

IC 13-30-3

Chapter 3. Investigation of Violations; Administrative Proceedings and Orders

IC 13-30-3-1

Investigations; initiation

Sec. 1. The commissioner or a designated member of the staff of the department may initiate an investigation on receipt of information of an alleged violation of any of the following:

- (1) Environmental management laws.
- (2) Air pollution control laws.
- (3) Water pollution control laws.
- (4) IC 36-9-30-35.
- (5) A rule or standard adopted under the following:
 - (A) Environmental management laws.
 - (B) Air pollution control laws.
 - (C) Water pollution control laws.

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

IC 13-30-3-2

Procedures

Sec. 2. If an investigation discloses a possible violation, the commissioner shall proceed under:

- (1) section 3 of this chapter; or
- (2) first section 3 of this chapter and then section 4 of this chapter.

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

IC 13-30-3-3

Notice of violation; offer of opportunity to enter into agreed order; failure to enter into agreed order

Sec. 3. (a) The commissioner shall:

- (1) notify the alleged violator in writing that the commissioner believes a violation may exist; and
- (2) offer the alleged violator an opportunity to enter into an agreed order providing for:
 - (A) the actions required to correct the violation; and
 - (B) if appropriate, the payment of a civil penalty.

(b) The commissioner is not required to extend the offer under subsection (a)(2) for more than sixty (60) days.

(c) An alleged violator may enter into an agreed order without admitting that the violation occurred.

(d) A notification under this section does not constitute a notice of violation for purposes of IC 14-34-3-3(20).

(e) If an agreed order is not entered into, the commissioner may proceed under section 4 of this chapter to issue a notice and order.

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

IC 13-30-3-4

Notice; contents

Sec. 4. (a) The commissioner shall issue written notice to an alleged violator in accordance with IC 13-14-2-1.

(b) The notice must:

(1) specify the provision of:

- (A) the environmental management laws;
- (B) the air pollution control laws; or
- (C) the water pollution control laws; or
- (D) the rule;

allegedly being violated;

(2) include:

(A) a statement of:

- (i) the manner in which; and
- (ii) the extent to which;

the alleged violation exists; and

(B) an order under sections 10 through 12 of this chapter:

- (i) requiring that the alleged violator take specific action to correct the violation;
- (ii) assessing a civil penalty under IC 13-30-4-1, IC 13-30-4-2, and section 11 of this chapter for the violation; or
- (iii) containing the substance of both item (i) and item (ii); and

(3) include a brief description of the procedure for requesting review under IC 4-21.5.

(c) A copy of the notice and order may also be sent to a local governmental unit that is a party to the action.

As added by P.L.1-1996, SEC.20. Amended by P.L.263-2013, SEC.9.

IC 13-30-3-5

Order; effective date; review

Sec. 5. (a) Except as otherwise provided in:

- (1) a notice issued under section 4 of this chapter; or
- (2) a law relating to emergency orders;

an order of the commissioner under this chapter takes effect twenty (20) days after the alleged violator receives the notice, unless the alleged violator requests under subsection (b) a review of the order before the twentieth day after receiving the notice.

(b) To request a review of the order, the alleged violator must:

- (1) file a written request with the office of environmental adjudication under IC 4-21.5-7; and
- (2) serve a copy of the request on the commissioner.

(c) If a review of an order is requested under this section, the office of environmental adjudication established under IC 4-21.5-7 shall review the order under IC 4-21.5.

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

IC 13-30-3-6

Order; approval based on agreement before final order

Sec. 6. If an alleged violator who has requested a review of an order of the commissioner under section 5 of this chapter agrees to resolve the controversy concerning the order in a manner satisfactory to the commissioner before a final order is issued by the office of environmental adjudication, the commissioner may approve an agreed order based on the agreement.

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

IC 13-30-3-7

Final order; judicial review

Sec. 7. A final order of an environmental law judge is subject to judicial review under IC 4-21.5-5.

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

IC 13-30-3-8

Private actions permitted; conditions

Sec. 8. (a) A person who has filed a complaint under IC 13-30-1 may proceed against the alleged violator if the department does not:

(1) commence:

(A) an administrative proceeding; or

(B) a civil action;

on the alleged pollution, impairment, or destruction not later than ninety (90) days after receiving notice under IC 13-30-1-2;

(2) take steps not later than ninety (90) days after receiving notice under IC 13-30-1-2 to have a criminal prosecution commenced on the alleged pollution, impairment, or destruction; or

(3) diligently pursue:

(A) an administrative proceeding; or

(B) a civil action;

concerning the alleged pollution, impairment, or destruction after the administrative proceeding or civil action is commenced.

(b) The department 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 13-30-3-9

Hearings; complainant's burden

Sec. 9. In hearings under this chapter, the burden is on the complainant to show the alleged violation.

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

IC 13-30-3-10

Orders; determinations

Sec. 10. In accordance with the procedure set forth in this chapter,

the commissioner shall:

- (1) issue and enter an order; or
- (2) make any other determination;

that the commissioner considers appropriate.

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

IC 13-30-3-11

Orders of commissioner

Sec. 11. An order of the commissioner under this chapter may do any of the following:

- (1) Include a direction to cease and desist from violations of the following:
 - (A) Environmental management laws.
 - (B) Air pollution control laws.
 - (C) Water pollution control laws.
 - (D) A rule adopted by the board.
 - (E) A rule adopted by the underground storage tank financial assurance board created by IC 13-23-11-1.
- (2) Impose monetary penalties in accordance with the following:
 - (A) Environmental management laws.
 - (B) Air pollution control laws.
 - (C) Water pollution control laws.
- (3) Mandate corrective action, including corrective action to be taken beyond the boundaries of the area owned or controlled by the person to whom the order is directed, to alleviate the violation.
- (4) Revoke a permit or condition or modify the terms of a permit.

As added by P.L.1-1996, SEC.20. Amended by P.L.133-2012, SEC.159.

IC 13-30-3-12

Performance bond; surety

Sec. 12. If an order of the commissioner allows time during which to correct a violation, the order may provide for the posting of a performance bond with surety or security acceptable to the department to assure the correction of the violation within the time prescribed in the order.

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

IC 13-30-3-13

Landowners on whose land garbage has been dumped without consent; parties; expenses; attorney's fees

Sec. 13. (a) Except as provided in subsection (c), an enforcement action may not be taken under this chapter for a violation of IC 13-30-2-1(5) against a landowner on whose land garbage or other solid waste, except hazardous waste, has been illegally dumped

without the landowner's consent unless the commissioner has made a diligent and good faith effort to identify, locate, and take enforcement action against a person who appears likely to have committed or caused the illegal dumping.

(b) A landowner described in subsection (a) who in good faith provides information to the commissioner concerning:

(1) a name;

(2) an address; or

(3) any other evidence of a responsible person's identity found in garbage or other solid waste dumped on the landowner's land; is not liable to a person for an action taken by the commissioner against the person as a result of the information provided the landowner.

(c) The commissioner may include the owner of land on which a violation of IC 13-30-2-1(5) has apparently occurred as a party in any enforcement action against a person who allegedly committed the violation of IC 13-30-2-1(5) so that the commissioner may order the landowner to allow the alleged violator access to the land to remove and dispose of the solid waste allegedly dumped on the land in violation of IC 13-30-2-1(5).

(d) A landowner on whose land garbage or other solid waste has been illegally dumped without the landowner's consent may, in addition to any other legal or equitable remedy available to the landowner, recover from the person responsible for the illegal dumping:

(1) reasonable expenses incurred by the landowner in disposing of the garbage or other solid waste; and

(2) reasonable attorney's fees.

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