

IC 14-38-2

Chapter 2. Test Hole Pollution Control and Waste

IC 14-38-2-1

Applicability of chapter

Sec. 1. This chapter applies to a person who desires to drill at least one (1) test hole:

- (1) for fluid disposal investigation, mineral resources investigation, engineering projects investigation, or geologic investigation; and
- (2) to a depth of at least two hundred (200) feet below ground surface elevation at the test hole site.

As added by P.L.1-1995, SEC.31.

IC 14-38-2-2

Public interest in preventing pollution, impairment, and waste of natural resources

Sec. 2. It is in the public interest for the state to provide the means whereby test holes for or in connection with fluid disposal investigations, mineral resources investigations, engineering projects investigations, or geologic investigations are drilled, used, and plugged in a manner that prevents pollution, impairment, and waste of natural resources.

As added by P.L.1-1995, SEC.31.

IC 14-38-2-3

"Plug" or "plugging" defined

Sec. 3. As used in this chapter, "plug" or "plugging" means the stopping of the flow or migration of oil, gas, water, or other fluid or material up or down a test hole.

As added by P.L.1-1995, SEC.31.

IC 14-38-2-4

"Test hole" defined

Sec. 4. As used in this chapter, "test hole" means an exploratory hole, except for coal exploration, drilled for the purpose of obtaining information and data on the character, composition, sequence, thickness, age, and correlation of underground strata and formations for at least one (1) of the following and no other purposes:

- (1) The feasibility of an area for fluid disposal.
- (2) The existence, extent, and characteristics of an underground mineral deposit or deposits.
- (3) The suitability of underground formations for use in or as a foundation for engineering projects or works.
- (4) Expanding the store of scientific knowledge of the geology of an area.

As added by P.L.1-1995, SEC.31.

IC 14-38-2-5

Enforcement by department

Sec. 5. The department shall carry out and enforce this chapter.
As added by P.L.1-1995, SEC.31.

IC 14-38-2-6

Application and permit fee

Sec. 6. A person must do the following before drilling a test hole:

- (1) File a written application for a permit with and receive a permit from the commission. A single permit may authorize the drilling of more than one (1) test hole.
- (2) Submit a permit fee of one hundred dollars (\$100) payable to the department.

As added by P.L.1-1995, SEC.31.

IC 14-38-2-7

Duties of commission

Sec. 7. The commission shall do the following:

- (1) Adopt rules and orders necessary to administer this chapter.
- (2) Hold hearings at any place in Indiana for the purpose of administering this chapter. A hearing may be conducted by a member of the commission or by the officer, agent, or employee that is designated by the commission. However, a proposed finding is not valid unless the commission approves the finding.
- (3) Prescribe and adopt the form of an application for a permit to be filed by an applicant.
- (4) Except as provided by subdivision (5), require a person drilling a test hole under this chapter to furnish at a reasonable time and place that the commission specifies the following:
 - (A) A copy of the driller's log of the test hole.
 - (B) A copy of a geophysical log taken in the drilling of the test hole.
 - (C) A copy of the drilling record.
 - (D) Typical drill cuttings or cores, if taken.
- (5) Upon written application certifying that the withholding of the information is necessary for protection of the permittee:
 - (A) the commission shall excuse the permittee from furnishing the items required by subdivision (4); and
 - (B) the permittee shall furnish the location of each test hole by county, township, range, and quarter-quarter section, including the proper legal description and the size and depth of the hole.
- (6) Require a person filing for a permit to drill a test hole, except for state or federal agencies, to execute and file with the commission:
 - (A) a bond not exceeding one thousand dollars (\$1,000) for each test hole drilled; or
 - (B) a blanket bond not exceeding five thousand dollars (\$5,000) for all test holes drilled by the applicant during the duration of the bond;

to provide for compliance with this chapter and the rules of the commission adopted under this chapter with respect to the

plugging of the test holes. The bond must be in the form approved by the commission, and the bond shall be renewed and continued in effect until the conditions have been fully complied with.

(7) Enter upon and inspect, at any reasonable time and by any member of the commission or the commission's agent, any location where test holes are being or have been drilled for fluid disposal, mineral resources investigation, engineering projects, or geologic information for the purpose of ascertaining whether this chapter and the rules and orders of the commission are being or have been complied with, including information on the drilling or completion depth of a test hole.

As added by P.L.1-1995, SEC.31.

IC 14-38-2-8

Expiration of permit

Sec. 8. A permit issued under this chapter expires one (1) year from the date of issuance unless a test hole is drilled within one (1) year.

As added by P.L.1-1995, SEC.31.

IC 14-38-2-9

Issuance of permit

Sec. 9. (a) Subject to subsection (b), if an applicant for a permit to drill or deepen a test hole has complied with this chapter and the rules of the commission, the commission shall issue a permit.

(b) The commission may refuse to issue a permit if the drilling of the test hole would violate this chapter or rules adopted under this chapter.

As added by P.L.1-1995, SEC.31.

IC 14-38-2-10

Plugging and abandoning hole

Sec. 10. Upon the completion of drilling, a permittee shall plug and abandon the hole in a manner that confines permanently all fluids or materials in the separate strata originally confining the fluids or materials by the use of mud-laden fluid, cement, or plugs used:

- (1) singly; or
- (2) in combinations approved by the commission.

As added by P.L.1-1995, SEC.31.

IC 14-38-2-11

Notice before plugging

Sec. 11. A permittee may not begin plugging procedures until the permittee has given notice to the commission or the commission's designated representative by personal oral or written notice, telephone, or telegram.

As added by P.L.1-1995, SEC.31.

IC 14-38-2-12

Affidavit of plugging and abandoning

Sec. 12. (a) The commission's designated representative or the authorized representative of the permittee who supervises the plugging of the test hole shall make and furnish to the permittee an affidavit to the effect that the test hole has been plugged and abandoned in accordance with this chapter, reciting in the affidavit the pertinent information that is prescribed by the commission.

(b) The commission representative or the authorized representative of the permittee shall furnish to the commission an exact copy of the affidavit.

(c) The commission shall permanently retain the affidavit, which must be open to inspection by all persons.

As added by P.L.1-1995, SEC.31.

IC 14-38-2-13

Actions to restrain violations

Sec. 13. If it appears that a person is violating or is about to violate this chapter or the rules and orders of the commission adopted under this chapter or under IC 13-4-5 (before its repeal), the commission may, in the name of the state of Indiana through the attorney general, bring an action against the person in the circuit or superior court of the county in which:

- (1) the land involved is located;
- (2) the violator resides; or
- (3) the authorized agent of a nonresident violator resides;

to restrain the person from continuing the violations.

As added by P.L.1-1995, SEC.31.

IC 14-38-2-14

Secretary of state as agent for service of process upon nonresident

Sec. 14. The ownership, operation, or other interest by a nonresident or by a nonresident's authorized agent in a test hole in Indiana is considered equivalent to an appointment by the nonresident of the secretary of state to be the nonresident's attorney, upon whom may be served all process in an action or a proceeding growing out of the operation or ownership by the nonresident or the nonresident's agent of a test hole in Indiana. The operation or ownership indicates the nonresident's agreement that the process served against the nonresident is of the legal force and validity as if served upon the nonresident personally, unless the nonresident maintains on file with the commission the designation of a resident agent for service of process.

As added by P.L.1-1995, SEC.31.

IC 14-38-2-15

Filing action against nonresident; service of process; affidavit; continuances

Sec. 15. (a) An action against a nonresident may be filed in the county:

- (1) of residence of the plaintiff; or
 - (2) where the test hole is located;
- at the election of the plaintiff.

(b) Service of process shall be made by leaving a copy of the process, with a fee of two dollars (\$2) for the defendant to be served, with the secretary of state. The service is sufficient service upon a nonresident if:

- (1) notice of the service and a copy of the process are immediately sent by registered mail to the defendant; and
- (2) the defendant's return receipt is appended to the original process and filed in court.

(c) If the defendant refuses to accept or claim registered mail, the secretary of state shall return the registered mail to the plaintiff or to the plaintiff's attorney. The registered mail shall be appended to the original process, together with an affidavit of the plaintiff or the plaintiff's attorney or agent to the effect that the summons was:

- (1) delivered to the secretary of state, together with a fee of two dollars (\$2); and
- (2) returned unclaimed by the United States Postal Service.

(d) The affidavit, together with the returned envelope and the summons, is considered sufficient service upon the nonresident defendant.

(e) The court in which the action is brought may order continuances that are reasonable to afford the defendant an opportunity to defend the action.

As added by P.L.1-1995, SEC.31.

IC 14-38-2-16

Department, person, or agency entering land to plug, replug, or repair test hole

Sec. 16. (a) This section does not do any of the following:

- (1) Relieve a person otherwise legally responsible from an obligation to plug, replug, or repair a test hole.
- (2) Limit the authority of the commission to require the proper plugging, replugging, or repair of a test hole.

(b) This section and sections 17 through 20 of this chapter are a supplemental remedy if any of the following conditions exist:

- (1) A person obligated to plug, replug, or repair a test hole fails to do so.
- (2) The identity of the obligated person cannot be determined.

(c) If:

- (1) after notice and hearing the department finds that a test hole drilled has been abandoned and:

- (A) is leaking; or
- (B) may result in the leaking of;

fluid into a fresh water formation or onto the surface of the land in the vicinity of the test hole; and

- (2) after thirty (30) days from the date of the finding by the department the test hole has not been properly plugged, replugged, or repaired to remedy the situation;

the department or a person or an agency authorized by order of the department may enter upon the land upon which the test hole is located and plug, replug, or repair the test hole as is reasonably required to remedy the condition.

As added by P.L.1-1995, SEC.31.

IC 14-38-2-17

Entry onto land without notice or hearing

Sec. 17. If:

- (1) an emergency exists; and
- (2) the department determines that irreparable injury will result unless immediate action is taken;

the department may enter or authorize the entry upon the land by order of the department without notice or hearing for the purpose of taking the temporary remedial action that the department considers necessary to prevent or minimize the injury pending the giving of notice and hearing. The operation shall be conducted in the manner prescribed by the department.

As added by P.L.1-1995, SEC.31.

IC 14-38-2-18

Liability of persons entering land to plug, replug, or repair test hole

Sec. 18. (a) This section applies to a person who:

- (1) enters upon the land on which a test hole is located to plug, replug, or repair the test hole; or
- (2) supports or contributes to the action under the authority and in accordance with the order of the department.

(b) A person:

- (1) is not liable and may not be held responsible for any damages resulting from operations reasonably necessary or proper to plug, replug, or repair the test hole, except damages to growing crops and improvements;
- (2) has not assumed responsibility for future remedial work on the test hole; and
- (3) is not liable in damages or otherwise for conditions subsequently arising from or in connection with the test hole.

As added by P.L.1-1995, SEC.31.

IC 14-38-2-19

Remedying condition of test hole not admission of liability or discharge of action

Sec. 19. The fact that a person has initiated or supported a proceeding before the department or has remedied or attempted to remedy the condition of a test hole under this chapter:

- (1) is not an admission of liability and may not be received in evidence against the person in an action or a proceeding in which responsibility for or damages from:
 - (A) surface or subsurface pollution; or
 - (B) injury to a fresh water, an oil, a gas, or a mineral bearing

formation;
is or may become an issue; and
(2) does not release or discharge an action, a cause of action, or
a claim against the person in favor of a third person for damages
to property resulting from:
(A) surface or subsurface pollution; or
(B) injury to a fresh water, an oil, a gas, or a mineral bearing
formation;
to the extent that the action, cause of action, or claim preexisted
the initiation or support of the proceeding or the remedying or
attempted remedying of the condition of the test hole.

As added by P.L.1-1995, SEC.31.

IC 14-38-2-20

Cause of action for plugging, replugging, or repairing test hole

Sec. 20. (a) A person who did not have an obligation to plug,
replug, or repair a test hole, but who does so under this chapter, has
the following:

(1) A cause of action against the person who was obligated by
law to properly plug, replug, or repair the test hole for the
reasonable cost and expense incurred in plugging, replugging,
or repairing the test hole.

(2) A lien enforceable upon the interest of the obligated person
in and to the equipment located on the test hole to the extent of
the reasonable cost and expense.

(b) This section does not assign or impute any liability or
obligation upon the owner of the land upon which the test hole is
located, except if the owner is the person who was granted a permit
to drill the test hole.

As added by P.L.1-1995, SEC.31.

IC 14-38-2-21

Violations

Sec. 21. (a) A person who knowingly violates this chapter
commits a Class C infraction.

(b) Each day of violation constitutes a separate infraction.

As added by P.L.1-1995, SEC.31.