

IC 13-14-2

Chapter 2. Powers of Department

IC 13-14-2-1

Orders and determinations by commissioner

Sec. 1. (a) This section applies to any:

- (1) determination made by the commissioner;
- (2) order issued by the commissioner; and
- (3) notice issued by the department;

under this title.

(b) The commissioner may issue orders and make determinations.

(c) An order issued under this section may address multiple sites for the purpose of arranging for site investigations and the establishment of priority of sites.

(d) Notice of a determination made or an order issued by the commissioner must be given under IC 4-21.5-3-1, unless a person provides a written request to the department for a different method of notice that is reasonably available to the department.

(e) The department:

- (1) shall make a good faith effort to provide notice of an order or a determination according to subsection (d); and
- (2) bears the burden of persuasion that the notice has been provided.

(f) Failure to receive notice does not invalidate an order or a determination, unless the person required to receive notice of an order or a determination is substantially prejudiced by the lack of notice. The burden of persuasion as to substantial prejudice is on the person claiming the lack of notice.

As added by P.L.1-1996, SEC.4. Amended by P.L.263-2013, SEC.1.

IC 13-14-2-2

Entry upon private or public property for inspection by agent

Sec. 2. The department may have a designated agent, upon presentation of proper credentials, enter upon private or public property to inspect for and investigate possible violations of any of the following:

- (1) Air pollution control laws.
- (2) Water pollution control laws.
- (3) Environmental management laws.
- (4) IC 13-18-9.
- (5) IC 13-18-10.
- (6) IC 13-19-3.
- (7) Any rule adopted by the board.

As added by P.L.1-1996, SEC.4. Amended by P.L.133-2012, SEC.79.

IC 13-14-2-3

Department to represent state in all matters pertaining to environmental protection

Sec. 3. The department may do the following:

(1) Represent the state in all matters pertaining to plans, procedures, or negotiations for interstate compacts or other governmental arrangements for environmental protection.

(2) Conduct, convoke, attend, or participate in official or unofficial conferences or hearings within or outside Indiana concerning any matter within the scope of the power and duties of the board or the department.

As added by P.L.1-1996, SEC.4. Amended by P.L.133-2012, SEC.80.

IC 13-14-2-4

Acceptance of gifts or other funds

Sec. 4. The department may accept and receive, on behalf of the state, any gifts or other money made available to the state from any source for purposes of:

(1) this title; or

(2) other environmental protection activities, surveys, or programs.

As added by P.L.1-1996, SEC.4.

IC 13-14-2-5

Contract for legal, professional, and other services

Sec. 5. The commissioner may employ or contract for the legal, professional, and other personnel and assistance that is necessary for the efficient performance of duties imposed by this title.

As added by P.L.1-1996, SEC.4.

IC 13-14-2-6

Court actions by commissioner

Sec. 6. Except as provided in IC 13-14-6, the commissioner may proceed in court, by appropriate action, to:

(1) enforce any final order of the commissioner or the board;

(2) collect any penalties or fees;

(3) procure or secure compliance with this title or any other law that the department has the duty or power to enforce;

(4) procure compliance with any standard or rule of the board;

(5) enforce a restrictive covenant (as defined in IC 13-11-2-193.5) in accordance with the terms of the covenant if the covenant is:

(A) executed before July 1, 2009;

(B) approved by the commissioner; and

(C) created in connection with any:

(i) remediation;

(ii) closure;

(iii) cleanup;

(iv) corrective action; or

(v) determination exercising enforcement discretion or of no further action being required;

approved by the department under this title; or

(6) enforce a restrictive covenant (as defined in

IC 13-11-2-193.5) in accordance with the terms of the covenant if the covenant is:

- (A) executed after June 30, 2009; and
- (B) created in connection with any of the following approved by the department under this title:
 - (i) A remediation.
 - (ii) A closure.
 - (iii) A cleanup.
 - (iv) A corrective action.
 - (v) A determination exercising enforcement discretion or of no further action being required.

As added by P.L.1-1996, SEC.4. Amended by P.L.61-2001, SEC.1; P.L.78-2009, SEC.10; P.L.133-2012, SEC.81.

IC 13-14-2-7

Orders to secure compliance; civil penalties

Sec. 7. Except as provided in IC 13-14-6, the commissioner may issue orders to:

- (1) secure compliance with:
 - (A) this title; or
 - (B) any applicable rule of a board; and
- (2) assess civil penalties.

As added by P.L.1-1996, SEC.4.

IC 13-14-2-8

Certain restrictive covenants not subject to department approval; department review and action on certain activities and land use restrictions

Sec. 8. (a) Subject to subsection (b), a restrictive covenant executed after June 30, 2009, is not subject to approval by the department.

- (b) The department shall:
 - (1) review; and
 - (2) approve, disapprove, or partially approve and partially disapprove;

activities and land use restrictions described in IC 13-11-2-193.5(2) that are proposed as part of a remediation, closure, cleanup, corrective action, or determination exercising enforcement discretion or of no further action being required to be included in a restrictive covenant.

As added by P.L.78-2009, SEC.11. Amended by P.L.1-2010, SEC.61.

IC 13-14-2-9

Modification of restrictive covenants; recovery of expenses incurred

Sec. 9. (a) This section applies to a restrictive covenant created in connection with a remediation project conducted under:

- (1) IC 13-23;
- (2) IC 13-24;

(3) IC 13-25-4; or

(4) IC 13-25-5.

(b) If:

(1) a change of conditions or an advancement in science or technology permits a modification of the conditions and restrictions imposed by a restrictive covenant; and

(2) the modification of the conditions and restrictions imposed by the restrictive covenant would not increase the potential hazards to human health or the environment;

the commissioner may, under subsection (c), authorize the filing in the office of the county recorder of a supplemental recording recognizing the modification of the conditions and restrictions of the restrictive covenant to reflect the change in conditions or advancement in science or technology.

(c) The commissioner may authorize the filing of a supplemental recording under subsection (b) if the owner of the real property that is subject to the restrictive covenant submits to the department:

(1) a written request for the modification of the covenant;

(2) a copy of the proposed modification of the restrictive covenant; and

(3) information indicating why the covenant should be modified.

The information submitted under subdivision (3) must be sufficient to enable the department to determine whether the proposed modification of the restrictive covenant will increase the potential hazards to human health or the environment. The commissioner may request additional information from the owner of the real property if necessary to the making of a determination under this subsection.

(d) The board shall adopt rules under IC 4-22-2 and IC 13-14-9 providing for the recovery of administrative and personnel expenses incurred by the state in evaluating proposed modifications of restrictive covenants under this section.

As added by P.L.220-2014, SEC.8.