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TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule LSA Document #05-57

DIGEST

Amends 312 IAC 3-1-9, which governs defaults, dismissals, and uncontested orders, to authorize the administrative law judge to issue a final order where the parties have tendered an agreed order or where the administrative law judge has issued a nonfinal order, which was subject to written objections, but for which no party filed objections, and allows the secretary of the commission to serve written notice of the intent to review any nonfinal order. Effective 30 days after filing with the secretary of state.

312 IAC 3-1-9

SECTION 1. 312 IAC 3-1-9 IS AMENDED TO READ AS FOLLOWS:

312 IAC 3-1-9 Defaults, dismissals, and uncontested orders

Authority: IC 4-21.5-3-34; IC 14-10-2-4

Affected: IC 4-21.5-3; IC 4-21.5-5; IC 14; IC 25

Sec. 9. (a) An administrative law judge may enter a final order of dismissal if the party who initiated administrative review requests **that** the proceeding be dismissed.

(b) An administrative law judge may, on the motion of the administrative law judge or the motion of a party, enter a proposed order of default or proposed order of dismissal under IC 4-21.5-3-24, if at least one (1) of the following applies:

- (1) A party fails to attend or participate in a prehearing conference, hearing, or other stage of the proceeding.
- (2) The party responsible for taking action does not take action on a matter for a period of at least sixty (60) days.
- (3) The person seeking administrative review does not qualify for review under IC 4-21.5-3-7.
- (4) A default or dismissal could be entered in a civil action.

(c) Within seven (7) days after service of a proposed order of default or dismissal, or within a longer period prescribed by the proposed order, a party may file a written motion requesting the order not be imposed and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the administrative law judge may:

- (1) adjourn the proceedings; or
- (2) conduct them without participation of the party against whom a proposed default order was issued; having due regard for the interest of justice and the orderly and prompt conduct of the proceeding.

(d) If the party fails to file a written motion under subsection (c), the administrative law judge shall issue an order of default or dismissal. If the party has filed a written motion under subsection (c), the administrative law judge may either enter or refuse to enter an order of default or dismissal.

(e) After issuing an order of default, but before issuing a final order or disposition, the administrative law judge shall:

- (1) conduct any action necessary to complete the proceeding without the participation of the party in default; and ~~shall~~
- (2) determine all issues in the adjudication, including those affecting the defaulting party.

The administrative law judge may conduct proceedings under IC 4-21.5-3-23 to resolve any issue of fact.

(f) An administrative law judge shall approve an agreed order entered by the parties, **as a final order of the agency**, if ~~it~~ **the agreed order** is:

- (1) clear and concise; and
- (2) lawful.

(g) ~~The secretary of the commission, as its designee under IC 4-21.5-3-28(b), may affirm the entry of an agreed order approved by the~~ **If an administrative law judge under subsection (f) issues a nonfinal order that is subject to a party filing an objection under IC 4-21.5-3-29(d), but no party files a timely objection, the administrative law judge shall issue a final order. Notwithstanding this subsection, however, the secretary of the commission may serve written notice under IC 4-21.5-3-29(e) of the intent to review any issue relating to the order. If the secretary serves notice under this subsection, the committee established under section 12(d) of this rule shall review the issue.**

(h) A final order entered under this section is made with prejudice unless otherwise specified in the order. A person may seek judicial review of the order as provided in IC 4-21.5-5. (*Natural Resources Commission; 312 IAC 3-1-9; filed Feb 5, 1996, 4:00 p.m.: 19 IR 1320; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 25, 2005 at 11:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Room W272, Indianapolis, Indiana the Natural Resources Commission will hold a public hearing on a proposed amendment to 312 IAC 3-1-9, which governs defaults, dismissals, and uncontested orders, to authorize the administrative law judge to issue a final order where the parties have tendered an agreed order or where the administrative law judge has issued a nonfinal order, which was subject to written objections, but for which no party filed objections, and allows the secretary of the commission to serve written notice of the intent to review any nonfinal order.

The proposed amendments would improve efficiency and would not result in an additional requirement or cost under IC 4-22-2-24(d)(3).

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