

**IC 13-24**

**ARTICLE 24. PETROLEUM**

**IC 13-24-1**

Chapter 1. Petroleum Releases

**IC 13-24-1-1**

**Removal or remedial actions; resolution of disputes**

Sec. 1. (a) The commissioner may issue an order under:

- (1) IC 13-14-2-7;
- (2) IC 4-21.5-4; or
- (3) IC 4-21.5-3-6;

to require an owner or operator or a responsible person to undertake removal or remedial action with respect to a release of petroleum at a petroleum facility.

(b) If the commissioner determines that the removal or remedial action will be done properly and promptly by the owner, operator, or responsible person, the commissioner may enter into an agreed order with the owner, operator, or responsible person to implement necessary removal or remedial action.

(c) If the commissioner and the owner or operator or the responsible party fail to agree on the appropriate and necessary removal or remedial action to be taken, the dispute shall be resolved under IC 4-21.5.

*As added by P.L.1-1996, SEC.14.*

**IC 13-24-1-2**

**Conditions for actions; priorities; emergencies**

Sec. 2. (a) Except as provided in subsection (c), the commissioner may undertake removal or remedial action with respect to a release of petroleum at a petroleum facility if:

- (1) the action is necessary, in the judgment of the commissioner, to protect human health and the environment; and
- (2) a person cannot be found not later than ninety (90) days after the suspected or confirmed release is identified who is:
  - (A) an owner or operator of the petroleum facility or a responsible person; and
  - (B) capable of properly carrying out removal or remedial action with respect to the release.

(b) In undertaking removal or remedial action under subsection (a), the commissioner shall give priority to releases of petroleum from a petroleum facility that pose the greatest threat to human health and the environment.

(c) The commissioner may undertake or require removal or remedial action with respect to a release of petroleum into the environment if it is determined that an emergency exists under IC 4-21.5-4.

*As added by P.L.1-1996, SEC.14.*

### **IC 13-24-1-3**

#### **Exposure assessments**

Sec. 3. (a) Remedial action undertaken or required under section 1 or 2 of this chapter may include an exposure assessment.

(b) The cost of:

- (1) an exposure assessment;
- (2) a removal; or
- (3) a remedial action;

undertaken under section 2 of this chapter may be recovered under section 4 of this chapter.

*As added by P.L.1-1996, SEC.14. Amended by P.L.2-1998, SEC.58.*

### **IC 13-24-1-4**

#### **Liability for response or remedial action costs; recovery from other responsible persons of costs paid to state; deposit of funds recovered; removal or remedial action costs; administrative costs**

Sec. 4. (a) Except where an owner or operator can prove that a release from a petroleum facility was caused by:

- (1) an act of God;
- (2) an act of war;
- (3) negligence on the part of a local government, the state government, or the federal government;
- (4) except as provided in subsection (b), an act or omission of a responsible person; or
- (5) a combination of the causes set forth in subdivisions (1) through (4);

the owner or operator is liable to the state for the reasonable costs of any response or remedial action taken under section 2 of this chapter involving the petroleum facility. A responsible person is liable to the state for the reasonable costs of any response or remedial action taken under section 2 of this chapter involving the petroleum facility.

(b) The owner, operator, or responsible person is entitled to all rights of the state to recover from another responsible person all or a part of the costs described in subsection (a) incurred or paid to the state by the owner, operator, or responsible person in an action brought in a circuit or superior court with jurisdiction in the county in which the release occurred.

(c) Money recovered by the state under this section in connection with a removal or remedial action undertaken with respect to a release of petroleum shall be deposited in the hazardous substances response trust fund.

(d) The state may recover removal or remedial action costs under this section as follows:

- (1) Commence an action under IC 13-14-2-6 or IC 13-14-2-7.
- (2) Impose a lien under IC 13-25-4-11 on the property on which the removal or the remedial action was undertaken.

(e) In an administrative action brought under this chapter, an environmental law judge shall apportion the costs of a response or a remedial action in proportion to each party's responsibility for a release.

*As added by P.L.1-1996, SEC.14. Amended by P.L.25-1997, SEC.17.*

#### **IC 13-24-1-5**

##### **Agreements to indemnify, hold harmless, or insure; subrogation**

Sec. 5. (a) An indemnification agreement, hold harmless agreement, or similar agreement or conveyance is not effective to transfer the liability imposed under section 4 of this chapter from:

- (1) the owner or operator of a petroleum facility; or
- (2) a person who may be liable for a release or threatened release under this chapter;

to another person. However, this subsection does not bar an agreement to insure, hold harmless, or indemnify a party to an agreement for any liability under this chapter.

(b) This section does not bar a cause of action that:

- (1) an owner or operator;
- (2) a responsible party; or
- (3) another person subject to liability under this chapter;

has or would have, by reason of subrogation or otherwise, against any person.

*As added by P.L.1-1996, SEC.14.*

#### **IC 13-24-1-6**

##### **Enforcement; testing; facility site right of entry; inspection; reasonable promptness**

Sec. 6. (a) To allow the commissioner to take or to assess the need for removal or remedial action under section 1, 2, or 3 of this chapter or to enforce this chapter, an owner, an operator, or a responsible party of a facility, upon the request of an officer, an employee, or a designated representative of the department, shall:

- (1) furnish information relating to the facility or the facility's associated equipment or contents;
- (2) conduct testing of the facility or the facility's associated equipment or contents;
- (3) conduct testing of:
  - (A) soils;
  - (B) air;
  - (C) surface water; or
  - (D) ground water;

surrounding the facility if the testing, using methods that are similar to but do not exceed federal standards, confirms a release of petroleum, or if other evidence exists that gives cause for reasonable suspicion that a release has occurred;

(4) allow, at reasonable times, the officer, employee, or designated representative to have access to and to copy records that relate to the release at the facility; and

(5) allow the officer, employee, or designated representative to have access for response, removal, or remedial action under section 2 of this chapter.

(b) For the reasons described under subsection (a), an officer, an employee, or a designated representative of the department may

enter, at reasonable times, a site where a facility is located or where petroleum may be present because of a release from a facility to do the following:

- (1) Inspect and obtain samples of petroleum contained in the facility from any person.
- (2) Conduct testing of:
  - (A) the facility;
  - (B) the facility's associated equipment or contents; or
  - (C) surrounding:
    - (i) soils;
    - (ii) air;
    - (iii) surface water; or
    - (iv) ground water.
- (3) Take removal or remedial action under section 2 of this chapter.

(c) An action authorized under this section shall be commenced and completed with reasonable promptness.

*As added by P.L.1-1996, SEC.14.*

#### **IC 13-24-1-7**

##### **Use of funds; petroleum facility expenses**

Sec. 7. The commissioner may use money in the hazardous substances response trust fund to pay the following expenses associated with petroleum facilities:

- (1) Expenses incurred by the state for:
  - (A) a removal or remedial action that is ordered or undertaken under section 2 of this chapter; and
  - (B) enforcement of this chapter.
- (2) Expenses incurred by the state under section 4 of this chapter in recovering the costs of a removal or remedial action.
- (3) Administrative expenses and personnel expenses incurred by the state in carrying out this chapter.

*As added by P.L.1-1996, SEC.14.*

#### **IC 13-24-1-8**

##### **Application of IC 4-21.5 to determinations, notices, hearing, and appeal determinations**

Sec. 8. IC 4-21.5 applies to:

- (1) determinations;
- (2) notices;
- (3) hearings; and
- (4) appeal determinations;

under this chapter.

*As added by P.L.1-1996, SEC.14.*

#### **IC 13-24-1-9**

##### **Repealed**

*(Repealed by P.L.90-1998, SEC.27.)*

#### **IC 13-24-1-10**

**Lenders considered to participate in management**

Sec. 10. A person that is a lender and that holds evidence of ownership primarily to protect a security interest in a petroleum facility may be considered to participate in the management (as defined in IC 13-11-2-151.3) of the petroleum at the petroleum facility only if, while the borrower is still in possession of the petroleum facility encumbered by the security interest, the person:

- (1) exercises decision making control over the environmental compliance related to the petroleum facility such that the person has undertaken responsibility for the petroleum handling or disposal practices related to the petroleum facility; or
- (2) exercises control at a level comparable to that of a manager of the petroleum facility such that the person has assumed or manifested responsibility:
  - (A) for the overall management of the petroleum facility encompassing day to day decision making with respect to environmental compliance; or
  - (B) over all or substantially all of the operational functions (as distinguished from financial or administrative functions) of the petroleum facility other than the function of environmental compliance.

*As added by P.L.90-1998, SEC.22.*

**IC 13-24-1-11**

**Limits on liability of fiduciaries**

Sec. 11. (a) The liability of a fiduciary under this title for the release or threatened release of petroleum at, from, or in connection with a petroleum facility held in a fiduciary capacity shall not exceed the assets held in the fiduciary capacity.

(b) Subsection (a) does not apply to the extent that a person is liable under this title independently of:

- (1) the person's ownership of the petroleum facility as a fiduciary; or
- (2) actions taken in a fiduciary capacity.

(c) Subsections (a) and (d) do not limit the liability pertaining to a release or threatened release of petroleum if negligence of a fiduciary causes or contributes to the release or threatened release.

(d) A fiduciary is not liable in its personal capacity under this title for any of the following:

- (1) Undertaking or directing another person to undertake a response action under 42 U.S.C. 9607(d)(1) or under the direction of an on-scene coordinator designated under the National Contingency Plan.
- (2) Undertaking or directing another person to undertake other lawful means of addressing a hazardous substance in connection with the petroleum facility.
- (3) Terminating the fiduciary relationship.
- (4) Including in the terms of the fiduciary agreement a covenant, warranty, or other term or condition that relates to compliance with an environmental law, or monitoring,

modifying, or enforcing the term or condition.

(5) Monitoring or undertaking at least one (1) inspection of the petroleum facility.

(6) Providing financial advice or other advice or counseling to other parties to the fiduciary relationship, including the settlor or beneficiary.

(7) Restructuring, renegotiating, or otherwise altering the terms and conditions of the fiduciary relationship.

(8) Administering, as a fiduciary, a vessel or facility that was contaminated before the fiduciary relationship began.

(9) Declining to take any of the actions referred to in subdivisions (2) through (8).

(e) This section does not apply to a person if the person:

(1) acts in a capacity other than:

(A) a fiduciary capacity; or

(B) a beneficiary capacity;

and, in that capacity, directly or indirectly benefits from a trust or fiduciary relationship; or

(2) is a beneficiary and a fiduciary with respect to the same fiduciary estate and, as a fiduciary, receives benefits that exceed customary or reasonable compensation and incidental benefits permitted under other applicable law.

(f) This section does not preclude a claim against the assets of the estate or trust administered by:

(1) the fiduciary; or

(2) a nonemployee agent or independent contractor retained by a fiduciary.

(g) This section does not:

(1) affect the rights, immunities, or other defenses that are available under:

(A) this title; or

(B) other law that is applicable to a person subject to this chapter; or

(2) create:

(A) any liability for a person; or

(B) a private right of action against a fiduciary or any other person.

*As added by P.L.90-1998, SEC.23.*