

Second Regular Session of the 123rd General Assembly (2024)

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 2023 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 140

AN ACT to amend the Indiana Code concerning natural resources.

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

SECTION 1. IC 14-8-2-156.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: **Sec. 156.5. "Logjam", for purposes of IC 14-28-1, has the meaning set forth in IC 14-28-1-3.5.**

SECTION 2. IC 14-8-2-158.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: **Sec. 158.5. "Mass of wood debris", for purposes of IC 14-28-1, has the meaning set forth in IC 14-28-1-3.7.**

SECTION 3. IC 14-28-1-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: **Sec. 3.5. As used in this chapter, "logjam" means an accumulation of lodged trees, root wads, or other debris that impedes the ordinary flow of water through a waterway. The term does not include the development of sandbars, sedimentation, or accumulations of stone or gravel. Logjams are evidenced by a blockage that does any of the following:**

- (1) Traverses the waterway.**
- (2) Causes upstream ponding.**
- (3) Results in significant bank erosion.**

SECTION 4. IC 14-28-1-3.7 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: **Sec. 3.7. As used in this chapter, "mass of wood debris"**



means an accumulation of lodged trees or other woody debris that does any of the following:

- (1) Causes or threatens to cause flooding on a road or private property.**
- (2) Impedes navigation by a boat.**
- (3) Reduces the capacity of a waterway to transport water.**

SECTION 5. IC 14-28-1-22, AS AMENDED BY P.L.191-2023, SECTION 8, AND AS AMENDED BY P.L.247-2023, SECTION 6, AND AS AMENDED BY THE TECHNICAL CORRECTIONS BILL OF THE 2024 GENERAL ASSEMBLY, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]:
 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:~~ A person is not required to obtain a permit from the department for the following activities:

- (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, **the following apply to logs that are crossways in the channel:**

(i) Free logs must be relocated and removed from the flood plain. ~~or A free log includes a log that is still attached to a root system that is no longer in the ground.~~

(ii) Affixed logs that are crossways in the channel must be cut, relocated, and removed from the floodplain. An affixed log includes a log that is still attached to a root system that is still in the ground. If the root system is still in the ground, the log must be cut so as to allow the root system to remain in the ground. However, cutting and removing the affixed log is not required if, in the opinion of the individual removing the log, the cutting and removing would create an unreasonable risk of bodily harm to the individual.

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.

(J) A logjam or mass of wood debris that is removed from a river or stream may be burned so completely as to eliminate the risk that the resulting ash and remnants will not cause another logjam, unless a local ordinance specifies otherwise.

(K) Subject to clause (M), a person removing a logjam or a mass of wood debris from a river or stream under this subdivision without obtaining a permit:

(i) may use the means that the person believes to present the lowest risk of physical injury to individuals performing the removal work; and

(ii) may, subject to clause (G), use mechanical equipment appropriate to the task of removing the logjam or mass of wood debris.

(L) A person removing a logjam or a mass of wood debris from a river or stream under this subdivision must comply with the following:

(i) Section 404 of the federal Clean Water Act (33 U.S.C. 1344).

(ii) IC 13-18-22 (state regulated wetlands).

(c) Except for an activity under subsection (b), 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. *The permit application must be accompanied by a nonrefundable minimum fee of two hundred dollars (\$200).*

(d) ~~The~~ *A permit application for a permit filed under this section:*

- (1) *must set forth the material facts ~~together with~~ concerning the structure, obstruction, deposit, or excavation; and*
- (2) *must be accompanied by plans and specifications for the structure, obstruction, deposit, or excavation.*

(e) **This subsection does not apply to the state or a county, city, or town.** *A person who files a permit application under this section must provide:*

- (1) *documentation of the person's ownership of the site where the proposed work will be performed; or*
- (2) *an affidavit from the owner of the site where the proposed work will be performed expressly authorizing the performance of the proposed work on that site.*

(f) *A person who applies for a permit under this section may file an amendment to the person's permit application. The director may approve a permit application amendment filed under this subsection only if the permit, as amended by the amendment, would meet the requirements of this section.*

(g) *Two (2) or more persons may jointly apply for a permit under this section.*

~~(e)~~ (h) **An applicant** *A person described in subsection (c) 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)~~ (i) *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)~~ (j) *The following apply to a permit issued under this section:*

- (1) *Except as provided in subdivisions (2) and (3), a permit is valid for two (2) years after the date of issuance of the permit.*
- (2) *A permit issued to:*



(A) the Indiana department of transportation or a county highway department *in connection with a construction project*, 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~~ of the permit.

(3) *is valid for the duration of a permitted project subject to periodic compliance evaluations for A permit issued to 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;

is valid for the duration of the permitted project, subject to periodic compliance evaluations.

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

~~(i)~~ (l) *The following apply to the renewal of a permit issued under this section:*

(1) *A permit to which subsection ~~(g)(1)~~ (j)(1) applies may be renewed one (1) time for a period not to exceed two (2) additional years. ~~and~~*

(2) *A permit to which subsection ~~(g)(2)~~ (j)(2) applies may be renewed one (1) time for a period not to exceed five (5) additional years.*

~~(j)~~ (m) 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.

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

~~(o)~~ (o) 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.

SECTION 6. IC 36-9-27.2 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]:

Chapter 27.2. Indiana Drainage Handbook

Sec. 1. As used in this chapter, "advisory board" refers to the Indiana Drainage Handbook advisory board.

Sec. 2. As used in this chapter, "department" refers to the Indiana state department of agriculture.

Sec. 3. As used in this chapter, "Indiana Drainage Handbook" refers to the publication "Indiana Drainage Handbook: An Administrative and Technical Guide for Activities within Indiana Streams and Ditches", which was prepared by the Christopher B. Burke Engineering Company in accordance with P.L.329-1995, published in 1996, and revised and republished in 1999.

Sec. 4. (a) The department shall oversee and take all actions necessary for the preparation and publication of an updated version of the Indiana Drainage Handbook.

(b) The department may select a contractor to draft the updated version of the Indiana Drainage Handbook. The contractor selected under this subsection shall be subject to the supervision of the department, and the text developed by the contractor shall be subject to review and comment by the advisory board.

Sec. 5. (a) The secretary of agriculture and rural development shall appoint an Indiana Drainage Handbook advisory board to:

- (1) advise the contractor and the department on the preparation of the updated version of the Indiana Drainage Handbook; and**
- (2) review and comment on:**
 - (A) the structure of; and**



- (B) the text of drafts of;
the updated version of the Indiana Drainage Handbook.
- (b) The advisory board must include the following:
- (1) A representative of the department.
 - (2) A licensed county surveyor.
 - (3) A county commissioner.
 - (4) A representative of a soil and water conservation district.
 - (5) A licensed engineer.
 - (6) A representative of the department of natural resources.
 - (7) A representative of the department of environmental management.
 - (8) A farmer from northern Indiana.
 - (9) A farmer from central Indiana.
 - (10) A farmer from southern Indiana.
 - (11) A representative of the construction industry.
 - (12) A representative of the United States Fish and Wildlife Service.
 - (13) A representative of the United States Army Corps of Engineers.
 - (14) A representative of the United States Department of Agriculture's Natural Resources Conservation Service.
 - (15) An individual focused on environmental stewardship and sustainability.
- (c) The secretary of agriculture and rural development shall appoint one (1) member of the advisory board as chairperson.
- (d) A member of the advisory board serves until:
- (1) the updated version of the Indiana Drainage Handbook is published on the website of the department of natural resources or the department; and
 - (2) the secretary of agriculture and rural development declares that the work of the advisory board is concluded.
- (e) A vacancy on the advisory board shall be filled by appointment by the secretary of agriculture and rural development.
- Sec. 6. (a) The advisory board may not take official action or make official recommendations on:
- (1) general drainage policies;
 - (2) the text of drafts of the updated version of the Indiana Drainage Handbook; or
 - (3) the structure of the updated version of the Indiana Drainage Handbook.
- (b) Advice and comments provided by the advisory board are



not binding on the department or the contractor selected under section 4 of this chapter.

Sec. 7. (a) The advisory board shall meet at the call of the chairperson. After the contractor is selected under section 4 of this chapter, the advisory board:

(1) shall meet at least two (2) times to review the work of the contractor; and

(2) may meet at other times at the call of the chairperson as the contractor's work on the updated Indiana Drainage Handbook progresses.

(b) The expenses of the advisory board shall be paid from funds appropriated to the department.

(c) Each member of the advisory board who is not a state employee is entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). The member is also entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

Sec. 8. (a) The department shall staff the advisory board.

(b) The department may record and keep records of comments provided by the advisory board to the department or the contractor selected under section 4 of this chapter.



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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