

# INDIANA

## *Enforceable Provisions Applicable to Nonpoint Source Water Pollution*

### DISCHARGE PROHIBITIONS

#### Water Pollution Control Law

Indiana's water pollution control law includes several provisions that may be used to take enforcement action against nonpoint source discharges that contribute to a polluted condition of the state's waters.

- "A person may not: (1) throw, run, drain, or otherwise dispose into any of the streams or waters of Indiana; or (2) cause, permit, or suffer to be thrown, run, drained, allowed to seep, or otherwise disposed into any waters; any organic or inorganic matter that causes or contributes to a polluted condition of any waters, as determined by a rule of the [water pollution control] board."<sup>1</sup> The water pollution control board is authorized to adopt rules to determine what constitutes a "polluted condition" of the water in any stream or water of the state.<sup>2</sup> Whenever the commissioner of the environment "determines that a person: (1) is in violation; or (2) is about to violate [this prohibition]" the department of environmental management must issue an order to abate the violation.<sup>3</sup>

- The board has power to "adopt rules restricting the polluting content of any waste material and polluting substances discharged or sought to be discharged into any of the streams or waters of Indiana."<sup>4</sup> This authority is not limited to point sources. The board also has authority to establish requirements for permits "to control or limit the discharge of contaminants into state waters;" while this is not limited to point sources, the current regulations cover permitting for point sources<sup>5</sup> and do not require permits for "any introduction of pollutants from nonpoint source agricultural and silvicultural activities."<sup>6</sup>

- In addition to the prohibition on causing or contributing to a polluted condition, and the permitting provisions, the commissioner of the environment has general authority to "take appropriate steps to prevent any pollution that is determined to be unreasonable and against public interests in view of the condition in any stream or other waters of Indiana."<sup>7</sup>

- Another provision prohibits the discharge of any contaminant or waste into the environment in "any form that causes or would cause pollution that violates or would violate rules, standards, or discharge or emission requirements" adopted by the board.. and prohibits deposit of a contaminant on the land that "creates or would create a pollution hazard that violates or would violate a rule" and prohibits deposit of "solid waste...in or immediately adjacent to a lake or stream"<sup>8</sup>

- A separate provision of the water pollution law requires reporting of spills, including those not reported under federal spill response requirements.<sup>9</sup> "Spill" for purposes of this law includes "any unexpected, unintended, abnormal, or unapproved dumping, leakage, drainage, seepage, discharge, or other loss of...oil, a hazardous

substance; or *other objectionable substance* that enters or threatens to enter the waters of Indiana"<sup>10</sup>

These laws are enforced by the commissioner by administrative order, civil penalties of up to \$25,000 per day, and injunctions.<sup>11</sup> Failure to comply with an order or discharge a duty imposed by the water pollution control laws is a Class B misdemeanor.<sup>12</sup> Minor violations that do not present an immediate or reasonably foreseeable danger to the public health or environment, and that do not include violation of a numerical limit or permit condition applicable to a business required to correct the violation before disclosure, and that are not failure to possess a required permit, may result in a reduced penalty limited to \$500 if the business corrects the violation within 90 days.<sup>13</sup>

### **Other Discharge Limitations**

- Indiana also has broad general authorities applicable to pollution events. The governor may issue an emergency order if contamination of air, water, or land presents a "clear and present danger" to the "health and safety of persons in any area," and the commissioner may file suit if a pollution source is presenting "an imminent and substantial endangerment" to health or livelihood.<sup>14</sup> An environmental enforcement law authorizes the attorney general, a political subdivision of the state, a citizen or a corporation or association to bring actions in the name of the state "for the protection of environment from significant pollution, impairment, or destruction" after notice to the state and failure of the appropriate state agency to act.<sup>15</sup>

- Nuisance law may apply to some nonpoint source pollution events. Indeed, the water pollution law defines "water pollution" as including discharges of contaminants that can "create a nuisance or make the waters harmful, detrimental, or injurious" to public health, safety or welfare, legitimate uses of water, or animals, fish or aquatic life.<sup>16</sup> Indiana law also provides that "Whatever is injurious to health, or indecent, or offensive to the senses, or an obstruction to the free use of property, so as essentially to interfere with the comfortable enjoyment of life or property is a nuisance, and the subject of an action."<sup>17</sup> However agricultural and industrial operations are insulated from public and private nuisance actions by virtue of changed conditions in the vicinity if they have operated for more than one year, were not a nuisance when they began, and there was no significant change in the operation; the exception does not apply if the nuisance results from "negligent" operation.<sup>18</sup>

- Indiana's Flood Control Act prohibits any person from putting contaminants or solid waste in, upon, or within 15 feet of a lake or within a floodway.<sup>19</sup> Violations may be abated by injunction and by civil penalty of up to \$1,000 per day.<sup>20</sup> But this provision does not apply to persons using chemicals in a normal manner in the production of agricultural products, nor to persons acting in accordance with discharge permits issued by IDEM or DNR.<sup>21</sup>

- Indiana expressly prohibits "discharge of a nonpoint source of pollution to waters of the United States" from municipal solid waste land fills, if such discharge "violates any requirement of an area wide or state wide water quality management plan...under § 208" of the federal Clean Water Act.<sup>22</sup>

- Indiana's recreational rivers law provides that any person who "throws, dumps, or leaves refuse in the water or on the banks" of a designated stream, is guilty of a misdemeanor, punishable by fine of up to \$1,000 and/or imprisonment for up to 180 days.<sup>23</sup>

## **Fish/Fisheries Laws**

Indiana's fisheries laws do not appear to contain enforceable provisions relating to nonpoint source discharges.

## **OPERATIONAL REQUIREMENTS**

### **Forestry Requirements**

State law does not appear to include enforceable requirements aimed specifically at controlling nonpoint source pollution from forestry on private lands.

### **Agriculture Requirements**

- Although soil and water conservation districts and conservancy districts can develop comprehensive plans and adopt rules and regulations, no enforcement powers are provided; they have the power to condition receipt of benefits on agreements with landowners.<sup>24</sup>

- The state does regulate water pollution from confined animal feeding operations similarly to federal requirements, but with somewhat different size limits and including operations in violation of water pollution laws or rules.<sup>25</sup> Prior approval from IDEM is required before commencing construction of a CAFO, but not a construction permit.<sup>26</sup> Enforcement is via administrative orders, injunctions, and penalties.<sup>27</sup>

- The pesticide law includes registration of pesticides, requirements for certifications and licensing of applicators and others. Enforcement mechanisms include registration and licensing actions, injunctions, orders, and civil penalties.<sup>28</sup>

- The Drainage Board Act establishes county drainage boards<sup>29</sup> does not provide for much environmental protection; however, IDEM approval is needed if connection of a drain to a regulated drain would result in a discharge of liquid wastes that "would cause or contribute to pollution of the receiving waters."<sup>30</sup> The Ditch Act requires a permit for ditching or drain activities within ½ mile of freshwater lake of more than 10 acres; DNR may issue the permit only if it finds that the proposed action "will not result in unreasonably detrimental effects upon fish, wildlife, or botanical resources."<sup>31</sup> The Ditch Act is enforceable by injunction, notice of violation, civil penalty, or petty criminal prosecution.<sup>32</sup>

## Development and Other Earth-Disturbing Activities

Indiana has several provisions apart from regulation of urban stormwater under the federal Clean Water Act.

- Although construction activities affecting 5 or more acres must control erosion, including filing a notice of intent and preparing an erosion control plan, local regulation under zoning codes can reach smaller sites.<sup>33</sup>

- It is unlawful to build any structure, place any obstruction, or "...make any deposit or excavation" in any floodway without a permit from the Dept. of Natural Resources. A permit may be issued only if the action will not, among other things, result in "...unreasonable detrimental effects upon fish, wildlife, or botanical resources..."<sup>34</sup> However permits are not required for drain reconstruction or maintenance if the stream or drain is 10 miles or less in length,<sup>35</sup> nor for production of crops, or for pasture, forests, and park and recreational uses provided they do not involve any structure, obstruction, deposit, or excavations.<sup>36</sup> Enforcement is by injunction, criminal prosecution, and civil penalty of up to \$1,000 per day.<sup>37</sup>

- A person may not substantially affect "natural or scenic qualities of a [designated natural, scenic, or recreational] river that is the subject of a river commission unless the person has secured a permit to do so from the river commission."<sup>38</sup> Enforcement is by injunction, and civil penalty of \$10 to \$300 per day.<sup>39</sup>

### Endnotes

<sup>1</sup> Ind. Code § 13-18-4-5.

<sup>2</sup> Ind. Code § 13-18-4-1.

<sup>3</sup> Ind. Code § 13-18-4-6.

<sup>4</sup> Ind. Code § 13-18-4-3.

<sup>5</sup> Ind. Code § 13-15-1-2; Ind. Admin. Code tit. 327, sec. 5-2-1 et seq.

<sup>6</sup> Ind. Admin. Code tit. 327, sec. 5-2-4(4).

<sup>7</sup> Ind. Code § 13-18-4-4.

<sup>8</sup> Ind. Code § 13-20-2-1.

<sup>9</sup> Ind. Code Ann. § 13-18-6-1.

<sup>10</sup> Ind. Code Ann. § 13-11-2-217.

<sup>11</sup> Ind. Code Ann. §§ 13-14-2-1, 13-14-2-6, 13-14-2-7, 13-30-3-3, 13-30-3-4, 13-30-4-1.

<sup>12</sup> Ind. Code Ann. § 13-18-8-9.

<sup>13</sup> Ind. Code Ann. § 13-30-7.

<sup>14</sup> Ind. Code Ann. §§ 13-14-10-1, -2.

<sup>15</sup> Ind. Code Ann. 13-30-1-1.

<sup>16</sup> Ind. Code Ann. § 13-11-2-260.

<sup>17</sup> Ind. Code Ann. § 34-1-52-1.

<sup>18</sup> Ind. Code Ann. § 34-1-52-4.

<sup>19</sup> Ind. Code Ann. § 14-28-1-27.

<sup>20</sup> Ind. Code Ann. §§ 14-28-1-35, 14-28-1-36.

<sup>21</sup> Ind. Code Ann. § 14-28-1-27.

<sup>22</sup> Ind. Admin. Code tit. 329, sec. 10-20-26.

<sup>23</sup> Ind. Code Ann. § 14-29-8-5.

<sup>24</sup> Ind. Code Ann. §§ 14-32-3, 14-32-5-1; see also 14-33-1 et seq.

- <sup>25</sup> Ind. Code Ann. § 13-18-2-40.
- <sup>26</sup> Ind. Code Ann. § 13-18-10-1; Ind. Admin. Code tit. 327, sec. 3-1-4.
- <sup>27</sup> Ind. Code Ann. §§ 13-18-10-3(b), -5, -6.
- <sup>28</sup> Ind. Code Ann. §§ 15-3-3.5-1 et seq.; 51-3-3.6-1 et seq.
- <sup>29</sup> Ind. Code Ann. §§ 36-9-27-1 et seq; also see 14-27-8-1 et seq.
- <sup>30</sup> Ind. Code Ann. § 36-9-27-23.
- <sup>31</sup> Ind. Code Ann. § 14-26-5-1 et seq.
- <sup>32</sup> Ind. Code Ann. § 14-26-5-16; 14-10-2-6; 14-26-5-17.
- <sup>33</sup> Ind. Admin. Code tit. 327, sec. 15-5-1 et seq.
- <sup>34</sup> Ind. Code Ann. §§ 14-28-1, 14-28-1-22.
- <sup>35</sup> Ind. Code Ann. § 14-28-1-22.
- <sup>36</sup> Ind. Admin. Code tit. 310, sec. 6-1-9.
- <sup>37</sup> Ind. Code Ann. §§ 14-28-1-32 to -36.
- <sup>38</sup> Ind. Code Ann. § 14-29-7-18.
- <sup>39</sup> Ind. Code Ann. § 14-29-7-25.