

First Regular Session of the 123rd General Assembly (2023)

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 2022 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1601

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 13-11-2-85.9 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2023]: **Sec. 85.9. (a) "Forestry operation", for purposes of IC 13-18-22-1, includes facilities, activities, and equipment used to plant, raise, manage, harvest, and remove trees on private land.**

(b) The term includes:

- (1) site preparation;**
- (2) fertilization;**
- (3) pest control;**
- (4) wildlife management;**
- (5) new and previously existing staging areas;**
- (6) new and previously existing access roads; and**
- (7) new and previously existing haul roads.**

SECTION 2. IC 13-11-2-265.2 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2023]: **Sec. 265.2. "Waterway", for purposes of IC 13-18-22-1, means a river, stream, ditch, canal, or other channel through which water may flow continuously or seasonally.**

SECTION 3. IC 13-18-22-1, AS AMENDED BY P.L.160-2021, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2023]: Sec. 1. (a) Except as provided in subsection (b), a person proposing a wetland activity in a state regulated wetland must obtain a permit under this chapter to authorize the wetland activity.

(b) A permit is not required for the following wetland activities:

(1) The discharge of dirt, sand, rock, stone, concrete, or other inert fill materials in a de minimis amount.

(2) A wetland activity at a surface coal mine for which the department of natural resources has approved a plan to:

(A) minimize, to the extent practical using best technology currently available, disturbances and adverse effects on fish and wildlife;

(B) otherwise effectuate environmental values; and

(C) enhance those values where practicable.

(3) Any activity listed under Section 404(f) of the Clean Water Act, including:

(A) normal farming, silviculture, and ranching activities, such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices;

(B) maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures;

(C) construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches;

(D) construction of temporary sedimentation basins on a construction site that does not include placement of fill material into the navigable waters; and

(E) construction or maintenance of farm roads or forest roads, or temporary roads for moving mining equipment, where the roads are constructed and maintained, in accordance with best management practices, to assure that:

(i) flow and circulation patterns and chemical and biological characteristics of the navigable waters are not impaired;

(ii) the reach of the navigable waters is not reduced; and

(iii) any adverse effect on the aquatic environment will be otherwise minimized.

(4) The maintenance or reconstruction (as defined in IC 36-9-27-2) of a regulated drain in accordance with IC 36-9-27-29(2) as long as the work takes place within the current easement, and the reconstruction does not substantially



change the characteristics of the drain to perform the function for which it was designed and constructed.

(5) Wetland activities in an exempt isolated wetland, as defined in IC 13-11-2-74.5.

(6) Dredge and fill activities in an ephemeral stream, as defined in IC 13-11-2-72.4.

(7) Dredge and fill activities in a Class II wetland that:

(A) is located within the boundaries of a municipality; and

(B) has an area, as delineated, of not more than three-fourths (3/4) acre.

(8) The activities of a forestry operation that are:

(A) conducted in compliance with the Indiana Logging and Forestry Best Management Practices Field Guide published by the department of natural resources; and

(B) confined to a waterway that has a watershed not greater than ten (10) square miles.

A state permit will be required if there are permanent negative impacts to isolated wetlands outside of a waterway or the activities conducted fail to comply with the Indiana Logging and Forestry Best Management Practices Field Guide.

(c) If a conflict arises between:

(1) the provision in subsection (b)(7) under which dredge and fill activities in a Class II wetland with an area, as delineated, of not more than three-fourths (3/4) acre do not require a permit; and

(2) the provision in section 3(a) of this chapter under which a wetland activity in a Class II wetland with an area, as delineated, of more than three-eighths (3/8) acre require an individual permit;

the exemption in subsection (b)(7) controls.

(d) The development of cropland, as defined in IC 13-11-2-48.5, does not require a permit under this chapter if the cropland has been used for agricultural purposes:

(1) in the five (5) years immediately preceding the development; or

(2) in the ten (10) years immediately preceding the development, if the United States Army Corps of Engineers has issued a jurisdictional determination confirming that the cropland does not contain wetlands subject to federal jurisdiction under Section 404 of the Clean Water Act.

After receiving a jurisdictional determination described in subdivision (2) from the United States Army Corps of Engineers, the department shall notify the person proposing the wetland activity that the



development of the cropland used for agricultural purposes in the immediately preceding ten (10) years is exempt from the permit requirement of subsection (a) under subdivision (2).

SECTION 4. IC 14-8-2-102.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 102.5. (a) "Forestry operation", for purposes of IC 14-28-1-22, includes facilities, activities, and equipment used to plant, raise, manage, harvest, and remove trees on private land.**

(b) The term includes:

- (1) site preparation;**
- (2) fertilization;**
- (3) pest control;**
- (4) wildlife management;**
- (5) new and previously existing staging areas;**
- (6) new and previously existing access roads; and**
- (7) new and previously existing haul roads.**

SECTION 5. IC 14-8-2-315 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 315. "Waterway", for purposes of IC 14-22 and IC 14-28-1-22, means a river, stream, ditch, canal, or other channel through which water may flow continuously or seasonally.

SECTION 6. IC 14-28-1-22, AS AMENDED BY P.L.141-2022, SECTION 44, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: 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.

(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 activities of a forestry operation that are:

(A) conducted in compliance with the Indiana Logging and Forestry Best Management Practices Field Guide published by the department of natural resources; and

(B) confined to a waterway that has a watershed not greater than ten (10) square miles.

~~(6)~~ (7) 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 agriculture, business, navigation, or property.

(E) A leaning or severely damaged tree that is in immediate danger of falling into the waterway may be cut and removed. 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;
- (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.

(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.

(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.

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



(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;

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.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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