

First Regular Session of the 121st General Assembly (2019)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2018 Regular and Special Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1266

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AN ACT to amend the Indiana Code concerning environmental law.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 13-11-2-40.9 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 40.9. "Construction activities", for purposes of IC 13-18-27, has the meaning set forth in IC 13-18-27-2.**

SECTION 2. IC 13-11-2-41.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 41.2. "Construction plan", for purposes of IC 13-18-27, has the meaning set forth in IC 13-18-27-3.**

SECTION 3. IC 13-11-2-72.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 72.6. "Erosion", for purposes of IC 13-18-27, has the meaning set forth in IC 13-18-27-4.**

SECTION 4. IC 13-11-2-72.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 72.7. "Erosion and sediment control measure", for purposes of IC 13-18-27, has the meaning set forth in IC 13-18-27-5.**

SECTION 5. IC 13-11-2-88.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 88.8. "General permit", for**

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purposes of IC 13-18-27, has the meaning set forth in IC 13-18-27-6.

SECTION 6. IC 13-11-2-116.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 116.5. "Large construction activity site", for purposes of IC 13-18-27, has the meaning set forth in IC 13-18-27-7.**

SECTION 7. IC 13-11-2-130.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 130.6. "MS4 community", for purposes of IC 13-18-27, has the meaning set forth in IC 13-18-27-8.**

SECTION 8. IC 13-11-2-173.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 173.2. "Project site owner", for purposes of IC 13-18-27, has the meaning set forth in IC 13-18-27-9.**

SECTION 9. IC 13-11-2-195.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 195.2. "Review authority", for purposes of IC 13-18-27, has the meaning set forth in IC 13-18-27-10.**

SECTION 10. IC 13-11-2-197.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 197.8. "Sedimentation", for purposes of IC 13-18-27, has the meaning set forth in IC 13-18-27-11.**

SECTION 11. IC 13-11-2-204.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 204.5. "Small construction activity site", for purposes of IC 13-18-27, has the meaning set forth in IC 13-18-27-12.**

SECTION 12. IC 13-11-2-234.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 234.5. "Trained individual", for purposes of IC 13-18-27, has the meaning set forth in IC 13-18-27-13.**

SECTION 13. IC 13-11-2-245.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 245.3. "Very small construction activity site", for purposes of IC 13-18-27, has the meaning set forth in IC 13-18-27-14.**



SECTION 14. IC 13-18-27 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]:

**Chapter 27. Erosion and Sediment Control in Construction Projects**

**Sec. 1.** As used in this chapter, "327 IAC 15-5" refers to the administrative rule of the environmental rules board in effect on March 25, 2019, concerning storm water runoff associated with construction activity.

**Sec. 2.** As used in this chapter, "construction activities" include clearing, grading, and excavating.

**Sec. 3.** As used in this chapter, "construction plan" means a written plan that:

- (1) presents information about a construction project and activities associated with the construction project;
- (2) includes a storm water pollution prevention plan that outlines how erosion and sedimentation will be controlled on the site of the construction project; and
- (3) must be submitted to a review authority as a condition of proceeding with the construction project under the general permit rule program established under 327 IAC 15-5 or the general permit.

**Sec. 4.** As used in this chapter, "erosion" means the detachment and movement of soil, sediment, or rock fragments by water, wind, ice, or gravity.

**Sec. 5.** As used in this chapter, "erosion and sediment control measure" means a practice, or a combination of practices, to control erosion and resulting sedimentation associated with construction activity.

**Sec. 6.** As used in this chapter, "general permit" refers to the general permit issued by the commissioner or the department in accordance with 40 CFR 122.26 to establish erosion and sediment control requirements for construction sites.

**Sec. 7.** As used in this chapter, "large construction activity site" means:

- (1) a site at which construction activities result in land disturbance of at least five (5) acres; or
- (2) a site:
  - (A) at which construction activities result in land disturbance of more than one (1) but less than five (5) acres; but
  - (B) that is part of a larger common plan of development or



sale in which construction activities will ultimately result in land disturbance of more than five (5) acres.

**Sec. 8.** As used in this chapter, "MS4 community" means a county, city, or town that:

- (1) owns, operates, or maintains a regulated municipal separate storm sewer system (MS4); and
- (2) administers a program under which construction plans relating to construction projects in locations within the boundaries of the MS4 community are reviewed and given a favorable or unfavorable determination.

**Sec. 9.** As used in this chapter, "project site owner" means the person required to comply with 327 IAC 15-5, the general permit, or the applicable ordinance of an MS4 community with respect to a construction project. The term includes the following:

- (1) A developer.
- (2) A person who has financial and operational control of construction activities and construction project plans and specifications, including the ability to make modifications to those plans and specifications.

**Sec. 10.** As used in this chapter, "review authority" means either of the following:

- (1) A soil and water conservation district or another entity designated by the department.
- (2) An MS4 community, in the case of a construction project in a location within the boundaries of the MS4 community.

**Sec. 11.** As used in this chapter, "sedimentation" means the settling and accumulation of unconsolidated sediment carried by storm water runoff.

**Sec. 12.** As used in this chapter, "small construction activity site" means:

- (1) a site at which construction activities result in land disturbance of at least one (1) but less than five (5) acres; or
- (2) a site:
  - (A) at which construction activities result in land disturbance of less than one (1) acre; but
  - (B) that is part of a larger common plan of development or sale in which construction activities will ultimately result in land disturbance of at least one (1) but less than five (5) acres.

**Sec. 13.** As used in this chapter, "trained individual" means an individual who is trained and experienced in the principles of storm water management, including erosion and sediment control,



as demonstrated by:

- (1) the completion of course work;
- (2) state registration;
- (3) professional certification; or
- (4) annual training;

that enables the individual to make judgments concerning storm water management, storm water treatment, and storm water monitoring.

**Sec. 14.** As used in this chapter, "very small construction activity site" means a site at which construction activities result in land disturbance of less than one (1) acre.

**Sec. 15. (a)** Except as provided in subsection (b), an MS4 community may not require erosion and sediment control measures that are more stringent than the erosion and sediment control measures required by 327 IAC 15-5 or the general permit.

**(b)** An MS4 community may require erosion and sediment control measures at a very small construction activity site even if requiring erosion and sediment control measures at a very small construction activity site is not required by 327 IAC 15-5 or by the general permit. However:

- (1) the erosion and sediment control measures required by an MS4 community at a very small construction activity site may not be more stringent than the erosion and sediment control measures required by 327 IAC 15-5 or by the general permit at a small construction activity site; and
- (2) the review authority to which a construction plan for a very small construction activity site is submitted is subject to the time limit set forth in section 16 of this chapter for notifying the project site owner of the review authority's preliminary determination concerning the construction plan.

**Sec. 16. (a)** A review authority to which a construction plan is submitted must make a preliminary determination whether the construction plan is substantially complete before the end of:

- (1) the tenth working day after the day on which the construction plan is submitted to the review authority, in the case of a small or very small construction activity site; or
- (2) the fourteenth working day after the day on which the construction plan is submitted to the review authority, in the case of a large construction activity site.

**(b)** If a review authority to which a construction plan is submitted under subsection (a):

- (1) makes a preliminary determination that the construction



plan is substantially complete; and

(2) notifies the project site owner of its favorable preliminary determination;

before the end of the tenth working day after the day on which the construction plan is submitted to the review authority, in the case of a small or very small construction activity site, or the fourteenth working day after the day on which the construction plan is submitted to the review authority, in the case of a large construction activity site, the project site owner may submit a notice of intent letter including the information required by 327 IAC 15-5-5 or the general permit and, forty-eight (48) hours after submission of the notice of intent letter, may begin the construction project, including the land disturbing activities of the construction project.

(c) If a review authority to which a construction plan for a small or very small construction activity site or a large construction activity site is submitted under subsection (a) does not notify the project site owner before the end of the tenth working day after the day on which the construction plan is submitted to the review authority, in the case of a small or very small construction activity site, or the fourteenth working day after the day on which the construction plan is submitted to the review authority, in the case of a large construction activity site, of its preliminary determination as to whether the construction plan is substantially complete, the project site owner may submit a notice of intent letter including the information required by 327 IAC 15-5-5 or the general permit and, forty-eight (48) hours after submission of the notice of intent letter, may begin the construction project, including the land disturbing activities of the construction project.

(d) If a review authority to which a construction plan is submitted under subsection (a) notifies the project site owner before the end of the tenth working day after the day on which the construction plan is submitted to the review authority, in the case of a small or very small construction activity site, or the fourteenth working day after the day on which the construction plan is submitted to the review authority, in the case of a large construction activity site, of its preliminary determination that the construction plan is not substantially complete, the project site owner may not submit a notice of intent letter until the review authority makes a conclusive favorable determination concerning the construction plan under 327 IAC 15-5, the general permit, or the applicable ordinance of the MS4 community.



(e) If a review authority to which a construction plan is submitted under subsection (a):

- (1) makes a preliminary determination that the construction plan is substantially complete; and
- (2) makes a conclusive unfavorable determination concerning the construction plan under 327 IAC 15-5, the general permit, or the applicable ordinance of the MS4 community;

the land disturbing activities of the construction project must stop when the review authority notifies the project site owner of the review authority's conclusive unfavorable determination concerning the construction plan.

Sec. 17. (a) This section does not apply to an individual employed on July 1, 2019, to review and make conclusive determinations concerning construction plans submitted to an MS4 community.

(b) An individual who reviews and makes a conclusive determination concerning a construction plan submitted to an MS4 community must be:

- (1) a trained individual; or
- (2) an individual working under the direct supervision of a trained individual.

Sec. 18. (a) If:

- (1) an MS4 community has made a conclusive favorable determination concerning a construction plan; and
- (2) work on the construction project has begun;

the MS4 community may not order work on the construction project to stop on the grounds that the erosion and sediment control measures included in the construction plan are not adequate unless the project site owner is notified in writing of the inadequacies that the MS4 community perceives in the erosion and sediment control measures and the perceived inadequacies are not resolved within seventy-two (72) hours after the project site owner receives the written notice.

(b) This section does not prohibit an MS4 community from ordering work on a construction project to stop if the project site owner is creating a public health hazard or a safety hazard.

Sec. 19. The general permit, to the extent allowed under federal law, must recognize and be consistent with the provisions of this chapter, including:

- (1) the prohibition in section 15 of this chapter against an MS4 community imposing erosion and sediment control measures on a construction project within the boundaries of



the MS4 community that are more stringent than the erosion and sediment control measures established by the general permit;

(2) the provisions of section 16 of this chapter under which a project site owner may begin a construction project:

(A) if the review authority, under section 16(b) of this chapter, makes and notifies the project site owner of its preliminary determination that the construction plan is substantially complete; or

(B) if the review authority does not make a preliminary determination whether the construction plan is substantially complete within the period allowed by section 16(c) of this chapter;

(3) the qualifications established by section 17 of this chapter for an individual who reviews and makes a conclusive determination concerning a construction plan submitted to an MS4 community; and

(4) the limitation in section 18 of this chapter on the authority of an MS4 community to order the stoppage of work on a construction project after the MS4 community has made a conclusive favorable determination concerning the construction plan for the construction project.





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Speaker of the House of Representatives

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President of the Senate

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President Pro Tempore

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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