

IC 13-25-5

Chapter 5. Voluntary Remediation of Hazardous Substances and Petroleum

IC 13-25-5-1

Intent of chapter

Sec. 1. (a) This chapter is intended to provide an alternative procedure to assure compliance with the law and to encourage the voluntary remediation of hazardous substances and petroleum.

(b) This section does not affect a person's legal obligations set forth in 42 U.S.C. 6901 et seq. regardless of a person's participation in this chapter.

As added by P.L.1-1996, SEC.15. Amended by P.L.59-1997, SEC.16.

IC 13-25-5-2

Application; confidentiality; conditions; fee

Sec. 2. (a) A person who desires to participate in the voluntary remediation program under this chapter must submit an application and a fee to the department as described under subsection (c).

(b) Except as provided under section 5(c) of this chapter, any information submitted to the division of the department responsible for reviewing and making determinations on applications under this chapter is confidential between the applicant and the department until the applicant and the commissioner sign a voluntary remediation agreement.

(c) An application submitted under this section must meet the following conditions:

(1) Be on a form provided by the department.

(2) Contain the following:

(A) General information concerning:

(i) the person;

(ii) the site; and

(iii) other background information;

as requested by the department.

(B) An environmental assessment of the actual or threatened release of the hazardous substance or petroleum at the site.

(3) Be accompanied by an application fee of one thousand dollars (\$1,000). However, a political subdivision is not required to submit an application fee under this section.

(d) A fee collected under this section shall be deposited in the voluntary remediation fund established by section 21 of this chapter.

As added by P.L.1-1996, SEC.15. Amended by P.L.59-1997, SEC.17.

IC 13-25-5-3

Environmental assessment; contents

Sec. 3. An environmental assessment described under section 2(c)(2)(B) of this chapter must include the following:

(1) A legal description of the site.

(2) The physical characteristics of the site.

(3) The operational history of the site to the extent the history

is known by the applicant.

(4) Information that the applicant is aware of concerning:

- (A) the nature and extent of any relevant contamination; and
- (B) relevant releases;

at the site and immediately contiguous to the site.

(5) Relevant information the applicant is aware of concerning the potential for human exposure to contamination at the site.

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

IC 13-25-5-4

Determination of applicant eligibility

Sec. 4. Not more than thirty (30) days after receiving:

- (1) an application; and
- (2) an application fee;

under section 2 of this chapter, the department shall determine if the applicant is eligible to participate in the voluntary remediation program under this chapter.

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

IC 13-25-5-5

Rejection of application; reasons; completeness; list of information; department duties

Sec. 5. (a) The department may reject an application submitted under section 2 of this chapter only for one (1) or more of the following reasons:

- (1) A state or federal enforcement action that concerns the remediation of the hazardous substance or petroleum described in the application is pending.
- (2) A federal grant requires an enforcement action at the site.
- (3) The condition of the hazardous substance or petroleum described in the application constitutes an imminent and substantial threat to human health or the environment.
- (4) The application is not complete.

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

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

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

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

IC 13-25-5-6

Rejection of application; appeal; submission of completed application; refund

Sec. 6. (a) If an applicant's application is rejected under section 5

of this chapter, the applicant may do the following:

- (1) Appeal the department's decision under IC 4-21.5.
 - (2) If the application is rejected because the application is not complete, submit a completed application without submitting an additional application fee.
- (b) If an applicant's application is rejected and the applicant:
- (1) does not appeal the rejection; or
 - (2) loses an appeal concerning the rejection;

the department shall refund the unexpended part of the applicant's application fee.

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

IC 13-25-5-7

Voluntary remediation investigation plan; voluntary remediation work plan; contents

Sec. 7. (a) If the department determines an application is eligible under section 4 of this chapter, the applicant may submit:

- (1) a proposed voluntary remediation investigation plan to the department;
- (2) a proposed voluntary remediation work plan to the department; or
- (3) a voluntary remediation work plan for a completed remediation project to the department.

(b) A proposed voluntary remediation work plan must include the following:

- (1) Detailed documentation of the investigation conducted by the applicant in preparing the proposed voluntary remediation work plan and a description of the work to be performed by the applicant to determine the nature and extent of the actual or threatened release.
- (2) A proposed statement of work to accomplish the remediation in accordance with guidelines established by the department.
- (3) Plans concerning the following:
 - (A) Quality assurance for the implementation of the proposed remediation project.
 - (B) Descriptions of sampling and analysis.
 - (C) Health and safety considerations.
 - (D) Community relations and community comment in planning, cleanup objectives, and implementation processes.
 - (E) Data management and record keeping.
 - (F) A proposed schedule concerning the implementation of all tasks set forth in the proposed statement of work.

(c) A voluntary remediation work plan for a completed remediation project must include the following:

- (1) Detailed documentation of the investigation conducted by the applicant in preparing the proposed voluntary remediation work plan and a description of the work performed by the applicant to determine the nature and extent of the actual or threatened release.

(2) A statement of work performed to accomplish the remediation in accordance with rules or guidelines established by the department.

(3) Plans concerning the following:

(A) Quality assurance for the implementation of and, if appropriate, plans for future oversight of the remediation project.

(B) Descriptions of sampling and analysis conducted before and after the remediation is performed.

(C) Health and safety considerations.

(D) Community comment.

(E) Data management and record keeping.

(F) Criteria used to determine remediation levels and remediation methodology.

(4) Other information the department determines is necessary to evaluate the work plan and determine if the remediation objectives have been achieved.

As added by P.L.1-1996, SEC.15. Amended by P.L.59-1997, SEC.18.

IC 13-25-5-8

Voluntary remediation agreement; contents; failure to reach accord within reasonable time after good faith negotiations

Sec. 8. (a) Before the department evaluates a proposed voluntary remediation work plan, the applicant who submitted the work plan and the commissioner must enter into a voluntary remediation agreement that sets forth the terms and conditions of the evaluation and the implementation of the work plan. A voluntary remediation agreement must include the following:

(1) Provisions for the following:

(A) A requirement that the department provide the applicant with an itemized list of estimated costs the department may incur under this chapter.

(B) The recovery of all reasonable costs that:

(i) are incurred by the department in the review and oversight of the work plan;

(ii) are attributable to the voluntary remediation agreement; and

(iii) exceed the fee submitted by the applicant under section 2 of this chapter.

(C) A schedule of payments to be made by the applicant to the department to recover the costs to the department.

(2) A mechanism to resolve disputes arising from the evaluation, analysis, and oversight of the implementation of the work plan, including any of the following:

(A) Arbitration.

(B) Adjudication under IC 4-21.5.

(C) A dispute resolution procedure provided under the Indiana Rules of Court.

(3) A provision concerning the indemnification of the parties.

(4) A provision concerning retention of records.

- (5) A timetable for the department to do the following:
 - (A) Reasonably review and evaluate the adequacy of the work plan.
 - (B) Make a determination concerning the approval or rejection of the work plan.
- (6) A provision concerning applicable interagency coordination.
- (7) A provision specifying the proposed remediation objectives to be achieved on the site, as described in section 8.5 of this chapter.
- (8) The requirement that the applicant submit to the department a proposed voluntary remediation work plan:
 - (A) not later than one hundred eighty (180) days after the date the voluntary remediation agreement is signed; or
 - (B) after a longer period if the extension is agreed to by the department and the applicant.
- (9) Any other conditions considered necessary by the commissioner or the applicant concerning the effective and efficient implementation of this chapter.
- (b) If an agreement is not reached between an applicant and the commissioner within a reasonable time after good faith negotiations have begun between the applicant and the commissioner:
 - (1) the applicant or the commissioner may withdraw from the negotiations; and
 - (2) the department shall refund the unexpended part of the applicant's application fee.

As added by P.L.1-1996, SEC.15. Amended by P.L.59-1997, SEC.19.

IC 13-25-5-8.5

Voluntary remediation work plan objectives; additional action to protect human health and the environment not necessary under certain circumstances; risk based remediation objectives and proposals

Sec. 8.5. (a) A voluntary remediation work plan must specify the remediation objectives for the site. Subsections (b) through (e) apply to a site regardless of whether the site was entered into the voluntary remediation program before July 1, 2009, or after June 30, 2009.

(b) The remediation objectives for each hazardous substance and any petroleum on the site shall be based on:

- (1) background levels of hazardous substances and petroleum that occur naturally on the site; or
- (2) an assessment of the risks pursuant to subsection (d) posed by the hazardous substance or petroleum presently found on the site taking into consideration the following:
 - (A) Expected future use of the site.
 - (B) Measurable risks to human health, natural resources, or the environment based on the:
 - (i) activities that take place; and
 - (ii) environmental impact;

(c) If the:

(1) nature and extent of the hazardous substance or petroleum is adequately characterized under the voluntary remediation work plan, considering the remediation objectives developed under this section; and

(2) the level of the hazardous substance or petroleum is demonstrated to be below:

(A) background levels of the hazardous substances and petroleum that occur naturally on the site; or

(B) the risk based levels developed under subsection (d); additional action is not necessary to protect human health or the environment.

(d) Risk based remediation objectives shall be based on one (1) of the following:

(1) Levels of hazardous substances and petroleum calculated by the department using standard equations and default values for particular hazardous substances or petroleum.

(2) Levels of hazardous substances and petroleum calculated using site specific data for the default values in the department's standard equations.

(3) Levels of hazardous substances and petroleum developed based on site specific risk assessments that take into account site specific factors, including remedial measures, restrictive covenants, and environmental restrictive ordinances that:

(A) manage risk; and

(B) control completed or potential exposure pathways.

(e) The department shall consider and give effect to restrictive covenants and environmental restrictive ordinances in evaluating risk based remediation proposals.

(f) The department, or a person authorized under subsection (g), shall give written notice to a municipal corporation that the department is relying on an environmental restrictive ordinance adopted by the municipal corporation as part of a risk based remediation proposal:

(1) approved by the department; and

(2) conducted under IC 13-22, IC 13-23, IC 13-24, IC 13-25-4, or IC 13-25-5.

(g) The department may delegate authority to give the written notice referred to in subsection (f) to the person who proposed the risk based remediation.

As added by P.L.59-1997, SEC.20. Amended by P.L.78-2009, SEC.18; P.L.159-2011, SEC.40.

IC 13-25-5-9

Review and evaluation; additional or corrected information

Sec. 9. (a) After the commissioner and an applicant have signed a voluntary remediation agreement described under section 8 of this chapter, the department or a person under contract with the department shall do the following:

(1) Review and evaluate the site and the affected area surrounding the site.

(2) Review and evaluate the documentation of the investigation and feasibility study conducted by the applicant or the applicant's representative for accuracy and thoroughness.

(3) Review and evaluate the proposed voluntary remediation work plan for quality, efficiency, and safety based on guidelines established by the department.

(4) Make a recommendation to the commissioner concerning whether the commissioner should:

(A) approve;

(B) modify and approve; or

(C) reject;

the proposed voluntary remediation work plan.

(b) At any time during the evaluation of a proposed voluntary remediation work plan, the commissioner or the department may request that an applicant submit additional or corrected information to the department. An applicant may:

(1) comply with the request; or

(2) withdraw the applicant's proposed voluntary remediation work plan from consideration.

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

IC 13-25-5-10

Voluntary remediation work plan; approval, modification, or rejection

Sec. 10. Subject to section 11 of this chapter, after receiving a recommendation under section 9 of this chapter, the commissioner shall:

(1) approve;

(2) modify and approve; or

(3) reject;

the proposed voluntary remediation work plan.

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

IC 13-25-5-11

Voluntary remediation work plan; placement in public library; notice; comment period; hearing

Sec. 11. (a) Before the commissioner approves or rejects a proposed voluntary remediation work plan under section 10 of this chapter, the commissioner must:

(1) notify local government units located in a county affected by the proposed voluntary remediation work plan of the work plan;

(2) provide that a copy of the proposed voluntary remediation work plan be placed in at least one (1) public library in a county affected by the work plan; and

(3) publish a notice requesting comments concerning the proposed voluntary remediation work plan.

(b) A comment period of at least thirty (30) days must follow publication of a notice under this section. During a comment period, interested persons may do the following:

(1) Submit written comments to the commissioner concerning

the proposed voluntary remediation work plan.

(2) Request a public hearing concerning the proposed voluntary remediation work plan.

(c) If the commissioner receives at least one (1) written request, the commissioner may hold a public hearing in the geographical area affected by the proposed voluntary remediation work plan on the question of whether to approve or reject the work plan. The commissioner shall consider all written comments and public testimony.

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

IC 13-25-5-12

Voluntary remediation work plan; rejection; notice; appeal

Sec. 12. If the commissioner rejects a proposed voluntary remediation work plan under section 10 of this chapter:

(1) the commissioner shall, under applicable provisions set forth in IC 4-21.5-3-5(b) and IC 4-21.5-3-5(c), notify the applicant and specify the reasons for rejecting the work plan; and

(2) the applicant may appeal the commissioner's decision under IC 4-21.5.

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

IC 13-25-5-13

Voluntary remediation work plan; approval or modification; notice

Sec. 13. If the commissioner approves or modifies and approves a proposed voluntary remediation work plan under this chapter, the commissioner shall notify the applicant in writing, under the applicable provisions set forth in IC 4-21.5-3-5(b) and IC 4-21.5-3-5(c), of the following:

(1) That the voluntary remediation work plan has been approved or modified and approved.

(2) The date:

(A) the applicant may begin implementing the work plan; and

(B) by which the work plan must be completed.

(3) The applicant's right to appeal the commissioner's decision under IC 4-21.5.

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

IC 13-25-5-14

Voluntary remediation work plan; implementation; notice

Sec. 14. If an applicant who submitted an approved voluntary remediation work plan desires to proceed with the implementation of the work plan, the applicant must notify the commissioner in writing not more than sixty (60) days after the work plan is approved that the applicant:

(1) intends to proceed with the implementation of the work plan; and

(2) agrees to the starting and completion dates set forth by the

commissioner under section 13(2) of this chapter.
As added by P.L.1-1996, SEC.15.

IC 13-25-5-15

Voluntary remediation work plan; implementation; reports

Sec. 15. If an applicant who submitted an approved voluntary remediation work plan proceeds with the work plan, the department or a person under contract with the department shall do the following:

- (1) Oversee and review the implementation of the voluntary remediation work plan.
- (2) Make regular reports to the commissioner concerning the remediation.

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

IC 13-25-5-16

Certificate of completion

Sec. 16. (a) If the commissioner determines that an applicant has successfully completed a voluntary remediation work plan approved under this chapter, the commissioner shall certify that the work plan has been completed by issuing the applicant a certificate of completion.

(b) The issuance of a certificate of completion under this section is a final agency action for purposes of IC 4-21.5.

(c) A person who receives a certificate under this section shall attach a copy of the certificate to the recorded deed that concerns the property on which the remediation took place.

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

IC 13-25-5-17

Notice of unsuccessful completion

Sec. 17. If the commissioner determines that an applicant has not successfully completed a voluntary remediation work plan approved under this chapter, the commissioner shall notify the applicant of this determination under IC 4-21.5.

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

IC 13-25-5-18

Covenant not to sue; conditions in covenants not to sue and certificates of completion; immunity from actions; exceptions

Sec. 18. (a) If the commissioner issues a certificate to a person under section 16 of this chapter, the governor shall also provide the person with a covenant not to sue for any liability, including future liability, or a claim resulting from or based upon the release or threatened release of a hazardous substance or petroleum that is addressed by an approved voluntary remediation work plan under this chapter.

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

- (1) a person who received the certificate of completion under

section 16 of this chapter; or

(2) any other person who receives the certificate of completion:

(A) through a legal transfer of the certificate of completion;
or

(B) by acquiring property to which the certificate of completion applies;

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

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

(1) was present:

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

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

(2) was not known to the commissioner at the time the commissioner issued the certificate of completion under section 16 of this chapter.

(d) A certificate of completion issued under section 16 of this chapter may include conditions that must be performed or maintained after issuance of the certificate.

(e) A covenant not to sue issued under this section may include conditions that must be performed or maintained after issuance of the covenant.

(f) Except as:

(1) provided under federal law; or

(2) agreed to by a federal governmental entity;

a covenant not to sue issued under this section may not release a person from liability to the federal government for claims based on federal law.

(g) After an applicant and the department have signed a voluntary remediation agreement, a person may not bring an action, including an administrative action, against the applicant or any other person proceeding under this chapter on behalf of the applicant for any cause of action arising under this title or rules adopted under this title and relating to the release or threatened release of a hazardous substance or petroleum that is the subject of the agreement. However, this section does not apply if:

(1) the applicant fails to file a proposed voluntary remediation work plan within the time period established in section 8(a)(8) of this chapter;

(2) the commissioner rejects a proposed voluntary remediation work plan submitted in good faith and the rejection is upheld in any appeal brought under section 12 of this chapter;

(3) the applicant or another person proceeding under this chapter on behalf of the applicant fails to complete a voluntary remediation in accordance with an approved voluntary

remediation work plan; or

(4) the commissioner withdraws the commissioner's approval of the voluntary remediation work plan and the withdrawal is upheld in any appeal under section 19 of this chapter.

However, if the commissioner withdraws approval of the plan under section 19(a)(2) of this chapter, the commissioner may bring an action, including an administrative action, against the applicant.

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

As added by P.L.1-1996, SEC.15. Amended by P.L.59-1997, SEC.21; P.L.78-2009, SEC.19.

IC 13-25-5-19

Withdrawing commissioner's approval of voluntary remediation work plan; appeal

Sec. 19. (a) This chapter does not prohibit or limit the commissioner from withdrawing the commissioner's approval of a voluntary remediation work plan at any time during the implementation of the work plan if:

(1) the person implementing the work plan fails substantially to comply with the terms and conditions of:

(A) the voluntary remediation work plan; or

(B) a voluntary remediation agreement; or

(2) a hazardous substance or petroleum becomes an imminent and substantial threat to human health or the environment.

(b) The withdrawal of the approval of a voluntary remediation work plan may be appealed under IC 4-21.5.

As added by P.L.1-1996, SEC.15. Amended by P.L.59-1997, SEC.22.

IC 13-25-5-20

Third party actions or claims; liability for claims for contribution

Sec. 20. (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 voluntary remediation work plan has or may have against a third party.

(b) A person who implements or completes an approved voluntary remediation work plan under this chapter is not liable for claims for contribution concerning matters addressed in:

(1) the work plan; or

(2) a certificate of completion issued to the person under section 16 of this chapter.

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

IC 13-25-5-21

Voluntary remediation fund

Sec. 21. (a) The voluntary remediation fund is established to provide a source of money for the department to implement this chapter.

(b) The expenses of administering the fund shall be paid from the money in the fund.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the fund.

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

(e) The sources of money for the fund are as follows:

(1) Fees paid under section 2 of this chapter.

(2) Appropriations made by the general assembly.

(3) Gifts and donations intended for deposit in the fund.

(4) Transfers under section 22 of this chapter from the environmental management special fund established by IC 13-14-12-1.

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

IC 13-25-5-22

Repealed

(Repealed by P.L.1-2001, SEC.51.)

IC 13-25-5-23

Rules

Sec. 23. The board may adopt rules under IC 4-22-2 and IC 13-14-8 to implement this chapter. The rules may include interim or final remediation standards or provisions limiting the liability of lenders associated with persons involved in voluntary remediation projects under this chapter.

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