

**TITLE 312 NATURAL RESOURCES COMMISSION**

**Final Rule**

LSA Document #22-350(F)

**DIGEST**

Amends [312 IAC 1-1-26](#) and [312 IAC 6-7-5](#) to remove all references to the Lake Michigan shoreline at 581.5 due to codification of [IC 14-26-2.1-2](#). Effective 30 days after filing with the Publisher.

**[312 IAC 1-1-26](#); [312 IAC 6-7-5](#)**

SECTION 1. [312 IAC 1-1-26](#) IS AMENDED TO READ AS FOLLOWS:

**[312 IAC 1-1-26](#) "Ordinary high watermark" defined**

**Authority:** [IC 14-10-2-4](#)

**Affected:** [IC 14-26-2.1-2](#); [IC 25](#)

Sec. 26. "Ordinary high watermark" means the following:

~~(1) The line on the shore of a waterway established by the fluctuations of water and indicated by physical characteristics. Examples of these physical characteristics include the following:~~

~~(A) (1) A clear and natural line impressed on the bank.~~

~~(B) (2) Shelving.~~

~~(C) (3) Changes in character of the soil.~~

~~(D) (4) The destruction of terrestrial vegetation.~~

~~(E) (5) The presence of litter or debris.~~

~~(2) Notwithstanding subdivision (1), the shore of Lake Michigan at five hundred eighty one and five tenths (581.5) feet I.G.L.D., 1985 (five hundred eighty two and two hundred fifty two thousandths (582.252) feet N.G.V.D., 1929).~~

*(Natural Resources Commission; [312 IAC 1-1-26](#); filed Dec 1, 1995, 10:00 a.m.: 19 IR 659; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895; readopted filed May 29, 2007, 9:42 a.m.: [20070613-IR-312070111RFA](#); readopted filed Sep 19, 2013, 10:13 a.m.: [20131016-IR-312130169RFA](#); readopted filed Mar 26, 2019, 3:40 p.m.: [20190424-IR-312190006RFA](#); filed Apr 24, 2023, 10:29 a.m.: [20230524-IR-312220350FRA](#))*

SECTION 2. [312 IAC 6-7-5](#) IS AMENDED TO READ AS FOLLOWS:

**[312 IAC 6-7-5](#) Factors tending to support a finding an emergency exists**

**Authority:** [IC 14-10-2-4](#); [IC 14-28-3-2](#); [IC 14-29-1-8](#)

**Affected:** [IC 14-26-2.1-2](#); [IC 14-28](#); [IC 14-29](#)

Sec. 5. Factors tending to support a finding emergency conditions are present under section 3 of this rule include the following:

(1) The lake level is rising.

(2) The current lake level is higher than the ordinary high watermark. ~~(five hundred eighty one and five tenths (581.5) feet) or lower than five hundred seventy eight (578) feet I.G.L.D., 1985.~~

(3) The failed or threatened erosion control structure is in close proximity to the subject property.

(4) The content, design, or position of an erosion control structure makes its accelerated deterioration or collapse more likely.

(5) The existing angle of repose of a bluff face or the bluff height make continued slumping probable.

(6) The risk of harm to public safety or major damage to real property is aggravated by external circumstances.

(7) If immediate action is not taken, persons other than the person seeking to perform emergency remedial action are also likely to suffer harm.

*(Natural Resources Commission; [312 IAC 6-7-5](#); filed Jan 23, 2001, 10:17 a.m.: 24 IR 1611; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed Sep 28, 2009, 11:57 a.m.: [20091021-IR-312090152RFA](#); readopted filed Nov 24, 2015, 4:05 p.m.: [20151223-IR-312150295RFA](#); readopted filed Sep 23, 2021, 9:42 a.m.: [20211020-IR-312210342RFA](#); filed Apr 24, 2023, 10:29 a.m.: [20230524-IR-312220350FRA](#))*

LSA Document #22-350(F)

Notice of Intent: [20221123-IR-312220350NIA](#)

Proposed Rule: [20230111-IR-312220350PRA](#)

Hearing Held: February 28, 2023

Approved by Attorney General: April 12, 2023

Approved by Governor: April 19, 2023

Filed with Publisher: April 24, 2023, 10:29 a.m.

Documents Incorporated by Reference: None Received by Publisher

Small Business Regulatory Coordinator: Jennifer Ware, Assistant Director, Division of Water, Department of Natural Resources, Indiana Government Center South, 402 West Washington Street, W254, Indianapolis, IN 46204, (317) 234-1093, [jware@dnr.in.gov](mailto:jware@dnr.in.gov)

Posted: 05/24/2023 by Legislative Services Agency

An [html](#) version of this document.