

IC 13-30

ARTICLE 30. ENFORCEMENT AND LEGAL ACTIONS

IC 13-30-1

Chapter 1. Standing to Sue for Declaratory and Equitable Relief in the Name of the State

IC 13-30-1-1

Declaratory or equitable relief in name of state

Sec. 1. Under this chapter:

- (1) the attorney general;
- (2) a state, city, town, county, or local agency or officer vested with the authority to seek judicial relief;
- (3) a citizen of Indiana; or
- (4) a corporation, a limited liability company, a partnership, or an association maintaining an office in Indiana;

may bring an action for declaratory and equitable relief in the name of the state of Indiana against an individual, a partnership, a copartnership, a firm, a company, a corporation, a limited liability company, an association, a joint stock company, a trust, an estate, a state agency or an officer of the state, a city, a town, a county, a local governmental unit, an agency, or an official of a city, a town, a county, a local governmental unit, or an agency, or any other legal entity or their legal representative, agent, or assigns for the protection of the environment of Indiana from significant pollution, impairment, or destruction.

As added by P.L.1-1996, SEC.20.

IC 13-30-1-2

Notice

Sec. 2. (a) A citizen, a partnership, a corporation, a limited liability company, an association, or a public officer or agency, as a condition precedent to maintaining an action, must give notice in writing by registered or certified mail to:

- (1) the department of natural resources;
- (2) the department; and
- (3) the attorney general.

(b) The attorney general shall promptly notify all state administrative agencies having jurisdiction over or control of the pollution, impairment, destruction, or protection of the environment for which relief is sought.

As added by P.L.1-1996, SEC.20.

IC 13-30-1-3

Maintenance of action; agency not required to be joined as party

Sec. 3. (a) An individual or entity that is identified in section 1(2) through 1(4) of this chapter and that brings an action under section

1 of this chapter may not maintain the action unless:

(1) none of the agencies that receives notice of the action under section 2 of this chapter:

(A) commences an administrative proceeding or a civil action on the alleged pollution, impairment, or destruction not later than ninety (90) days after receiving notice under section 2 of this chapter; or

(B) takes steps not later than ninety (90) days after receiving notice under section 2 of this chapter to have a criminal prosecution commenced on the alleged pollution, impairment, or destruction; or

(2) the agency that commences an administrative proceeding or a civil action on the alleged pollution, impairment, or destruction does not diligently pursue the administrative proceeding or civil action after the administrative proceeding or civil action is commenced.

(b) The agency does not have to be joined as a party in an action under this section.

As added by P.L.1-1996, SEC.20.

IC 13-30-1-4

Hearing; final determination; appeal

Sec. 4. If the administrative agency that has jurisdiction and that is given notice by the attorney general under section 2 of this chapter:

(1) holds a hearing; and

(2) makes a final determination;

after receiving the notice, an appeal from the agency's action may be taken in the manner prescribed by law.

As added by P.L.1-1996, SEC.20.

IC 13-30-1-5

Intervention

Sec. 5. In an administrative, a licensing, or any other proceeding, and in an action for judicial review of an administrative, a licensing, or any other proceeding that is made available by law:

(1) the attorney general;

(2) a state, city, town, county, or local agency or officer vested with the authority to seek judicial relief;

(3) a citizen of Indiana; or

(4) a corporation, a limited liability company, a partnership, or an association maintaining an office in Indiana;

shall be permitted to intervene as a party upon the filing of a verified pleading asserting that the proceeding or action for judicial review involves conduct, programs, or products that may have the effect of significantly impairing, polluting, or destroying the environment of Indiana.

As added by P.L.1-1996, SEC.20.

IC 13-30-1-6

Consideration of impairment, pollution, or destruction of environment

Sec. 6. In the administrative, licensing, or other procedure, the agency shall consider the alleged significant impairment, pollution, or destruction of the environment of Indiana. A program, a product, or conduct that:

- (1) has; or
- (2) is reasonably likely to have;

the effect of impairing, polluting, or destroying the environment may not be authorized, approved, or permitted to continue if there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare.

As added by P.L.1-1996, SEC.20.

IC 13-30-1-7

Judicial review

Sec. 7. In an action for judicial review of proceedings described in section 4 of this chapter, the court shall, in addition to other duties imposed upon the court by law, grant review of claims that the conduct, program, or product under review:

- (1) has impaired, significantly polluted, or destroyed the environment of Indiana; or
- (2) is reasonably likely to impair, significantly pollute, or destroy the environment of Indiana.

As added by P.L.1-1996, SEC.20.

IC 13-30-1-8

Respondent's burden

Sec. 8. (a) In an action under this chapter, whenever the petitioner has made a prima facie showing that the conduct of the respondent has or is reasonably likely to impair, pollute, or destroy the environment of Indiana, the respondent has the burden of establishing the following:

- (1) If there is an applicable rule adopted by a state agency setting standards for pollution, impairment, or destruction, or for antipollution devices, the respondent has the burden of establishing compliance with the rule, which constitutes a prima facie defense to petitioner's claim.
- (2) If there is not an applicable rule, the respondent has the burden of establishing that:
 - (A) there is no feasible and prudent alternative; and
 - (B) the conduct, program, or product at issue is consistent with and reasonably required for the promotion of the public health, safety, and welfare in light of the state's paramount concern for the protection of the environment from pollution, impairment, or destruction.

- (b) Upon the respondent establishing the proof under subsection

(a):

- (1) the respondent is considered to have rebutted the prima facie showing; and
- (2) the petitioner has the burden of going forward with the evidence.

As added by P.L.1-1996, SEC.20.

IC 13-30-1-9

Venue

Sec. 9. An action under this chapter must be brought in a circuit or superior court in the county in which the significant pollution, impairment, or destruction is alleged to have occurred.

As added by P.L.1-1996, SEC.20.

IC 13-30-1-10

Master or referee; appointment

Sec. 10. The court may appoint a master or referee, who must be a disinterested person and technically qualified, to take testimony and make a report to the court in the action. The costs of the master or referee may be apportioned to the parties if the interests of justice require.

As added by P.L.1-1996, SEC.20.

IC 13-30-1-11

Temporary and permanent equitable relief

Sec. 11. The court may:

- (1) grant temporary and permanent equitable relief; or
- (2) impose the conditions upon the respondent that are required to protect the environment of the state from pollution, impairment, and destruction.

As added by P.L.1-1996, SEC.20.

IC 13-30-1-12

Failure to intervene; effect

Sec. 12. (a) In an action in which a petitioner or an intervenor seeking judicial adjudication as provided by this chapter has failed to intervene in an administrative, a licensing, or other similar proceeding, the court may:

- (1) remit the petitioner or intervenor to the proceeding for amplification of the record in the proceeding; and
- (2) order the granting of intervention and the granting of review in the proceeding as provided in of this chapter.

(b) However, if:

- (1) intervention was available in the proceeding; and
- (2) the petitioner or intervenor seeking judicial adjudication under this chapter willfully and inexcusably refused intervention in the proceeding;

the court may dismiss the action with prejudice to the petitioner or

intervenor.

As added by P.L.1-1996, SEC.20.