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TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #00-126(F)

DIGEST

Amends 312 IAC 11 to expand the opportunities to use a general license for the placement of qualified dry hydrants and qualified glacial stone seawall refacings along or within public freshwater lakes. Clarifies existing criteria, including the resolution of potential conflicts in the definitions of “area of special concern” and “developed area”. Effective 30 days after filing with the secretary of state.

312 IAC 11-2-2

312 IAC 11-3-2

312 IAC 11-2-7

312 IAC 11-4-3

312 IAC 11-3-1

SECTION 1. 312 IAC 11-2-2 IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-2-2 “Area of special concern” defined

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-2-23

Affected: IC 14-26-2

Sec. 2. “Area of special concern” means an area that contains at least one (1) of the following characteristics:

(1) An ~~unaltered~~ **altered** shoreline where bulkhead seawalls are at least two hundred fifty (250) feet apart.

~~(2) Water quality or erosion control benefits.~~

~~(3) (2)~~ Bogs, fens, muck flats, sand flats, or marl beaches identified by the division of nature preserves in the Natural Community Classification System.

~~(4) (3)~~ More than one hundred (100) square feet of contiguous emergent vegetation or rooted vegetation with floating leaves.

(Natural Resources Commission; 312 IAC 11-2-2; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2220; filed Jan 23, 2001, 10:05 a.m.: 24 IR 1614)

SECTION 2. 312 IAC 11-2-7 IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-2-7 “Developed area” defined

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-2-23

Affected: IC 14-26-2

Sec. 7. “Developed area” means an area does not contain any of the following characteristics:

~~(1) Unaltered shoreline:~~

~~(2) (1)~~ An area of special concern.

~~(3) (2)~~ A significant wetland.

(Natural Resources Commission; 312 IAC 11-2-7; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2220; filed Jan 23, 2001, 10:05 a.m.: 24 IR 1614)

SECTION 3. 312 IAC 11-3-1 IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-3-1 General licenses for qualified temporary structures; dry hydrants; glacial stone refaces

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-2-23

Affected: IC 14-26-2

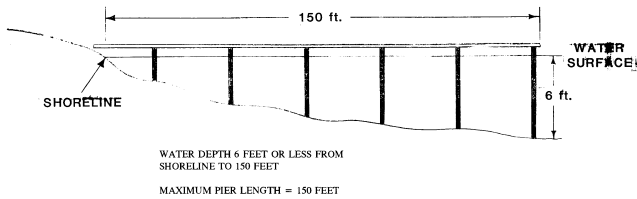
Sec. 1. (a) The placement and maintenance of a temporary structure, ~~or~~ a dry hydrant, **or a glacial stone reface** is authorized without a written license issued by the department under IC 14-26-2 and this rule if the temporary structure, ~~or~~ dry hydrant, **or glacial**

stone reface qualifies under this section.

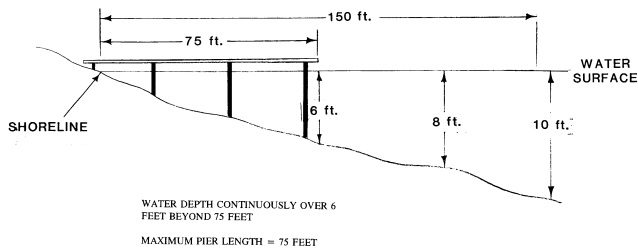
(b) In order for a temporary structure to qualify, the structure must satisfy each of the following:

- (1) Be easily removable.
- (2) Not infringe on the access of an adjacent landowner to the public freshwater lake.
- (3) Not unduly restrict navigation.
- (4) Not be unusually wide or long relative to similar structures within the vicinity on the same public freshwater lake.
- (5) Not extend more than one hundred fifty (150) feet from the legally established or average normal waterline or shoreline.
- (6) If a pier, not extend over water that is continuously more than six (6) feet deep to a distance of one hundred fifty (150) feet from the legally established or average normal waterline or shoreline.
- (7) Not be a marina.
- (8) Be placed by or with the acquiescence of a riparian owner.

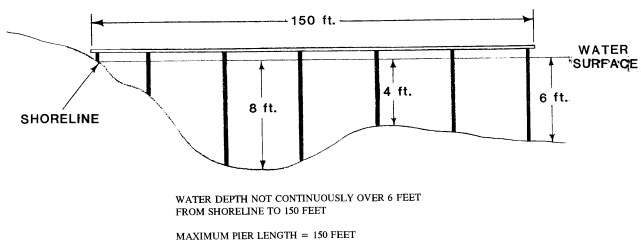
(c) Illustrations of maximum lengths for a pier or similar structure that may qualify under subsection (b) are as follows:



Where the water depth is six (6) feet or less from the shoreline to one hundred fifty (150) feet from the shoreline, the maximum pier length is one hundred fifty (150) feet.



Where the maximum water depth is continuously more than six (6) feet beyond seventy-five (75) feet from the shoreline, the maximum pier length is seventy-five (75) feet.



Where the maximum water depth is not continuously over six (6) feet from the shoreline, the maximum pier length is one hundred fifty (150) feet.

(d) In order for the placement, maintenance, and operation of a dry hydrant to qualify, the hydrant must satisfy each of the following:

- (1) Be sponsored or owned by a volunteer or full-time fire department recognized by the public safety training institute.
- (2) Be readily accessible from an all-weather road, public access site, or similar area.
- (3) Have a diameter of at least six (6) inches.
- (4) Be constructed of PVC pipe or a similar nontoxic material.

- (5) Extend no more than one hundred fifty (150) feet from the waterline or shoreline.
- (6) Have all portions of the hydrant and its ~~appurtenant~~ in-lake ~~facilities~~ **accessories** be at least five (5) feet below the legally established or average normal water level.
- (7) Be marked with a danger buoy, which conforms ~~with~~ **to** 310 IAC 2.1-4-6(a)(1), at the lakeward end of the hydrant.
- (8) Be equipped with a screen or straining device on the lakeward end.
- (9) ~~Include neither stone nor concrete~~ **Glacial stone or riprap only may be placed** in or on the lakebed for either of the following:
 - (A) Bedding the intake pipe.
 - (B) Straining the intake water.
- (10) Be approved by the riparian landowner.

(e) In order for the placement of glacial stone on the lakeward side of a seawall that is located within or along the waterline or shoreline of a public freshwater lake to qualify, the glacial stone reface must satisfy each of the following:

- (1) The existing seawall must not have been previously refaced.**
- (2) The seawall reface must be comprised exclusively of glacial stone.**
- (3) The reface must not extend more than four (4) feet lakeward of the waterline or shoreline at the base of the existing wall.**
- (4) A walk or structural tie must not be constructed on the existing seawall in combination with the glacial stone reface.**
- (5) An impermeable material must not be placed behind or beneath the glacial stone reface.**
- (6) Filter cloth placed behind or beneath the glacial stone reface must be properly anchored to prevent displacement or flotation.**
- (7) Erosion from disturbed areas landward of the waterline or shoreline must be controlled to prevent its transport into the lake.**

(Natural Resources Commission; 312 IAC 11-3-1; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2223; filed Jan 23, 2001, 10:05 a.m.: 24 IR 1614)

SECTION 4. 312 IAC 11-3-2 IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-3-2 Disputes relative to a temporary structure, dry hydrant, or glacial stone reface placed through a general license

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-2-23

Affected: IC 4-21.5-3.5; IC 14-26-2

Sec. 2. (a) A person may seek administrative review of the placement or maintenance of a temporary structure, ~~or~~ a dry hydrant, **or a glacial stone reface** under section 1 of this rule.

(b) Administrative review under this section is subject to IC 4-21.5 and 312 IAC 3-1. If a dispute involves the placement of a pier, ~~or~~ another temporary structure, **or a glacial stone reface**, where the review of another structure authorized by a general license appears appropriate to a full and fair determination of the dispute, the administrative law judge may order ~~the joinder of~~ additional parties ~~needed to accomplish that result.~~ **joined.**

(c) The administrative law judge shall commit the matter to mediation under IC 4-21.5-3.5 as soon as practicable. No administrative review brought under this section shall proceed to formal discovery or to a hearing without the completion of at least two (2) mediation sessions unless agreed in writing by all the parties.

(d) Unless otherwise ordered by the administrative law judge or agreed in writing by all the parties, any structure placed by a party under section 1 of this rule must be removed from ~~within~~ **areas along or lakeward of** the waterline or shoreline upon the later of the following:

- (1) Ninety (90) days after filing of the request for administrative review.
- (2) January 1 of the year following the filing of the request for administrative review.

(e) In exercising discretion under subsection (d), an administrative law judge shall consider whether the structure poses a substantial intrusion or merely a de ~~minimus~~ **minimis** intrusion to the interests protected by IC 14-26-2, IC 14-15-7-3, and this rule.
(Natural Resources Commission; 312 IAC 11-3-2; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2224; filed Jan 23, 2001, 10:05 a.m.: 24 IR 1615)

SECTION 5. 312 IAC 11-4-3 IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-4-3 Seawall refacing

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-2-23

Affected: IC 14-26-2

Sec. 3. (a) A written license under IC 14-26-2 and this rule is required to reface on the lakeward side of a seawall that is located within or along the waterline or shoreline of a public freshwater lake.

(b) The director or a delegate shall not issue a license to reface a seawall if the wall has been previously refaced.

(c) To qualify for a license if a seawall is to be refaced in a significant wetland, the seawall reface must be comprised of bioengineered materials:

(d) To qualify for a license if a seawall is to be refaced in a **significant wetland or** an area of special concern, the seawall reface must be comprised of either or both of the following:

- (1) Bioengineered materials.
- (2) Glacial stone.

(e) To qualify for a license if a seawall is to be refaced in a developed area, the seawall reface must be comprised of one (1) or some combination of the following:

- (1) Bioengineered material.
- (2) Glacial stone.
- (3) Riprap.
- (4) Concrete.
- (5) Steel sheet piling.

(f) For a seawall reface comprised of:

- (1) glacial stone or riprap, the reface must not extend more than four (4) feet lakeward of the waterline or shoreline at the base of the existing wall;
- (2) concrete, the reface must:
 - (A) not extend more than twelve (12) inches lakeward of the existing seawall; and
 - (B) be keyed to the lakeward face of the existing seawall;
- (3) steel sheet piling, the reface must not extend more than six (6) inches lakeward of the existing seawall; and
- (4) bioengineered material, the lakeward extent of the reface must be coordinated with the department before filing the permit application.

(g) Any walk or structural tie constructed on top of the existing seawall must be located landward of the seawall face.

(h) The director or a delegate shall not issue a license for the placement of an impermeable material behind or beneath a seawall reface.

(i) Filter cloth placed behind or beneath the seawall reface must be properly anchored to prevent displacement or flotation.

(j) Erosion from disturbed areas landward of the waterline or shoreline must be controlled to prevent its transport into the lake. (Natural Resources Commission; 312 IAC 11-4-3; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2225; filed Jan 23, 2001, 10:05 a.m.: 24 IR 1616)

LSA Document #00-126(F)

Notice of Intent Published: 23 IR 2521

Proposed Rule Published: September 1, 2000; 23 IR 3147

Hearing Held: November 22, 2000

Approved by Attorney General: January 3, 2001

Approved by Governor: January 19, 2001

Filed with Secretary of State: January 23, 2001, 10:05 a.m.

Incorporated Documents Filed with Secretary of State: None

