

IC 13-23-13

Chapter 13. Corrective Actions

IC 13-23-13-0.2

Application of certain amendments to prior law

Sec. 0.2. The amendments made to IC 13-7-20-24 (before its repeal, now partly codified at section 5 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.286.

IC 13-23-13-1

Issuance of orders or corrective actions

Sec. 1. (a) The commissioner may, under rules adopted under IC 13-23-1-2:

- (1) issue an order under IC 13-14-2-7 or IC 4-21.5-4; or
- (2) proceed under IC 13-14-2-6;

to require the owner or operator of an underground storage tank to undertake corrective action with respect to any release of a regulated substance.

(b) If the commissioner determines that the corrective action will be done properly and promptly by the owner or operator of the underground storage tank from which the release occurs, the commissioner may enter into an agreed order with the owner or operator to implement necessary corrective action.

As added by P.L.1-1996, SEC.13.

IC 13-23-13-2

Action by commissioner

Sec. 2. The commissioner, under rules adopted under IC 13-23-1-2, may undertake corrective action with respect to any release of a regulated substance into the environment from an underground storage tank if:

- (1) that action is necessary, in the judgment of the commissioner, to protect human health and the environment; and

- (2) at least one (1) of the following conditions exists:

(A) A person cannot be found not later than ninety (90) days after a suspected or confirmed release is identified (or a shorter time necessary to protect human health and the environment) who is:

- (i) an owner or operator of the underground storage tank;
- (ii) subject to the rules concerning corrective action; and
- (iii) capable of properly carrying out corrective action with respect to the release.

(B) An existing situation requires prompt action by the commissioner under this section to protect human health and the environment.

(C) The cost of corrective action at the site of an underground storage tank exceeds the amount of financial responsibility required under IC 13-23-1-2(c)(6), IC 13-23-4-4, and IC 13-23-4-5 and, considering the class or category of underground storage tank from which the release occurred, expenditures by the state are necessary to ensure an effective corrective action.

(D) The owner or operator of the underground storage tank has failed or refused to comply with an order of the commissioner or a judgment of a court of competent jurisdiction under section 1 of this chapter to take corrective action with respect to the release.

As added by P.L.1-1996, SEC.13.

IC 13-23-13-3

Exposure assessment

Sec. 3. A corrective action undertaken or required under this chapter may include an exposure assessment. The cost of any exposure assessment undertaken under this chapter may be recovered under section 8 of this chapter as part of the costs of corrective action.

As added by P.L.1-1996, SEC.13.

IC 13-23-13-4

Priority of orders and corrective actions

Sec. 4. In:

- (1) issuing orders requiring corrective action under section 1 of this chapter; or
- (2) undertaking corrective action under section 2 of this chapter;

the commissioner shall give priority to releases of regulated substances from underground storage tanks that pose the greatest threat to human health and the environment.

As added by P.L.1-1996, SEC.13.

IC 13-23-13-5

Limited corrective actions; streamlined administrative procedures

Sec. 5. In issuing orders requiring corrective action under section 1 of this chapter or undertaking corrective action under section 2 of this chapter the commissioner may:

- (1) require only a limited form of corrective action; and
- (2) implement streamlined administrative procedures;

with respect to a release of a regulated substance from an underground storage tank that, in the judgment of the commissioner, poses little or no immediate threat to human health or to the environment.

As added by P.L.1-1996, SEC.13.

IC 13-23-13-5.5

Intentional surface spill or overflow; contribution to corrective action costs claim

Sec. 5.5. (a) Notwithstanding any other provision of this chapter, a person who is not an owner or operator of an underground storage tank is liable to the state only for corrective action to address a surface spill or overflow of a regulated substance from the underground storage tank that is intentionally caused by the person during the delivery of the regulated substance into the underground storage tank.

(b) A person who is liable for corrective action under subsection (a) is subject to a claim for contribution to corrective action costs arising solely from the surface spill or overflow by a person described in section 8(b)(1) or 8(b)(2) of this chapter. Except as otherwise provided in subsection (c) and (d), an action for contribution under this section may be brought in the same manner and is subject to the same provisions as an action brought under section 8(b) of this chapter.

(c) Before a person brings a contribution action under this section, the person must provide written notice of intent to bring the action by certified mail to:

- (1) the department; and
- (2) each person allegedly responsible for the surface spill or overflow that occurred during the delivery of a regulated substance into the underground storage tank.

(d) A person that provides notice under subsection (c) may not bring a contribution action if:

- (1) the department commences an administrative proceeding or a civil action concerning the alleged surface spill or overflow not later than ninety (90) days after receiving notice under subsection (c)(1); or
- (2) the person who receives the notice under subsection (c)(2) agrees in writing, within ninety (90) days after receipt of the notice, to remediate the surface spill or overflow in accordance with the state's rules governing spills and overflows.

As added by P.L.212-1999, SEC.6.

IC 13-23-13-6

Uses of underground petroleum storage tank trust fund; mandatory use for corrective actions

Sec. 6. (a) Except as provided in subsection (b), the commissioner, under rules adopted under IC 13-23-1-2, may use money in the petroleum trust fund to pay the following costs and expenses associated with underground petroleum storage tanks:

- (1) Costs incurred for corrective action conducted under cooperative agreements entered into between the state and the Administrator of the United States Environmental Protection Agency under Section 9003(h)(7) of the federal Solid Waste

Disposal Act (42 U.S.C. 6991b(h)(7)), in accordance with the provisions of the cooperative agreements.

(2) Expenses incurred by the state for the following:

(A) Corrective actions that are ordered or undertaken under this chapter.

(B) Enforcement of this article.

(3) Expenses incurred by the state under section 8 of this chapter in recovering the costs of corrective actions undertaken under section 2 of this chapter.

(4) Administrative expenses and personnel expenses incurred by the state in carrying out this article.

(b) Notwithstanding subsection (a), fifty percent (50%) of the fees deposited in the petroleum trust fund under IC 13-23-12-4(1) shall be used by the commissioner to pay for corrective actions:

(1) taken under this chapter that involve releases of regulated substances from underground storage tanks; and

(2) that are not eligible to receive funds from the underground petroleum storage tank excess liability trust fund under IC 13-23-7.

Not more than eleven percent (11%) of the funds expended under this subsection may be used to pay for administrative and personnel expenses incurred in carrying out this subsection.

As added by P.L.1-1996, SEC.13. Amended by P.L.220-2014, SEC.31.

IC 13-23-13-7

Use of funds for corrective actions; nonpetroleum underground storage tanks

Sec. 7. The commissioner, under rules adopted under IC 13-23-1-2, may use money in the hazardous substances response trust fund to pay the following expenses associated with underground storage tanks used to contain regulated substances other than petroleum:

(1) Expenses incurred by the state for the following:

(A) Corrective actions that are ordered or undertaken under this chapter.

(B) Enforcement of this article.

(2) Expenses incurred by the state under section 8 of this chapter in recovering the costs of corrective actions.

(3) Administrative expenses and personnel expenses incurred by the state in carrying out this article.

As added by P.L.1-1996, SEC.13.

IC 13-23-13-7.5

Recovery of certain costs

Sec. 7.5. IC 34-11-2-11.5 applies to an action brought under section 8(b) of this chapter.

As added by P.L.154-2011, SEC.1.

IC 13-23-13-8

Liability of owner or operator for costs of corrective action; subrogation; actions to recover costs

Sec. 8. (a) Except where an owner or operator can prove that a release from an underground storage tank was caused solely by:

- (1) an act of God;
- (2) an act of war;
- (3) negligence on the part of the state or the United States government; or
- (4) any combination of the causes set forth in subdivisions (1) through (3);

the owner or operator of an underground storage tank is liable to the state for the actual costs of any corrective action taken under section 2 of this chapter or IC 13-7-20-19(b) (before its repeal) involving the underground storage tank and is responsible for undertaking any corrective action, including undertaking an exposure assessment, ordered under this chapter, IC 13-23-14-1, IC 13-7-20-19 (before its repeal), or IC 13-7-20-26 (before its repeal), or required by this title or a rule adopted under this title.

(b) A person who:

- (1) pays to the state the costs described under subsection (a); or
- (2) undertakes corrective action resulting from a release from an underground storage tank, regardless of whether the corrective action is undertaken voluntarily or under an order issued under this chapter, IC 13-23-14-1, IC 13-7-20-19 (before its repeal), or IC 13-7-20-26 (before its repeal);

is entitled to receive a contribution from a person who owned or operated the underground storage tank at the time the release occurred. A person who brings a successful action to receive a contribution from an owner or operator is also entitled to receive reasonable attorney's fees and court costs from the owner or operator. An action brought under this subsection may be brought in a circuit or superior court. In resolving a contribution claim, a court may allocate the cost of a corrective action among the parties to the action using equitable factors that the court determines are appropriate.

(c) Money recovered by the state under this section in connection with any corrective action undertaken with respect to a release of petroleum shall be deposited in the petroleum trust fund.

(d) Money recovered by the state under this section in connection with any corrective action undertaken with respect to a release of a regulated substance other than petroleum shall be deposited in the hazardous substances response trust fund.

(e) The state may recover corrective action costs under this section in an action commenced under IC 13-14-2-6, IC 13-14-2-7, IC 13-7-5-7 (before its repeal), or IC 13-7-5-8 (before its repeal). An action to recover corrective action costs under this section may be combined, as appropriate, with an action to enforce an order issued under section 1 of this chapter or IC 13-7-20-19(a) (before its repeal)

to require corrective action not already undertaken by the commissioner.

As added by P.L.1-1996, SEC.13.

IC 13-23-13-9

Equities for recovery of costs

Sec. 9. In determining the equities for seeking the recovery of costs under section 8 of this chapter, the commissioner may consider the following:

- (1) The amount of financial responsibility required to be maintained under IC 13-23-1-2(c)(6).
- (2) The factors considered in establishing that amount for underground storage tanks containing petroleum under IC 13-23-4-4.

As added by P.L.1-1996, SEC.13.

IC 13-23-13-10

Agreements to indemnify, hold harmless, or insure

Sec. 10. (a) An indemnification agreement, a hold harmless agreement, or other similar agreement or conveyance is not effective to transfer the liability imposed under section 8 of this chapter from:

- (1) the owner or operator of an underground storage tank; or
- (2) any person who may be liable for a release or threat of release under this article;

to any other person.

(b) This section does not bar an agreement to:

- (1) insure;
- (2) hold harmless; or
- (3) indemnify;

a party to an agreement for any liability under this article.

As added by P.L.1-1996, SEC.13.

IC 13-23-13-11

Subrogation

Sec. 11. This chapter does not bar a cause of action that:

- (1) an owner or operator;
- (2) a guarantor; or
- (3) any other person subject to liability under this article;

has or would have, by reason of subrogation or otherwise, against any person.

As added by P.L.1-1996, SEC.13.

IC 13-23-13-12

Duty of owner or operator to furnish information, conduct testing, or permit access; right of entry

Sec. 12. (a) For the purpose of enabling the commissioner to take or to assess the need for corrective action under this chapter or to enforce this article, an owner or operator of an underground storage

tank, upon the request of an officer, an employee, or a designated representative of the department, shall do the following:

- (1) Furnish information relating to the underground storage tank or associated equipment or contents.
- (2) Conduct monitoring or testing of the underground storage tank, including associated equipment or contents.
- (3) Conduct monitoring or testing of soils, air, surface water, or ground water surrounding the underground storage tank if:
 - (A) tank testing, using methods that are applicable to but not in excess of federal standards, confirms a release of regulated substance; or
 - (B) other evidence exists that gives cause for reasonable suspicion that a release has occurred.
- (4) Permit, at all reasonable times, the officer, employee, or designated representative to have access to and to copy all records relating to the underground storage tank.
- (5) Permit the officer, employee, or designated representative to have access for corrective action.

(b) For the purposes set forth in subsection (a), an officer, an employee, or a designated representative of the department may enter at reasonable times any establishment or other place where an underground storage tank is located or where a regulated substance may be present due to a release from an underground storage tank to do the following:

- (1) Inspect and obtain samples from any person of any regulated substances contained in the underground storage tank.
- (2) Conduct monitoring or testing of:
 - (A) the underground storage tank;
 - (B) associated equipment or contents; or
 - (C) surrounding soils, air, surface water, or ground water.
- (3) Take corrective action under section 2 of this chapter.

(c) Every action authorized by this section shall be commenced and completed with reasonable promptness.

As added by P.L.1-1996, SEC.13.

IC 13-23-13-13

Emergency procurement powers; actions authorized under federal law

Sec. 13. (a) This article does not bar the commissioner from using any emergency procurement powers existing under law.

(b) This article does not bar the commissioner from taking any actions authorized under Section 9003(h)(7) of the federal Solid Waste Disposal Act (42 U.S.C. 6991b(h)(7)).

As added by P.L.1-1996, SEC.13.

IC 13-23-13-14

Leaders considered to participate in management

Sec. 14. For purposes of IC 13-11-2-148(e), IC 13-11-2-150(b),

and IC 13-11-2-150(c), a person that is a lender and that holds evidence of ownership primarily to protect a security interest in an underground storage tank shall be considered to participate in management (as defined in IC 13-11-2-151.2) of the underground storage tank only if, while the borrower is still in possession of the underground storage tank encumbered by the security interest, the person:

- (1) exercises decision making control over the environmental compliance related to the underground storage tank such that the person has undertaken responsibility for the hazardous substance handling or disposal practices related to the underground storage tank; or
- (2) exercises control at a level comparable to that of a manager of the underground storage tank such that the person has assumed or manifested responsibility:
 - (A) for the overall management of the underground storage tank 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 underground storage tank other than the function of environmental compliance.

As added by P.L.90-1998, SEC.20. Amended by P.L.159-2011, SEC.38.

IC 13-23-13-15

Limits on liability of fiduciaries

Sec. 15. (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 an underground storage tank 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 an underground storage tank 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 underground storage tank.

- (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 underground storage tank.
 - (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, an underground storage tank 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.21.

IC 13-23-13-16

Presumptions concerning a governmental unit's tank activity on a brownfield

Sec. 16. (a) A political subdivision or unit of federal or state government that acquired ownership or control of an underground

storage tank on a brownfield by any of the means listed in IC 13-11-2-150(c) and IC 13-11-2-151(b) may undertake any activity in conjunction with:

(1) investigation or remediation of hazardous substances, petroleum, and other pollutants associated with 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 a regulated substance 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.

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

As added by P.L.221-2007, SEC.15.