

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

##### Chapter 4. Emergency Regulation of Ground Water Rights

#### **IC 14-25-4-1**

##### **"Construction" defined**

Sec. 1. As used in this chapter, "construction" means the process of building a building, highway, utility, or another structure. The term includes the following:

- (1) The process of assembling materials.
- (2) Disassembling and removing a structure.
- (3) The preparation of the construction site.
- (4) Related work.

*As added by P.L.1-1995, SEC.18.*

#### **IC 14-25-4-2**

##### **"Dewatering well" defined**

Sec. 2. As used in this chapter, "dewatering well" means a temporary water well that:

- (1) is used as part of a construction project to remove water from a surface or subsurface area; and
- (2) ceases to be used upon completion of the construction project or shortly after completion of the project.

*As added by P.L.1-1995, SEC.18.*

#### **IC 14-25-4-3**

##### **"Nonsignificant ground water withdrawal facility" defined**

Sec. 3. As used in this chapter, "nonsignificant ground water withdrawal facility" means the ground water withdrawal facility of a person that, in the aggregate, has a withdrawal capability of less than one hundred thousand (100,000) gallons of ground water in one (1) day.

*As added by P.L.1-1995, SEC.18.*

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

##### **"Owner" defined**

Sec. 4. (a) As used in this chapter and subject to subsection (b), "owner" includes the following:

- (1) The owner of an interest in property.
- (2) A person in possession of property.

(b) For a temporary dewatering well, "owner" means the person who authorized the construction that necessitated the installation of the dewatering well.

*As added by P.L.1-1995, SEC.18.*

#### **IC 14-25-4-5**

##### **"Potable water" defined**

Sec. 5. As used in this chapter, "potable water" means water that at the point of use is acceptable for human consumption under drinking water quality standards adopted by the water pollution control board under IC 13-18-4-1.

*As added by P.L.1-1995, SEC.18. Amended by P.L.1-1996, SEC.65.*

#### **IC 14-25-4-6**

##### **"Significant ground water withdrawal facility" defined**

Sec. 6. As used in this chapter, "significant ground water withdrawal facility" means the ground water withdrawal facility of a person that, in the aggregate from all sources and by all methods, has the capability of withdrawing at least one hundred thousand (100,000) gallons of ground water in one (1) day.

*As added by P.L.1-1995, SEC.18.*

#### **IC 14-25-4-7**

##### **"Water well" defined**

Sec. 7. (a) As used in this chapter, "water well" means an excavation, however constructed, that is used for the purpose of withdrawing ground water for reasonable beneficial uses.

(b) The term does not include agricultural and urban drainage systems.

*As added by P.L.1-1995, SEC.18.*

#### **IC 14-25-4-8**

##### **Investigations**

Sec. 8. Within twenty-four (24) hours after receiving a written complaint from the owner of a nonsignificant ground water withdrawal facility that a water well on property in the owner's possession has:

- (1) failed to furnish the well's normal supply of water; or
- (2) failed to furnish potable water;

the director shall cause an onsite investigation to be made.

*As added by P.L.1-1995, SEC.18.*

#### **IC 14-25-4-9**

##### **Ground water emergency; based on investigation**

Sec. 9. If an investigation under section 8 of this chapter discloses:

- (1) that the well has:
  - (A) failed to furnish the well's normal supply of water; or
  - (B) based upon reasonable evidence of prior potability supplied by the owner, failed to furnish potable water;
- (2) that there has been a substantial lowering of the level of ground water in the area that has resulted in the failure of the well to:
  - (A) furnish the well's normal supply of water; or
  - (B) furnish potable water if the failure is caused by natural variations in the potability of water in the source aquifer;
- (3) that the well and the well's equipment were functioning properly at the time of the failure;
- (4) that the failure of the well was caused by the lowering of the ground water level in the area;
- (5) that the lowering of the ground water level is such that the

ground water level:

- (A) exceeds normal seasonal water level fluctuations; and
- (B) substantially impairs continued use of the ground water resource in the area; and

(6) that the lowering of the ground water level was caused by at least one (1) significant ground water withdrawal facility; the director shall, by temporary order, declare a ground water emergency.

*As added by P.L.1-1995, SEC.18.*

#### **IC 14-25-4-10**

##### **Ground water emergency; based on other evidence**

Sec. 10. If the director has reasonable evidence that indicates that continued ground water withdrawals from a significant ground water withdrawal facility will exceed the recharge capability of the ground water resource of the area, the director shall, by temporary order, declare a ground water emergency.

*As added by P.L.1-1995, SEC.18.*

#### **IC 14-25-4-11**

##### **Notice of hearing**

Sec. 11. A temporary order under section 9 or 10 of this chapter must include a notice of hearing to be held under IC 4-21.5-4 as soon as practicable after the declaration of the ground water emergency. Following the hearing, the director may continue, amend, or terminate the ground water emergency. The emergency shall be terminated as soon as justified by changed conditions.

*As added by P.L.1-1995, SEC.18.*

#### **IC 14-25-4-12**

##### **Restrictions on withdrawal of ground water**

Sec. 12. (a) Except as provided in subsection (b), the director may restrict the quantity of ground water that may be extracted from a significant ground water withdrawal facility when the director declares a ground water emergency under section 9 or 10 of this chapter if:

(1) the:

- (A) facility is reasonably believed to have caused the failure of the complainant's water well; and
- (B) immediate temporary provision of an adequate supply of potable water required under sections 18(1) and 20(a) of this chapter is not carried out; or

(2) there is a reasonable belief that continued ground water withdrawals from the facility will exceed the recharge capability of the ground water resource of the area.

(b) If an operator of a significant ground water withdrawal facility withdraws water by a means other than pumping, the director may temporarily restrict the quantity of ground water that may be extracted only if the provisions of subsection (a)(1) have not been met.

*As added by P.L.1-1995, SEC.18.*

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

##### **Adoption of rules**

Sec. 13. The commission may adopt rules under IC 4-22-2 to administer this chapter. The rules must be consistent with IC 25-39 and rules adopted under IC 25-39.

*As added by P.L.1-1995, SEC.18.*

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

##### **Ground water emergency; when effective; notice**

Sec. 14. (a) A declaration of a ground water emergency under this chapter is effective when a copy of a declaration is served under IC 4-21.5-3-1 upon a person who owns the significant ground water withdrawal facility that is reasonably believed to have caused the failure of the complainant's water well.

(b) As soon as possible after a declaration of a ground water emergency has been made, copies of the declaration shall be given to the newspapers of general circulation located in the affected county. The notification to newspapers required by this subsection is in addition to the minimum procedural duties required of the department under IC 4-21.5 and does not satisfy service of process by publication under IC 4-21.5-3-1(f).

(c) If the emergency requires action before service can be completed under subsection (a), oral notification in person by a representative of the department and authorized by the director is sufficient until service can be completed. Oral notification is effective for not more than ninety-six (96) hours.

*As added by P.L.1-1995, SEC.18. Amended by P.L.32-2011, SEC.8.*

#### **IC 14-25-4-15**

##### **Effect on civil right of action**

Sec. 15. This chapter does not:

- (1) create a new; or
- (2) abridge an existing;

civil right of action.

*As added by P.L.1-1995, SEC.18.*

#### **IC 14-25-4-16**

##### **Violations; injunctions**

Sec. 16. (a) A person who violates this chapter commits a Class A infraction.

(b) The commission may, without proof of irreparable injury, maintain an action to enjoin a violation of this chapter.

*As added by P.L.1-1995, SEC.18.*

#### **IC 14-25-4-17**

##### **Right to compensation for impairment of nonsignificant ground water withdrawal facilities**

Sec. 17. The owner of a significant ground water withdrawal

facility shall, subject to an order issued under section 20 of this chapter or under IC 13-2-2.5-11 (before its repeal), provide timely and reasonable compensation to persons who own nonsignificant ground water withdrawal facilities if there is failure or substantial impairment of those facilities as set forth in section 8 of this chapter if both of the following conditions exist:

(1) The failure or substantial impairment was caused by the ground water withdrawals of the significant ground water withdrawal facility.

(2) Either:

(A) the affected nonsignificant ground water withdrawal facility was in existence before January 1, 1986; or

(B) if constructed after December 31, 1985, the facility conforms to the rules of the department issued under section 13 of this chapter. Water wells constructed after December 31, 1985, but before the adoption of rules under this chapter must conform to the Recommended Guidelines of the department in Information Bulletin No. 3 published at 9 IR 1242.

*As added by P.L.1-1995, SEC.18.*

#### **IC 14-25-4-18**

##### **Measure of compensation**

Sec. 18. Timely and reasonable compensation under section 17 of this chapter consists of and is limited to the following:

(1) The immediate temporary provision at the prior point of use of an adequate supply of potable water.

(2) Reimbursement of expenses reasonably incurred by the complainant to do the following:

(A) Obtain an immediate temporary provision at the prior point of use of an adequate supply of potable water.

(B) Provide timely and reasonable compensation as provided in subdivision (3)(A) and (3)(B).

(3) Either:

(A) the restoration of the affected nonsignificant ground water withdrawal facility to the facility's former relative capability;

(B) the permanent provision at the point of use of an alternative potable supply of equal quantity; or

(C) the permanent restriction or scheduling of the ground water withdrawals of the significant ground water withdrawal facility so that the affected water well continues to produce:

(i) the well's normal supply of water; or

(ii) the normal supply of potable water if the well normally furnishes potable water.

*As added by P.L.1-1995, SEC.18.*

#### **IC 14-25-4-19**

##### **Refusal of compensation**

Sec. 19. The refusal of an owner of an affected nonsignificant ground water withdrawal facility to accept timely and reasonable compensation is sufficient grounds for the department to terminate an order imposed on a responsible significant ground water withdrawal facility. An owner may request a hearing under IC 4-21.5 if the owner does not believe compensation was timely or reasonable. *As added by P.L.1-1995, SEC.18.*

#### **IC 14-25-4-20**

##### **Ground water emergency; temporary provision of potable water**

Sec. 20. (a) Upon the declaration of a ground water emergency under section 9 of this chapter, the director shall, by temporary order, require the immediate temporary provision at the prior point of use of an adequate supply of potable water. A temporary order under section 9 or 10 of this chapter remains in effect for ninety (90) days unless:

- (1) terminated by the director before the expiration of ninety (90) days; or
- (2) extended under IC 4-21.5-4-5(b) during the pendency of a proceeding under section 18(2) and 18(3) of this chapter.

(b) The commission shall implement section 18(2) and 18(3) of this chapter by order. Before the commission enters an initial determination of the order, the department shall conduct an investigation and provide affected persons with an informal opportunity to contribute to the investigation. All final orders of the commission shall be issued under IC 4-21.5-3.

*As added by P.L.1-1995, SEC.18.*

#### **IC 14-25-4-21**

##### **Nonsignificant ground water withdrawal facilities to comply with rules**

Sec. 21. (a) An owner of a new nonsignificant ground water withdrawal facility who desires to receive the protection of this chapter must construct the facility to conform to the rules adopted under section 13 of this chapter.

(b) Before a licensed water well drilling contractor or plumbing contractor drills and equips a ground water withdrawal facility for a person, the contractor must advise the person of the provisions of this chapter.

*As added by P.L.1-1995, SEC.18.*