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TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #00-154(F)

DIGEST

Adds 312 IAC 11-1-3 to establish the mediation process for dispute resolution as appropriate to conforming that process to IC 14-26-2-23. Amends 312 IAC 11-3-2 concerning temporary structures and permanent structures in public freshwater lakes. Effective 30 days after filing with the secretary of state.

312 IAC 11-1-3

312 IAC 11-3-2

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

312 IAC 11-1-3 Mediation of disputes among riparian owners or between riparian owners and the department

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

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

Sec. 3. (a) A riparian owner or the department may initiate a proceeding under IC 4-21.5 and 312 IAC 3-1 to seek resolution by the commission of a dispute among riparian owners, or between a riparian owner and the department, concerning the usage of an area over, along, or within a shoreline or waterline of a public freshwater lake.

(b) A party to a proceeding initiated under subsection (a) may seek mediation of the dispute under IC 4-21.5. The administrative law judge shall approve the use of mediation if the request is made by:

(1) a party within thirty (30) days of the initiation of the proceeding;

(2) a party within thirty (30) days after a party is joined as determined necessary for just adjudication or by agreement of the parties; or

(3) agreement of the parties.

(c) The administrative law judge may at any time approve the use of mediation.

(d) If a good faith effort by the parties to the mediation fails to achieve a settlement, the department shall make an initial determination of the dispute, file the determination with the administrative law judge, and serve it upon the parties. Within twenty (20) days after filing the initial determination, a party may request that the administrative law judge perform administrative review of the initial determination.

(e) If a request for administrative review is received under subsection (d), the administrative law judge shall seek a final disposition of the proceeding as soon as is practicable. (Natural Resources Commission; 312 IAC 11-1-3; filed Jun 21, 2001, 3:03 p.m.: 24 IR 3374)

SECTION 2. 312 IAC 11-3-2, AS AMENDED AT 24 IR 1615, SECTION 4, IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-3-2 Disputes relative to a temporary structure or dry hydrant 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; 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, 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 additional parties joined.

(c) The administrative law judge shall commit the matter to mediation under ~~IC 4-21.5-3.5~~ **312 IAC 11-1-3** as soon as practicable. **Except as otherwise provided in this subsection**, 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.~~
A mediation session is not required to be scheduled where either:

- (1) all parties agree in writing not to participate in mediation; or**
- (2) a party is dismissed or defaulted under 312 IAC 3-1-9(a), 312 IAC 3-1-9(b)(1), or 312 IAC 3-1-9(b)(2).**

(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 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; filed Jun 21, 2001, 3:03 p.m.: 24 IR 3374*)

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