

**IC 14-25.5**                    **ARTICLE 25.5. ENFORCEMENT ACTIONS BY THE  
DIVISION OF WATER**

Ch. 1.	Applicability and Definitions
Ch. 2.	Enforcement
Ch. 3.	Water Environmental Fund
Ch. 4.	Penalties

**IC 14-25.5-1**                    **Chapter 1. Applicability and Definitions**

14-25.5-1-1	Applicability
14-25.5-1-2	"Division"
14-25.5-1-3	"Fund"

**IC 14-25.5-1-1**                    **Applicability**

Sec. 1. This article applies to actions to enforce the following articles:

- (1) IC 14-26.
- (2) IC 14-27.
- (3) IC 14-28.
- (4) IC 14-29.

*As added by P.L.145-2002, SEC.3.*

**IC 14-25.5-1-2**                    **"Division"**

Sec. 2. As used in this article, "division" refers to the division of water of the department.

*As added by P.L.145-2002, SEC.3.*

**IC 14-25.5-1-3**                    **"Fund"**

Sec. 3. As used in this article, "fund" means the water environmental fund established by IC 14-25.5-3-1.

*As added by P.L.145-2002, SEC.3.*

**IC 14-25.5-2 Chapter 2. Enforcement**

14-25.5-2-1	Inspection to determine violation
14-25.5-2-2	Notice of violation
14-25.5-2-3	Notice of violation; contents
14-25.5-2-4	Applicability of adjudicative proceedings to notice of violation
14-25.5-2-5	Notice of violation effective without proceeding; request for administrative review
14-25.5-2-6	Failure to mitigate violation; penalties; permit revocation

**IC 14-25.5-2-1 Inspection to determine violation**

Sec. 1. A division inspector or a person authorized by the department may at any reasonable time enter upon public or private property to determine if there is a violation of:

- (1) an article listed in IC 14-25.5-1-1; or
- (2) a rule adopted under an article listed in IC 14-25.5-1-1.

*As added by P.L.145-2002, SEC.3.*

**IC 14-25.5-2-2 Notice of violation**

Sec. 2. The department may issue a written notice of violation if a person violates:

- (1) an article listed in IC 14-25.5-1-1; or
- (2) a rule adopted under an article listed in IC 14-25.5-1-1.

*As added by P.L.145-2002, SEC.3.*

**IC 14-25.5-2-3 Notice of violation; contents**

Sec. 3. A notice of violation issued under this chapter must include the following:

- (1) The nature of the violation.
- (2) The action that is appropriate to mitigate the violation.
- (3) The date by which the violation must be mitigated.
- (4) The procedure to obtain administrative review if a person is aggrieved by the issuance of the notice of violation.

*As added by P.L.145-2002, SEC.3.*

**IC 14-25.5-2-4 Applicability of adjudicative proceedings to notice of violation**

Sec. 4. A notice of violation issued under this chapter is governed by IC 4-21.5-3-6.

*As added by P.L.145-2002, SEC.3.*

**IC 14-25.5-2-5 Notice of violation effective without proceeding; request for administrative review**

Sec. 5. A notice of violation issued under this chapter becomes effective without a proceeding under IC 4-21.5-3 unless a person requests administrative review under IC 4-21.5-3-6 within thirty (30) days after receipt of the notice.

*As added by P.L.145-2002, SEC.3.*

**IC 14-25.5-2-6 Failure to mitigate violation; penalties; permit revocation**

Sec. 6. A person who fails to mitigate a violation within the time set forth in a notice of violation is liable for:

- (1) a civil penalty;
- (2) permit revocation; or
- (3) the sanctions under both subdivisions (1) and (2);

under IC 14-25.5-4.

*As added by P.L.145-2002, SEC.3.*

**IC 14-25.5-3 Chapter 3. Water Environmental Fund**

14-25.5-3-1	Fund established; administration by department
14-25.5-3-2	Sources of money in fund
14-25.5-3-3	Limited reversion to the state general fund; investment
14-25.5-3-4	Appropriations from fund; purposes; expenditures without prior approval
14-25.5-3-5	Expenditure from fund not releasing responsible party

**IC 14-25.5-3-1 Fund established; administration by department**

Sec. 1. The water environmental fund is established. The department shall administer the fund.

*As added by P.L.145-2002, SEC.3.*

**IC 14-25.5-3-2 Sources of money in fund**

Sec. 2. The fund consists of the following:

- (1) Accrued interest and other investment earnings of the fund.
- (2) Civil penalties collected for the violation of a statute in an article described in IC 14-25.5-1-1.
- (3) Gifts, grants, donations, or appropriations from any source.

*As added by P.L.145-2002, SEC.3. Amended by P.L.195-2014, SEC.27.*

**IC 14-25.5-3-3 Limited reversion to the state general fund; investment**

Sec. 3. (a) Except as provided in subsection (d), money in the fund does not revert to the state general fund at the end of a fiscal year.

(b) The total amount in the fund may not exceed one million dollars (\$1,000,000). Any money in the fund that exceeds one million dollars (\$1,000,000) reverts to the land and water resources fund established by IC 14-25-10-2.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the fund.

(d) If the fund is abolished, all money in the fund reverts to the state general fund.

*As added by P.L.145-2002, SEC.3.*

**IC 14-25.5-3-4 Appropriations from fund; purposes; expenditures without prior approval**

Sec. 4. (a) Money paid into the fund may be appropriated for the following purposes:

- (1) To cover the costs of mitigating a violation of an article to which this article applies or rules adopted under an article to which this article applies.
- (2) To cover the costs of:
  - (A) mitigating environmental damage;
  - (B) protecting the public from harm;
  - (C) public awareness activities; or
  - (D) litigation expenses directly related to the enforcement process, including the cost of transcripts, depositions, and expert witnesses;caused by a violation of an article to which this article applies or a violation of rules adopted under an article to which this article applies.

(b) The division director may make expenditures from the fund for purposes described in subsection (a) without the prior approval of the budget agency or the governor. An expenditure under this subsection may not exceed fifty thousand dollars (\$50,000).

*As added by P.L.145-2002, SEC.3. Amended by P.L.195-2017, SEC.40.*

**IC 14-25.5-3-5 Expenditure from fund not releasing responsible party**

Sec. 5. (a) An expenditure made from the fund under this chapter does not release a

responsible person from liability.

(b) The department may seek from a responsible person reimbursement for expenses incurred under this chapter.

*As added by P.L.145-2002, SEC.3.*

**IC 14-25.5-4 Chapter 4. Penalties**

14-25.5-4-1	Revocation of permit; causes
14-25.5-4-2	Revoked permit; mitigation of violation
14-25.5-4-3	Civil penalties
14-25.5-4-4	Applicability of adjudicative proceedings to civil penalties
14-25.5-4-5	Actions by attorney general
14-25.5-4-6	Repealed

**IC 14-25.5-4-1 Revocation of permit; causes**

Sec. 1. The department may revoke a permit issued under an article to which this article applies if the department finds any of the following:

- (1) The permit was issued through fraud or misrepresentation.
- (2) The person to whom the permit was issued has violated an article to which this article applies or has violated a rule adopted under an article to which this article applies.
- (3) The information or conditions upon which a permit was issued have substantially changed since the permit was issued.
- (4) The person to whom the permit was issued has received a notice of violation under this article and has failed to do at least one (1) of the following:
  - (A) Mitigate the violation within the time limit set forth within the notice.
  - (B) Secure from the division in writing an extension of time within which to mitigate the violation before the expiration of the time established for mitigation.
  - (C) Request a proceeding under IC 4-21.5-3-6 within:
    - (i) thirty (30) days after receipt of the notice; or
    - (ii) the time provided by the division for mitigation;whichever is longer.

*As added by P.L.145-2002, SEC.3.*

**IC 14-25.5-4-2 Revoked permit; mitigation of violation**

Sec. 2. (a) If a permit is revoked under this chapter, the department may do either or both of the following:

- (1) Order the person to mitigate the violation.
- (2) Mitigate the violation.

(b) The revocation of a permit under this chapter does not relieve the person to whom the permit relates of the responsibilities imposed by this article.

(c) If the department elects to mitigate under subsection (a)(2), the person to whom the permit relates remains liable for the costs of mitigating the violation.

*As added by P.L.145-2002, SEC.3.*

**IC 14-25.5-4-3 Civil penalties**

Sec. 3. (a) If the department has authority to assess a civil penalty for the violation of a statute in an article described in IC 14-25.5-1-1, the department also has authority to assess a civil penalty for the violation of a rule adopted in connection with that statute.

(b) Each day during which a violation continues may be considered a separate violation for purposes of assessing a civil penalty.

(c) The department may bring a civil action under section 5 of this chapter to recover a civil penalty described in this section and to enjoin a person from continuing a violation.

*As added by P.L.145-2002, SEC.3. Amended by P.L.195-2014, SEC.28.*

**IC 14-25.5-4-4 Applicability of adjudicative proceedings to civil penalties**

Sec. 4. (a) A civil penalty assessed for a violation described in section 3 of this chapter is subject to IC 4-21.5-3-6 and becomes effective without a proceeding under IC 4-21.5-3

unless a person requests an administrative review within thirty (30) days after receipt of the notice of assessment.

(b) A civil penalty that is assessed for a violation described in section 3 of this chapter shall be deposited in the fund.

*As added by P.L.145-2002, SEC.3. Amended by P.L.195-2014, SEC.29.*

**IC 14-25.5-4-5            Actions by attorney general**

Sec. 5. The division director may request the attorney general to institute an action in an appropriate court for the following:

(1) The recovery of civil penalties owed for a violation described in section 3 of this chapter.

(2) To restrain a person from commencing to violate or continuing to violate any of the following:

(A) An article to which this article applies or a rule adopted under an article to which this article applies.

(B) An order of the department.

*As added by P.L.145-2002, SEC.3. Amended by P.L.195-2014, SEC.30.*

**IC 14-25.5-4-6            Repealed**

*As added by P.L.145-2002, SEC.3. Amended by P.L.71-2004, SEC.3. Repealed by P.L.195-2014, SEC.31.*