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TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule LSA Document #05-38

DIGEST

Amends 312 IAC 11, which governs construction activities along and within public freshwater lakes, concerning the regulation and treatment of a seawall and to include standards that distinguish a seawall placed in a manmade channel from one placed on a natural shoreline, to allow a bulkhead seawall to be permitted along the upland sides of a manmade channel, to define “natural shoreline”, to amend the definitions of “area of special concern” and “significant wetland”, and to provide discretion to grant a license for a seawall or other structure, which might not otherwise satisfy the rule, where public access is enhanced or where a written assessment by a qualified professional demonstrates a particular methodology is needed to control erosion or to stabilize the shoreline and that the methodology would not violate IC 14-26-2. Effective 30 days after filing with the secretary of state.

312 IAC 11-2-2	312 IAC 11-2-25.2
312 IAC 11-2-7	312 IAC 11-2-27.5
312 IAC 11-2-11	312 IAC 11-3-3
312 IAC 11-2-11.8	312 IAC 11-4-2
312 IAC 11-2-14.5	312 IAC 11-4-3
312 IAC 11-2-20	312 IAC 11-4-4
312 IAC 11-2-24	312 IAC 11-5-3

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 altered shoreline where bulkhead seawalls are at least two hundred fifty (250) feet apart.
- (2) Bogs, fens, muck flats, sand flats, or marl beaches identified by the division of nature preserves in the Natural Community Classification System.
- (3) More than ~~one six~~ hundred (~~100~~) **twenty-five (625)** 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 **the upland side or sides of a manmade channel or** an area **that** does not contain any of the following characteristics:

- (1) An area of special concern.
- (2) A significant wetland.
- (3) A natural shoreline.**

(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 11-2-11 IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-2-11 “Glacial stone” defined

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

Affected: IC 14-26-2

Sec. 11. “Glacial stone” means a rounded stone that satisfies ~~both~~ **each** of the following:

(1) Was produced by glacial activity.

(2) No individual stone weighs more than one hundred twenty (120) pounds.

(3) At least ninety percent (90%) of the material passes through a twelve (12) inch sieve.

(4) Not more than ten percent (10%) of the material passes through a six (6) inch sieve.

(Natural Resources Commission; 312 IAC 11-2-11; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2221)

SECTION 4. 312 IAC 11-2-11.8 IS ADDED TO READ AS FOLLOWS:

312 IAC 11-2-11.8 “Manmade channel” defined

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

Affected: IC 14-26-2

Sec. 11.8. “Manmade channel” means a watercourse created by mechanical means that connects to the lake at one (1) or more points and by its construction increases the total length of shoreline around the lake. The term does not include any areas within the lake cleared by either chemical or mechanical means that do not result in an increase in the total length of shoreline around the lake. *(Natural Resources Commission; 312 IAC 11-2-11.8)*

SECTION 5. 312 IAC 11-2-14.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 11-2-14.5 “Natural shoreline” defined

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

Affected: IC 14-26-2

Sec. 14.5. “Natural shoreline” means a continuous section of unaltered shoreline or waterline where the distance between lawful permanent structures is at least two hundred fifty (250) feet. *(Natural Resources Commission; 312 IAC 11-2-14.5)*

SECTION 6. 312 IAC 11-2-20 IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-2-20 “Riprap” defined

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

Affected: IC 14-26-2

Sec. 20. “Riprap” means angular, limestone rock that satisfies each of the following conditions:

(1) No individual piece weighs more than one hundred twenty (120) pounds.

(2) At least ninety percent (90%) of the material passes through a twelve (12) inch sieve.

~~(3) Between twenty percent (20%) and sixty percent (60%) of the material passes through a six (6) inch sieve.~~

~~(4)~~ **(3)** Not more than ten percent (10%) of the material passes through a ~~one and one-half (1½)~~ **six (6)** inch sieve.

(Natural Resources Commission; 312 IAC 11-2-20; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2222)

SECTION 7. 312 IAC 11-2-24 IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-2-24 “Significant wetland” defined

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

Affected: IC 14-26-2

Sec. 24. “Significant wetland” means a transitional area between terrestrial and deepwater habitats containing at least one (1) of

the following:

- (1) At least two thousand five hundred (2,500) square feet of contiguous, emergent vegetation or rooted vegetation with floating leaves landward or lakeward of the legally established or average normal waterline or shoreline. The areal extent of the vegetation is independent of ownership.
- (2) Adjacent wetland areas designated by a federal or state agency under one (1) of the following:
 - (A) National Wetlands Inventory.
 - (B) U.S. Army Corps of Engineers Wetlands Delineation Manual (1987).
 - (C) National Food Security Act Manual (1994).
- (3) The existence of a species listed at 15 IR 1312 in the Roster of Indiana Animals and Plants ~~which that~~ are Extirpated, Endangered, Threatened, or Rare.
- ~~(4) An alteration of the area would result in significant environmental harm.~~
- ~~(5) Unaltered shoreline for at least two hundred fifty (250) feet.~~

(Natural Resources Commission; 312 IAC 11-2-24; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2222)

SECTION 8. 312 IAC 11-2-25.2 IS ADDED TO READ AS FOLLOWS:

312 IAC 11-2-25.2 “Toe protection” defined

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

Affected: IC 14-26-2

Sec. 25.2. “Toe protection” means the glacial stone or angular, limestone rock that is placed along the lakeward face of a bulkhead seawall to minimize lake bed erosion and undercutting at the base of the seawall and satisfies each of the following:

- (1) No individual piece weighs more than one hundred twenty (120) pounds.**
- (2) At least ninety percent (90%) of the material passes through a twelve (12) inch sieve.**
- (3) Not more than ten percent (10%) of the material passes through a six (6) inch sieve.**
- (4) No individual piece is placed more than one (1) foot lakeward of the lakeward face of a bulkhead seawall.**

(Natural Resources Commission; 312 IAC 11-2-25.2)

SECTION 9. 312 IAC 11-2-27.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 11-2-27.5 “Upland side of a manmade channel” defined

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

Affected: IC 14-26-2

Sec. 27.5. “Upland side of a manmade channel” means those sections of the shoreline along a manmade channel where less than six hundred twenty-five (625) square feet of contiguous emergent vegetation or rooted vegetation with floating leaves are present. *(Natural Resources Commission; 312 IAC 11-2-27.5)*

SECTION 10. 312 IAC 11-3-3 IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-3-3 Written licenses for structures that do not qualify for a general license

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

Affected: IC 14-11-4; IC 14-26-2

Sec. 3. (a) Except as provided in section 1 of this rule and ~~in~~ subsection (c), a structure placed within the waterline or shoreline of a public freshwater lake requires a written license issued by the department under IC 14-26-2 and this rule.

(b) Except as provided in 312 IAC 11-4-7, a structure that is located on a public freshwater lake:

- (1) more than one hundred fifty (150) feet; and**
- (2) less than two hundred (200) feet;**

from the legally established or average normal waterline or shoreline requires a written license under IC 14-26-2, this rule, IC 14-15-7-3, and ~~310 IAC 2-1-4~~. **312 IAC 5-4.** The department may provide that the multiple licensing requirements of this subsection be satisfied with a single written license.

(c) Except as provided in 312 IAC 11-4-7, a structure that is located:

(1) on a public freshwater lake; and
(2) not less than two hundred (200) feet from the waterline or shoreline;
does not require a license under IC 14-26-2 and this rule, but the structure does require a license under IC 14-15-7-3 and ~~310 IAC 2-1-4~~ **312 IAC 5-4**. Only a navigation aid or water recreation structure can be licensed under ~~310 IAC 2-1-4~~ **312 IAC 5-4**.

(d) The director or a delegate shall not issue a license under this rule except upon a written determination that shows the following:
(1) The license, including conditions attached to the license, conforms with IC 14-26-2 and this rule. In making the determination, there shall be a determination that issuance of the permit would not result in significant environmental harm to the public freshwater lake.
(2) The applicant has demonstrated that an owner of each parcel of real estate, reasonably known to be adjacent to the real estate described in subsection (e)(2), has been notified under IC 14-11-4 and 312 IAC 2-3.

(e) An application for a license under this section must include **a description of** the following:
(1) ~~A description of~~ The permanent structure, including plans and specifications of sufficient detail for the department to evaluate the project under IC 14-26-2 and this rule.
(2) ~~A description of~~ The real estate:
(A) on which the structure would be located; or ~~which~~
(B) **that** the structure would benefit.

(f) Examples of a structure that requires a written license under this section include the following:

- (1) A marina.
- (2) A new seawall or a seawall refacing.
- (3) An underwater beach.
- (4) A boat well excavation, construction, or fill.
- (5) A fish attractor.
- (6) A pier that is supported by a structure permanently:
(A) mounted in; or
(B) affixed to;
the bed of the lake.

(7) A boathouse that is totally or partially enclosed on the sides. This structure ordinarily should be:
(A) placed over a boat well constructed landward of the legally established or average normal waterline or shoreline; and
(B) constructed only after a permit is obtained to alter the legally established or average normal waterline or shoreline.

(g) The requirements of this rule are in addition to the requirements of 312 IAC 6 for any public freshwater lake that is also a navigable waterway. (*Natural Resources Commission; 312 IAC 11-3-3; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2224*)

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

312 IAC 11-4-2 New seawalls

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

Affected: IC 14-26-2

Sec. 2. (a) A written license under IC 14-26-2 and this rule is required for the construction or placement of a seawall within or along the legally established or average normal waterline or shoreline of a public freshwater lake.

(b) If a new seawall is to be placed:
(1) in a significant wetland; **or**
(2) **along a natural shoreline;**
the seawall must be comprised of bioengineered materials.

(c) If a new seawall is to be placed in an area of special concern, the seawall must be comprised of either or both of the following:
(1) Bioengineered materials.
(2) Glacial stone.

(d) If a new seawall is to be placed in a developed area, the seawall must be comprised of one (1) or ~~some~~ **any** combination of the

following:

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

(e) For a new seawall comprised of glacial stone or riprap, the base of the wall must not extend more than four (4) feet lakeward of the waterline or shoreline.

(f) The lakeward face of the new seawall must be located along the public freshwater lake's legally established or average normal waterline or shoreline as determined by the department.

(g) The lakeward extent of bioengineered material must be coordinated with the department before filing the license application.

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

(i) Filter cloth placed behind or beneath a new seawall 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.

(k) Toe protection placed along the lakeward face of a new bulkhead seawall must not extend more than one (1) foot lakeward of the new seawall. (*Natural Resources Commission; 312 IAC 11-4-2; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2225*)

SECTION 12. 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) Except as provided in 312 IAC 11-3-1(e), 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 or an area of special concern, the seawall reface must be comprised of ~~either or both of~~ **like materials in accordance with** the following **seawall types**:

(1) For an existing concrete seawall, the seawall reface may be comprised of one (1) or any combination of the following:

- (A) Concrete.**
- (B) Glacial stone.**
- (C) Bioengineered materials.

(2) For an existing steel sheet piling seawall, the seawall reface may be comprised of one (1) or any combination of the following:

- (A) Steel sheet piling.**
- (B) Glacial stone.**
- (C) Bioengineered materials.**

(3) For an existing riprap seawall, the seawall reface may be comprised of one (1) or any combination of the following:

- (A) Riprap.**
- (B) Glacial stone.**
- (C) Bioengineered materials.**

(4) For an existing glacial stone seawall, the seawall reface may be comprised of one (1) or any combination of the following:

- (A) Glacial stone.**

(B) Bioengineered materials.

(5) For an existing bioengineered seawall, the seawall reface may be comprised of bioengineered materials only.

(6) For all other seawall types, the seawall reface may be comprised of one (1) or any combination of the following:

(A) Glacial stone.

(B) Bioengineered materials.

(d) 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~~ any combination of the following:

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

(e) 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.

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

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

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

(i) Erosion from disturbed areas landward of the waterline or shoreline must be controlled to prevent its transport into the lake.

(j) Toe protection placed along the lakeward face of a refaced bulkhead seawall must not extend more than one (1) foot lakeward of the refaced seawall. *(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; filed May 25, 2004, 8:45 a.m.: 27 IR 3063)*

SECTION 13. 312 IAC 11-4-4 IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-4-4 Underwater beaches

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

Affected: IC 14-26-2

Sec. 4. (a) A written license under IC 14-26-2 and this rule is required to place material for an underwater beach within a public freshwater lake.

(b) The director or a delegate shall not issue a license for the placement of:

(1) filter cloth; or

(2) an impermeable material;

beneath or in an underwater beach.

(c) The director or a delegate shall not issue a license for the placement of an underwater beach:

(1) in a significant wetland; or

(2) along a natural shoreline.

(d) To qualify for a license to place an underwater beach in an area of special concern, the underwater beach must:

(1) not exceed six hundred twenty-five (625) square feet;

(2) not extend:

(A) more than thirty (30) feet lakeward of the normal waterline or shoreline; or

(B) to a depth of six (6) feet;

whichever occurs earlier;

(3) be placed on ~~no~~ **not** more than one-half ($\frac{1}{2}$) the length of the waterline or shoreline of the riparian owner;

(4) be comprised of clean, nontoxic pea gravel;

(5) not exceed six (6) inches ~~thick~~ **in thickness**; and

(6) be thin enough or ~~be~~ tapered so the waterline or shoreline will not be extended lakeward when the public freshwater lake is at its average normal water level.

(e) To qualify for a license to place an underwater beach in a developed area, the underwater beach must:

(1) be comprised of clean, nontoxic pea gravel;

(2) not exceed six (6) inches ~~thick~~ **in thickness**;

(3) be placed on ~~no~~ **not** more than one-half ($\frac{1}{2}$) the length of the waterline or shoreline of the riparian owner;

(4) extend ~~no~~ **not**:

(A) more than fifty (50) feet lakeward from the waterline or shoreline; or

(B) beyond a depth of six (6) feet;

whichever occurs earlier; and

(5) be thin enough or ~~be~~ tapered so the waterline or shoreline will not be extended lakeward when the public freshwater lake is at its normal water level.

(f) If beach material has been placed previously under this section, the additional material must not:

(1) extend beyond the limits of the previous beach material; and

(2) exceed the size restrictions specified in subsections (d) and (e).

(g) 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 11-4-4; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2226; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1547)

SECTION 14. 312 IAC 11-5-3 IS ADDED TO READ AS FOLLOWS:

312 IAC 11-5-3 Licenses to enhance the public trust or to help control erosion

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

Affected: IC 14-26-2

Sec. 3. (a) If an applicant demonstrates to the satisfaction of the department that modifications to conditions required under this article would promote a purpose described in subsection (b) or (c), the director or a delegate may issue a license under this section that incorporates those modifications. A person who wishes to secure a license under this section must confer with the department before filing an application.

(b) If a purpose of the license is to enhance public access to or use of the lake, the department may issue a license to any of the following:

(1) A government entity.

(2) A nonprofit organization.

(3) A lake association.

(4) An educational institution.

(c) If a purpose of the license is to control erosion and stabilize the shoreline or waterline, the department may issue a license where supported by a written assessment from a registered engineer, geologist, or soil scientist (with expertise in bank stabilization and erosion control practices) that the proposal is the only viable method for controlling erosion and stabilizing the shoreline or waterline. The written assessment must evaluate the following:

(1) The composition of existing shoreline terrain.

(2) Impacts due to wind and wave action.

- (3) The severity of erosion and need for bank stabilization.
- (4) The suitability of materials to armor and provide bank stabilization.

(d) The applicant for a license under this section must also demonstrate the proposal would not affect the:

- (1) public safety;
- (2) natural resources;
- (3) natural scenic beauty; or
- (4) water level;

of the lake in a manner otherwise prohibited by IC 14-26-2.

(e) The following materials do not qualify for a license under this section:

- (1) Railroad ties.
- (2) Treated timber.
- (3) Broken concrete.
- (4) Tires.
- (5) Scrap metal, appliances, or vehicle bodies.
- (6) Asphalt.
- (7) Another material determined by the department to be unsuitable for satisfying the requirements of this section.

(Natural Resources Commission; 312 IAC 11-5-3)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 27, 2005 at 10:30 a.m., at the District I Headquarters, 9822 North Turkey Creek Road, Syracuse, Indiana the Natural Resources Commission will hold a public hearing on proposed amendments concerning construction activities along and within public freshwater lakes, the regulation and treatment of a seawall, standards that distinguish a seawall placed in a manmade channel from one placed on a natural shoreline, the allowing of a bulkhead seawall to be permitted along the upland sides of a manmade channel, the definitions of "natural shoreline", "area of special concern", and "significant wetland", and providing discretion to grant a license for a seawall or other structure, which might not otherwise satisfy the rule, where public access is enhanced or where a written assessment by a qualified professional demonstrates a particular methodology is needed to control erosion or to stabilize the shoreline and that the methodology would not violate IC 14-26-2. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W272 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Michael Kiley
Chairman
Natural Resources Commission