

Notice of Public Hearing

LSA Document #09-806

Notice of Public Hearing

Under [IC 4-22-2-24](#), notice is given that on June 18, 2010, at 10:00 a.m., at the DNR Northeast Regional Headquarters, 1353 South Governor's Drive, Columbia City, Indiana, the Natural Resources Commission will hold a public hearing on proposed amendments to [312 IAC 11](#), governing public freshwater lakes, to define and establish standards for a general license to place an aerator, to clarify that an aerator that is not authorized by a general license must not be placed in a public freshwater lake except upon a person's prior receipt of an individual license, to amend provisions for administrative review of general licenses to include general licenses for the placement and maintenance of an aerator, to remove requirements for participation in mediation, if all parties agree not to participate, to incorporate by reference a nonrule policy document, which provides guidance for the identification of riparian zones, and to make other technical changes.

[IC 4-22-2-24\(d\)\(3\)](#) Statement: The state of Indiana holds the waters of public freshwater lakes in trust for the citizens of Indiana ([IC 14-26-2-5](#)). The Department of Natural Resources (DNR) is the agency charged with administering the trust. The DNR must seek to balance the rights of riparian landowners to use water frontage with the rights of the public to use the lakes. The public of Indiana has a vested right in the preservation, protection, and enjoyment of all the public freshwater lakes in their present state. Riparian owners are using aerators along their shorelines with increasing frequency. Use of aerators with a modest geographic influence can fester recreational enjoyment of a person's riparian area, but an aerator that affects a neighbor's riparian area can unfairly impose upon the neighbor's enjoyment. An aerator with a large impact zone also poses an increased likelihood of unreasonable detrimental effects upon fish, wildlife, or botanical resources. Within a person's riparian zone, use of an aerator in March can reduce the likelihood of damages to piers and other structures, caused by the movement of ice in late winter, but can also pose a safety hazard to members of the public using a lake during this period and unaware of thin or absent ice caused by an aerator. The amendments would authorize a general license for the placement of an aerator with a limited geographic impact if accompanied by a warning sign in March, as well as in warmer months when snowmobiling, ice skating, ice fishing, and similar recreational activities are unlikely. The use of an aerator in late fall and earlier in the winter would be prohibited except as authorized by an individual licensing following a completed review process. Other amendments would cross-reference a guidance document that helps determine riparian boundaries and would eliminate the requirement that litigants participate in mediation, if none of the litigants wish to participate in mediation. The amendments are needed to promote public safety, allow reasonable enjoyment by riparian owners, and provide clarity and efficiency in the resolution of user disputes. Establishment of a general license for a qualified aerator benefits a person who wishes to place the aerator by obviating the need for the delivery of a nonrefundable application fee to the DNR of \$100 and by eliminating the associated application costs estimated at \$500 to \$1,000 for each individual application. For a person who wishes to place an aerator in March, the cost is estimated at \$20 for the placement of warning signs. This cost is reasonably required for public safety. Other amendments would not result in additional requirements and costs. The costs imposed on a regulated entity by the proposed rule amendments are reasonably required for public safety and otherwise for protection of the public's vested right in the preservation, protection, and enjoyment of all the public freshwater lakes in their present state. The monetary amounts described in this justification statement are based upon [IC 14-26-2](#) and upon experience by the DNR's Division of Water and the DNR's Division of Law Enforcement with similar regulated activities governed by [IC 14-26-2](#).

Copies of these rules are now on file at the Indiana Government Center North, 100 North Senate Avenue, Room N501 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Bryan W. Poynter
Chairman
Natural Resources Commission

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