

First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1496

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AN ACT to amend the Indiana Code concerning natural and cultural resources.

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

SECTION 1. IC 14-28-1-22, AS AMENDED BY P.L.156-2020, SECTION 61, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 22. (a) As used in subsection (b)(1) with respect to a stream, "total length" means the length of the stream, expressed in miles, from the confluence of the stream with the receiving stream to the upstream or headward extremity of the stream, as indicated by the solid or dashed, blue or purple line depicting the stream on the most current edition of the seven and one-half (7 1/2) minute topographic quadrangle map published by the United States Geological Survey, measured along the meanders of the stream as depicted on the map.

(b) This section does not apply to the following:

- (1) A reconstruction or maintenance project (as defined in IC 36-9-27) on a stream or an open regulated drain if the total length of the stream or open drain is not more than ten (10) miles.
- (2) A construction or reconstruction project on a state or county highway bridge in a rural area that crosses a stream having an upstream drainage area of not more than fifty (50) square miles and the relocation of utility lines associated with the construction or reconstruction project if confined to an area not more than one hundred (100) feet from the limits of the highway construction right-of-way.

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- (3) The performance of an activity described in subsection (c)(1) or (c)(2) by a surface coal mining operation that is operated under a permit issued under IC 14-34.
- (4) Any other activity that is determined by the commission, according to rules adopted under IC 4-22-2, to pose not more than a minimal threat to floodway areas.
- (5) An activity in a boundary river floodway to which section 26.5 of this chapter applies.
- (6) The removal of a logjam or mass of wood debris that has accumulated in a river or stream, subject to the following conditions:
- (A) Work must not be within a salmonid stream designated under 327 IAC 2-1.5-5 without the prior written approval of the department's division of fish and wildlife.
  - (B) Work must not be within a natural, scenic, or recreational river or stream designated under 312 IAC 7-2.
  - (C) Except as otherwise provided in Indiana law, free logs or affixed logs that are crossways in the channel must be cut, relocated, and removed from the floodplain. Logs may be maintained in the floodplain if properly anchored or otherwise secured so as to resist flotation or dislodging by the flow of water and placement in an area that is not a wetland. Logs must be removed and secured with a minimum of damage to vegetation.
  - (D) Isolated or single logs that are embedded, lodged, or rooted in the channel, and that do not span the channel or cause flow problems, must not be removed unless the logs are either of the following:
    - (i) Associated with or in close proximity to larger obstructions.
    - (ii) Posing a hazard to navigation.
  - (E) A leaning or severely damaged tree that is in immediate danger of falling into the waterway may be cut and removed if the tree is associated with or in close proximity to an obstruction. The root system and stump of the tree must be left in place.
  - (F) To the extent practicable, the construction of access roads must be minimized, and should not result in the elevation of the floodplain.
  - (G) To the extent practicable, work should be performed exclusively from one (1) side of a waterway. Crossing the bed of a waterway is prohibited.



(H) To prevent the flow of sediment laden water back into the waterway, appropriate sediment control measures must be installed.

(I) Within fifteen (15) days, all bare and disturbed areas must be revegetated with a mixture of grasses and legumes. Tall fescue must not be used under this subdivision, except that low endophyte tall fescue may be used in the bottom of the waterway and on side slopes.

(c) A person who desires to:

- (1) erect, make, use, or maintain a structure, an obstruction, a deposit, or an excavation; or
- (2) suffer or permit a structure, an obstruction, a deposit, or an excavation to be erected, made, used, or maintained;

in or on a floodway must file with the director a verified written application for a permit accompanied by a nonrefundable minimum fee of two hundred dollars (\$200).

(d) The application for a permit must set forth the material facts together with plans and specifications for the structure, obstruction, deposit, or excavation.

(e) An applicant must receive a permit from the director for the work before beginning construction. The director shall issue a permit only if in the opinion of the director the applicant has clearly proven that the structure, obstruction, deposit, or excavation will not do any of the following:

- (1) Adversely affect the efficiency of or unduly restrict the capacity of the floodway.
- (2) Constitute an unreasonable hazard to the safety of life or property.
- (3) Result in unreasonably detrimental effects upon fish, wildlife, or botanical resources.

(f) In deciding whether to issue a permit under this section, the director shall consider the cumulative effects of the structure, obstruction, deposit, or excavation. The director may incorporate in and make a part of an order of authorization conditions and restrictions that the director considers necessary for the purposes of this chapter.

(g) A permit issued under this section:

- (1) is valid for two (2) years after the issuance of the permit; ~~and~~
- (2) to:
  - (A) the Indiana department of transportation or a county highway department if there is any federal funding for the project; or
  - (B) an electric utility for the construction of a power



generating facility;  
 is valid for five (5) years from the date of issuance; **and**  
**(3) is valid for the duration of a permitted project subject to periodic compliance evaluations for a quarrying or aggregate company for the excavation of industrial materials, including:**

- (A) clay and shale;**
- (B) crushed limestone and dolostone;**
- (C) dimension limestone;**
- (D) dimension sandstone;**
- (E) gypsum;**
- (F) peat;**
- (G) construction sand and gravel; and**
- (H) industrial sand.**

**However, a permit issued under this section expires if construction is not commenced within two (2) years after the permit is issued. Except as provided under section 22.1 of this chapter,** a permit that is active and was issued under subdivision (1) before July 1, 2014, is valid for two (2) years beginning July 2014, and a permit that is active and was issued under subdivision (2) before July 1, 2014, is valid for five (5) years beginning July 2014.

**(h) The holder of a permit issued under subsection (g)(3) shall notify the commission within six (6) months of completing the permitted project.**

~~(h)~~ **(i)** A permit issued under:

- (1) subsection (g)(1) may be renewed one (1) time for a period not to exceed two (2) additional years; and
- (2) subsection (g)(2) may be renewed one (1) time for a period not to exceed five (5) additional years.

~~(i)~~ **(j)** The director shall send a copy of each permit issued under this section to each river basin commission organized under:

- (1) IC 14-29-7 or IC 13-2-27 (before its repeal); or
- (2) IC 14-13-9, IC 14-30-1 (before its repeal), or IC 36-7-6 (before its repeal);

that is affected.

~~(j)~~ **(k)** The permit holder shall post and maintain a permit issued under this section at the authorized site.

~~(k)~~ **(l)** For the purposes of this chapter, the lowest floor of a building, including a residence or abode, that is to be constructed or reconstructed in the one hundred (100) year floodplain of an area protected by a levee that is:

- (1) inspected; and
- (2) found to be in good or excellent condition;

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by the United States Army Corps of Engineers shall not be lower than the one hundred (100) year frequency flood elevation plus one (1) foot.

SECTION 2. IC 14-28-1-22.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014 (RETROACTIVE)]: **Sec. 22.1. (a) A permit issued under section 22(g)(1) of this chapter on or before July 1, 2014, for a quarrying or aggregate company that is active for the excavation of industrial materials, including:**

- (1) clay and shale;**
- (2) crushed limestone and dolostone;**
- (3) dimension limestone;**
- (4) dimension sandstone;**
- (5) gypsum;**
- (6) peat;**
- (7) construction sand and gravel; and**
- (8) industrial sand;**

**is valid for the duration of the permitted project subject to the permit conditions and periodic compliance evaluations.**

**(b) The holder of a permit described in subsection (a) shall notify the department not later than January 1, 2022, if the permitted project is still active. Failure to notify the department not later than January 1, 2022, will cause the permit to expire.**

**(c) The holder of a permit described in subsection (a) is required to notify the department that the permitted project is complete not later than six (6) months after completing the permitted project.**

SECTION 3. IC 14-28-1-34, AS AMENDED BY P.L.219-2014, SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 34. A person who knowingly fails to comply with section ~~22(j)~~ 22(k) of this chapter commits a Class B infraction. Each day a person violates section ~~22(j)~~ 22(k) of this chapter constitutes a separate infraction.**

**SECTION 4. An emergency is declared for this act.**



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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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