

## IC 13-25-4

### Chapter 4. Hazardous Substances Response Trust Fund

#### IC 13-25-4-0.2

##### **Application of certain amendments to prior law**

Sec. 0.2. The amendments made to IC 13-7-8.7-8(c) through IC 13-7-8.7-8(f) (before that section's repeal, now codified at section 8 of this chapter) by P.L.25-1991 apply to an action for which a final determination of liability is made after June 30, 1991.

*As added by P.L.220-2011, SEC.288.*

#### IC 13-25-4-1

##### **Establishment; purpose**

Sec. 1. (a) The hazardous substances response trust fund is established. The purpose of the fund is to accumulate and maintain a source of money for the following purposes:

- (1) Financing contracts or cooperative agreements between the state and the President of the United States under Section 104 of CERCLA (42 U.S.C. 9604).
- (2) Providing state assistance in the form of supplies, materials, services, and equipment to:
  - (A) prevent the release of a hazardous substance or contaminant; or
  - (B) control, contain, isolate, neutralize, remove, store, or dispose of any hazardous substance or contaminant already released into or on the air, land, or waters of Indiana.
- (3) Financing response actions that are:
  - (A) undertaken or authorized by the commissioner with respect to sites in Indiana; and
  - (B) considered by the commissioner to be necessary to protect the public health or welfare or the environment from the release or threatened release of a hazardous substance or contaminant.
- (4) Paying expenses related to releases of regulated substances other than petroleum from underground storage tanks under IC 13-23-13-7.
- (5) Paying administrative and personnel expenses incurred by the state in responding to releases or threats of releases of hazardous substances or contaminants.
- (6) Paying claims for the reimbursement of necessary response costs incurred by persons that have received preauthorization from the commissioner for reimbursement.
- (7) Providing grants for household hazardous waste and conditionally exempt small quantity generator waste collection, recycling, or disposal projects under IC 13-20-20.
- (8) Paying administrative and personnel expenses incurred by the department in implementing and administering household hazardous waste and conditionally exempt small quantity generator waste collection, recycling, or disposal projects under IC 13-20-20.

(9) Transferring funds to the environmental remediation revolving loan fund established by IC 13-19-5-2.

(b) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

*As added by P.L.1-1996, SEC.15. Amended by P.L.59-1997, SEC.14; P.L.237-1999, SEC.10.*

#### **IC 13-25-4-2**

##### **Sources of fund**

Sec. 2. The sources of money for the fund are the following:

- (1) Revenue produced by the levy under IC 6-6-6.6.
- (2) Any payment to the state or the fund as:
  - (A) reimbursement for amounts expended by the state in a response action; or
  - (B) a settlement or judgment stemming from a lawsuit by the state or federal government to recover amounts expended by the state in a response action, including recoveries under section 10 of this chapter.
- (3) Accrued interest and other investment earnings of the fund.
- (4) Fees paid under IC 13-23-12-4(2) and penalties paid under IC 13-23-12-7 by owners and operators of underground storage tanks used to contain regulated substances other than petroleum.
- (5) Appropriations made by the general assembly and gifts and donations from private and public entities intended for deposit in the fund.
- (6) Grants and other payments made by the United States government under:
  - (A) the federal Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) in relation to regulated substances other than petroleum; or
  - (B) CERCLA.
- (7) Money received from responsible parties under agreements under section 23 of this chapter for response actions at specific sites.

*As added by P.L.1-1996, SEC.15.*

#### **IC 13-25-4-3**

##### **Investments**

Sec. 3. The treasurer of state shall invest the assets of the fund:

- (1) as a whole; and
- (2) in the investments that are authorized by the Constitution of the State of Indiana and state laws.

*As added by P.L.1-1996, SEC.15.*

#### **IC 13-25-4-4**

##### **Annual budget; expenditures; household hazardous waste grants**

Sec. 4. (a) The department shall do the following:

- (1) Prepare an annual budget to provide for administrative and personnel expenses from the fund.
- (2) Submit the budget to the budget committee in accordance

with IC 4-12-1.

(b) The general assembly must appropriate the money in the fund to be used for administrative and personnel expenses before expenditure of the money. The commissioner shall order all other expenditures from the fund with the approval of the governor and the budget agency.

(c) Not more than four hundred fifty thousand dollars (\$450,000) of the fund is available to the department each year to fund grants awarded under IC 13-20-20, exclusive of administrative and personnel expenditures authorized by section 1(a)(8) of this chapter. *As added by P.L.1-1996, SEC.15. Amended by P.L.237-1999, SEC.11.*

#### **IC 13-25-4-5**

##### **Corrective action determination; access to records**

Sec. 5. (a) This section applies to the following:

- (1) A person that stores, treats, or disposes of hazardous substances.
- (2) If necessary to ascertain facts not available at the site or facility where the hazardous substances are located, a person that generates, transports, or otherwise handles or has handled hazardous substances.

(b) To assist in determining the need for corrective action under IC 13-22-13 or removal or remedial action under this chapter in connection with a hazardous substance, a person described in subsection (a) shall:

- (1) upon request of an officer, an employee, or a designated agent of the department, furnish information relating to the hazardous substances referred to in subsection (a)(1) or (a)(2); and
- (2) permit the officer, the employee, or the designated agent of the department at any reasonable time to have access to and to copy all records relating to the hazardous substances referred to in subsection (a)(1) or (a)(2).

*As added by P.L.1-1996, SEC.15.*

#### **IC 13-25-4-6**

##### **Entry for inspection by agent; reasonable promptness; samples**

Sec. 6. (a) For the purpose of assisting in determining the need for corrective action under IC 13-22-13 or removal or remedial action in connection with a hazardous substance under this chapter, an officer, an employee, or a designated agent of the department may:

- (1) enter at reasonable times any establishment or other place:
  - (A) where hazardous substances are or have been generated, stored, treated, or disposed of; or
  - (B) from which hazardous substances have been transported;and
- (2) inspect and obtain samples of:
  - (A) any hazardous substance;
  - (B) containers or labeling for hazardous substances; or

(C) soil, surface water, ground water, or other environmental media.

(b) Each inspection under subsection (a)(2) must be commenced and completed with reasonable promptness. If the officer, the employee, or the representative of the department conducting the inspection obtains any samples, before leaving the premises the officer, the employee, or the representative shall give to the owner, the operator, or the person in charge of the premises:

- (1) a receipt describing the sample obtained; and
- (2) if requested, a portion or a duplicate of each sample equal in volume or weight to the portion retained.

(c) If an analysis is made of samples obtained in an inspection under subsection (a)(2), a copy of the results of the analysis shall be furnished promptly to the owner, the operator, or the person in charge of the premises inspected.

*As added by P.L.1-1996, SEC.15.*

#### **IC 13-25-4-7**

##### **Rules**

Sec. 7. The solid waste management board shall adopt rules establishing criteria for determining the commissioner's priorities in selecting hazardous substance response sites. Until these rules have been adopted, the commissioner shall give priority to those sites presenting a significant threat to public health and environment.

*As added by P.L.1-1996, SEC.15.*

#### **IC 13-25-4-8**

##### **Liability of a person to the state; exceptions; presumptions concerning releases**

Sec. 8. (a) Except as provided in subsection (b), (c), or (d), a person that is liable under Section 107(a) of CERCLA (42 U.S.C. 9607(a)) for:

- (1) the costs of removal or remedial action incurred by the commissioner consistent with the national contingency plan;
- (2) the costs of any health assessment or health effects study carried out by or on behalf of the commissioner under Section 104(i) of CERCLA (42 U.S.C. 9604(i)); or
- (3) damages for:
  - (A) injury to;
  - (B) destruction of; or
  - (C) loss of;

natural resources of Indiana;

is liable, in the same manner and to the same extent, to the state under this section.

(b) The exceptions provided by Sections 107(b), 107(q), and 107(r) of CERCLA 42 U.S.C. 9607(b), 42 U.S.C. 9607(q), and 42 U.S.C. 9607(r) to liability otherwise imposed by Section 107(a) of CERCLA (42 U.S.C. 9607(a)) are equally applicable to any liability otherwise imposed under subsection (a).

(c) Notwithstanding any liability imposed by the environmental

management laws:

- (1) a lender that meets, for purposes of the determination under this section of liability for a release of hazardous substances, the exception criteria under Section 101(20)(E) of CERCLA (42 U.S.C. 9601(20)(E));
- (2) a secured or unsecured creditor; or
- (3) a fiduciary;

is not liable under the environmental management laws, in connection with the release or threatened release of a hazardous substance from a facility unless the lender, the fiduciary, or creditor has participated in the management of the hazardous substance at the facility.

(d) Notwithstanding any liability imposed by the environmental management laws, the liability of a fiduciary for a release or threatened release of a hazardous substance from a facility that is held by the fiduciary in its fiduciary capacity may be satisfied only from the assets held by the fiduciary in the same estate or trust as the facility that gives rise to the liability.

(e) Except as provided in subsection (g), a political subdivision (as defined in IC 36-1-2-13) or unit of federal or state government is not liable to the state under this section for costs or damages associated with the presence of a hazardous substance on, in, or at a property in which the political subdivision or unit of federal or state government acquired an interest because of:

- (1) bankruptcy;
- (2) foreclosure;
- (3) tax delinquency, including an acquisition under IC 6-1.1-24 or IC 6-1.1-25;
- (4) abandonment;
- (5) the exercise of eminent domain, including any purchase of property once an offer to purchase has been tendered under IC 32-24-1-5;
- (6) receivership;
- (7) transfer from another political subdivision or unit of federal or state government;
- (8) acquiring an area needing redevelopment (as defined in IC 36-7-1-3) or conducting redevelopment activities, specifically under IC 36-7-14-22.2, IC 36-7-14-22.5, IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;
- (9) other circumstances in which the political subdivision or unit of federal or state government involuntarily acquired ownership or control because of the political subdivision's or unit's function as sovereign; or
- (10) any other means to conduct remedial actions on a brownfield.

(f) If a transfer of an interest in property as described in subsection (e) occurs, a person who owned, operated, or otherwise controlled the property immediately before the political subdivision or unit of federal or state government acquired the interest in the property remains liable under this section:

- (1) in the same manner; and
- (2) to the same extent;

as the person was liable immediately before the person's interest in the property was acquired by the political subdivision or unit of federal or state government.

(g) Notwithstanding subsection (e), a political subdivision or unit of federal or state government that causes or contributes to the release or threatened release of a hazardous substance on, in, or at a property remains subject to this section:

- (1) in the same manner; and
- (2) to the same extent;

as a nongovernmental entity under this section.

(h) Except as provided in subsection (i), a nonprofit corporation is not liable to the state under this section for costs or damages associated with the presence of a hazardous substance on, in, or at a property in which the nonprofit corporation acquired an interest to assist and support a political subdivision's revitalization and reuse of a brownfield for noncommercial purposes, including conservation, preservation, and recreation.

(i) Notwithstanding subsection (h), a nonprofit corporation that causes or contributes to a release or threatened release of a hazardous substance on, in, or at a property remains subject to this section:

- (1) in the same manner; and
- (2) to the same extent;

as any other nongovernmental entity under this section.

(j) A political subdivision or unit of federal or state government that establishes an exemption or defense under subsection (b) or (e) may undertake any activity related to:

- (1) investigation, removal, or remedial action on a brownfield, including complying with land use restrictions and institutional controls; or
- (2) monitoring or closure of an underground storage tank;

without being considered as contributing to the existing release or threatened release of hazardous substances on, in, or at the brownfield unless existing contamination on the brownfield is exacerbated due to gross negligence or intentional misconduct by the political subdivision or unit of federal or state government.

(k) For purposes of subsection (j), reckless, willful, or wanton misconduct constitutes gross negligence.

*As added by P.L.1-1996, SEC.15. Amended by P.L.59-1997, SEC.15; P.L.90-1998, SEC.24; P.L.25-2005, SEC.3; P.L.208-2005, SEC.13; P.L.1-2006, SEC.205; P.L.221-2007, SEC.17; P.L.159-2011, SEC.39.*

## **IC 13-25-4-8.2**

### **Lenders considered to participate in management**

Sec. 8.2. A person that is a lender and that holds evidence of ownership primarily to protect a security interest in a vessel or facility may be considered to participate in the management (as defined in IC 13-11-2-151.4) of the hazardous substance at the

facility only if, while the borrower is still in possession of the vessel or facility encumbered by the security interest, the person:

(1) exercises decision making control over the environmental compliance related to the vessel or facility such that the person has undertaken responsibility for the hazardous substance handling or disposal practices related to the vessel or facility;

or

(2) exercises control at a level comparable to that of a manager of the vessel or facility such that the person has assumed or manifested responsibility:

(A) for the overall management of the vessel or 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 vessel or facility other than the function of environmental compliance.

*As added by P.L.90-1998, SEC.25.*

#### **IC 13-25-4-8.4**

##### **Limits on liability of fiduciaries**

Sec. 8.4. (a) The liability of a fiduciary under this title for the release or threatened release of a hazardous substance at, from, or in connection with a vessel or 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 the person's ownership of a vessel or facility as a fiduciary or actions taken in a fiduciary capacity.

(c) Subsections (a) and (d) do not limit the liability pertaining to a release or threatened release of a hazardous substance 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 vessel or 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 vessel or 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.26.*

### **IC 13-25-4-9**

#### **Court actions by commissioner; administrative orders**

Sec. 9. (a) The commissioner may proceed in court, by appropriate action, to:

(1) compel a responsible person to undertake a removal or remedial action with respect to a release or threatened release of a hazardous substance from a facility or site in Indiana; or

(2) obtain an order to enter upon private or public property to carry out an appropriate response under the environmental management laws if the commissioner cannot identify or locate another person responsible for carrying out the response who:

(A) is willing to carry out the response and capable of doing so; or

(B) can be compelled to carry out the response under subdivision (1).

(b) The commissioner may issue an administrative order for the purpose set forth in subsection (a)(1).

*As added by P.L.1-1996, SEC.15.*

#### **IC 13-25-4-10**

##### **Actions to recover costs and damages; punitive damages; deposit of recovery**

Sec. 10. (a) The commissioner may proceed in the appropriate court to recover costs and damages for which a responsible person is liable to the state under any of the following:

- (1) Section 107 of CERCLA (42 U.S.C. 9607).
- (2) Section 8 of this chapter.
- (3) This section.

(b) In addition to the recovery allowed under subsection (a) and the civil penalty provisions of IC 13-30-4-1 and IC 13-30-4-2, a person that:

- (1) is liable for a release or threat of release of a hazardous substance; and
- (2) fails, without sufficient cause, to properly provide removal or remedial action upon order of a court under section 9 of this chapter;

is liable for punitive damages.

(c) The commissioner may commence a civil action against a person described in subsection (b) to recover punitive damages. In the action, the commissioner may seek and the court may grant an award of punitive damages against a person described in subsection (b) for up to three hundred percent (300%) of the total costs incurred by the department as a result of that person's failure to properly provide removal or remedial action upon the order of a court. However, any recovery in the action is subject to offset by the amount of any civil penalty paid by the person under IC 13-30-4-1 and IC 13-30-4-2 based upon the release, the threatened release, or the person's failure to properly provide removal or remedial action.

(d) Costs, damages, and punitive damages awarded under this section shall be deposited in the fund.

*As added by P.L.1-1996, SEC.15.*

#### **IC 13-25-4-11**

##### **Lien; amount**

Sec. 11. After a response is initiated under:

- (1) section 9 of this chapter; or
- (2) IC 13-24-1;

the state may impose a lien on the property on which the response is undertaken. The lien may secure the payment to the state of an amount of money equal to the amount expended from the fund under section 1(a)(3) of this chapter to finance the response.

*As added by P.L.1-1996, SEC.15.*

#### **IC 13-25-4-12**

##### **Lien; perfection**

Sec. 12. For a lien arising under section 11 of this chapter to be perfected, notice of the lien must be filed in the office of the county recorder of the county in which the real property subject to the lien is located. Before notice of a lien may be filed in the office of the county recorder, the department shall provide notice of the intention to file the lien as provided by section 19 of this chapter.

*As added by P.L.1-1996, SEC.15.*

#### **IC 13-25-4-13**

##### **Lien; notification of owner**

Sec. 13. The department shall provide notice of the filing of a lien to the owner of the property if the owner can be identified. If the owner of record cannot be identified, the department shall notify the tenant or other person having control of the property.

*As added by P.L.1-1996, SEC.15.*

#### **IC 13-25-4-14**

##### **Lien; recording**

Sec. 14. When a notice of a lien arising under section 11 of this chapter is presented to the county recorder for filing, the county recorder shall enter the lien appropriately in the entry book and in the miscellaneous record. The entries made under this section must show the following:

- (1) The date of filing.
- (2) The book and page number or instrument number.
- (3) The name of the person named in the notice.
- (4) A legal description of the property if appropriate.
- (5) A serial number or other identifying number given in the notice.

*As added by P.L.1-1996, SEC.15.*

#### **IC 13-25-4-15**

##### **Lien; discharge; release**

Sec. 15. (a) Subject to subsection (b), when a certificate of discharge of a lien arising under section 11 of this chapter or IC 13-7-8.7-10.7 (before its repeal) is:

- (1) issued by an employee or a designated agent of the department; and
- (2) presented for filing in the office of the county recorder of the county where the notice of lien was filed;

the county recorder shall record the certificate of discharge as a release of the lien.

(b) To be recorded under this section, the certificate must refer to the county recorder's book and page number or instrument number under which the lien was recorded.

*As added by P.L.1-1996, SEC.15.*

#### **IC 13-25-4-16**

##### **Lien; release; recording**

Sec. 16. When recording a release of a lien under section 15 of

this chapter, the county recorder shall inscribe, in the margin of each entry made to record the lien under section 14 of this chapter, a reference to the place where the release is recorded.

*As added by P.L.1-1996, SEC.15.*

#### **IC 13-25-4-17**

##### **Lien; discharge and satisfaction**

Sec. 17. Upon:

- (1) the recording of the certificate of discharge as a release under section 15 of this chapter; and
- (2) the inscribing of the references to the release under section 16 of this chapter;

a certificate of discharge of a lien arising under section 11 of this chapter operates as a full discharge and satisfaction of the lien unless the references to the release inscribed under section 15 of this chapter specifically note the release as a partial lien release.

*As added by P.L.1-1996, SEC.15.*

#### **IC 13-25-4-18**

##### **Lien; duration**

Sec. 18. A lien created under section 11 of this chapter or IC 13-7-8.7-10.7 (before its repeal) continues until the earlier of the following:

- (1) The full discharge and satisfaction of the lien.
- (2) The expiration of a ten (10) year period from the date of the creation of the lien unless an action to foreclose the lien is pending.

*As added by P.L.1-1996, SEC.15.*

#### **IC 13-25-4-19**

##### **Notice of intent to impose lien**

Sec. 19. (a) At least thirty (30) days before notice of a lien arising under this chapter may be filed under section 12 of this chapter, the department must send a written notice:

- (1) to the owner of the real property that would be subject to the lien; or
- (2) if the owner of record cannot be identified, to the tenant or other person having control of the real property;

of the date on which the state intends to impose a lien under section 11 of this chapter.

(b) The department shall provide the county recorder of the county in which the real property that would be subject to the lien is located with a copy of the written notice described in subsection (a).

*As added by P.L.1-1996, SEC.15.*

#### **IC 13-25-4-20**

##### **Request for and conduct of hearing**

Sec. 20. (a) Before the date on which the state intends to impose a lien on real property under section 11 of this chapter, the owner of the real property may request that a hearing be conducted under

IC 4-21.5. A hearing conducted under this section and IC 4-21.5 shall be limited to determining if there is probable cause to believe that:

(1) a removal or a remedial action was conducted on the real property under:

(A) this chapter; or

(B) IC 13-24-1; and

(2) if the removal or the remedial action was conducted under this chapter, the owner of the real property would be subject to liability under 42 U.S.C. 9607 (Section 107 of the federal Comprehensive Environmental Response, Compensation, and Liability Act).

(b) For the purposes of a hearing conducted under this section and IC 4-21.5, an environmental law judge is the ultimate authority.

*As added by P.L.1-1996, SEC.15.*

### **IC 13-25-4-21**

#### **Effect of request for hearing**

Sec. 21. If an owner requests a hearing under section 20 of this chapter, the state may not impose a lien on the owner's real property under section 11 of this chapter until the commissioner determines after the hearing that there is probable cause to believe that:

(1) a removal or a remedial action was conducted on the real property under this chapter or IC 13-24-1; and

(2) if the removal or the remedial action was conducted under this chapter, the owner of the real property would be subject to liability under 42 U.S.C. 9607 (Section 107 of the federal Comprehensive Environmental Response, Compensation, and Liability Act).

*As added by P.L.1-1996, SEC.15.*

### **IC 13-25-4-22**

#### **Retrieval of copy of written notice from county recorder**

Sec. 22. If the department provides a county recorder with a copy of a written notice under section 19(b) of this chapter, the department shall retrieve the copy of the written notice from the county recorder on the date a lien is imposed on the real property described in the written notice. However:

(1) if:

(A) a hearing is not held under section 20 of this chapter and IC 4-21.5; and

(B) a lien is not imposed:

(i) on the real property described in the notice; and

(ii) by the date indicated in the notice;

the department shall retrieve the copy of the notice on the day after the date the lien was to be imposed on the real property; or

(2) if:

(A) a hearing is held under section 20 of this chapter and IC 4-21.5; and

(B) a lien is not imposed on the real property described in the notice;

the department shall retrieve the copy of the notice on the day after the date the commissioner determines that a lien may not be imposed on the real property.

*As added by P.L.1-1996, SEC.15.*

#### **IC 13-25-4-23**

##### **Agreements for removal and remedial action**

Sec. 23. (a) The commissioner may enter into an agreement with one (1) or more potentially responsible persons concerning removal and remedial action at a site in Indiana. An agreement entered into under this section may call for one (1) or more parties, at the party's own expense, to conduct any response action at a site if the commissioner determines that the action called for in the agreement will be performed properly.

(b) An agreement entered into under this section may provide that the commissioner will:

- (1) reimburse one (1) or more parties for certain costs of the actions that those parties have agreed to perform under the agreement; or
- (2) perform a part of the response action called for in the agreement.

Money from the fund may be used for the reimbursement. An agreement may provide for the commissioner to pay interest on the principal amount to be reimbursed. Money from the fund may be used to pay the interest.

(c) The commissioner may not enter into an agreement subject to subsection (b) if, in the commissioner's opinion, there is not a reasonable likelihood of recovering:

- (1) the amount of the reimbursement agreed to under subsection (b); and
- (2) other costs incurred by the department in the response action;

unless the commissioner determines that the agreement is nonetheless in the public interest.

(d) After entering into an agreement that provides for reimbursement under subsection (b), the commissioner shall make every reasonable effort to recover the amount of the reimbursement under section 10 of this chapter from persons other than the parties.

(e) An agreement entered into under this section may be established:

- (1) in an administrative order issued by the commissioner; or
- (2) by a consent decree entered in an appropriate court.

*As added by P.L.1-1996, SEC.15.*

#### **IC 13-25-4-24**

##### **Contaminated property; restrictive covenants**

Sec. 24. (a) This section applies to real property that is:

- (1) the site of an existing or former hazardous waste facility that is or was subject to regulation under:
  - (A) IC 13-22-2 through IC 13-22-8 and IC 13-22-13 through

IC 13-22-14; or

(B) Subchapter III of the federal Solid Waste Disposal Act (42 U.S.C. 6921 through 6939e); or

(2) a site:

(A) on which a hazardous substance has been:

- (i) deposited;
- (ii) stored; or
- (iii) disposed of; and

(B) that is or was listed on the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) in accordance with Section 116 of CERCLA (42 U.S.C. 9616);

if more than an insignificantly small amount of a hazardous substance remains on or beneath the surface of that property after the partial or final closure of a hazardous waste facility located on the property or the completion of a remedial action on the property under CERCLA or this chapter.

(b) The owner of real property described in subsection (a) shall execute and record, in the office of the county recorder of the county in which the property is located, a restrictive covenant applying to the property if the commissioner determines that a restrictive covenant meeting the requirements set forth in subsection (c) is necessary to protect the public health or welfare or the environment from unreasonable risk of future exposure to a hazardous substance.

(c) A restrictive covenant required under this section must:

(1) to the extent feasible, describe:

(A) the identity, quantity, and location of every hazardous substance:

- (i) deposited;
- (ii) stored;
- (iii) disposed of; or
- (iv) placed;

on the property; and

(B) the extent to which each hazardous substance remains on the property; and

(2) incorporate the conditions and restrictions that the commissioner considers necessary to assure that the future use of the property will not disturb the final cover, any liners, or any components of the hazardous substance containment system on the property, or disturb the function of the monitoring system on the property, unless the commissioner finds that the disturbance:

(A) is necessary to the proposed use of the property and will not increase the potential hazards to human health or to the environment; or

(B) is necessary to mitigate a threat to human health or to the environment.

(d) If a change of conditions or advancements in science or technology permit an alteration in the conditions and restrictions imposed by a restrictive covenant required by this section that would

not increase the potential hazards to human health or to the environment, the commissioner, upon written request by the owner of the real property, may authorize the filing of a supplemental recording recognizing a change in the restrictive covenant in the office of the county recorder to reflect the change in the conditions and restrictions.

*As added by P.L.1-1996, SEC.15.*

#### **IC 13-25-4-25**

##### **Annual report on remedial actions**

Sec. 25. Before January 1 of each year, the commissioner shall make a report concerning the progress of remedial actions commenced under this chapter to the following:

- (1) The governor.
- (2) The standing committees of the house of representatives and the senate concerned with the environment.
- (3) The board.

*As added by P.L.1-1996, SEC.15.*

#### **IC 13-25-4-26**

##### **Removal or remedial actions; state or local permit**

Sec. 26. A state or local permit may not be required for the part of a removal or remedial action that is conducted entirely at the site of the release or threatened release of a hazardous substance if the removal or remedial action is selected and carried out in compliance with:

- (1) this chapter; and
- (2) IC 13-25-5.

*As added by P.L.1-1996, SEC.15.*

#### **IC 13-25-4-27**

##### **Action or claims; effect of chapter; immunity for liability for claims or contributions**

Sec. 27. (a) This chapter does not affect an action or a claim, including a claim for contribution, that a person who implements or completes an approved response action has or may have against a third party.

(b) A person who implements or completes an approved response action under this chapter may not be held liable for claims or contribution concerning matters addressed in the response action.

*As added by P.L.1-1996, SEC.15.*

#### **IC 13-25-4-28**

##### **Criminal penalty for application misstatement**

Sec. 28. A person who, with intent to defraud, knowingly or intentionally makes a material misstatement in connection with an application for financial assistance from the fund commits a Class D felony.

*As added by P.L.137-2007, SEC.29.*