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TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule LSA Document #06-9

DIGEST

Amends 312 IAC 8-1-4, 312 IAC 8-2-3, 312 IAC 8-2-9, 312 IAC 9-5-7, 312 IAC 9-10-7, 312 IAC 10-3-6, 312 IAC 10-4-4, 312 IAC 11-2-4, 312 IAC 11-2-11, 312 IAC 11-2-14.5, 312 IAC 11-2-21, 312 IAC 11-2-24, 312 IAC 11-2-27, 312 IAC 11-2-28, and 312 IAC 11-4-2 through 312 IAC 11-4-6 to update or correct statutory cross-references and to correct clerical or grammatical errors in rules of the Natural Resources Commission. Repeals 312 IAC 11-2-28. Effective 30 days after filing with the Secretary of State.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

The changes are to update or correct statutory cross-references and to correct clerical or grammatical errors. They make no substantive or programmatic changes and will have no adverse annual impact on small businesses. Also, the amendments do not impose an additional requirement or cost under IC 4-22-2-24(d).

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SECTION 1. 312 IAC 8-1-4, AS AMENDED AT 29 IR 461, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

312 IAC 8-1-4 Definitions

Authority: IC 14-10-2-4; IC 14-11-2-1

Affected: IC 9-13-2-196; IC 9-25-2-4; IC 14-8-2-185; IC 14-8-2-261; IC 14-31-1

Sec. 4. The following definitions are supplemental to those set forth at 312 IAC 1 and apply throughout this article:

- (1) "Authorized representative" means the director or another person designated by the director.
- (2) "Berry" means the fruiting body of the following:
 - (A) A blackberry.
 - (B) A blueberry.
 - (C) A dewberry.
 - (D) An elderberry.
 - (E) A gooseberry.

- (F) A huckleberry.
- (G) A mulberry.
- (H) A raspberry.
- (I) A serviceberry.
- (J) A strawberry.

(3) "DNR property" means land and water owned, licensed, leased, or dedicated under IC 14-31-1 or under easement to the state or managed by the department. The following areas are, however, exempted from the term:

- (A) Public freshwater lakes.
- (B) Navigable waterways.

(C) Buildings and grounds (other than those of the Indiana state museum) not located at recreational, natural, or historic sites. An area is not exempted because the department has issued a lease, license, or concession to another person.

(4) "Fallen cone" means the fruiting body of a coniferous tree that is no longer attached to a living tree.

(5) "Firearm or bow and arrows" means:

- (A) a firearm;
- (B) an air gun;
- (C) a CO₂ gun;
- (D) a spear gun;
- (E) a bow and arrows;
- (F) a crossbow;
- (G) a paint gun; or
- (H) a similar mechanical device;

that can be discharged and is capable of causing injury or death to a person or an animal or damage to property.

(6) "Fruit" means the fruiting body of the following:

- (A) Apples.**
- ~~(A)~~ (B) Cherries.
- ~~(B)~~ (C) Grapes.
- ~~(C)~~ Apples.
- (D) Hawthorns.
- (E) Persimmons.
- (F) Plums.
- (G) Pears.
- (H) Pawpaws.
- (I) Roses.

(7) "Greens" means the aboveground shoots or leaves of the following:

- (A) Asparagus.
- (B) Dandelion.
- (C) Mustard.
- (D) Plantain.
- (E) Poke.

(8) "Group boat dock" means an artificial basin or enclosure for the reception of watercraft that is owned and maintained by adjacent landowners for their private usage.

(9) "Leaf" means the leaf of a woody plant for use in a leaf collection or similar academic project.

(10) "License" means:

- (A) a license;
- (B) a permit;
- (C) an agreement;
- (D) a contract;
- (E) a lease;
- (F) a certificate; or
- (G) any other form of approval;

issued by the department. A license may authorize an activity otherwise prohibited by this rule.

(11) "Mushroom" means edible fungi.

(12) "Nut" means the seeds of the following:

- (A) Hazelnuts.
- (B) Hickories.

- (C) Oaks.
- (D) Pecans.
- (E) Walnuts.

(13) "Off-road vehicle" has the meaning set forth in ~~IC 14-16-1-3~~. **IC 14-8-2-185.**

(14) "Public road" means a public highway under IC 9-25-2-4 that is designated by the department for use by the public.

(15) "Recreation area" means an area that is managed by the department for specific recreation activities.

(16) "Snowmobile" has the meaning set forth in IC 14-8-2-261.

(17) "Vehicle" has the meaning set forth in IC 9-13-2-196(d).

(Natural Resources Commission; 312 IAC 8-1-4; filed Oct 28, 1998, 3:32 p.m.: 22 IR 738, eff Jan 1, 1999; filed Nov 5, 1999, 10:14 a.m.: 23 IR 552, eff Jan 1, 2000; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1544; filed Jun 17, 2002, 4:13 p.m.: 25 IR 3713; filed Sep 19, 2003, 8:14 a.m.: 27 IR 455; readopted filed Nov 17, 2004, 11:00 a.m.: 28 IR 1315; filed Sep 14, 2005, 2:45 p.m.: 29 IR 461, eff Jan 1, 2006)

SECTION 2. 312 IAC 8-2-3, AS AMENDED AT 29 IR 461, SECTION 2, IS AMENDED TO READ AS FOLLOWS:

312 IAC 8-2-3 Firearms, hunting, and trapping

Authority: IC 14-10-2-4; IC 14-11-2-1

Affected: IC 14-22-11-1

Sec. 3. (a) A person must not possess a firearm or bow and arrows on a DNR property unless one (1) of the following conditions apply:

(1) The firearm or bow and arrows are:

- (A) unloaded and uncocked; and
- (B) placed in a case or locked within a vehicle.

(2) The firearm or bow and arrows are possessed at and of a type designated for usage on:

- (A) a rifle;
- (B) a pistol;
- (C) a shotgun; or
- (D) an archery;

range.

(3) The firearm or bow and arrows are being used in the lawful pursuit of either of the following:

- (A) A wild animal on a DNR property authorized for that purpose.
- (B) A groundhog as authorized under a license.

(b) Except as provided in subsection (a)(1), a firearm or bow and arrows may not be possessed on DNR properties within any of the following:

- (1) A nature preserve unless hunting is authorized under subsection (c).
- (2) A property administered by the division of museums and historic sites.
- (3) A campground.
- (4) A picnic area.
- (5) A beach.
- (6) A service area.
- (7) A headquarters building.
- (8) A hunter check station.
- (9) A developed recreation site.

(c) A person may hunt on a state forest administered by the division of forestry, a reservoir administered by the division of state parks and reservoirs, or a wildlife area administered by the division of fish and wildlife. A person using any of these areas must do the following:

- (1) Comply with all federal and state hunting, trapping, and firearms laws.
- (2) On a fish and wildlife area and a reservoir property, obtain a one (1) day hunting permit and record from a checking station. The person must:
 - (A) retain the permit and record **card** while in the field for the authorized date; and
 - (B) as directed, return them to the department.
- (3) Refrain from hunting on a nature preserve if prohibited by signage posted at the site.

(d) Unless otherwise posted or designated on a property map, a person must not place a trap except as authorized by a license issued for a property by an authorized representative. This license is in addition to the licensing requirement for traps set forth in IC 14-22-11-1.

(e) A person must not run dogs, except:

- (1) during the lawful pursuit of wild animals; or
- (2) as authorized by a license for field trials or in a designated training area.

A property administered by the division of fish and wildlife may be designated for training purposes without requiring a field trial permit. Only dogs may be used during field trials on a DNR property, except where authorized by a license on a fish and wildlife property.

(f) Unless otherwise designated, a person must not discharge a firearm or bow and arrows within two hundred (200) feet of any of the following:

- (1) A campsite.
- (2) A boat dock.
- (3) A launching ramp.
- (4) A picnic area.
- (5) A bridge.

(g) A person must not leave a portable tree blind or duck blind unattended except for the period authorized by 312 IAC 9-3-2(l).

(h) The following terms apply to the use of shooting ranges:

- (1) A person must not use a shooting range unless the person is:
 - (A) at least eighteen (18) years of age; or
 - (B) accompanied by a person who is at least eighteen (18) years of age.

(2) A person must:

- (A) register with the department; and
- (B) pay any applicable fees;

before using a shooting range.

(3) A person must shoot only at paper targets placed on target holders provided by the department. All firing must be downrange with reasonable care taken to assure any projectile is stopped by the range backstop.

(4) Shot ~~no~~ **not** larger than size 6 must be used on a shotgun range.

(5) A person must not:

- (A) discharge a firearm using automatic fire;
- (B) use tracer, armor-piercing, or incendiary rounds;
- (C) play on, climb on, walk on, or shoot into or from the side berms; or
- (D) shoot at clay pigeons, except on a site designated for shooting clay pigeons.

Glass and other forms of breakable targets must not be used on a shooting range.

(6) A person must dispose of the targets used by the person under section 2(a) of this rule.

(7) Permission must be obtained from the department in advance for a shooting event that involves any of the following:

- (A) An entry fee.
- (B) Competition for any of the following:
 - (i) Cash.
 - (ii) Awards.
 - (iii) Trophies.
 - (iv) Citations.
 - (v) Prizes.

(C) The exclusive use of the range or facilities.

(D) A portion of the event occurring between sunset and sunrise.

(8) On a field course, signs and markers must be staked. Trees must not be marked or damaged.

(i) A person must not take a reptile or amphibian unless the person is issued a scientific collector license under 312 IAC 9-10-6.

Exempted from this subsection are:

- (1) turtles taken under 312 IAC 9-5-2; and
- (2) frogs taken under 312 IAC 9-5-3;

from a DNR property where hunting or fishing is authorized. (*Natural Resources Commission; 312 IAC 8-2-3; filed Oct 28, 1998, 3:32 p.m.: 22 IR 739, eff Jan 1, 1999; filed Nov 5, 1999, 10:14 a.m.: 23 IR 553, eff Jan 1, 2000; filed Jun 17, 2002, 4:13 p.m.: 25 IR 3714; filed Sep 19, 2003, 8:14 a.m.: 27 IR 456; readopted filed Nov 17, 2004, 11:00 a.m.: 28 IR 1315; filed Sep 14, 2005, 2:45 p.m.: 29 IR 461, eff Jan 1, 2006*)

SECTION 3. 312 IAC 8-2-9 IS AMENDED TO READ AS FOLLOWS:

312 IAC 8-2-9 Swimming, snorkeling, scuba diving, and tow kite flying

Authority: IC 14-10-2-4; IC 14-11-2-1

Affected: IC 14

Sec. 9. (a) A person must not swim, or allow a child or other person in the person's care to swim, other than at the following locations:

- (1) At a designated swimming beach or pool during designated hours.
- (2) From a watercraft between sunrise and sunset in an embayment on a reservoir property established under 312 IAC 5-10 as an idle speed zone, but not:
 - (A) in a causeway; or
 - (B) within one hundred (100) feet of a designated launching ramp or other public use facility.

(b) A person must not snorkel, except from a watercraft on a reservoir property and within an embayment designated as an idle speed zone.

(c) A person must not scuba dive unless in compliance with each of the following:

- (1) A license is issued by the department.
- (2) Between the hours of sunrise and sunset.
- (3) A diving flag is displayed to designate the area in use.

(d) A person must not engage in tow ~~kit~~ kite flying, except during the following periods:

- (1) On weekdays from sunrise to sunset.
- (2) Except as provided in subdivision (3), on Saturdays, Sundays, or holidays, from sunrise until 11 a.m. and from 5 p.m. until sunset.
- (3) On:
 - (A) Memorial Day weekend;
 - (B) the Fourth of July and a Saturday or Sunday that immediately precedes or follows the Fourth of July; and
 - (C) Labor Day weekend;from sunrise until 11 a.m.

(*Natural Resources Commission; 312 IAC 8-2-9; filed Oct 28, 1998, 3:32 p.m.: 22 IR 741, eff Jan 1, 1999; filed Sep 19, 2003, 8:14 a.m.: 27 IR 458; readopted filed Nov 17, 2004, 11:00 a.m.: 28 IR 1315*)

SECTION 4. 312 IAC 9-5-7, AS AMENDED AT 28 IR 2948, SECTION 5, IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-5-7 Sale and transport for sale of reptiles and amphibians native to Indiana

Authority: IC 14-22-2-6; IC 14-22-26-3; IC 14-22-34-17

Affected: IC 14-22; IC 20-19-2-8; IC 20-19-2-10

Sec. 7. (a) This section governs the:

- (1) sale;
- (2) transport for sale; or
- (3) offer for sale or transport for sale;

of any reptile or amphibian native to Indiana regardless of place of origin.

(b) Except as otherwise provided in this section and in section 6(g) of this rule, the sale, transport for sale, or offer to sell or transport for sale of a reptile or amphibian native to Indiana is prohibited. A person must not sell a turtle, regardless of species or origin, with a carapace less than four (4) inches long, except for a valid scientific or educational purpose that is associated with one (1) of the following:

- (1) A federal, state, county, city, or similar governmental agency that is engaged in scientific study or research.
- (2) A scientific research organization.
- (3) An accredited museum or institution of higher learning.
- (4) An individual working in cooperation with a:
 - (A) college;
 - (B) university; or
 - (C) governmental agency.
- (5) A private company under a contract for scientific or educational purposes.

(c) As used in this rule, “reptile or amphibian native to Indiana” means those reptiles and amphibians with the following scientific names, including common names for public convenience, but the scientific names control:

- (1) Hellbender (*Cryptobranchus alleganiensis*).
- (2) Common mudpuppy (*Necturus maculosus*).
- (3) Streamside salamander (*Ambystoma barbouri*).
- (4) Jefferson salamander (*Ambystoma jeffersonianum*).
- (5) Blue-spotted salamander (*Ambystoma laterale*).
- (6) Spotted salamander (*Ambystoma maculatum*).
- (7) Marbled salamander (*Ambystoma opacum*).
- (8) Mole salamander (*Ambystoma talpoideum*).
- (9) Smallmouth salamander (*Ambystoma texanum*).
- (10) Eastern tiger salamander (*Ambystoma tigrinum tigrinum*).
- (11) Eastern newt (*Notophthalmus viridescens*).
- (12) Green salamander (*Aneides aeneus*).
- (13) Northern dusky salamander (*Desmognathus fuscus*).
- (14) Southern two-lined salamander (*Eurycea cirrigera*).
- (15) Longtailed salamander (*Eurycea longicauda*).
- (16) Cave salamander (*Eurycea lucifuga*).
- (17) Four-toed salamander (*Hemidactylium scutatum*).
- (18) Northern redback salamander (*Plethodon cinereus*).
- (19) Northern zigzag salamander (*Plethodon dorsalis*).
- (20) Northern ravine salamander (*Plethodon electromorphus*).
- (21) Northern slimy salamander (*Plethodon glutinosus*).
- (22) Red salamander (*Pseudotriton ruber*).
- (23) Lesser siren (*Siren intermedia*).
- (24) Eastern spadefoot toad (*Scaphiopus holbrookii*).
- (25) American toad (*Bufo americanus*).
- (26) Fowler’s toad (*Bufo fowleri*).
- (27) Cricket frog (*Acris crepitans*).
- (28) Cope’s gray treefrog (*Hyla chrysoscelis*).
- (29) Green treefrog (*Hyla cinerea*).
- (30) Eastern gray treefrog (*Hyla versicolor*).
- (31) Spring peeper (*Pseudacris crucifer*).
- (32) Western chorus frog (*Pseudacris triseriata*).
- (33) Crawfish frog (*Rana areolata*).
- (34) Plains leopard frog (*Rana blairi*).
- (35) Bullfrog (*Rana catesbeiana*).
- (36) Green frog (*Rana clamitans*).
- (37) Northern leopard frog (*Rana pipiens*).
- (38) Pickerel frog (*Rana palustris*).
- (39) Southern leopard frog (*Rana utricularia*).
- (40) Wood frog (*Rana sylvatica*).
- (41) Common snapping turtle (*Chelydra serpentina serpentina*).
- (42) Smooth softshell turtle (*Apalone mutica*).
- (43) Spiny softshell turtle (*Apalone spinifera*).
- (44) Alligator snapping turtle (*Macrochelys temmincki*).

- (45) Eastern mud turtle (*Kinosternon subrubrum*).
- (46) Common musk turtle (*Sternotherus odoratus*).
- (47) Midland painted turtle (*Chrysemys picta marginata*).
- (48) Western painted turtle (*Chrysemys picta bellii*).
- (49) Spotted turtle (*Clemmys guttata*).
- (50) Blanding's turtle (*Emydoidea blandingii*).
- (51) Common map turtle (*Graptemys geographica*).
- (52) False map turtle (*Graptemys pseudogeographica*).
- (53) Ouachita map turtle (*Graptemys ouachitensis*).
- (54) Hieroglyphic river cooter (*Pseudemys concinna*).
- (55) Eastern box turtle (*Terrapene carolina*).
- (56) Ornate box turtle (*Terrapene ornata*).
- (57) Red-eared slider (*Trachemys scripta elegans*).
- (58) Eastern fence lizard (*Sceloporus undulatus*).
- (59) Slender glass lizard (*Ophisaurus attenuatus*).
- (60) Six-lined racerunner (*Cnemidophorus sexlineatus*).
- (61) Five-lined skink (*Eumeces fasciatus*).
- (62) Broadhead skink (*Eumeces laticeps*).
- (63) Ground skink (*Scincella lateralis*).
- (64) Eastern worm snake (*Carphophis amoenus*).
- (65) Scarlet snake (*Cemophora coccinea*).
- (66) Racer (*Coluber constrictor*).
- (67) Kirtland's snake (*Clonophis kirtlandii*).
- (68) Ringneck snake (*Diadophis punctatus*).
- (69) Midland rat snake, also known as the black rat snake (*Elaphe spiloides*).
- (70) Western rat snake (*Elaphe obsoleta*).
- (71) Western fox snake (*Elaphe vulpina vulpina*).
- (72) Mud snake (*Farancia abacura*).
- (73) Eastern hognose snake (*Heterodon platirhinos*).
- (74) Prairie kingsnake (*Lampropeltis calligaster calligaster*).
- (75) Black kingsnake (*Lampropeltis getula nigra*).
- (76) Eastern milk snake (*Lampropeltis triangulum triangulum*).
- (77) Red milk snake (*Lampropeltis triangulum sypila*).
- (78) Copperbelly water snake (*Nerodia erythrogaster*).
- (79) Diamondback water snake (*Nerodia rhombifer*).
- (80) Northern water snake (*Nerodia sipedon*).
- (81) Rough green snake (*Opheodrys aestivus*).
- (82) Smooth green snake (*Liochlorophis vernalis*).
- (83) Bull snake (*Pituophis catenifer sayi*).
- (84) Queen snake (*Regina septemvittata*).
- (85) Brown snake (*Storeria dekayi*).
- (86) Redbelly snake (*Storeria occipitomaculata*).
- (87) Southeastern crowned snake (*Tantilla coronata*).
- (88) Butler's garter snake (*Thamnophis butleri*).
- (89) Western ribbon snake (*Thamnophis proximus*).
- (90) Plains garter snake (*Thamnophis radix*).
- (91) Eastern ribbon snake (*Thamnophis sauritus*).
- (92) Common garter snake (*Thamnophis sirtalis*).
- (93) Smooth earthsnake (*Virginia valeriae*).
- (94) Northern copperhead (*Agkistrodon contortrix*).
- (95) Cottonmouth moccasin (*Agkistrodon piscivorus*).
- (96) Timber rattlesnake (*Crotalus horridus*).
- (97) Massasauga (*Sistrurus catenatus*).

(d) As used in this section, "sale" means either of the following:

- (1) Barter, purchase, trade, or offer to sell, barter, purchase, or trade.
- (2) Serving as part of a meal by a restaurant, a hotel, a boarding house, or the keeper of an eating house. However, a hotel, a boarding house, or the keeper of an eating house may prepare and serve during open season to:
 - (A) a guest, patron, or boarder; and
 - (B) the family of the guest, patron, or boarder;
 a reptile or amphibian legally taken by the guest, patron, or boarder during the open season.

(e) As used in this section, “transport” means:

- (1) to move, carry, or ship a ~~wild animal protected by law~~ by any means; and
- (2) for any common or contract carrier knowingly to move, carry, or receive for shipment; a wild animal protected by law.

(f) A reptile or amphibian that is not on a state or federal endangered or threatened species list and with a color morphology that is:

- (1) albinistic (an animal lacking brown or black pigment);
- (2) leucistic (a predominately white animal); or
- (3) xanthic (a predominately yellow animal);

is exempted from this section if it was not collected from the wild.

(g) ~~The following are~~ exempted from this section: ~~is~~

(1) An institution governed by, and in compliance with, the Animal Welfare Act (7 U.S.C. 2131, et seq.) and 9 CFR 2.30 through 9 CFR 2.38 (January 1, 1998 edition). To qualify for the exemption, the institution must have an active Assurance of Compliance on file with the Office for the Protection of Risk, U.S. Department of Health and Human Services.

~~(h) Exempted from this section is~~ (2) A sale made under a reptile captive breeding license governed by section 9 of this rule.

~~(i) Exempted from this section is~~ (3) The sale to and purchase of reptiles or amphibians by a:

(A) public school accredited under ~~IC 20-1-1-6(a)~~(5) **IC 20-19-2-8**; or

(B) nonpublic school accredited under ~~IC 20-1-1-6(a)~~(9) **IC 20-19-2-8** and ~~IC 20-1-1-6.2~~ **IC 20-19-2-10**.

This exemption does not authorize the sale of reptiles or amphibians by a public school or a nonpublic school.

~~(j) Exempted from this section is~~ (4) The sale and purchase of a:

(A) bullfrog (*Rana catesbeiana*) tadpole; or

(B) green frog (*Rana clamitans*) tadpole;

produced by a resident holder of a hauler and supplier permit or an aquaculture permit if the tadpole is a byproduct of a fish production operation. As used in this ~~subsection, subdivision~~, “tadpole” means the larval life stage of a frog for the period in which the tail portion of the body is at least one (1) inch long.

~~(h)~~ (h) A person who is transporting native reptiles and amphibians in interstate commerce, to be sold outside Indiana, is exempted from this section. (*Natural Resources Commission; 312 IAC 9-5-7; filed Jul 9, 1999, 5:55 p.m.: 22 IR 3673; errata filed Oct 26, 1999, 2:40 p.m.: 23 IR 589; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1535; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; filed Sep 23, 2004, 3:00 p.m.: 28 IR 543; filed May 25, 2005, 10:15 a.m.: 28 IR 2948*)

SECTION 5. 312 IAC 9-10-7 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-10-7 Field trial permits

Authority: IC 14-22-2-6; IC 14-22-24

Affected: IC 14-22

Sec. 7. (a) A field ~~trip~~ **trial** permit may be issued only for a trial listed with the division by a sanctioning national or regional hunting dog association. The list must include the following:

- (1) The name of the sponsoring club, group, or individual.
- (2) The name and address of the responsible official.
- (3) The type and location of the trial.
- (4) The location of the trial headquarters.
- (5) The dates of the trial.

The list must be received by the division by February 1 for a trial to be conducted the following March through August and by August 1 for a trial to be conducted the following September through February, except a field trial to be held solely on property owned,

leased, or managed by the division.

(b) An application for a field trial permit must be:

- (1) completed on a departmental form; and ~~must be~~
- (2) received by the division at least twenty-one (21) days before the proposed field trial.

(c) The field trial permit and a complete roster of participants in the field trial must be:

- (1) kept at the trial headquarters during the event; ~~The permit and the roster must be~~
- (2) presented to a conservation officer upon request.

(d) During a field trial, each participant shall carry a card approved by the responsible official ~~which that~~ specifies **the following**:

- (1) The number of the field trial permit. ~~and~~
- (2) The name and address of the participant.

The card must be presented to a conservation officer upon request. (*Natural Resources Commission; 312 IAC 9-10-7; filed May 12, 1997, 10:00 a.m.: 20 IR 2730; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

SECTION 6. 312 IAC 10-3-6 IS AMENDED TO READ AS FOLLOWS:

312 IAC 10-3-6 Local approval of activities within a floodway

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-28-1; IC 14-28-3

Sec. 6. (a) A county or municipality shall not authorize:

- (1) a structure;
- (2) an obstruction;
- (3) a deposit; or
- (4) an excavation;

in a floodway until a license is issued by the department under IC 14-28-1.

(b) A county or municipality may place terms and conditions on a local license issued for a site in a floodway. The terms and conditions must not be less restrictive than those required by the department under this article.

(c) A license from the department under ~~IC 14-18-1~~ **IC 14-28-1** and 312 IAC 10-4 is not required for a site within a fringe.

(d) Where a floodway is not separately delineated, a county or municipality shall refer a license application for work in a flood plain to the department for advice and recommendations. (*Natural Resources Commission; 312 IAC 10-3-6; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3391, eff Jan 1, 2002*)

SECTION 7. 312 IAC 10-4-4 IS AMENDED TO READ AS FOLLOWS:

312 IAC 10-4-4 Flood easements

Authority: IC 14-10-2-4; IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-28-1-29

Sec. 4. If a license application includes the creation of a flood easement, the applicant must demonstrate to the satisfaction of the department the project:

- (1) will not constitute an unreasonable hazard to the safety of life or property;
- (2) is not unreasonably detrimental to fish, wildlife, or botanical resources; and
- (3) is either:
 - (A) a dam;
 - (B) a flood control project under ~~IC 14-18-1-29~~; **IC 14-28-1-29**; or
 - (C) a public works project.

(*Natural Resources Commission: 312 IAC 10-4-4; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3393, eff Jan 1, 2002*)

SECTION 8. 312 IAC 11-2-4 IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-2-4 “Boatwell” defined

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

Affected: IC 14-26-2

Sec. 4. “Boatwell” means a manmade excavation along the ~~legally established or average normal waterline~~ or shoreline or **water line** of a public freshwater lake that:

- (1) is used for the mooring of a boat; and
- (2) has been stabilized to prevent erosion.

(Natural Resources Commission; 312 IAC 11-2-4; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2220; readopted filed Aug 4, 2005, 6:00 p.m.: 28 IR 3661)

SECTION 9. 312 IAC 11-2-11, AS AMENDED AT 29 IR 464, SECTION 3, 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; readopted filed Aug 4, 2005, 6:00 p.m.: 28 IR 3661; filed Sep 14, 2005, 2:45 p.m.: 29 IR 464)

SECTION 10. 312 IAC 11-2-14.5, AS ADDED AT 29 IR 464, SECTION 5, IS AMENDED 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~~ **water line** where the distance between lawful permanent structures is at least two hundred fifty (250) feet. *(Natural Resources Commission; 312 IAC 11-2-14.5; filed Sep 14, 2005, 2:45 p.m.: 29 IR 464)*

SECTION 11. 312 IAC 11-2-21 IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-2-21 “Seawall” defined

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

Affected: IC 14-26-2

Sec. 21. “Seawall” means a manmade structure placed along the ~~legally established or average normal waterline~~ or shoreline or **water line** of a public freshwater lake for the purpose of shoreline stabilization. *(Natural Resources Commission; 312 IAC 11-2-21; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2222; readopted filed Aug 4, 2005, 6:00 p.m.: 28 IR 3661)*

SECTION 12. 312 IAC 11-2-24, AS AMENDED AT 29 IR 465, SECTION 7, 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 deep-water 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 or **water line**. 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.

(Natural Resources Commission; 312 IAC 11-2-24; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2222; readopted filed Aug 4, 2005, 6:00 p.m.: 28 IR 3661; filed Sep 14, 2005, 2:45 p.m.: 29 IR 465)

SECTION 13. 312 IAC 11-2-27 IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-2-27 “Underwater beach” defined

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

Affected: IC 14-26-2

Sec. 27. “Underwater beach” means an area of a lakebed that is both **of the following:**

(1) Lakeward of the ~~waterline or shoreline or water line~~ of a public freshwater lake. ~~and~~

(2) Used for a recreational ~~purposes;~~ **purpose**, such as wading or swimming.

(Natural Resources Commission; 312 IAC 11-2-27; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2223; readopted filed Aug 4, 2005, 6:00 p.m.: 28 IR 3661)

SECTION 14. 312 IAC 11-4-2, AS AMENDED AT 29 IR 466, SECTION 11, 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 or water line~~ 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 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 or water line~~.

(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 or water line~~ 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 **or water line** 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; readopted filed Aug 4, 2005, 6:00 p.m.: 28 IR 3661; filed Sep 14, 2005, 2:45 p.m.: 29 IR 466*)

SECTION 15. 312 IAC 11-4-3, AS AMENDED AT 29 IR 467, SECTION 12, 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 **or water line** 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 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 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~~ **or water line** 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~~ **or water line** 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; readopted filed Aug 4, 2005, 6:00 p.m.: 28 IR 3661; filed Sep 14, 2005, 2:45 p.m.: 29 IR 467*)

SECTION 16. 312 IAC 11-4-4, AS AMENDED AT 29 IR 467, SECTION 13, 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 water line**; or
 - (B) to a depth of six (6) feet;
 whichever occurs earlier;
 - (3) be placed on ~~no~~ not more than one-half (½) the length of the ~~waterline or shoreline~~ **or water line** of the riparian owner;
 - (4) be comprised of clean, nontoxic pea gravel;
 - (5) not exceed six (6) inches in thickness; and
 - (6) be thin enough or ~~be tapered so the~~ ~~waterline or shoreline~~ **or water line** 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 (½) the length of the ~~waterline or shoreline~~ **or water line** of the riparian owner;
 - (4) extend not:
 - (A) more than fifty (50) feet lakeward from the ~~waterline or shoreline~~ **or water line**; or
 - (B) beyond a depth of six (6) feet;
 whichever occurs earlier; and
 - (5) be thin enough or tapered so the ~~waterline or shoreline~~ **or water line** 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~~ **or water line** 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; readopted filed Aug 4, 2005, 6:00 p.m.: 28 IR 3661; filed Sep 14, 2005, 2:45 p.m.: 29 IR 467*)

SECTION 17. 312 IAC 11-4-5 IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-4-5 Boatwell excavations or constructions

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

Affected: IC 14-26-2

Sec. 5. (a) A written license under IC 14-26-2 and this rule is required to excavate or construct a boatwell that is within or adjacent to the ~~legally established or average normal waterline or shoreline~~ **or water line** of a public freshwater lake.

(b) The department may not issue a license for the excavation or construction of a boatwell in:

- (1) a significant wetland; or
- (2) an area of special concern.

(c) To qualify for a license to place a boatwell in a developed area, the excavation or construction of the boatwell must not:

- (1) adversely affect the:
 - (A) water level;
 - (B) significant wetlands; or
 - (C) natural resources;
 of the public freshwater lake;
- (2) exceed twenty (20) feet wide;
- (3) extend more than thirty (30) feet landward from the ~~waterline or shoreline~~ **or water line**; and
- (4) be connected to the public freshwater lake until the landward sides of the boatwell have been stabilized to prevent erosion.

(d) Erosion from disturbed areas landward of the ~~legally established or average normal waterline or shoreline~~ **or water line** must be controlled to prevent its transport into the lake. (*Natural Resources Commission; 312 IAC 11-4-5; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2226; readopted filed Aug 4, 2005, 6:00 p.m.: 28 IR 3661*)

SECTION 18. 312 IAC 11-4-6 IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-4-6 Boatwell fills

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

Affected: IC 14-26-2

Sec. 6. (a) A written license under IC 14-26-2 and this rule is required to fill an existing boatwell along a public freshwater lake.

(b) To qualify for a license, the existing boatwell must:

- (1) not exceed twenty (20) feet wide;

- (2) not extend more than thirty (30) feet landward from the ~~waterline or shoreline~~ **or water line**;
- (3) not be filled until a seawall or other permanent barrier has been constructed across the lakeward end of the boatwell to prevent the fill material from entering the public freshwater lake; and
- (4) be filled with only clean, nontoxic material.

(c) Erosion from disturbed areas landward of the ~~waterline or shoreline~~ **or water line** must be controlled to prevent its transport into the lake. (*Natural Resources Commission; 312 IAC 11-4-6; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2227; errata filed Apr 27, 1999, 4:45 p.m.: 22 IR 2883; readopted filed Aug 4, 2005, 6:00 p.m.: 28 IR 3661*)

SECTION 19. 312 IAC 11-2-28 IS REPEALED.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on April 24, 2006 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 proposed amendments to 312 IAC to update or correct statutory cross-references and to correct clerical or grammatical errors in rules of the Natural Resources Commission.

The changes are to update or correct statutory cross-references and to correct clerical or grammatical errors. They make no substantive or programmatic changes and will have no adverse annual impact on regulated entities. Also, the amendments do not impose an additional requirement or cost under IC 4-22-2-24(d).

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.

Rick Cockrum
Chairman
Natural Resources Commission