastewater  
16 treatment plant (as defined in IC 13-11-2-258(a)) or a sewage  
17 treatment facility.



1        **Sec. 2. As used in this chapter, "odor nuisance" means a**  
 2        **situation in which the repeated or persistent discharge into the**  
 3        **outdoor atmosphere of air contaminants causes an odor that:**

- 4            (1) substantially obstructs the free use of property; or  
 5            (2) is injurious to human health.

6        **Sec. 3. The repeated or persistent discharge into the outdoor**  
 7        **atmosphere of air contaminants causing odor that:**

- 8            (1) substantially obstructs the free use of property; or  
 9            (2) is injurious to human health;

10       **is a public nuisance contrary to the public policy of the state.**

11       **Sec. 4. The environmental rules board shall adopt rules under**  
 12       **IC 4-22-2 and IC 13-14-9 that:**

- 13            (1) establish a means of determining when an odor nuisance  
 14            exists; and  
 15            (2) identify practical and economically feasible methods of  
 16            eliminating odor nuisances at their source.

17       **Sec. 5. The means of determining when an odor nuisance exists**  
 18       **as established in rules adopted under section 4(1) of this chapter**  
 19       **may include one (1) or more of the following:**

- 20            (1) The use of the CEN standard EN 13725 adopted for use in  
 21            the member countries of the European Union.  
 22            (2) The adoption of maximum allowable emission  
 23            concentrations in ambient air of certain compounds or  
 24            families of compounds often associated with offensive odors  
 25            from industrial operations, such as:

- 26                    (A) methyl mercaptan;  
 27                    (B) dimethyl sulfide;  
 28                    (C) ammonia; and  
 29                    (D) phenols.

- 30            (3) The use of an odor panel or jury of individuals who:

- 31                    (A) have no specific hypersensitivity or lack of sensitivity  
 32                    to odors; and

- 33                    (B) when summoned by the department in response to  
 34                    complaints from residents of an area, would be  
 35                    transported by the department to the area to determine by  
 36                    use of their own olfactory senses whether an odor nuisance  
 37                    exists in the area.

- 38            (4) The written determination of one (1) or more real estate  
 39            appraisers licensed or certified under IC 25-34.1-8 that a  
 40            repeated or persistent odor in an area has caused the market  
 41            value of the residential property in the area to be significantly  
 42            lower than the market value of comparable residential



property located in a comparable area not affected by the odor.

Sec. 6. (a) The methods of eliminating odor nuisances at their source as identified in rules adopted under section 4(2) of this chapter may include the following:

(1) Combustion in catalytic burners or through use of another combustion method.

(2) Absorption of odorous vapors in liquid absorbents.

(3) Adsorption through the use of activated carbon or another adsorbent.

(4) Masking of an odor to which section 2(2) of this chapter does not apply by superimposing another odor, such as that of vanillin, methyl ionone, or eugenol, to create a new and inoffensive odor sensation in the outdoor air.

(b) The methods of eliminating odor nuisances at their source as identified in rules adopted under section 4(2) of this chapter may not include the dilution and dispersion of the gas causing the odor by increasing the height above ground level at which the gas is emitted.

Sec. 7. (a) The commissioner may order a person that creates an odor nuisance to implement one (1) or more of the methods identified in the rules adopted under section 4(2) of this chapter to eliminate the odor nuisance.

(b) A person who violates an order issued under subsection (a) is subject to a civil penalty under IC 13-30-4-1(a).

(c) The department may bring a civil action under IC 13-30-4-1(b) to:

(1) enjoin a person's violation of an order issued under subsection (a); and

(2) obtain a judicial order compelling the person to comply with an order issued under subsection (a).

(d) One (1) or more persons adversely affected by a purported odor nuisance may bring an action to abate or enjoin the purported odor nuisance under IC 32-30-6-7 regardless of:

(1) whether the existence of the odor nuisance has been determined under the rules adopted under section 4(1) of this chapter; or

(2) whether:

(A) the commissioner has issued an order under subsection (a); or

(B) the department has brought action under subsection (c);



concerning the purported odor nuisance.

SECTION 3. IC 13-30-3-11.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 11.5. (a) If an order of the commissioner entered under section 11 of this chapter that:

- (1) includes a direction to cease and desist from violations of the air pollution control laws;
- (2) imposes a monetary penalty under section 11(2)(B) of this chapter in accordance with the air pollution control laws;
- (3) mandates corrective action to alleviate a violation of the air pollution control laws; or
- (4) revokes a permit or condition or modifies the terms of a permit;

is stayed under IC 4-21.5-3, the stay expires not more than one hundred eighty (180) days after it begins.

(b) If, after the expiration of a stay of a commissioner's order under subsection (a), the commissioner's order is finally determined to have been:

- (1) an abuse of discretion;
- (2) arbitrary and capricious;
- (3) contrary to substantial or reliable evidence; or
- (4) contrary to law;

the person subject to the order is entitled to relief under subsection (c).

(c) If subsection (b) applies to a person:

- (1) any direction to the person under subsection (a)(1) to cease and desist lapses;
- (2) any monetary penalty imposed against the person under subsection (a)(2) shall be refunded;
- (3) the person may discontinue any corrective action mandated under subsection (a)(3); and
- (4) the person's permit:
  - (A) if revoked under subsection (a)(4), shall be reinstated; or
  - (B) if modified under subsection (a)(4), shall be returned to its original form;

upon the final determination referred to in subsection (b).

