13-7-16-4 [35-5258]. State agencies' report—Review by board.

NOTES TO DECISIONS

Eminent Domain Actions.

In an action to condemn property pursuant to the eminent domain law, filing an environmental report with the Indiana environmental management board is not a prerequisite to the filing of a complaint for condemnation. J. M. Foster Co. v. NIPSCO (1975), — App. —, 46 Ind. Dec. 570, 326 N. E. 2d 584.

CHAPTER 16.5—POLYCHLORINATED BIPHENYLS AND TERPHENYLS

SECTION.
13-7-16.5-1. Definitions.
13-7-16.5-2. Responsibility of board for administration.
13-7-16.5-3. Prohibitions against sale or manufacture of compound PCB — Effective dates.
13-7-16.5-4. Application for exemption certificate from board — Reasons for granting exemptions.
13-7-16.5-5. Concentration of PCB greater than 100 ppm in items, products or materials use prohibited after July 1, 1977—Exceptions.
13-7-16.5-6. Concentration of PBC greater than 100 ppm in items manufactured for sale or sold prohibited after July 1, 1977 — Exceptions.
13-7-16.5-7. Prohibition against disposal of solid or liquid waste containing prohibited PCB concentration after July 1, 1977.
13-7-16.5-8. Penalties for violations.

13-7-16.5-1. Definitions.—As used in this chapter [13-7-16.5-1—13-7-16.5-8]:

(a) "Board" means the environmental management board.

(b) "PCB" means the class of organic compounds known as polychlorinated biphenyls or terphenyls and includes any of several compounds produced by replacing two [2] or more hydrogen atoms on the biphenyl or terphenyl molecule with chlorine.

(c) "Person" means an individual, firm, partnership, association or corporation.

(d) "Ppm" means parts per million.

[IC 13-7-16.5-1, as added by Acts 1976, P. L. 52, § 1, p. —.]

13-7-16.5-2. Responsibility of board for administration.—The board shall be responsible for the administration and implementation of this chapter [13-7-16.5-1—13-7-16.5-8] to protect the public health, safety, and welfare from the toxic effects and environmental dangers of PCB. The board shall promulgate rules required by this chapter [13-7-16.5-1—13-7-16.5-8] in the manner required by law. [IC 13-7-16.5-2, as added by Acts 1976, P. L. 52, § 1, p. —.]

13-7-16.5-3. Prohibitions against sale or manufacture of compound PCB—Effective dates.—(a) A person shall not sell or manufacture for sale in this state the compound PCB.

(b) Beginning July 1, 1977, a person shall not sell, manufacture for sale, or use an item, product, or material in his business in this state if the item, product, or material contains a concentration of greater than two hundred fifty thousand [250,000] ppm of PCB.

(c) Beginning January 1, 1978, a person shall not sell, manufacture for sale, or use an item, product, or material in his business in this state if the item, product, or material contains a concentration of PCB equal to or greater than one thousand [1,000] ppm.

(d) Beginning January 1, 1979, a person shall not sell, manufacture for sale, or use an item, product, or material in his business in this state

DSW 349256

STLCOPCB4085238

if the item, product, or material contains a concentration of PCB equal to or greater than one hundred [100] ppm, except that:

(1) The board may by rule prescribe a lower maximum concentration of PCB for specific items, products, or materials if the board finds the one hundred [100] ppm concentration provided in this subsection to be inadequate to protect the public health, safety, and welfare from the toxic dangers of the PCB contained in that item, product, or material.

(2) An item, product, or material for which a lower maximum concentration of PCB is prescribed by federal law, rule, or regulation shall not contain a concentration of PCB higher than that federal maximum.

(e) Notwithstanding subsections (a), (b), (c), or (d) of this section, PCB or an item, product, or material containing PCB may be manufactured, sold for use or used in this state if it is used in a closed system as a dielectric fluid for an electric transformer or capacitor pursuant to rules promulgated by the board to insure the public health, safety, and welfare.

(f) Notwithstanding subsections (a), (b), (c), or (d) of this section, an item, product, or material containing PCB may be manufactured for sale, sold for use, or used in a business in this state pursuant to an exemption certificate issued by the director under section 4 [13-7-16.5-4] of this chapter. [IC 13-7-16.5-3, as added by Acts 1976, P. L. 52, § 1, p. —.]

13-7-16.5-4. Application for exemption certificate from board—Reasons for granting exemptions.—(a) A person may make written application to the board for an exemption certificate on forms provided by the board. The board may require additional information or materials to accompany the application as he deems necessary for an accurate evaluation of the application.

(b) The board may grant an exemption for an item, product, or material manufactured for sale, sold for use, or used by the person in his business if the item, product, or material contains incidental concentrations of PCB.

(c) As used in this section, "incidental concentrations of PCB" means concentrations of PCB which are beyond the control of the person and which are not the result of the person:

(1) exposing the item, product, or material to concentrations of PCB;

(2) failing to take reasonable measures to rid the item, product, or material of concentrations of PCB; or

(3) failing to use a reasonable substitute for the item, product, or material for which the exemption is sought.

(d) In granting a certificate of exemption, the board shall impose conditions on the exemption in order that the exemption covers only incidental concentrations of PCB. [IC 13-7-16.5-4, as added by Acts 1976, P. L. 52, § 1, p. —.]

13-7-16.5-5. Concentration of PCB greater than 100 ppm in items, products or materials use prohibited after July 1, 1977—Exceptions.—In addition to the prohibitions prescribed in section 3 [13-7-16.5-3] of this chapter, beginning July 1, 1977, a person shall not use an item, product, or material containing a concentration of PCB equal to or greater than one hundred [100] ppm in his business in this state unless:

(1) The person files with the board a written notice of intent to use the PCB or the item, product, or material containing PCB in his busi-

STLCOPCB4085239

ness and files a plan for the disposal of all material containing PCB which plan shall be approved prior to the use of the item, product, or material.

(2) The person annually files with the board a report detailing the total amount of PCB used by the person, and other information required by rule of the board to protect the public health, safety, and welfare from the toxic effects and environmental dangers of PCB. [IC 13-7-16.5-5, as added by Acts 1976, P. L. 52, § 1, p. —.]

13-7-16.5-6. Concentration of PCB greater than 100 ppm in items manufactured for sale or sold prohibited after July 1, 1977—Exceptions. —In addition to the prohibitions prescribed in section 3 [13-7-16.5-3] of this chapter, beginning July 1, 1977, a person shall not manufacture for sale or sell in this state an item, product, or material containing a concentration of PCB equal to or greater than one hundred [100] ppm unless:

(1) The PCB or the item, product, or material containing PCB is conspicuously labeled to disclose the presence of PCB, the concentration of PCB, and other information required by rule of the board to protect the public health, safety, and welfare from the toxic effects and environmental dangers of PCB.

(2) The person files with the board a written notice of intent to manufacture or sell the PCB or the item, product, or material containing PCB.

(3) The person annually files with the board a report detailing the total amount of PCB manufactured or sold by the person, and other information required by rule of the board to protect the public health, safety, and welfare from the toxic effects and environmental dangers of PCB. [IC 13-7-16.5-6, as added by Acts 1976, P. L. 52, § 1, p. —.]

13-7-16.5-7. Prohibition against disposal of solid or liquid waste containing prohibited PCB concentration after July 1, 1977.—Beginning July 1, 1977, a person shall not dispose of solid or liquid waste resulting from the use in his business of PCB or an item, product, or material containing or which has contained PCB except in conformity with rules promulgated by the board. [IC 13-7-16.5-7, as added by Acts 1976, P. L. 52, § 1, p. —.]

13-7-16.5-8. Penalties for violations.—(a) A person who violates this chapter [13-7-16.5-1—13-7-16.5-8] or a rule promulgated under this chapter is guilty of a misdemeanor, punishable by imprisonment for not more than thirty [30] days, or a fine of not more than ten thousand dollars [$10,000], or both, for each violation.

(b) Each day that a violation of this chapter [13-7-16.5-1—13-7-16.5-8], or a rule promulgated under this chapter, continues shall be considered a separate violation. [IC 13-7-16.5-8, as added by Acts 1976, P. L. 52, § 1, p. —.]

Emergency and Effective Dates. Section 2 of Acts 1976, P. L. 52 declared an emergency and provided that the act take effect on May 1, 1976.

DSW 349258

STLCOPCB4085240