

## TITLE 312 NATURAL RESOURCES COMMISSION

### ARTICLE 1. DEFINITIONS

#### Rule 1. Definitions

##### **312 IAC 1-1-1 Applicability**

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 1. (a) Except as provided in subsection (b), the definitions contained in this article apply throughout this title.

(b) If a definition in this article conflicts with a definition of specific applicability in another part of this title or in a statute that controls another part of this title, the definition of specific applicability controls. (*Natural Resources Commission; 312 IAC 1-1-1; filed Dec 1, 1995, 10:00 a.m.: 19 IR 656; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895*)

##### **312 IAC 1-1-2 “Administrative law judge” defined**

Authority: IC 14-10-2-4

Affected: IC 4-21.5; IC 14-10-2-2; IC 25

Sec. 2. “Administrative law judge” refers to a person appointed by the commission under IC 14-10-2-2 to function as an administrative law judge under IC 4-21.5. (*Natural Resources Commission; 312 IAC 1-1-2; filed Dec 1, 1995, 10:00 a.m.: 19 IR 656; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895*)

##### **312 IAC 1-1-3 “Animal” defined**

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 3. “Animal” includes all:

- (1) mammals;
- (2) birds;
- (3) reptiles;
- (4) amphibians;
- (5) fish;
- (6) crustaceans; and
- (7) mollusks.

(*Natural Resources Commission; 312 IAC 1-1-3; filed Dec 1, 1995, 10:00 a.m.: 19 IR 656; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895*)

##### **312 IAC 1-1-4 “Board” defined**

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 4. “Board” means each of the following:

- (1) Advisory council for the bureau of lands and cultural resources.
- (2) Advisory council for the bureau of water and resource regulation.
- (3) Board of trustees for the division of state museums and historic sites.
- (4) Commission.
- (5) Historic preservation review board.
- (6) Soil conservation board.
- (7) Surface coal mine reclamation bond pool fund committee.

(*Natural Resources Commission; 312 IAC 1-1-4; filed Dec 1, 1995, 10:00 a.m.: 19 IR 656; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895*)

**312 IAC 1-1-5 “Boundary waters” defined**

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 5. “Boundary waters” means the following:

- (1) The part of the Wabash River that forms the boundary between Illinois and Indiana.
- (2) The part of the Ohio River that forms the boundary between Kentucky and Indiana.
- (3) The part of the Great Miami River that forms the boundary between Ohio and Indiana.
- (4) The part of Lake Michigan that is under the jurisdiction of Indiana.
- (5) The lakes other than Lake Michigan that are on the boundary between Indiana and bordering states.

*(Natural Resources Commission; 312 IAC 1-1-5; filed Dec 1, 1995, 10:00 a.m.: 19 IR 657; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)*

**312 IAC 1-1-6 “Bureau” defined**

Authority: IC 14-10-2-4

Affected: IC 14-9-3-1; IC 15

Sec. 6. “Bureau” refers to any bureau created within the department under IC 14-9-3-1. *(Natural Resources Commission; 312 IAC 1-1-6; filed Dec 1, 1995, 10:00 a.m.: 19 IR 657; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)*

**312 IAC 1-1-7 “Chase” defined**

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 7. “Chase” means following wildlife without the intent to take. *(Natural Resources Commission; 312 IAC 1-1-7; filed Dec 1, 1995, 10:00 a.m.: 19 IR 657; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)*

**312 IAC 1-1-8 “Commission” defined**

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 8. “Commission” means the natural resources commission. *(Natural Resources Commission; 312 IAC 1-1-8; filed Dec 1, 1995, 10:00 a.m.: 19 IR 657; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)*

**312 IAC 1-1-9 “Conservation officer” defined**

Authority: IC 14-10-2-4

Affected: IC 14-9-8-1; IC 25

Sec. 9. “Conservation officer” has the meaning set forth in IC 14-9-8-1. *(Natural Resources Commission; 312 IAC 1-1-9; filed Dec 1, 1995, 10:00 a.m.: 19 IR 657; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)*

**312 IAC 1-1-10 “Department” defined**

Authority: IC 14-10-2-4

Affected: IC 14-9-1-1; IC 25

Sec. 10. “Department” refers to the department of natural resources created by IC 14-9-1-1. *(Natural Resources Commission; 312 IAC 1-1-10; filed Dec 1, 1995, 10:00 a.m.: 19 IR 657; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)*

**312 IAC 1-1-11 “Deputy director” defined**

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 11. “Deputy director” refers to the deputy director of the bureau that supervises a division. *(Natural Resources Commission; 312 IAC 1-1-11; filed Dec 1, 1995, 10:00 a.m.: 19 IR 657; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)*

**312 IAC 1-1-12 “Director” defined**

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 12. “Director” refers to the director of the department. *(Natural Resources Commission; 312 IAC 1-1-12; filed Dec 1, 1995, 10:00 a.m.: 19 IR 657; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)*

**312 IAC 1-1-13 “Division” defined**

Authority: IC 14-10-2-4

Affected: IC 14-9-4; IC 25

Sec. 13. “Division” refers to a division established under IC 14-9-4. *(Natural Resources Commission; 312 IAC 1-1-13; filed Dec 1, 1995, 10:00 a.m.: 19 IR 657; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)*

**312 IAC 1-1-14 “Division director” defined**

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 14. “Division director” means the director of a division. *(Natural Resources Commission; 312 IAC 1-1-14; filed Dec 1, 1995, 10:00 a.m.: 19 IR 657; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)*

**312 IAC 1-1-15 “Flood plain” defined**

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 15. “Flood plain” means the area adjoining a river or stream that has been or may be covered by flood water. *(Natural Resources Commission; 312 IAC 1-1-15; filed Dec 1, 1995, 10:00 a.m.: 19 IR 657; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)*

**312 IAC 1-1-16 “Floodway” defined**

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 16. “Floodway” means:

(1) the channel of a river or stream; and

(2) the parts of the flood plain adjoining the channel that are reasonably required to efficiently carry and discharge the flood water or flood flow of a river or stream.

*(Natural Resources Commission; 312 IAC 1-1-16; filed Dec 1, 1995, 10:00 a.m.: 19 IR 657; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)*

**312 IAC 1-1-17 “Ground water” defined**

Authority: IC 14-10-2-4

Affected: IC 14-25-7-3; IC 25

Sec. 17. (a) "Ground water" means, except as provided in subsection (b), all water that fills the natural openings made under the earth's surface. The term includes the following:

- (1) Underground watercourses.
- (2) Artesian basins.
- (3) Reservoirs.
- (4) Lakes.
- (5) Other bodies of water below the earth's surface.

(b) For purposes of IC 14-25-7, "ground water" has the meaning set forth in IC 14-25-7-3. *(Natural Resources Commission; 312 IAC 1-1-17; filed Dec 1, 1995, 10:00 a.m.: 19 IR 658; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)*

**312 IAC 1-1-18 "Hearing officer" defined**

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 18. "Hearing officer" refers to a person or persons who conduct a hearing for a board or the department other than as an administrative law judge. *(Natural Resources Commission; 312 IAC 1-1-18; filed Dec 1, 1995, 10:00 a.m.: 19 IR 658; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)*

**312 IAC 1-1-19 "Hunt" defined**

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 19. "Hunt" means to take a wild animal except by trapping. *(Natural Resources Commission; 312 IAC 1-1-19; filed Dec 1, 1995, 10:00 a.m.: 19 IR 658; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)*

**312 IAC 1-1-19.5 "Includes" defined**

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 19.5. "Includes" means includes, but is not limited to. *(Natural Resources Commission; 312 IAC 1-1-19.5; filed May 11, 2004, 9:00 a.m.: 27 IR 3065)*

**312 IAC 1-1-20 "Individual" defined**

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 20. "Individual" means a human person. *(Natural Resources Commission; 312 IAC 1-1-20; filed Dec 1, 1995, 10:00 a.m.: 19 IR 658; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)*

**312 IAC 1-1-21 "Lake" defined**

Authority: IC 14-10-2-4

Affected: IC 14-15; IC 14-26-3-1; IC 25

Sec. 21. (a) "Lake" means, except as provided in subsections (b) and (c), a reasonably permanent body of water substantially at rest in a depression in the surface of the earth, if both the depression and the body of water are of natural origin or part of a watercourse. If part of a watercourse, a lake may be formed by damming a river or stream.

(b) For purposes of IC 14-15, "lake" means a natural or an artificial lake.

(c) For purposes of IC 14-26-3, "lake" has the meaning set forth in IC 14-26-3-1. *(Natural Resources Commission; 312 IAC 1-1-21; filed Dec 1, 1995, 10:00 a.m.: 19 IR 658; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)*

**312 IAC 1-1-22 “Law” defined**

Authority: IC 14-10-2-4

Affected: IC 4-21.5-1-7; IC 14; IC 25

Sec. 22. “Law” has the meaning set forth in IC 4-21.5-1-7. (*Natural Resources Commission; 312 IAC 1-1-22; filed Dec 1, 1995, 10:00 a.m.: 19 IR 658; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895*)

**312 IAC 1-1-23 “License” defined**

Authority: IC 14-10-2-4

Affected: IC 4-21.5-1-8; IC 14-8-2-152; IC 25

Sec. 23. “License”, except as provided in IC 14-8-2-152, has the meaning set forth in IC 4-21.5-1-8. (*Natural Resources Commission; 312 IAC 1-1-23; filed Dec 1, 1995, 10:00 a.m.: 19 IR 658; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895*)

**312 IAC 1-1-24 “Navigable” defined**

Authority: IC 14-10-2-4

Affected: IC 4-21.5; IC 14-29-1-2; IC 25

Sec. 24. (a) “Navigable” means a waterway that has been declared to be navigable or a public highway by one (1) or more of the following:

- (1) A court.
- (2) The Indiana general assembly.
- (3) The United States Army Corps of Engineers.
- (4) The Federal Energy Regulatory Commission.
- (5) A board of county commissioners under IC 14-29-1-2.
- (6) The commission following a completed proceeding under IC 4-21.5.

(b) To assist in the administration of this title, a “Roster of Indiana Waterways Declared Navigable” is set forth at 15 IR 2385. This roster is not dispositive of whether a waterway is or is not navigable. (*Natural Resources Commission; 312 IAC 1-1-24; filed Dec 1, 1995, 10:00 a.m.: 19 IR 658; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895*)

**312 IAC 1-1-25 “Order” defined**

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 25. “Order” means an action by the department (including a board, other than the commission, of the department) of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons. (*Natural Resources Commission; 312 IAC 1-1-25; filed Dec 1, 1995, 10:00 a.m.: 19 IR 658; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895*)

**312 IAC 1-1-26 “Ordinary high watermark” defined**

Authority: IC 14-10-2-4

Affected: IC 14; 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) A clear and natural line impressed on the bank.
- (B) Shelving.
- (C) Changes in character of the soil.
- (D) The destruction of terrestrial vegetation.

(E) 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*)

**312 IAC 1-1-27 “Person” defined**

Authority: IC 14-10-2-4

Affected: IC 4-21.5-1-11; IC 14-8-2-202; IC 25

Sec. 27. “Person”, except as provided in IC 14-8-2-202, has the meaning set forth in IC 4-21.5-1-11. (*Natural Resources Commission; 312 IAC 1-1-27; filed Dec 1, 1995, 10:00 a.m.: 19 IR 659; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895*)

**312 IAC 1-1-27.5 “State plane coordinate” or “SPC” defined**

Authority: IC 14-10-2-4

Affected: IC 14; IC 32-19-1-1

Sec. 27.5. “State plane coordinate” or “SPC” has the meaning set forth in IC 32-19-1-1. (*Natural Resources Commission; 312 IAC 1-1-27.5; filed May 11, 2004, 9:00 a.m.: 27 IR 3065*)

**312 IAC 1-1-28 “Surface water” defined**

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 28. “Surface water” means all water occurring on the surface of the ground. The term includes the following:

- (1) Water in a stream.
- (2) Natural and artificial lakes.
- (3) Ponds.
- (4) Swales.
- (5) Marshes.
- (6) Diffused surface water.

(*Natural Resources Commission; 312 IAC 1-1-28; filed Dec 1, 1995, 10:00 a.m.: 19 IR 659; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895*)

**312 IAC 1-1-29 “Ultimate authority” defined**

Authority: IC 14-10-2-4

Affected: IC 4-21.5-1-15; IC 14; IC 25

Sec. 29. “Ultimate authority” has the meaning set forth in IC 4-21.5-1-15. (*Natural Resources Commission; 312 IAC 1-1-29; filed Dec 1, 1995, 10:00 a.m.: 19 IR 659; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895*)

**312 IAC 1-1-29.3 “Universal transverse mercator” or “UTM” defined**

Authority: IC 14-10-2-4

Affected: IC 14

Sec. 29.3. “Universal transverse mercator” or “UTM” means UTM Zone 16, NAD 83, in meters. (*Natural Resources Commission; 312 IAC 1-1-29.3; filed May 11, 2004, 9:00 a.m.: 27 IR 3065*)

**312 IAC 1-1-29.5 “Waterway” defined**

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 29.5. “Waterway” means:

- (1) a river;
- (2) a stream;
- (3) a creek;
- (4) a run;
- (5) a channel;
- (6) a ditch;
- (7) a lake;
- (8) a reservoir; or
- (9) an embayment.

*(Natural Resources Commission; 312 IAC 1-1-29.5; filed Feb 7, 2000, 3:31 p.m.: 23 IR 1363; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)*

**312 IAC 1-1-30 “Wild animal” defined**

Authority: IC 14-10-2-4

Affected: IC 14-22-38-6; IC 25

Sec. 30. (a) “Wild animal”, except as provided in subsection (b), means an animal whose species usually:

- (1) lives in the wild; or
- (2) is not domesticated.

(b) For the purposes of IC 14-22-38-6, “wild animal” has the meaning set forth in IC 14-22-38-6. *(Natural Resources Commission; 312 IAC 1-1-30; filed Dec 1, 1995, 10:00 a.m.: 19 IR 659; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895)*

**ARTICLE 2. PROCEDURES AND DELEGATIONS**

**Rule 1. Conduct of the Meetings of the Commission and Other Boards**

**312 IAC 2-1-1 Applicability**

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 1. (a) This rule governs the conduct of meetings of the commission and any other board.

(b) The rule is supplemental to 312 IAC 3. *(Natural Resources Commission; 312 IAC 2-1-1; filed Jul 26, 1996, 1:00 p.m.: 19 IR 3339; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546)*

**312 IAC 2-1-2 Minutes of meetings**

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 2. (a) Except as provided in 312 IAC 3-1, the minutes approved by a board are the official record of a meeting of the board.

(b) Notes or an electronic recording of a meeting, other than as provided in subsection (a), are not an official record of a board or the department. *(Natural Resources Commission; 312 IAC 2-1-2; filed Jul 26, 1996, 1:00 p.m.: 19 IR 3339; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546)*

**312 IAC 2-1-3 Withdrawal of an item from a board agenda**

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 3. (a) Except as provided in subsection (b), the director or a deputy director may withdraw an item from a meeting agenda at least forty-eight (48) hours before the meeting is scheduled to begin. Notification of the withdrawal shall be delivered to the secretary of the commission at the Indiana Government Center-South, 402 West Washington Street, Room W272, Indianapolis, Indiana.

(b) An administrative law judge or hearing officer for the commission may withdraw an item, placed by that person on a commission meeting agenda, at least forty-eight (48) hours before the meeting is scheduled to begin.

(c) A board may remove an item from an agenda if a withdrawal is not performed under subsection (a) or (b). (*Natural Resources Commission; 312 IAC 2-1-3; filed Jul 26, 1996, 1:00 p.m.: 19 IR 3339; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

**Rule 2. Delegations by the Natural Resources Commission**

**312 IAC 2-2-1 Applicability**

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 1. (a) This rule governs delegation of authority by the commission.

(b) A delegation in this rule may be supplemented by a delegation in another article of this title. (*Natural Resources Commission; 312 IAC 2-2-1; filed Jul 26, 1996, 1:00 p.m.: 19 IR 3339; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; filed May 26, 2004, 3:15 p.m.: 27 IR 3064*)

**312 IAC 2-2-2 Emergency actions by commission officers**

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 2. (a) The chair (or, if the chair cannot be contacted, the vice chair) and the secretary of the commission may jointly take an action for which the commission has authority where both of the following are established:

(1) There is an emergency.

(2) Irreparable harm would result if action were delayed until the next meeting of the commission.

(b) An action under subsection (a) shall be set forth in writing on a document that:

(1) indicates who entered the order; and

(2) bears the signature of at least one (1) of the participants.

(*Natural Resources Commission; 312 IAC 2-2-2; filed Jul 26, 1996, 1:00 p.m.: 19 IR 3339; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

**312 IAC 2-2-3 Issuance of sanctions and emergency orders by division directors**

Authority: IC 14-10-2-4

Affected: IC 4-21.5-3-6; IC 4-21.5-3-8; IC 14; IC 25

Sec. 3. A division director may do any of the following:

(1) Issue an order and notice of the order under IC 4-21.5-3-6.

(2) Cause a complaint to be filed with the commission under IC 4-21.5-3-8 and 312 IAC 3-1.

(*Natural Resources Commission; 312 IAC 2-2-3; filed Jul 26, 1996, 1:00 p.m.: 19 IR 3340; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)



**312 IAC 2-2-4 Preliminary adoption of rules and readoption of rules**

Authority: IC 14-10-2-4

Affected: IC 4-22-2-15; IC 4-22-2.5; IC 14; IC 25

Sec. 4. (a) The secretary of the commission may approve a rule for preliminary adoption.

(b) Where no amendment is proposed, the director of the commission's division of hearings may, under IC 4-22-2.5, give preliminary adoption to rules for recodification by readoption. (*Natural Resources Commission; 312 IAC 2-2-4; filed Jul 26, 1996, 1:00 p.m.: 19 IR 3340; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; filed May 26, 2004, 3:15 p.m.: 27 IR 3064*)

**Rule 3. Public Hearings Prior to the Issuance of an Agency Order (Subject to 312 IAC 3-1)**

**312 IAC 2-3-1 Applicability of rule; late or incomplete license application; time for giving notice**

Authority: IC 14-11-4-9

Affected: IC 4-21.5; IC 14-11-4-8; IC 14-21-1-17

Sec. 1. (a) This rule governs the conduct of a public hearing held on the question of the issuance, conditioning, or denial of an original or renewal license under IC 14-11-4-8.

(b) This rule also governs the conduct of a public hearing held under IC 14-21-1-17. However, sections 3 through 5 of this rule do not apply to a public hearing under this subsection.

(c) A person who conducts a public hearing before any agency action is taken by the director, a board, or a delegate of the director or a board may apply this rule even if IC 14-11-4-8 is inapplicable. The hearing officer who applies this subsection shall announce at the beginning of the public hearing that this rule applies. A board may appoint a person, a panel of persons, or the entirety of the board to serve as the hearing officer. If this subsection is implemented, section 3 of this rule does not apply.

(d) This rule does not apply to a hearing that is governed by 312 IAC 2-1 or 312 IAC 3-1.

(e) The director or the delegate of the director may deny a license application that is not completed in a reasonable period of time. If an agency action to deny a license application is made because the application is incomplete, the application does not qualify for a public hearing under this rule, but that agency action is subject to administrative review under IC 4-21.5 and 312 IAC 3-1.

(f) The time period for giving notice begins upon mailing if a notice required by this rule or IC 14-11-4 is made by the United States mail. Three (3) days are added to the period required for a notice that is made by the United States mail. (*Natural Resources Commission; 312 IAC 2-3-1; filed Aug 20, 1997, 3:16 p.m.: 21 IR 26; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; filed May 26, 2004, 3:15 p.m.: 27 IR 3064*)

**312 IAC 2-3-2 "Adjacent to the affected real property" defined**

Authority: IC 14-11-4-9

Affected: IC 14-11-4

Sec. 2. As used in this rule and IC 14-11-4, "adjacent to the affected real property" means real property owned by a person, other than the applicant, that is both of the following:

(1) Located within one-fourth (¼) mile of the site where the licensed activity would take place.

(2) Has a border or point in common with the exterior boundary of the property where the licensed activity would take place. Included is property that would share a common border if not for the separation caused by a right-of-way, an easement, or a railroad.

(*Natural Resources Commission; 312 IAC 2-3-2; filed Aug 20, 1997, 3:16 p.m.: 21 IR 27; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

**312 IAC 2-3-3 Notice of consideration of application for certain designated licenses; service by license applicant**

Authority: IC 14-11-4-9

Affected: IC 4-21.5; IC 14-22-26-3; IC 14-26-2; IC 14-26-5; IC 14-28-1; IC 14-29-1; IC 14-29-3; IC 14-29-4

Sec. 3. (a) Notice must be given under this section before a new license or a license renewal is issued by the department under

the following statutes and rules:

- (1) IC 14-26-2 and 312 IAC 11-1 through 312 IAC 11-5 (lake preservation).
- (2) IC 14-26-5 (lowering of lakes).
- (3) IC 14-29-4 (construction of channels).
- (4) IC 14-28-1 and 312 IAC 10 (flood plain management).
- (5) IC 14-22-26-3(2) and 312 IAC 9-11 (possession of wild animals that may be harmful or dangerous to plants or animals).
- (6) IC 14-29-3 and 312 IAC 6-5 (removal of substances from navigable waters of the state), including under IC 14-29-1 where the removal of substances from navigable waters is an element of the license.

(b) The director or the department may not issue a license until thirty (30) days after the notice required under this section has been given. Notice may be given at any time after an application for a license is filed with the department.

(c) Service of a notice must be provided by the applicant at its expense as follows:

(1) If a license application affects real property, at least one (1) of the owners of each parcel of real property reasonably known to be adjacent to the affected real property.

(2) In addition to service of the notice as required in subdivision (1), the license applicant shall cause notice to be given by publication (with proof of service made by a publisher's affidavit) in any of the following circumstances:

(A) The current address of a person entitled to notice under this rule is not ascertainable.

(B) The identity or existence of a person entitled to notice is not ascertainable.

(C) The department directs the applicant to cause notice by publication because the license application is likely to evoke general public interest.

(d) Service of a notice must be provided by the department to those persons who have requested notification of a license application that:

(1) affects the specific real property to which the application relates; or

(2) is of the same type as the application.

(e) Proof of service of the notifications required under subsection (c)(1) shall be provided by the applicant to the department as follows:

(1) If service is made by certified mail with return receipt requested, by providing a mailing receipt showing successful return from the person notified.

(2) If service is made in person or by first class mail (with a certificate of mailing), by an affidavit or affirmation on a department form including the following:

(A) The names and addresses of each person served.

(B) The date of personal service or mailing.

(C) If service was made by mail, that a period of at least twenty-one (21) days has passed without the mailing being returned as undelivered or undeliverable.

(f) A notice under this section shall do the following:

(1) Provide the name and address of the applicant.

(2) Identify the statute and rule under which a permit is sought.

(3) Identify the specific real property to which the application relates (unless the license is not related to specific real property).

(4) Set forth any other information required by statute or rule relative to the particular type of permit sought.

(5) Include an explanation of the options available to the persons served. These options shall be as follows:

(A) File a petition with the director requesting an informal hearing that is signed by at least twenty-five (25) individuals who are at least eighteen (18) years of age and who:

(i) reside in the county where the licensed activity would take place; or

(ii) own real property within one (1) mile of the site of the proposed or existing licensed activity.

(B) Request the department to notify the person in writing when an initial determination is made to issue or deny the permit. Following the receipt of notice under this clause, the person may request administrative review by the commission, under IC 4-21.5 and 312 IAC 3-1, of the initial determination by the director.

*(Natural Resources Commission; 312 IAC 2-3-3; filed Aug 20, 1997, 3:16 p.m.: 21 IR 27; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1542; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546)*

**312 IAC 2-3-4 Petition for a public hearing by local individuals**

Authority: IC 14-11-4-9

Affected: IC 14-11-4-8

Sec. 4. (a) This section establishes the requirements for a petition to request a public hearing under IC 14-11-4-8(a)(2).

(b) The petition shall include the signatures of at least twenty-five (25) individuals who are at least eighteen (18) years of age and who reside in the county where the licensed activity would take place or who own real property within one (1) mile of the site of the proposed or existing licensed activity.

(c) The complete mailing addresses of the petitioners shall be typed or printed legibly on the petition.

(d) Each individual who signs the petition shall affirm that the individual qualifies under subsection (b).

(e) The petition shall identify the application for which a public hearing is sought, either by division docket number or by the name of the applicant and the location of the permit. (*Natural Resources Commission; 312 IAC 2-3-4; filed Aug 20, 1997, 3:16 p.m.: 21 IR 28; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

**312 IAC 2-3-5 Notice of public hearing under this rule**

Authority: IC 14-11-4-9

Affected: IC 14

Sec. 5. (a) The hearing officer shall set the time and place of the public hearing and give reasonable written notice to the following persons:

(1) Each of the petitioners.

(2) The applicant.

(3) At least one (1) of the owners of each parcel of real property reasonably known to be adjacent to the affected real property.

(4) Any other person who requests in writing to be notified.

(b) Unless a shorter period is stipulated by the petitioners and the applicant or as specified by statute, the hearing officer shall give at least fifteen (15) days' notice of the hearing. If notice is served through the United States mail, three (3) days must be added to the period required for the notice.

(c) If requested in the petition, the location of the public hearing under subsection (b) shall be in the county where the licensed activity would take place. (*Natural Resources Commission; 312 IAC 2-3-5; filed Aug 20, 1997, 3:16 p.m.: 21 IR 28; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

**312 IAC 2-3-6 Conduct of a public hearing by a hearing officer; informal recommendations to the director or director's designee for an agency action**

Authority: IC 14-11-4-9

Affected: IC 4-21.5-3-5; IC 5-14-3-2; IC 14-11-3-1

Sec. 6. (a) A public hearing under this section shall be conducted by a hearing officer appointed by the director or appointed by the director's designee under IC 14-11-3-1(c). The hearing officer shall be the director, the deputy director for the bureau in which the statute is administered, or an employee of the division that is primarily responsible for the administration of the statute.

(b) The hearing officer shall announce at the opening and closing of the public hearing that a person is entitled to notification of an agency action on the license application (or other action at issue) if the person provides a written request for notification that does the following:

(1) Describes the subject of the order with reasonable particularity.

(2) Is delivered to the address of the department at least seven (7) days before the day that notice is given under IC 4-21.5-3-5.

The address specified by the hearing officer under this subdivision shall be the address of either of the following:

(A) The director.

(B) The person who has been delegated authority by the director to act upon the license or other agency action.

(c) The hearing officer shall conduct the public hearing under this section in a manner that is best suited to the solicitation of comments from the hearing participants. The public hearing is a nonevidentiary hearing, and neither the rules of evidence nor IC 4-21.5 apply.

(d) A hearing officer shall maintain a record of any portion of the public hearing to assist in providing written recommendations to the director or the director's delegate. Any other person may cause an audio or video recording to be made of the public hearing. The contents of any recording may be offered into evidence at a subsequent proceeding under IC 4-21.5 and this article, subject to objections that may apply to electronic recordings generally. The contents of a recording do not, however, limit the scope of administrative review under IC 4-21.5 and this article.

(e) Following the public hearing, the hearing officer shall make written recommendations to the director (or the director's designee) for an agency action. The director (or the director's designee) shall consider these recommendations. In taking an agency action, the director (or the director's designee) is not limited to facts and information received by the hearing officer under this rule.

(f) The written recommendations under subsection (e) do not constitute an agency action under IC 4-21.5. A person who disagrees with those recommendations is not required to file objections in order to obtain administrative review of any resulting agency action.

(g) The hearing officer shall not conduct a proceeding under IC 4-21.5 and 312 IAC 3-1 to provide administrative review of an agency action that results from a public hearing under this rule.

(h) The documentation received under this section, and any recording of the public hearing made by the department, is a public record under IC 5-14-3-2. (*Natural Resources Commission; 312 IAC 2-3-6; filed Aug 20, 1997, 3:16 p.m.: 21 IR 28; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

**312 IAC 2-3-7 Notice of determination by the department or historic preservation review board after public hearing; administrative review to natural resources commission**

Authority: IC 14-11-4-9

Affected: IC 4-21.5; IC 14-21-1-17

Sec. 7. (a) Notice of an order to issue, condition, or deny an original license, made following a public hearing under section 1(a) of this rule, shall be provided to the following persons:

(1) Each of the persons who signed a petition as provided under section 4 of this rule.

(2) The applicant.

(3) At least one (1) of the owners of each parcel of real property reasonably known to be adjacent to the affected real property.

(4) Any other person who requests in writing to be notified.

(b) Notice of a recommendation by a member or delegate of the historic preservation review board, made following a public hearing under section 1(b) of this rule, (and notice of the resulting determination by the historic preservation review board) shall be provided to the following persons:

(1) Any person who nominated the site or structure for addition or removal to or from the register of Indiana historic sites and historic structures.

(2) Any person who filed an objection to the nomination.

(3) Any affected person required to be notified under IC 14-21-1-17.

(4) Any other person who requests in writing to be notified.

(c) Notice of a determination, made following a public hearing under section 1(c) of this rule, shall be provided to any person required to be notified under IC 4-21.5.

(d) A notice of a determination under this section is the notice required to initiate administrative review under IC 4-21.5 and 312 IAC 3-1. (*Natural Resources Commission; 312 IAC 2-3-7; filed Aug 20, 1997, 3:16 p.m.: 21 IR 28; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

**Rule 4. Organized Activities and Tournaments on Designated Public Waters; Administration**

**312 IAC 2-4-1 Applicability**

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

Affected: IC 14

Sec. 1. (a) This rule applies to both of the following:

(1) The process for designating any public water where organized activities and tournaments are regulated.

(2) The administration of organized activities and tournaments on waters designated under subdivision (1).

(b) Exempted from this rule are each of the following:

(1) A boat race.

(2) A water ski event.

(3) A major organized boating activity.

(c) A person must not conduct or participate in a fishing tournament or other organized activity on a public water designated in this rule except under a license issued under this rule.

(d) The department's division of law enforcement shall administer this rule. (*Natural Resources Commission; 312 IAC 2-4-1; filed Aug 3, 2001, 10:54 a.m.: 24 IR 3930, eff Jan 1, 2002; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; filed May 27, 2003, 12:35 p.m.: 26 IR 3318, eff Oct 1, 2003*)

### **312 IAC 2-4-2 Definitions**

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

Affected: IC 14

Sec. 2. (a) The definitions in this section apply throughout this rule and are in addition to the definitions in 312 IAC 1.

(b) "Boat race" has the meaning set forth at 312 IAC 5-2-5.

(c) "Fishing tournament" means an activity involving fifteen (15) or more watercraft used for taking fish where:

(1) persons compete for a trophy, citation, cash, or prize; or

(2) a fee is charged to participants.

(d) "Major organized boating activity" means an activity other than a boat race, fishing tournament, or water ski event that:

(1) involves fifteen (15) or more watercraft as participants;

(2) involves fifty (50) or more watercraft as spectators;

(3) is conducted according to a prearranged schedule for a limited duration; or

(4) is reasonably expected to significantly disrupt boat traffic.

(e) "Water ski event" has the meaning set forth at 312 IAC 5-2-44. (*Natural Resources Commission; 312 IAC 2-4-2; filed Aug 3, 2001, 10:54 a.m.: 24 IR 3930, eff Jan 1, 2002; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; filed May 27, 2003, 12:35 p.m.: 26 IR 3318, eff Oct 1, 2003*)

### **312 IAC 2-4-3 Petition to regulate the conduct of fishing tournaments or other organized activities on designated public waters**

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

Affected: IC 14-33-1-1

Sec. 3. (a) The following persons may petition the commission to designate, by rule, a particular public water for regulation:

(1) The county executive for the county where the public water is located. A petition under this subdivision applies only to the portion of the public water located in that county. The county executives for adjoining counties may enter a joint petition.

(2) If a portion of a public water is located within a municipality, the executive for the municipality. A petition under this subsection applies only to the portion of the public water located in the municipality.

(3) A deputy director of the department.

(b) A petition filed under subsection (a) must include the following:

(1) The name and location of the public water to be regulated.

(2) The name, address, and telephone number of the petitioner.

(3) The periods when the public water would be regulated. These periods may be expressed in terms of months or beginning and ending days. Restrictions on activities regulated under this rule may be seasonally adjusted.

(4) Whether regulation would apply to fishing tournaments, other organized activities, or both fishing tournaments and other organized activities. If the regulation would apply to other organized activities, a description of the type of these activities that would be regulated.

(*Natural Resources Commission; 312 IAC 2-4-3; filed Aug 3, 2001, 10:54 a.m.: 24 IR 3930, eff Jan 1, 2002; filed May 16, 2002, 12:25 p.m.: 25 IR 3046; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

**312 IAC 2-4-4 Notice of and response to petition**

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

Affected: IC 14

Sec. 4. (a) Upon receipt of a completed petition under section 3 of this rule, the division of hearings of the commission shall cause:

- (1) a copy of the petition to be delivered for each deputy director of the department; and
- (2) notice of the petition and a brief summary of its contents to be delivered to the legislative services agency for publication in the Indiana Register.

(b) Within ninety (90) days after the receipt of a petition under subsection (a), the department shall review and tender written recommendations to the commission regarding preliminary adoption of a rule to implement the petition. A copy of the recommendations shall also be served upon the petitioner and any other person who requests in writing that the department provide a copy.

(c) In preparing the recommendations described in subsection (b), the department shall consult with the petitioner and any other interested person. The recommendations shall consider each of the following:

- (1) Fish, wildlife, or botanical resource management.
- (2) The protection of users, including the following:
  - (A) Limitations of the public water to safely accommodate watercraft.
  - (B) Limitations of facilities relative to vehicular access, pedestrian safety, parking, and the launching of watercraft.
- (3) The protection of private and public property.
- (4) Cultural resources.

(d) For an application to establish a license requirement on a public freshwater lake, the department shall consider limiting the total number of boats in an activity conducted between April 1 and September 30, and licensed under this rule or under 312 IAC 5-3.

(e) The maximum number established under subsection (d) governs any date on which the activity or a portion of the activity is conducted.

(f) If the department does not tender its written recommendations to the commission in a timely fashion as provided in subsection (b), the petitioner may move the commission to place the petition on its agenda at the next regular meeting. (*Natural Resources Commission; 312 IAC 2-4-4; filed Aug 3, 2001, 10:54 a.m.: 24 IR 3930, eff Jan 1, 2002; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; filed May 27, 2003, 12:35 p.m.: 26 IR 3318, eff Oct 1, 2003*)

**312 IAC 2-4-5 Designation of regulated public water by rule**

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

Affected: IC 4-22; IC 14

Sec. 5. (a) The commission may approve the recommendations of the department under section 4(b) of this rule or may modify or reject those recommendations.

(b) If a petition results in preliminary adoption of a rule, the proposal shall be reviewed under IC 4-22. A public hearing on the proposal shall be conducted in the county where the public water to be regulated is located.

(c) The regulation of a fishing tournament or other organized activity becomes effective for a particular public water when a section under this rule designating that public water becomes effective under IC 4-22. (*Natural Resources Commission; 312 IAC 2-4-5; filed Aug 3, 2001, 10:54 a.m.: 24 IR 3931, eff Jan 1, 2002; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

**312 IAC 2-4-6 License application**

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

Affected: IC 14

Sec. 6. (a) An application for a license to conduct a fishing tournament or other organized activity must be completed on a department form at least ninety (90) days before the date of the proposed tournament.

(b) An applicant must be an individual who is at least eighteen (18) years of age and a resident of Indiana.

- (c) The applicant shall attach a copy of the proposed standards and regulations governing the activity.
- (d) The department shall condition any license to achieve at least one (1) of the following:
  - (1) Prevention of unusual conditions or hazards.
  - (2) Promotion of scientific fish, wildlife, or botanical resource management.
  - (3) Assistance in the protection of users.
- (e) To accomplish the purposes described in subsection (d), the department may do any of the following:
  - (1) Designate the starting time or ending time for an activity.
  - (2) Designate the time and location for the use of any public facilities.
  - (3) Spread starting times among license holders if more than one (1) is approved for a particular waterway.
  - (4) Restrict portions of the waterway from use by the participants.

*(Natural Resources Commission; 312 IAC 2-4-6; filed Aug 3, 2001, 10:54 a.m.: 24 IR 3931, eff Jan 1, 2002; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; filed May 27, 2003, 12:35 p.m.: 26 IR 3319, eff Oct 1, 2003)*

**312 IAC 2-4-7 Advance date approval**

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

Sec. 7. (a) The department will conduct an organizational meeting between October 1 and December 15 to establish dates for the following year on which fishing tournaments or other organized activities can be conducted.

(b) A person who receives a reserved date must submit a completed license application within thirty (30) days of notification and at least sixty (60) days before the scheduled event, whichever is earlier. Failure to submit a timely completed application releases the reservation. *(Natural Resources Commission; 312 IAC 2-4-7; filed Aug 3, 2001, 10:54 a.m.: 24 IR 3931, eff Jan 1, 2002; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; filed May 27, 2003, 12:35 p.m.: 26 IR 3319, eff Oct 1, 2003)*

**312 IAC 2-4-8 Bond; list of officials; user fee (Repealed)**

Sec. 8. *(Repealed by Natural Resources Commission; filed May 27, 2003, 12:35 p.m.: 26 IR 3323, eff Oct 1, 2003)*

**312 IAC 2-4-9 General duties of license holder**

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

Sec. 9. In addition to the terms of the license and the requirements otherwise set forth in this rule, a license holder must do the following:

- (1) At least fourteen (14) days before the scheduled event, deliver a list of officials who will be present during the event.
- (2) Obtain permission from the department to use a zone or zones in the public water for mooring, judging, weigh-in, starting, or for any other activities using public facilities.
- (3) Upon the request of the department, meet with a designated authorized representative or representatives before a tournament or other organized activity begins.
- (4) Remove equipment and refuse and otherwise restore zones used in connection with a fishing tournament or other organized activity to the condition that existed before the event as directed by the department.
- (5) Provide officials needed to supervise participants and spectators.
- (6) Require each participating watercraft to clearly display a logo, banner, or other visible item approved by the department to identify the tournament or other organized activity.
- (7) Establish a starting location for the tournament or other organized activity within an idle speed zone.
- (8) Refrain from and prohibit the sale of food, beverages, or supplies within the area of the activity unless approved in writing by the department and the owner of the area.
- (9) Refrain from obstructing ingress, egress, or regress from private property.
- (10) Assure reasonable access to all persons to public use facilities, including swimming areas, mooring areas, navigational channels, and similar facilities. Limitations on the usage of facilities must include the following:

(A) Except as provided in clause (B), vehicles and trailers of contestants must use no more than seventy-five percent (75%) of the ramp and parking facilities in the staging area of the tournament.

(B) The owner of the staging area may, in writing, authorize more than the maximum allowed usage under clause (A). This clause does not apply to a fishing tournament that is subject to section 12 of this rule.

(11) Sponsor no more than one (1) event licensed under this rule on the same waterway with starting dates separated by less than fourteen (14) days. A tournament scheduled for two (2) consecutive days is considered a single event. The division of law enforcement may authorize an individual to seek more than one (1) event on the same waterway, with starting dates separated by less than fourteen (14) days, if in seeking the license, the individual is acting as the agent for different tournament organizations.

(12) Act in good faith to fully perform the event. A person who demonstrates a pattern of violations of this subdivision may be denied another license.

*(Natural Resources Commission; 312 IAC 2-4-9; filed Aug 3, 2001, 10:54 a.m.: 24 IR 3931, eff Jan 1, 2002; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; filed May 27, 2003, 12:35 p.m.: 26 IR 3319, eff Oct 1, 2003)*

### **312 IAC 2-4-9.5 Reporting**

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

Affected: IC 14

Sec. 9.5. (a) A license holder must report the results of the event on a form provided by the department within thirty (30) days of the completion of the event, including the number of boats and participants, starting and ending times, and actual use of public facilities.

(b) In addition to the terms of the license and the requirements otherwise set forth in this rule, the department may require a fishing tournament license holder to keep and report, on a department form, legible and accurate records of the following:

(1) Tournament name.

(2) Name, address, and telephone number of the license holder.

(3) Tournament date or dates, including starting time and ending time.

(4) Target fish species.

(5) Name of any waterway fished.

(6) Number of boats and number of participants.

(7) Individual or team catch statistics for each species of fish taken, including the following:

(A) The numbers and lengths of fish weighed-in.

(B) The numbers and lengths of fish caught and released.

*(Natural Resources Commission; 312 IAC 2-4-9.5; filed May 16, 2002, 10:00 a.m.: 25 IR 3045; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; filed May 27, 2003, 12:35 p.m.: 26 IR 3320, eff Oct 1, 2003)*

### **312 IAC 2-4-10 Limitation on usage of facilities (Repealed)**

Sec. 10. *(Repealed by Natural Resources Commission; filed May 27, 2003, 12:35 p.m.: 26 IR 3323, eff Oct 1, 2003)*

### **312 IAC 2-4-11 Sanctions and emergency relief**

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

Affected: IC 4-21.5-3-8; IC 4-21.5-4; IC 14

Sec. 11. (a) The department may file a complaint under IC 4-21.5-3-8, or seek emergency relief under IC 4-21.5-4, to condition, suspend, or revoke the license of a person who violates a term of the license, this article, or another law. In addition, the department may seek an order in the complaint to disqualify the person from receiving another license under this rule, for a period not to exceed three (3) years, if the person:

(1) conducts an activity, for which a license is required under this rule, without having such a license in effect; or

(2) violates a term of a license issued under this rule.

(b) The department may file a complaint under IC 4-21.5-3-8, or seek emergency relief under IC 4-21.5-4, to condition, suspend, or revoke a license if warranted by changed circumstances at the staging area or on the public water that might reasonably



be anticipated to endanger public health, safety, or the environment.

(c) In addition to the penalties prescribed by subsections (a) and (b), a person who violates this rule commits a Class C infraction. (*Natural Resources Commission; 312 IAC 2-4-11; filed Aug 3, 2001, 10:54 a.m.: 24 IR 3932, eff Jan 1, 2002; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

**312 IAC 2-4-12 Limitations on fishing tournaments at lakes administered by the division of state parks and reservoirs**

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

Affected: IC 5-14-3; IC 14

Sec. 12. (a) This section governs fishing tournaments at lakes administered by the division of state parks and reservoirs.

(b) The number of watercraft that may participate in a fishing tournament must not, on any date, exceed the following:

	Monroe	Salamonie	Mississinewa	Huntington	Brookville	Hardy	Patoka	Lieber	Raccoon
March	100	75	0	18	100	30	178	50	100
April	175	75	0	18	100	30	178	50	60
May	175	75	0	30	100	20	178	28	50
June	175	30	0	30	75	20	125	28	50
July	175	30	0	30	75	20	125	28	50
August	175	30	0	30	75	20	125	28	50
September	175	75	0	30	100	20	178	28	60
October	175	75	0	18	100	30	178	50	100
November	100	0	0	0	100	30	178	0	0

(c) A watercraft used to administer a tournament is excluded in determining the number of participating watercraft.

(d) The director may authorize a license for a fishing tournament under this section where the participants are not provided advance notice of the location. The name of the lake may be omitted from the license application, but the department must be provided with the name of the lake at least ten (10) days before the tournament. A license issued under this subsection does not authorize a fishing tournament that conflicts with another license issued under this section. Subject to IC 5-14-3, the department will not publish the location of a fishing tournament issued under this subsection.

(e) Notwithstanding section 7(a) of this rule, the department's division of state parks and reservoirs will conduct an organizational meeting between October 1 and December 15 to establish dates for the following two (2) years on which fishing tournaments or other organized activities can be conducted.

(f) Notwithstanding subsection (b), no more than one hundred (100) watercraft may participate in a fishing tournament on Monroe Lake on any date after October 15.

(g) At least thirty (30) days before the scheduled event, a license holder shall file a certificate of insurance or an insurance binder with the department. The certificate of insurance or insurance binder shall name the license holder and the department as insureds and shall demonstrate the license holder has obtained an irrevocable general liability insurance policy with a limitation for each of the following of not less than:

- (1) One hundred thousand dollars (\$100,000) for all damages to property for a single occurrence.
- (2) One hundred thousand dollars (\$100,000) for injury or death of one (1) person in a single occurrence.
- (3) Three hundred thousand dollars (\$300,000) for injury to or death of multiple persons in a single occurrence.

(h) At least fourteen (14) days before the scheduled event, a license holder must deliver each of the following to the department:

(1) A cash bond or other security approved by the department in the amount of one hundred fifty dollars (\$150) to compensate the department for expenses incurred to:

- (A) restore the mooring, judge's, or spectators' area; and
- (B) reimburse the department for the costs of supervision, maintenance, and labor.

(2) A user fee equal to the number of individual contestants in a fishing tournament or other organized activity at a rate of one dollar (\$1) per contestant or participant.

(i) The director may require insurance in addition to what is set forth in subsection (a) if the director determines a fishing tournament poses an unusual risk of liability to the department.

(j) A license holder shall indemnify, defend, exculpate, and hold harmless the department and its officials, employees, and agents from liability due to loss, damage, injury, or other casualty to the person or property of anyone arising directly or indirectly from the activity. (*Natural Resources Commission; 312 IAC 2-4-12; filed Aug 3, 2001, 10:54 a.m.: 24 IR 3932, eff Jan 1, 2002; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; filed May 27, 2003, 12:35 p.m.: 26 IR 3320, eff Oct 1, 2003*)

### **312 IAC 2-4-13 Limitations on organized boating activities at Lake Wawasee and Syracuse Lake, Kosciusko County**

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

Affected: IC 14

Sec. 13. (a) This section governs organized boating activities on Lake Wawasee and Syracuse Lake in Kosciusko County.

(b) On the combined waters of Lake Wawasee and Syracuse Lake, the maximum number of watercraft that can lawfully participate in a fishing tournament on a Saturday or a Sunday is as follows:

(1) One hundred twenty-five (125) for the following periods:

(A) from April 1 until the weekend including Memorial Day; and

(B) after the weekend including Labor Day until September 15.

(2) One hundred (100) from the weekend including Memorial Day through the weekend including Labor Day.

(c) For a tournament subject to subsection (b) that is scheduled to continue past midnight, the number of participating watercraft may be attributed either to Saturday or to Sunday so as to facilitate the ability of an organized boating activity to use the lake. (*Natural Resources Commission; 312 IAC 2-4-13; filed May 27, 2003, 12:35 p.m.: 26 IR 3321, eff Oct 1, 2003*)

## **ARTICLE 3. ADJUDICATORY PROCEEDINGS**

### **Rule 1. Procedural Rules**

#### **312 IAC 3-1-1 Administration**

Authority: IC 14-10-2-4; IC 25-31.5-3-8

Affected: IC 4-21.5; IC 14; IC 25-17.6

Sec. 1. (a) This rule controls proceedings governed by IC 4-21.5 for which the commission, or an administrative law judge for the commission, is the ultimate authority.

(b) An affected person who is aggrieved by a determination of:

(1) the director;

(2) a delegate of the director;

(3) a board (other than the commission when acting as the ultimate authority);

(4) a delegate of the board (other than an administrative law judge);

(5) a person who has been delegated authority under 312 IAC 2-2;

(6) the Indiana board of licensure for professional geologists under IC 25-17.6; or

(7) the Indiana board of registration for soil scientists under IC 25-31.5;

may apply for administrative review of the determination under IC 4-21.5 and this rule.

(c) As used in this rule, "division director" refers to the director of the division of hearings of the commission. (*Natural Resources Commission; 312 IAC 3-1-1; filed Feb 5, 1996, 4:00 p.m.: 19 IR 1317; filed Oct 19, 1998, 10:12 a.m.: 22 IR 748; filed Aug 29, 2002, 1:03 p.m.: 26 IR 7; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

#### **312 IAC 3-1-2 Ultimate authority**

Authority: IC 14-10-2-4; IC 25-31.5-3-8

Affected: IC 4-21.5-4; IC 14-34-4-13; IC 14-34-15-7; IC 25-17.6; IC 25-31.5

Sec. 2. (a) Except as provided in subsection (b), the commission is the ultimate authority for the department and any department board.

(b) An administrative law judge is the ultimate authority for an administrative review under the following:

(1) An order under IC 14-34, except for a proceeding:

(A) concerning the approval or disapproval of a permit application or permit renewal under IC 14-34-4-13; or

(B) a proceeding for suspension or revocation of a permit under IC 14-34-15-7.

(2) An order granting or denying temporary relief under IC 14-34 or an order voiding, terminating, modifying, staying, or continuing an emergency or temporary order under IC 4-21.5-4.

(3) An order designated as a final order in section 9 of this rule.

(c) An administrative law judge is also the ultimate authority for the following:

(1) The Indiana board of licensure for professional geologists under IC 25-17.6.

(2) The Indiana board of registration for soil scientists under IC 25-31.5.

*(Natural Resources Commission; 312 IAC 3-1-2; filed Feb 5, 1996, 4:00 p.m.: 19 IR 1317; filed Oct 19, 1998, 10:12 a.m.: 22 IR 749; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1543; filed Aug 29, 2002, 1:03 p.m.: 26 IR 8; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546)*

### **312 IAC 3-1-3 Initiation of a proceeding for administrative review**

Authority: IC 14-10-2-4; IC 25-31.5-3-8

Affected: IC 4-21.5-3-7; IC 4-21.5-3-8; IC 4-21.5-4; IC 14-34; IC 14-37-9; IC 25

Sec. 3. (a) A proceeding before the commission, under IC 4-21.5, as well as administrative review of a determination of the Indiana board of licensure for professional geologists or the Indiana board of registration for soil scientists, is initiated when one (1) of the following is filed with the Division of Hearings, Indiana Government Center-South, 402 West Washington Street, Room W272, Indianapolis, Indiana:

(1) A petition for review under IC 4-21.5-3-7.

(2) A complaint under IC 4-21.5-3-8.

(3) A request for temporary relief under IC 14-34.

(4) A request to issue or for review of an issued emergency or other temporary order under IC 4-21.5-4.

(5) A request concerning an integration order under IC 14-37-9.

(6) An answer to an order to show cause under section 5 of this rule.

(7) A referral by the director of a petition for and challenge to litigation expenses under section 13(g) of this rule.

(b) As soon as practicable after the initiation of administrative review under subsection (a), the division director shall appoint an administrative law judge to conduct the proceeding. *(Natural Resources Commission; 312 IAC 3-1-3; filed Feb 5, 1996, 4:00 p.m.: 19 IR 1317; filed Oct 19, 1998, 10:12 a.m.: 22 IR 749; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1543; filed Aug 29, 2002, 1:03 p.m.: 26 IR 8; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546)*

### **312 IAC 3-1-4 Answers and affirmative defenses**

Authority: IC 14-10-2-4

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

Sec. 4. (a) Except as provided in subsection (b) and in sections 5 and 13 of this rule, the matters contained in a pleading described in section 3(a) of this rule are deemed automatically denied by any other party.

(b) A party wishing to assert an affirmative defense, counterclaim, or cross-claim shall do so, in writing, filed and served not later than the initial prehearing conference, unless otherwise ordered by the administrative law judge. *(Natural Resources Commission; 312 IAC 3-1-4; filed Feb 5, 1996, 4:00 p.m.: 19 IR 1317; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546)*

### **312 IAC 3-1-5 Pleadings for and disposing of a show cause order issued under the Indiana Surface Mining Control and Reclamation Act**

Authority: IC 14-10-2-4

Affected: IC 4-21.5-3; IC 14-34-15-7; IC 15

Sec. 5. (a) This section governs the suspension or revocation of a permit under IC 14-34-15-7.

(b) When the director determines that a permit issued pursuant to IC 13-4.1 before its repeal, IC 14-34, or 310 IAC should be suspended or revoked, the director (or a delegate of the director) shall issue to the permittee an order of permit suspension or revocation pursuant to IC 14-34-15-7. An order of permit suspension or revocation shall allege the following:

- (1) A pattern of violations of:
  - (A) IC 13-4.1 before its repeal, IC 14-34, or 310 IAC 12; or
  - (B) any permit condition required by IC 13-4.1 before its repeal, IC 14-34, or 310 IAC 12.
- (2) The violations alleged in the order of permit suspension or revocation are either:
  - (A) willfully caused by the permittee; or
  - (B) caused by the permittee's unwarranted failure to comply with:
    - (i) IC 13-4.1 before its repeal, IC 14-34, 310 IAC 12; or
    - (ii) any permit condition required by IC 13-4.1 before its repeal, IC 14-34, or 310 IAC 12.

For the purposes of this subsection, the unwarranted failure of the permittee to pay any fee required under IC 13-4.1 before its repeal, IC 14-34, or 310 IAC 12 constitutes a pattern of violations and requires the issuance of an order of permit suspension or revocation.

(c) An order of permit suspension or revocation issued under subsection (b) shall be served by certified mail or by personal delivery. An order of permit suspension or revocation is governed by IC 4-21.5-3-6.

(d) A permittee who desires to contest an order of permit suspension or revocation must, within thirty (30) days of permittee's receipt of the order of permit suspension or revocation, file a petition for review pursuant to IC 4-21.5-3-7. A petition for review under this subsection shall set forth the following:

- (1) The reasons in detail why a pattern of violations of IC 13-4.1 before its repeal, IC 14-34, 310 IAC 12, or any permit condition required by IC 13-4.1 before its repeal, IC 14-34, or 310 IAC 12 does not exist or has not existed, including all reasons for contesting:
  - (A) that the facts alleged in the order of permit suspension or revocation constitute a pattern of violations;
  - (B) the willfulness of the violations; or
  - (C) whether the violations were caused by the unwarranted failure of the permittee to comply with IC 13-4.1 before its repeal, IC 14-34, 310 IAC 12, or any permit condition required by IC 13-4.1 before its repeal, IC 14-34, or 310 IAC 12.

(2) All mitigating factors the permittee believes exist in determining the terms of the revocation or the length and terms of the suspension.

(3) Any other alleged relevant facts.

(4) Whether a hearing on the order of permit suspension or revocation is desired.

(e) If a petition for review is not filed by the permittee under subsection (d), the order of permit suspension or revocation shall become an effective and final order of the commission without a proceeding pursuant to IC 14-34-15-7(c).

(f) If a petition for review is filed by the permittee under subsection (d) and a hearing on the order is sought by the permittee, the matter shall be assigned to an administrative law judge for a proceeding under IC 4-21.5-3. The proceeding is commenced when the permittee files a petition for review under subsection (d). In a hearing conducted under this section, the director has the burden of going forward with evidence demonstrating that the permit in question should be suspended or revoked. The director satisfies the burden under this subsection upon establishing a prima facie case that:

- (1) a pattern of violations of:
  - (A) any requirements of IC 13-4.1 before its repeal, IC 14-34, 310 IAC 12; or
  - (B) any permit conditions required under IC 13-4.1 before its repeal, IC 14-34, or 310 IAC 12;exists or has existed; and
- (2) the violations were:
  - (A) willfully caused by the permittee; or
  - (B) caused by the unwarranted failure of the permittee to comply with:
    - (i) any requirements of IC 13-4.1 before its repeal, IC 14-34, 310 IAC 12; or
    - (ii) any permit conditions required under IC 13-4.1 before its repeal, IC 14-34, or 310 IAC 12.

If the director demonstrates that the permit in question should be suspended or revoked, the permittee has the ultimate burden of persuasion to show cause why the permit should not be suspended or revoked. A permittee may not challenge the fact of any violation that is the subject of a final order of the director.

(g) Upon a determination by the administrative law judge that a pattern of violations exists or has existed, the administrative law judge shall issue a nonfinal order that does the following:

(1) Considers the factors set forth in 310 IAC 12-6-6.5.

(2) Need not find that all of the violations listed in the order of permit suspension or revocation occurred, but only that sufficient violations occurred to establish a pattern.

(3) Complies with the requirements of IC 4-21.5-3-27(a) through IC 4-21.5-3-27(d) and IC 4-21.5-3-27(g). The provisions of IC 4-21.5-3-27(e) and IC 4-21.5-3-27(f) shall not apply to permit suspension or revocation procedures.

(4) May, at any time prior to the conclusion of the hearing of record, allow the parties to submit briefs and proposed findings.

(h) The nonfinal order of the administrative law judge shall be submitted to the commission:

(1) Within ten (10) days following the date that the hearing of record is closed by the administrative law judge.

(2) Within ten (10) days of the receipt of the permittee's petition for review submitted under subsection (d) if no hearing is requested by any party and the administrative law judge determines that no hearing is necessary.

(i) To preserve for judicial review an objection to the nonfinal order of an administrative law judge, a party must object to the findings and nonfinal order in writing that:

(1) identifies the bases of the objection with reasonable particularity; and

(2) is filed with the commission within fifteen (15) days after the findings and nonfinal order are served on the party.

(j) After an administrative law judge issues a nonfinal order under subsection (g), the commission shall enter a final order affirming, modifying, or vacating the order of permit suspension or revocation. The final order of the commission shall be entered within forty-five (45) days following the issuance of the nonfinal order. The final order of the commission shall be issued within:

(1) sixty (60) days following the date that the hearing of record is closed by the administrative law judge; or

(2) sixty (60) days following the administrative law judge's receipt of the permittee's petition for review filed under subsection (d) if no hearing was requested by any party and the administrative law judge determined that no hearing was necessary.

(k) If the permit is suspended, the minimum suspension period shall be three (3) working days unless the commission finds that imposition of the minimum suspension period would result in manifest injustice and would not further the purposes of:

(1) IC 13-4.1 before its repeal, IC 14-34, 310 IAC 12; or

(2) any permit condition required by IC 13-4.1 before its repeal, IC 14-34, or 310 IAC 12.

The commission may impose preconditions to be satisfied prior to the suspension being lifted.

(l) The commission shall serve the parties with a copy of the final order of the commission as provided in IC 4-21.5-3-28. Following notification under this subsection, a party may apply for judicial review under IC 4-21.5 of any matter determined under this section. (*Natural Resources Commission; 312 IAC 3-1-5; filed Feb 5, 1996, 4:00 p.m.: 19 IR 1317; filed Feb 7, 2000, 3:31 p.m.: 23 IR 1363; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

### **312 IAC 3-1-6 Amendment of pleadings**

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 6. (a) A pleading described in section 3(a) of this rule may be amended once as a matter of course before a response is filed, but not later than the initial prehearing conference or fifteen (15) days before a hearing (whichever occurs first), except by leave of the administrative law judge. Leave shall be granted where justice requires.

(b) If the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. (*Natural Resources Commission; 312 IAC 3-1-6; filed Feb 5, 1996, 4:00 p.m.: 19 IR 1319; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

### **312 IAC 3-1-7 Filing and service of documents**

Authority: IC 14-10-2-4

Affected: IC 4-21.5-3-29; IC 4-21.5-5; IC 14; IC 25

Sec. 7. (a) Documents shall be filed with the administrative law judge and served on all other parties.

(b) The filing of a document with the administrative law judge may be performed by personal delivery, first class mail,

certified mail, interoffice mail, fax, or electronic mail.

(c) If a party is represented by an attorney or another authorized representative, service of a document must be made upon the attorney or other authorized representative. If an individual appears without separate representation, service must be made upon the individual.

(d) Filing or service is complete upon deposit in the United States mail properly addressed and first class or certified post prepaid; filing or service by another method is complete upon receipt.

(e) This section does not modify the time in which a party may file objections under IC 4-21.5-3-29 or a petition for judicial review under IC 4-21.5-5. (*Natural Resources Commission; 312 IAC 3-1-7; filed Feb 5, 1996, 4:00 p.m.: 19 IR 1319; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

### **312 IAC 3-1-8 Administrative law judge; automatic change**

Authority: IC 14-10-2-4; IC 25-31.5-3-8

Affected: IC 4-21.5-4; IC 14-34; IC 25

Sec. 8. (a) In addition to the reasons stated for the disqualification of an administrative law judge under IC 4-21.5, an automatic change of administrative law judge may be obtained under this section.

(b) A party, within ten (10) days after the appointment of an administrative law judge, may file a written motion for change of the administrative law judge without specifically stating the ground for the request.

(c) The administrative law judge shall grant a motion filed under subsection (b) and promptly notify the division director. The division director shall inform the parties of the names of two (2) other individuals from whom a substitute administrative law judge may be selected. A party who is opposed to the party who filed the motion under subsection (b) may, within five (5) days, select one (1) of the individuals named by the division director to serve as the substitute administrative law judge. In the absence of a timely designation by an opposing party under this subsection, the selection shall be made by the division director.

(d) This section does not apply:

(1) where a previous change of administrative law judge has been requested under this section;

(2) to a proceeding under IC 4-21.5-4;

(3) to temporary relief under:

(A) IC 13-4.1 before its repeal; or

(B) IC 14-34;

(4) if an administrative law judge has issued a stay or entered an order for disposition of all or a portion of the proceeding;

(5) if the commission orders a suspension of the section where its continued application is impracticable as a result of inadequate staffing; or

(6) to a proceeding to review a determination by the Indiana board of licensure for professional geologists or the Indiana board of registration for soil scientists.

(*Natural Resources Commission; 312 IAC 3-1-8; filed Feb 5, 1996, 4:00 p.m.: 19 IR 1319; filed Feb 7, 2000, 3:31 p.m.: 23 IR 1365; filed Aug 29, 2002, 1:03 p.m.: 26 IR 8; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

### **312 IAC 3-1-9 Defaults, dismissals, and agreed orders**

Authority: 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 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 adjourn the proceedings or 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 conduct any action necessary to complete the proceeding without the participation of the party in default and shall 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 if it 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 administrative law judge under subsection (f).

(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*)

### **312 IAC 3-1-10 Applicability of rules of trial procedure and rules of evidence**

Authority: IC 14-10-2-4

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

Sec. 10. Unless inconsistent with IC 4-21.5 or this rule, the administrative law judge may apply the Indiana Rules of Trial Procedure or the Indiana Rules of Evidence. (*Natural Resources Commission; 312 IAC 3-1-10; filed Feb 5, 1996, 4:00 p.m.: 19 IR 1320; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

### **312 IAC 3-1-11 Conduct of hearing; separation of witnesses**

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 11. (a) An administrative law judge shall govern the conduct of a hearing and the order of proof.

(b) On a motion by a party before the commencement of testimony, the administrative law judge shall provide for a separation of witnesses. (*Natural Resources Commission; 312 IAC 3-1-11; filed Feb 5, 1996, 4:00 p.m.: 19 IR 1320; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

### **312 IAC 3-1-12 Relief under IC 4-21.5-3-28 through IC 4-21.5-3-31, including disposition of objections to nonfinal orders of administrative law judge; commission objections committee**

Authority: IC 14-10-2-4; IC 4-21.5-3-28

Affected: IC 4-21.5-1-6; IC 4-21.5-3; IC 14-10-1-1; IC 25

Sec. 12. (a) This section governs relief under IC 4-21.5-3-28 through IC 4-21.5-3-31, including the disposition of objections under IC 4-21.5-3-29.

(b) A party who wishes to contest whether objections provide reasonable particularity shall move, in writing, for a more definite statement. The administrative law judge may rule upon a motion filed under this subsection, and any other motion filed subsequent to the entry of the nonfinal order by the administrative law judge, and enter an appropriate order (including removal of an item from the commission agenda).

(c) If objections are timely filed, the objections shall be scheduled for argument before the commission committee established by subsection (d), simultaneously with the presentation by the administrative law judge of findings, conclusions, and a nonfinal

order. Unless otherwise ordered by the commission committee, argument shall not exceed ten (10) minutes for each party and twenty (20) minutes for each side.

(d) For the review of objections, and to consider any other appropriate relief under IC 4-21.5-3-28 through IC 4-21.5-3-31, the chair of the commission shall appoint a committee consisting of at least three (3) members of the commission. To the extent practicable, the chair shall include persons on the committee who are licensed to practice law in Indiana. The chair shall announce the members of the committee during the first meeting of the commission held in a calendar year. The chair may supplement or modify the membership of the committee, as needed for the efficient conduct of the proceedings, during the course of the year. A member of the committee may serve through a designate where a designate is authorized under IC 14-10-1-1. A final determination by the committee is a final agency action of the commission under IC 4-21.5-1-6.

(e) At least ten (10) days before oral argument is scheduled on objections filed under subsection (c), a nonparty may file a brief with the commission committee. A copy of the brief must be served upon each party. The brief must not be more than five (5) pages long and cannot include evidentiary matters outside the record. Unless otherwise ordered by the commission committee, a nonparty may also present oral argument for not more than five (5) minutes in support of the brief. If more than one (1) nonparty files a brief, the administrative law judge shall order the consolidation of briefs if reasonably necessary to avoid injustice to a party. A nonparty who has not filed a brief at least ten (10) days before oral argument is first scheduled on objections may participate in the argument upon the stipulation of the parties.

(f) Upon the written request of a party filed at least forty-eight (48) hours before an oral argument to consider objections, the commission committee shall provide the services of a stenographer or court reporter to record the argument.

(g) If objections are not filed, the secretary of the commission may affirm the findings and nonfinal order. The secretary has exclusive jurisdiction to affirm, remand, or submit to the commission for final action, any findings and nonfinal order subject to this subsection. No oral argument will be conducted under this subsection unless ordered by the secretary.

(h) A party may move to strike all or any part of objections, a brief by a nonparty, or another pleading under this section that the party believes does not comply with this section. The administrative law judge shall act upon a motion filed under this subsection by providing relief that is consistent with IC 4-21.5 and this rule. (*Natural Resources Commission; 312 IAC 3-1-12; filed Feb 5, 1996; 4:00 p.m.: 19 IR 1320; filed Oct 19, 1998, 10:12 a.m.: 22 IR 749; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; filed May 27, 2003, 12:30 p.m.: 26 IR 3323*)

### **312 IAC 3-1-13 Awards of litigation expenses for specified proceedings**

Authority: IC 14-10-2-4

Affected: IC 4-21.5; IC 14-22-26-5; IC 14-24-11-5; IC 14-34-15-10; IC 14-37-13-7

Sec. 13. (a) This section governs an award of costs and expenses reasonably incurred, including attorney fees, under IC 14-22-26-5, IC 14-24-11-5, IC 14-34-15-10, or IC 14-37-13-7.

(b) Except as otherwise provided in this subsection, no award for costs and expenses, including attorney fees, shall be entered under IC 14-22-26-5, IC 14-24-11-5, or IC 14-37-13-7 unless there is a finding that the person against whom the award is made acted for the purpose of harassing or embarrassing an opposing party. The department may obtain an award for reasonable expenses incurred to seize and hold an animal, without a showing of harassment or embarrassment, if the department prevails under IC 14-22-26.

(c) Costs and expenses may be awarded from the department to any person, other than a permittee or the permittee's authorized representative, who initiates or participates in a proceeding under IC 14-37-13-7, and who prevails in whole or part, achieving at least some degree of success on the merits, upon a finding that the person made a substantial contribution to a full and fair determination of the issues.

(d) Appropriate costs and expenses, including attorney fees, may be awarded under IC 14-34-15-10 only as follows:

(1) To any person from the permittee if the person initiates or participates in an administrative proceeding reviewing enforcement and a finding is made by the administrative law judge or commission that:

(A) a violation of IC 14-34, a rule adopted under IC 14-34, or a permit issued under IC 14-34 has occurred or that an imminent hazard existed; and

(B) the person made a substantial contribution to the full and fair determination of the issues.

However, a contribution of a person who did not initiate a proceeding must be separate and distinct from the contribution made by a person initiating the proceeding.



(2) To a person from the department, other than to a permittee or the permittee's authorized representative, who initiates or participates in a proceeding and who prevails in whole or in part, achieving at least some degree of success on the merits, upon a finding that the person made a substantial contribution to a full and fair determination of the issues.

(3) To a permittee from the department if the permittee demonstrates that the department issued a cessation order, a notice of violation, or an order to show cause why a permit should not be suspended or revoked in bad faith and for the purpose of harassing or embarrassing the permittee.

(4) To a permittee from a person where the permittee demonstrates that the person initiated a proceeding under IC 14-34-15 or participated in the proceeding in bad faith for the purpose of harassing or embarrassing the permittee.

(5) To the department where it demonstrates that a person sought administrative review or participated in a proceeding in bad faith and for the purpose of harassing or embarrassing the department.

(e) The commission may order a person requesting a hearing to pay the cost of the court reporter if the person requesting the hearing fails, after proper notice, to appear at the hearing.

(f) In determining what is a reasonable amount of attorney fees under subsection (b), consideration shall be given to the following factors:

(1) The nature and difficulty of the proceeding.

(2) The time, skill, and effort involved.

(3) The fee customarily charged for similar legal services.

(4) The amount involved in the proceeding.

(5) The time limitations imposed by the circumstances.

(6) For a party represented by an attorney who is a full-time, salaried employee of the party, consideration also shall be given to the prorated cost of:

(A) the salary of the attorney and clerical or paralegal employees of the party who assisted the attorney; and

(B) their employee benefits attributable to the time devoted to representation.

(g) A party who wishes to seek litigation expenses must petition the director within thirty (30) days after the party receives notice of the final agency action. A party wishing to challenge the petition for an award must deliver a written response to the director within fifteen (15) days of service of the petition. If a petition and challenge are delivered to the director under this subsection, the director shall refer the matter to the division of hearings of the commission for the conduct of a proceeding under IC 4-21.5. (*Natural Resources Commission; 312 IAC 3-1-13; filed Feb 5, 1996, 4:00 p.m.: 19 IR 1321; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

### **312 IAC 3-1-14 Court reporter; transcripts**

Authority: IC 14-10-2-4; IC 25-31.5-3-8

Affected: IC 14; IC 25-17.6; IC 25-31.5

Sec. 14. (a) The commission (or, for administrative review of orders under IC 25-17.6, the Indiana board of licensure for professional geologists or under IC 25-31.5, the Indiana board of registration for soil scientists) shall employ and engage the services of a stenographer or court reporter, either on a full-time or a part-time basis, to record evidence taken during a hearing.

(b) A party may obtain a transcript of the evidence upon a written request to the administrative law judge.

(c) The party who requests a transcript under subsection (b) shall pay the cost of the transcript:

(1) as billed by the court reporting service; or

(2) if the transcript is prepared by an employee of the commission, as determined from time to time by the commission on a per page basis after consideration of all expenses incurred in the preparation of the transcript.

(d) For a proceeding in which the commission or its administrative law judge is the ultimate authority, a court reporter who is not an employee of the commission will be engaged to record a hearing upon a written request by a party filed at least forty-eight (48) hours before a hearing. (*Natural Resources Commission; 312 IAC 3-1-14; filed Feb 5, 1996, 4:00 p.m.: 19 IR 1322; filed Oct 19, 1998, 10:12 a.m.: 22 IR 750; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1543; filed Aug 29, 2002, 1:03 p.m.: 26 IR 9; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

**312 IAC 3-1-15 Quasi-declaratory judgments**

Authority: IC 14-10-2-4

Affected: IC 4-21.5-3-5; IC 14-21-1; IC 25

Sec. 15. (a) A person may, in writing, request the department to interpret a statute or rule administered by the department as applicable to a specific factual circumstance. The request must:

- (1) describe with reasonable particularity all relevant facts;
- (2) cite with specificity the statutory or rule sections in issue;
- (3) identify any other person who may be affected by a determination of the request; and
- (4) describe the relief sought.

(b) The director, the director's delegate, or the state historic preservation review board (for an action controlled by IC 14-21-1) may, within forty-five (45) days, provide a written response to the request. The response may set forth an interpretation based upon the information provided in the request or may specify additional information needed to respond to the request. If additional information is specified, an additional forty-five (45) days is provided to the department in which to respond.

(c) If the department does not respond within the periods described in subsection (b), a general denial of the request is deemed to have resulted.

(d) If the person seeking the request under subsection (a) is aggrieved by the response of the department under subsection (b) or a general denial under subsection (c), that person may file a petition for administrative review under IC 4-21.5-3. The response constitutes a determination of status under IC 4-21.5-3-5(a)(5).

(e) This section does not excuse a person from a requirement to exhaust another administrative remedy provided by statute or rule. A person may not under this section void or modify a final order entered by the department in another proceeding. A request under this section does not toll or extend any time limitation imposed on the availability of another administrative remedy. A final order of the department under this section, which follows a contested proceeding under IC 4-21.5-3, provides the same precedent as a final order following any other contested proceeding under IC 4-21.5-3. (*Natural Resources Commission; 312 IAC 3-1-15; filed Feb 5, 1996, 4:00 p.m.: 19 IR 1322; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

**312 IAC 3-1-16 Continuances**

Authority: IC 14-10-2-4

Affected: IC 14; IC 25

Sec. 16. (a) Upon the motion of a party, a hearing may be continued by the administrative law judge and shall be continued upon a showing of good cause.

(b) A motion to continue a hearing because of the absence of evidence must be made upon affidavit and must show:

- (1) the materiality of the evidence expected to be obtained;
- (2) that due diligence has been used to obtain the evidence;
- (3) where the evidence may be; and
- (4) if based on the absence of a witness:

(A) the name and residence of the witness, if known;

(B) the probability of procuring the testimony in a reasonable time;

(C) that absence of the witness was not procured by the party nor by others at the request, knowledge, or consent of the party;

(D) what facts the party believes to be true; and

(E) that the party is unable to prove the facts by another witness whose testimony can be readily procured.

(c) If, upon the receipt of a continuance motion under subsection (b), the adverse party stipulates to the truth of the facts which the party seeking the continuance indicated could not be presented, the hearing shall not be continued. (*Natural Resources Commission; 312 IAC 3-1-16; filed Feb 5, 1996, 4:00 p.m.: 19 IR 1322; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

**312 IAC 3-1-17 Record of proceedings; adjudicative hearings generally; record of the director for surface coal mining permits**

Authority: IC 14-10-2-4

Affected: IC 4-21.5-3-14; IC 4-21.5-3-33; IC 14-34-4-6; IC 14-34-4-13; IC 25

Sec. 17. (a) The record required to be kept by an administrative law judge under IC 4-21.5-3-14 commences when a proceeding is initiated under section 3(a) of this rule and includes the items described in IC 4-21.5-3-33.

(b) In addition to subsection (a), this subsection applies to a proceeding concerning the approval or disapproval of a permit application, permit revision application, or permit renewal under IC 14-34-4-13. However, nothing in this subsection precludes the admission of testimony or exhibits that are limited to the explanation or analysis of materials included in the record before the director, or the manner in which the materials were applied, used, or relied upon in evaluating the application. Upon a timely objection made before or during a hearing, the administrative law judge shall exclude testimony or exhibits that are offered but that identify or otherwise address matters that are not part of the record before the director under IC 14-34-4-13. The record before the director includes each of the following:

(1) The permit.

(2) The permit application as defined at 310 IAC 12-0.5-10.

(3) Documentation tendered or referenced, in writing, by the applicant or an interested person for the purposes of evaluating, or used by the department to evaluate, the application.

(4) The analyses of the department in considering the application, including the expertise of the department's employees and references used to evaluate the application.

(5) Documentation received under IC 14-34-4, including the conduct and results of any informal conference or public hearing under IC 14-34-4-6.

(6) Correspondence received or generated by the department relative to the application, including letters of notification, proofs of filing newspaper advertisements, and timely written comments from an interested person.

*(Natural Resources Commission; 312 IAC 3-1-17; filed Feb 5, 1996, 4:00 p.m.: 19 IR 1323; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546)*

**312 IAC 3-1-18 Petitions for judicial review**

Authority: IC 14-10-2-4; IC 25-31.5-3-8

Affected: IC 4-21.5-5-8; IC 14; IC 25

Sec. 18. (a) A person who wishes to take judicial review of a final agency action entered under this rule shall serve copies of a petition for judicial review upon the persons described in IC 4-21.5-5-8.

(b) The copy of the petition required under IC 4-21.5-5-8(a)(1) to be served upon the ultimate authority shall be served at the following address:

Division of Hearings

Natural Resources Commission

Indiana Government Center-South

402 West Washington Street, Room W272

Indianapolis, Indiana 46204.

This address applies whether the commission or an administrative law judge is the ultimate authority.

(c) Where the department or the state historic preservation review board is a party to a proceeding under this rule, a copy of the petition required under IC 4-21.5-5-8(a)(4) to be served upon each party shall be served at the following address:

Director

Department of Natural Resources

Indiana Government Center-South

402 West Washington Street, Room W256

Indianapolis, Indiana 46204.

(d) Where the Indiana board of licensure for professional geologists is a party to a proceeding under this rule, a copy of the petition required under IC 4-21.5-5-8(a)(4) to be served upon each party shall be served at the following address:

Indiana State Geologist  
Indiana University  
611 North Walnut Grove  
Bloomington, Indiana 47405-2208.

(e) Where the Indiana board of registration for soil scientists is a party to a proceeding under this rule, a copy of the petition required under IC 4-21.5-5-8(a)(4) to be served upon each party shall be served at the following address:

Office of Indiana State Chemist  
Purdue University  
1154 Biochemistry  
West Lafayette, Indiana 47907-1154.

(f) The commission and its administrative law judge provide the forum for administrative review under this rule. Neither the commission nor the administrative law judge is a party. (*Natural Resources Commission; 312 IAC 3-1-18; filed Feb 5, 1996, 4:00 p.m.: 19 IR 1323; filed Oct 19, 1998, 10:12 a.m.: 22 IR 750; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1544; filed Aug 29, 2002, 1:03 p.m.: 26 IR 9; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

### **312 IAC 3-1-19 Modification of final agency order**

Authority: IC 14-10-2-4; IC 4-21.5-3-31

Affected: IC 4-21.5-3-29; IC 14

Sec. 19. (a) A person who wishes to seek modification of a final agency action entered under this rule must file a petition with the administrative law judge and serve a copy upon each party.

(b) Except as provided in subsection (d), the administrative law judge may modify a final agency action only where the petitioner demonstrates each of the following:

(1) The petitioner is not in default under IC 4-21.5-3.

(2) Newly discovered material evidence exists.

(3) The evidence could not, by due diligence, have been discovered and produced at the hearing in the proceeding.

(c) The administrative law judge shall limit any hearing granted under subsection (b) to the issues directly affected by the newly discovered evidence. If an administrative law judge who is not the ultimate authority conducts the rehearing, IC 4-21.5-3-29 and section 12 of this rule apply to the review of the order resulting from the rehearing.

(d) The administrative law judge may, or shall upon the agreement of all parties, modify a final agency action to correct a clerical mistake or other error resulting from oversight or omission. (*Natural Resources Commission; 312 IAC 3-1-19; filed Jan 23, 2001, 9:50 a.m.: 24 IR 1613; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

### **312 IAC 3-1-20 Remand following judicial review or appeal**

Authority: IC 14-10-2-4; IC 4-21.5-3-31

Affected: IC 4-21.5-3-29; IC 14

Sec. 20. (a) Except as provided in subsection (b), upon remand following judicial review or appeal, the administrative law judge who previously conducted the proceeding shall resume jurisdiction.

(b) If the administrative law judge who previously conducted the proceeding is unavailable or declines to resume jurisdiction, the division director shall appoint a substitute administrative law judge as soon as practicable.

(c) If the administrative law judge is not the ultimate authority, IC 4-21.5-3-29 and section 12 of this rule apply. (*Natural Resources Commission; 312 IAC 3-1-20; filed Jan 23, 2001, 9:50 a.m.: 24 IR 1613; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

## **ARTICLE 4. LAW ENFORCEMENT**

### **Rule 1. Definitions**

**312 IAC 4-1-1    Applicability**

Authority: IC 14-9-8-3

Affected: IC 14-9-8

Sec. 1. The definitions in this rule are in addition to those in 312 IAC 1-1 and apply throughout this article. (*Natural Resources Commission; 312 IAC 4-1-1; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3933*)

**312 IAC 4-1-2    “Chain of command” defined**

Authority: IC 14-9-8-3

Affected: IC 14-9-8

Sec. 2. “Chain of command” means the formal lines of communication going downward or upward within the organizational hierarchy through each successive level of command. (*Natural Resources Commission; 312 IAC 4-1-2; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3934*)

**312 IAC 4-1-3    “Civilian employee” defined**

Authority: IC 14-9-8-3

Affected: IC 14-9-8

Sec. 3. “Civilian employee” means an employee of the division other than a conservation officer or the division director. (*Natural Resources Commission; 312 IAC 4-1-3; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3934*)

**312 IAC 4-1-4    “Conservation officer” defined**

Authority: IC 14-9-8-3

Affected: IC 14-9-8-1; IC 35-41-1-17

Sec. 4. “Conservation officer” means a sworn officer employee of the division, as established by IC 14-9-8-1, and is a law enforcement officer under IC 35-41-1-17. (*Natural Resources Commission; 312 IAC 4-1-4; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3934*)

**312 IAC 4-1-5    “Deputy director” defined**

Authority: IC 14-9-8-3

Affected: IC 14-9-8

Sec. 5. “Deputy director” means the deputy director of resource management. (*Natural Resources Commission; 312 IAC 4-1-5; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3934*)

**312 IAC 4-1-6    “District” defined**

Authority: IC 14-9-8-3

Affected: IC 14-9-8

Sec. 6. “District” means a grouping established for the purpose of operation and administration. (*Natural Resources Commission; 312 IAC 4-1-6; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3934*)

**312 IAC 4-1-7    “Division” defined**

Authority: IC 14-9-8-3

Affected: IC 14-9-4-1; IC 14-9-8

Sec. 7. “Division” means the division of law enforcement established under IC 14-9-4-1. (*Natural Resources Commission; 312 IAC 4-1-7; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3934*)

**312 IAC 4-1-8 “Division director” defined**

Authority: IC 14-9-8-3

Affected: IC 14-9-8-6

Sec. 8. “Division director” means the director of the division appointed under IC 14-9-8-6. *(Natural Resources Commission; 312 IAC 4-1-8; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3934)*

**312 IAC 4-1-9 “Division headquarters” defined**

Authority: IC 14-9-8-3

Affected: IC 14-9-8

Sec. 9. “Division headquarters” means the permanent headquarters of the division located in the Indiana Government Center-South, 402 West Washington Street, Room W255-D, Indianapolis, Indiana 46204. *(Natural Resources Commission; 312 IAC 4-1-9; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3934)*

**312 IAC 4-1-10 “Employee” defined**

Authority: IC 14-9-8-3

Affected: IC 14-9-8

Sec. 10. “Employee” means an individual in the paid service of the division. *(Natural Resources Commission; 312 IAC 4-1-10; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3934)*

**312 IAC 4-1-11 “General order” defined**

Authority: IC 14-9-8-3

Affected: IC 14-9-8

Sec. 11. “General order” means a permanent written directive to govern the conduct of all employees that is issued with the approval of the division director, the deputy director, and the director. *(Natural Resources Commission; 312 IAC 4-1-11; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3934)*

**312 IAC 4-1-12 “Memorandum” defined**

Authority: IC 14-9-8-3

Affected: IC 14-9-8

Sec. 12. “Memorandum” means an informal written document used to clarify, inform, or inquire. A memorandum used to direct compliance or convey an order must be issued under proper functional authority. *(Natural Resources Commission; 312 IAC 4-1-12; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3934)*

**312 IAC 4-1-13 “Officer trainee” defined**

Authority: IC 14-9-8-3

Affected: IC 14-9-8

Sec. 13. “Officer trainee” means an employee who is in training to become a conservation officer. *(Natural Resources Commission; 312 IAC 4-1-13; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3934)*

**312 IAC 4-1-14 “Order” defined**

Authority: IC 14-9-8-3

Affected: IC 14-9-8

Sec. 14. Notwithstanding 312 IAC 1-1-25, “order” means a lawful verbal or written instruction or direction that may be

provided either generally or specifically. (*Natural Resources Commission; 312 IAC 4-1-14; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3934*)

**312 IAC 4-1-15 “Permanent grade” defined**

Authority: IC 14-9-8-3

Affected: IC 14-9-8-12

Sec. 15. “Permanent grade” means the status achieved after successful completion of the period of probation described under IC 14-9-8-12. (*Natural Resources Commission; 312 IAC 4-1-15; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3935*)

**312 IAC 4-1-16 “Policy” defined**

Authority: IC 14-9-8-3

Affected: IC 14-9-8

Sec. 16. “Policy” means a broad statement of division principles or general division direction with respect to employees that is intended to provide uniform understanding and application. Policy intended to direct compliance or convey an order must be issued under proper functional authority. (*Natural Resources Commission; 312 IAC 4-1-16; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3935*)

**312 IAC 4-1-17 “Probationary officer” defined**

Authority: IC 14-9-8-3

Affected: IC 14-9-8

Sec. 17. “Probationary officer” means an officer employee of the division with less than one (1) year of service. (*Natural Resources Commission; 312 IAC 4-1-17; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3935*)

**312 IAC 4-1-18 “Region” defined**

Authority: IC 14-9-8-3

Affected: IC 14-9-8

Sec. 18. “Region” means a group of districts combined for purposes of supervision. (*Natural Resources Commission; 312 IAC 4-1-18; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3935*)

**312 IAC 4-1-19 “Section” defined**

Authority: IC 14-9-8-3

Affected: IC 14-9-8

Sec. 19. “Section” means a group of services within the division that are combined for purposes of administration and supervision. (*Natural Resources Commission; 312 IAC 4-1-19; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3935*)

**312 IAC 4-1-20 “Special order” defined**

Authority: IC 14-9-8-3

Affected: IC 14-9-8

Sec. 20. “Special order” means a personnel action issued under proper authority. A special order may be either temporary or permanent. (*Natural Resources Commission; 312 IAC 4-1-20; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3935*)

**312 IAC 4-1-21 “Standard operating procedure” defined**

Authority: IC 14-9-8-3

Affected: IC 14-9-8

Sec. 21. "Standard operating procedure" means a step by step guideline issued under proper authority and designed to carry out the activities of the division. *(Natural Resources Commission; 312 IAC 4-1-21; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3935)*

**312 IAC 4-1-22 "Temporary assignment" defined**

Authority: IC 14-9-8-3

Affected: IC 14-9-8

Sec. 22. "Temporary assignment" means an assignment of less than one (1) year duration and addressed by special order. *(Natural Resources Commission; 312 IAC 4-1-22; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3935)*

**312 IAC 4-1-23 "Written directive" defined**

Authority: IC 14-9-8-3

Affected: IC 14-9-8

Sec. 23. "Written directive" means a written document used to guide or affect the performance or conduct of an employee. *(Natural Resources Commission; 312 IAC 4-1-23; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3935)*

**Rule 2. Role and Authority**

**312 IAC 4-2-1 Oath of allegiance**

Authority: IC 14-9-8-3

Affected: IC 14-9-8

Sec. 1. Each conservation officer must subsequently take and abide by an oath to uphold all laws and local ordinances and to comply with court decisions and orders of courts having jurisdiction. The form of the oath shall be as prescribed by division director. *(Natural Resources Commission; 312 IAC 4-2-1; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3935)*

**312 IAC 4-2-2 Compliance with division orders and procedures**

Authority: IC 14-9-8-3

Affected: IC 14-9-8

Sec. 2. A division employee must abide by any standard operating procedure, written directive, general order, special order, or other order issued under this article. *(Natural Resources Commission; 312 IAC 4-2-2; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3935)*

**312 IAC 4-2-3 Officer procedures and priorities**

Authority: IC 14-9-8-3

Affected: IC 14-9-8

Sec. 3. (a) The division director shall determine the following with respect to conservation officers:

(1) When legally mandated authority should be vested.

(2) When alternatives to arrest should be pursued.

(3) When sound discretion should be applied.

(b) Primary areas of law enforcement responsibility within the division are as follows:

(1) Fish and wildlife laws.

(2) Recreational boating laws.

(3) Department property rules.

(4) Investigation and reporting to the division of incidents resulting from recreational activities. Examples include accidents associated with hunting, boating, swimming, and the operation of recreational vehicles.

(5) Any other responsibility identified by the division director in a special order.

*(Natural Resources Commission; 312 IAC 4-2-3; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3935)*



**Rule 3. Organization****312 IAC 4-3-1 Organizational structure**

Authority: IC 14-9-8-3

Affected: IC 14-9-8

Sec. 1. The division director shall establish the organizational structure of the division. The division director may subdivide the division into sections and subsections with assignments as needed to carry out the work of the division and to maintain continuity of supervision. (*Natural Resources Commission; 312 IAC 4-3-1; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3936*)

**312 IAC 4-3-2 Ranks and grades**

Authority: IC 14-9-8-3

Affected: IC 14-9-8

Sec. 2. (a) This section establishes ranks and grades for conservation officers.

(b) The ranks are as follows:

(1) Colonel or division director.

(2) Lieutenant colonel.

(3) Major.

(4) Captain.

(5) Lieutenant.

(6) First sergeant.

(7) Sergeant.

(8) Corporal.

(c) The grades of conservation officers are as follows:

(1) Master officer (at least fifteen (15) years of service).

(2) Senior officer (at least ten (10) years but fewer than fifteen (15) years of service).

(3) Conservation officer.

(4) Probationary officer.

(*Natural Resources Commission; 312 IAC 4-3-2; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3936*)

**312 IAC 4-3-3 Commensurate authority**

Authority: IC 14-9-8-3

Affected: IC 14-9-8

Sec. 3. An employee has commensurate authority to carry out the responsibilities of the employee's assignment. Each employee is accountable for the use of this authority. A supervisor is accountable for the performance of an employee under the immediate control of the supervisor. (*Natural Resources Commission; 312 IAC 4-3-3; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3936*)

**312 IAC 4-3-4 Organizational components**

Authority: IC 14-9-8-3

Affected: IC 14-9-8

Sec. 4. An organizational component shall be established under the direct command of only one (1) supervisor. Each employee is accountable to only one (1) supervisor at a time. (*Natural Resources Commission; 312 IAC 4-3-4; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3936*)

**312 IAC 4-3-5 Employee responsibilities**

Authority: IC 14-9-8-3

Affected: IC 14-9-8

Sec. 5. The division director shall define employee responsibilities through the use of appropriate task analyses, job classifications, and job descriptions. This information is available to all employees. (*Natural Resources Commission; 312 IAC 4-3-5; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3936*)

**Rule 4. Direction and Discipline**

**312 IAC 4-4-1 Command and control**

Authority: IC 14-9-8-3

Affected: IC 14-9-8

Sec. 1. The division shall establish clearly each of the following:

- (1) The command authority of the division director.
- (2) The designated command during any absence of the division director.
- (3) Supervisory accountability.
- (4) The need to obey lawful orders.

(*Natural Resources Commission; 312 IAC 4-4-1; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3936*)

**312 IAC 4-4-2 Office communications**

Authority: IC 14-9-8-3

Affected: IC 14-9-8

Sec. 2. (a) To assure each supervisor is informed concerning department activities and decisions, routine matters shall be routed through the chain of command as practicable and applicable.

(b) All functions of the division shall communicate, coordinate, and cooperate to the extent necessary to maintain the efficient conduct of division business. (*Natural Resources Commission; 312 IAC 4-4-2; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3936*)

**312 IAC 4-4-3 Issuance and effectiveness of orders by the division director**

Authority: IC 14-9-8-3

Affected: IC 14-9-8

Sec. 3. (a) The division director may issue general orders, special orders, standard operating procedures, administrative procedures, and policy to assist in the implementation of this article and the function of the division.

(b) The establishment, amendments, or repeal of a general order or a special order is as follows:

- (1) Initiated upon the signature of the division director and forwarded through the deputy director to the director for review and approval.
- (2) Effective upon distribution to the employees.

(c) All written directives shall include a date of effectiveness. General orders and standard operating procedures shall also have a review date. (*Natural Resources Commission; 312 IAC 4-4-3; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3937*)

**312 IAC 4-4-4 Temporary assignments**

Authority: IC 14-9-8-3

Affected: IC 14-9-8

Sec. 4. (a) A temporary assignment may be made if the duty to be performed will be additional in nature. The division director may, with the approval of the deputy director, designate other grades, classification of ranks, or positions as temporary assignments. Temporary assignments may result in temporary increases in grade, classification of ranks, or position.

(b) The division director may, at any time, return an employee given a temporary assignment to the employee's permanent rank, grade, or position. An action by the division director under this subsection is not a demotion and does not entitle the employee to any recourse.

(c) If a position described in 312 IAC 4-3-2(b) is vacated because of illness, injury, or leave approved to a permanent officer

for at least thirty (30) days, and the division director determines the officer is unlikely to return to duty for at least thirty (30) more days, the division director may fill the vacancy with a temporary assignment. (*Natural Resources Commission; 312 IAC 4-4-4; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3937*)

**312 IAC 4-4-5 Discipline**

Authority: IC 14-9-8-3

Affected: IC 14-9-8

Sec. 5. The division director (or a person designated by the division director) may, for just cause, discharge, demote, or suspend an employee after preferring charges in writing and after the employee is afforded a predisciplinary meeting with the division director (or a person designated by the division director). The division director will normally impose discipline in a progressive manner; however, the division director shall impose the discipline that is appropriate to the seriousness of the misconduct. (*Natural Resources Commission; 312 IAC 4-4-5; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3937*)

**312 IAC 4-4-6 Review of actions by conservation officer resulting in direct pecuniary loss**

Authority: IC 14-9-8-3

Affected: IC 4-21.5-5; IC 14-9-8

Sec. 6. (a) A conservation officer whose employment is terminated or who is demoted, suspended, or otherwise incurs direct pecuniary loss as a result of a final determination by the division director, or a person designated by the division director, may seek administrative review from the commission under IC 4-21.5 and 312 IAC 3-1.

(b) The department may, through the issuance of a general order, establish a board to provide informal review of any disciplinary action. A determination that is subject to administrative review under subsection (a), and for which informal review is available under this subsection, is not a final determination until the board completes the review and makes a written report of its findings.

(c) The employment of a probationary employee may be terminated without charges being made under section 5 of this rule. A probationary employee is not entitled to a predisciplinary meeting, administrative review under subsection (a), or informal review under subsection (b).

(d) A party who is aggrieved by a final agency action of the commission may seek judicial review under IC 4-21.5-5. (*Natural Resources Commission; 312 IAC 4-4-6; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3937*)

**Rule 5. Recruitment, Selection, and Promotion**

**312 IAC 4-5-1 Nondiscrimination**

Authority: IC 14-9-8-3

Affected: IC 14-9-8

Sec. 1. No applicant for a position as an employee, and no employee, shall be discriminated against or favored with respect to the following:

- (1) Hiring.
- (2) Promotion.
- (3) Demotion.
- (4) Termination.
- (5) Tenure.
- (6) Terms.
- (7) Conditions.
- (8) Privileges of employment or any matter directly or indirectly related to employment because of one (1) of the following:
  - (A) Race.
  - (B) Color.
  - (C) Sex.

- (D) Religion.
- (E) National origin.
- (F) Ancestry.

*(Natural Resources Commission; 312 IAC 4-5-1; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3937)*

**312 IAC 4-5-2 Prerequisites for a conservation officer applicant**

Authority: IC 14-9-8-3

Affected: IC 14-9-8

Sec. 2. A person who wishes to apply to become a conservation officer must meet each of the following requirements in order to be favorably considered:

- (1) Be a United States citizen.
- (2) Possess the strength and agility needed to complete the physical conditioning and psychomotor skills requirements established by the Indiana law enforcement training board under 250 IAC 1-3.
- (3) Have achieved one (1) of the following:
  - (A) An associate degree (two (2) year program) from a college or university accredited by an organization recognized by the Council for Higher Education Accreditation (CHEA) as evidenced by a certified transcript.
  - (B) Completed at least two (2) years toward a bachelor degree (four (4) year program) from a college or university accredited by an organization recognized by CHEA as evidenced by a certified transcript.
- (4) Be at least twenty-one (21) years of age on the date of appointment.
- (5) Possess a valid driver's license to operate an automobile.
- (6) Be willing, if appointed, to reside and serve any place within Indiana as designated by the division director.
- (7) Demonstrate an ability to swim one hundred (100) yards without stopping and to tread water for at least five (5) minutes.
- (8) Successfully complete physical agility testing.
- (9) Submit to and satisfy standard psychological testing.

*(Natural Resources Commission; 312 IAC 4-5-2; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3938)*

**312 IAC 4-5-3 Additional standards established by division director**

Authority: IC 14-9-8-3

Affected: IC 14-9-8

Sec. 3. The division director shall establish additional written standards for the recruitment, selection, training, and promotion of conservation officers. *(Natural Resources Commission; 312 IAC 4-5-3; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3938)*

**312 IAC 4-5-4 Promotion of conservation officers and return to rank of division director following the conclusion of service**

Authority: IC 14-9-8-3

Affected: IC 14-9-8

Sec. 4. (a) Unless an exception is made by the division director, with the approval of the deputy director, a conservation officer is ineligible for promotion until the conservation officer completes at least three (3) years of service with the division.

(b) This section does not prevent the division, with the approval of the director, from filling a vacancy with a temporary assignment.

(c) The promotion of a conservation to any rank is made by the division director subject to the approval of the director.

(d) The appointment of the division director from within the division is considered a promotion. Upon the appointment of a succeeding director, the division director is returned to the rank or grade held before unless the division director:

- (1) is not physically able to perform the duties of the rank; or
- (2) was removed from employment for moral turpitude, a violation of law, or another just cause.

*(Natural Resources Commission; 312 IAC 4-5-4; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3938)*

**312 IAC 4-5-5 Return to service by a former conservation officer**

Authority: IC 14-9-8-3

Affected: IC 14-9-8

Sec. 5. An officer who leaves employment with the division cannot return to employment with the division except upon the fulfillment of selection criteria as established by the division director. (*Natural Resources Commission; 312 IAC 4-5-5; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3938*)

**Rule 6. Other Standards and Practices**

**312 IAC 4-6-1 Designation of division insignia, uniforms, and equipment**

Authority: IC 14-9-8-3

Affected: IC 14-9-8-15

Sec. 1. (a) The division director shall specify the division insignia and the official uniform of the conservation officers and other employees.

(b) A standard issue of equipment and uniforms shall be established by the division director under IC 14-9-8-15. (*Natural Resources Commission; 312 IAC 4-6-1; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3938*)

**312 IAC 4-6-2 Accountability of conservation officers for uniforms and equipment**

Authority: IC 14-9-8-3

Affected: IC 14-9-8-15

Sec. 2. (a) This section sets standards for the responsibility of conservation officers for uniforms and equipment.

(b) The immediate supervisor is accountable for the care, use, transfer, inventory, and security of division equipment and property issued for the use of employees in the command of the supervisor.

(c) An employee is accountable for the proper care, maintenance, use, transfer, inventory, and security of uniforms and equipment issued for the personal use of the employee.

(d) The division director may establish a board of review to assist in the determination of accountability under IC 14-9-8-15. (*Natural Resources Commission; 312 IAC 4-6-2; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3939*)

**312 IAC 4-6-3 Employee reports**

Authority: IC 14-9-8-3

Affected: IC 14-9-8

Sec. 3. An employee must submit reports to the department that are true, accurate, complete, timely, and appropriate. (*Natural Resources Commission; 312 IAC 4-6-3; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3939*)

**312 IAC 4-6-4 Employee answers to superiors**

Authority: IC 14-9-8-3

Affected: IC 14-9-8

Sec. 4. Upon the issuance of a lawful order by a superior, an employee must truthfully answer any question specifically directed, and narrowly related, to the scope of employment and operations of the division. (*Natural Resources Commission; 312 IAC 4-6-4; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3939*)

**312 IAC 4-6-5 Employee involvement in litigation**

Authority: IC 14-9-8-3

Affected: IC 14-9-8

Sec. 5. (a) An employee must immediately notify the employee's immediate superior if the employee is named as any of the following:

(1) The defendant to any felony or misdemeanor.

(2) A party to a civil action or administrative action as a result of employment with the department.

(b) A conservation officer must not appear as a witness in a civil action or an administrative action, except:

(1) upon approval of the division director; or

(2) in response to a subpoena or similar form of service.

(c) A conservation officer must notify the immediate supervisor upon filing a personal civil action resulting from a duty-related incident.

(d) An employee who is charged with felony or misdemeanor, or sued individually as a result of a duty-related incident, must notify the immediate supervisor as soon as practicable. (*Natural Resources Commission; 312 IAC 4-6-5; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3939*)

### **312 IAC 4-6-6 Insurance committee**

Authority: IC 14-9-8-3

Affected: IC 5-10-8-6; IC 14-9-8

Sec. 6. (a) The insurance committee is established to assist in the implementation of a common and unified plan of group insurance as set forth in IC 5-10-8-6. This committee shall consist of no fewer than five (5) and no more than seven (7) conservation officers.

(b) The division director shall appoint the chair of the insurance committee.

(c) The insurance committee shall keep conservation officers informed of developments concerning insurance coverage and premiums. The committee shall provide each conservation officer with a copy of the carrier's group health and dental plan. (*Natural Resources Commission; 312 IAC 4-6-6; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3939*)

## **ARTICLE 5. WATERCRAFT OPERATIONS ON PUBLIC WATERS OF INDIANA**

### **Rule 1. Applicability and Administration**

#### **312 IAC 5-1-1 Applicability of watercraft article**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14

Sec. 1. This article governs the use of any watercraft on a public water. (*Natural Resources Commission; 312 IAC 5-1-1; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2364, eff Jan 1, 2002*)

#### **312 IAC 5-1-2 Licensing functions; administrative review; addresses**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 4-21.5-1-15; IC 14

Sec. 2. (a) Unless otherwise specified, the division director (or a delegate of the division director) makes the initial determination for any license issued under this article.

(b) The address of the central office for the division is as follows:

Division of Law Enforcement

Department of Natural Resources

Indiana Government Center-South

402 West Washington Street, Room W255-D

Indianapolis, Indiana 46204

(c) The commission is the ultimate authority for the department under this article. A request to the commission for administrative review of an initial determination by the division of law enforcement must be addressed as follows:

Division of Hearings  
Natural Resources Commission  
Indiana Government Center-South  
402 West Washington Street, Room W272  
Indianapolis, Indiana 46204

*(Natural Resources Commission; 312 IAC 5-1-2; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2364, eff Jan 1, 2002)*

## **Rule 2. Definitions**

### **312 IAC 5-2-1 Applicability**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14

Sec. 1. The definitions in this rule are in addition to those in 312 IAC 1-1 and apply throughout this article. *(Natural Resources Commission; 312 IAC 5-2-1; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2364, eff Jan 1, 2002)*

### **312 IAC 5-2-2 “B-1” defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14

Sec. 2. “B-1” means a hand portable fire extinguisher suitable for extinguishing fires involving flammable liquids and greases containing one and three-fourths (1¾) gallons of foam, four (4) pounds of carbon dioxide, and two (2) pounds of dry chemicals. *(Natural Resources Commission; 312 IAC 5-2-2; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2364, eff Jan 1, 2002)*

### **312 IAC 5-2-3 “B-2” defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14

Sec. 3. “B-2” means a hand portable fire extinguisher suitable for extinguishing fires involving flammable liquids and greases containing two and one-half (2½) gallons of foam, fifteen (15) pounds of carbon dioxide, and ten (10) pounds of dry chemicals. *(Natural Resources Commission; 312 IAC 5-2-3; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2364, eff Jan 1, 2002)*

### **312 IAC 5-2-4 “Bell” defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14

Sec. 4. “Bell” means a sound signaling device made of corrosion-resistant material and designed to give a clear tone not less than one hundred ten (110) decibels at a distance of one (1) meter. The diameter of the mouth of a bell shall be not less than thirty (30) centimeters for a watercraft at least twenty (20) meters long and not less than twenty (20) centimeters for a watercraft at least twelve (12) meters but less than twenty (20) meters long. *(Natural Resources Commission; 312 IAC 5-2-4; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2364, eff Jan 1, 2002)*

### **312 IAC 5-2-5 “Boat race” defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14

Sec. 5. “Boat race” means a contest of speed, skill, or efficiency involving one (1) or more watercraft. The term includes:

- (1) practice sessions;
- (2) qualifications; and
- (3) parades;

on a public water preparatory to a contest. (*Natural Resources Commission; 312 IAC 5-2-5; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2364, eff Jan 1, 2002*)

**312 IAC 5-2-6 “Carry passengers for hire” defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14

Sec. 6. “Carry passengers for hire” means to carry or transport passengers for a passage or trip in consideration of a fare or charge. The phrase does not mean to carry or transport passengers or guests without charge or to lease or rent a watercraft to a lessee to be operated by the lessee as the lessee’s for an hour, a day, a week, or other fixed period of time. (*Natural Resources Commission; 312 IAC 5-2-6; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2365, eff Jan 1, 2002*)

**312 IAC 5-2-7 “Daytime” defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14

Sec. 7. “Daytime” means sunrise to sunset, where the times of sunrise and sunset are determined by the United States Weather Bureau. (*Natural Resources Commission; 312 IAC 5-2-7; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2365, eff Jan 1, 2002*)

**312 IAC 5-2-8 “Deck rail” defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14

Sec. 8. “Deck rail” means a guard structure along the outer edge of a watercraft deck consisting of vertical solid or tubular posts and horizontal courses made of metal tubing, wood, cable, rope, or another suitable material. (*Natural Resources Commission; 312 IAC 5-2-8; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2365, eff Jan 1, 2002*)

**312 IAC 5-2-9 “Division” defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14-9-4-1

Sec. 9. “Division”, notwithstanding 312 IAC 1-1-13, means the division of law enforcement created under IC 14-9-4-1. (*Natural Resources Commission; 312 IAC 5-2-9; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2365, eff Jan 1, 2002*)

**312 IAC 5-2-10 “Division director” defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14-9-8-6

Sec. 10. “Division director”, notwithstanding 312 IAC 1-1-14, refers to the director of the division appointed under IC 14-9-8-6. (*Natural Resources Commission; 312 IAC 5-2-10; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2365, eff Jan 1, 2002*)

**312 IAC 5-2-11 “Dockside inspection” defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14

Sec. 11. “Dockside inspection” means an examination of a watercraft while moored alongside a dock and afloat in the water so that all of the exterior above the waterline and the interior of the watercraft may be examined. (*Natural Resources Commission; 312 IAC 5-2-11; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2365, eff Jan 1, 2002*)



**312 IAC 5-2-12 “Drydock inspection” defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3  
Affected: IC 14

Sec. 12. “Drydock inspection” means an examination of a watercraft outside the water and supported so all the exterior and interior of the watercraft may be examined. (*Natural Resources Commission; 312 IAC 5-2-12; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2365, eff Jan 1, 2002*)

**312 IAC 5-2-13 “Flexible vibration hose” defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3  
Affected: IC 14

Sec. 13. “Flexible vibration hose” means nonrigid tubing that is:

- (1) noncombustible or self-extinguishing; and
- (2) not affected by the motion of the watercraft or machinery to which it is connected or attached.

(*Natural Resources Commission; 312 IAC 5-2-13; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2365, eff Jan 1, 2002*)

**312 IAC 5-2-14 “General maintenance” defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3  
Affected: IC 14

Sec. 14. “General maintenance” means drydocking or hauling out of a watercraft for painting or cleaning the hull and rudder or the changing of a propeller shaft and associated bearing. (*Natural Resources Commission; 312 IAC 5-2-14; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2365, eff Jan 1, 2002*)

**312 IAC 5-2-15 “Good marine practice and standards” defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3  
Affected: IC 14

Sec. 15. “Good marine practice and standards” means methods and ways of maintaining, operating, equipping, repairing, and restructuring a watercraft as determined by a marine inspector. In making the determination, a marine inspector shall use commonly accepted standards, including the following:

- (1) 46 CFR 1.01 through 46 CFR 552.5.
- (2) The standards of the American Boat and Yacht Council.
- (3) The standards of the Boating Industry Association.

(*Natural Resources Commission; 312 IAC 5-2-15; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2365, eff Jan 1, 2002*)

**312 IAC 5-2-16 “Graywater” defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3  
Affected: IC 14

Sec. 16. “Graywater” means galley, bath, and shower water, as well as wastewater from laboratory sinks, laundry, interior deck drains, water fountains, and shop sinks. (*Natural Resources Commission; 312 IAC 5-2-16; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2366, eff Jan 1, 2002*)

**312 IAC 5-2-17 “Idle speed” defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3  
Affected: IC 14

Sec. 17. “Idle speed” means the slowest possible speed, not exceeding five (5) miles per hour, so as to maintain steerage

whereby the wake or wash created by a watercraft is minimal. (*Natural Resources Commission; 312 IAC 5-2-17; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2366, eff Jan 1, 2002*)

**312 IAC 5-2-18 “Inland waterway” defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14

Sec. 18. “Inland waterway” means a public water that is not a navigable waterway. (*Natural Resources Commission; 312 IAC 5-2-18; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2366, eff Jan 1, 2002*)

**312 IAC 5-2-19 “Marine inspector” defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14

Sec. 19. “Marine inspector” means a department marine safety officer, a conservation officer, or another person employed by the department and trained in watercraft inspection and operator testing procedures. (*Natural Resources Commission; 312 IAC 5-2-19; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2366, eff Jan 1, 2002*)

**312 IAC 5-2-20 “Marine sanitation device” defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14

Sec. 20. “Marine sanitation device” includes any equipment for installation onboard a watercraft that is designed to receive, retain, treat, or discharge sewage, and any process to treat the sewage. (*Natural Resources Commission; 312 IAC 5-2-20; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2366, eff Jan 1, 2002*)

**312 IAC 5-2-21 “Motorboat” defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14

Sec. 21. “Motorboat” means a watercraft propelled by an internal combustion, steam, or electrical inboard or outboard motor or engine or by any mechanical means, including sailboats that are equipped with any such motor or engine when in operation (whether or not the sails are hoisted). (*Natural Resources Commission; 312 IAC 5-2-21; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2366, eff Jan 1, 2002*)

**312 IAC 5-2-22 “Navigation aid” defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14

Sec. 22. “Navigation aid” means a device external to a watercraft intended to assist in determining a position or safe course or in warning of danger or obstructions to navigation. (*Natural Resources Commission; 312 IAC 5-2-22; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2366, eff Jan 1, 2002*)

**312 IAC 5-2-23 “Navigation aid or water recreation structure” defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14

Sec. 23. “Navigation aid or water recreation structure” means any of the following:

- (1) A buoy.
- (2) A marker.

(3) A flag.

(4) A device which is used for the purpose of swimming or extending the use of water skis, water sleds, or aquaplanes. *(Natural Resources Commission; 312 IAC 5-2-23; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2366, eff Jan 1, 2002)*

**312 IAC 5-2-24 “Nighttime” defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14

Sec. 24. “Nighttime” means sunset to sunrise where times of sunrise and sunset are determined by the United States Weather Bureau. *(Natural Resources Commission; 312 IAC 5-2-24; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2366, eff Jan 1, 2002)*

**312 IAC 5-2-25 “Open boat” defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14

Sec. 25. “Open boat” means a watercraft that has engine areas, fuel tank compartments, and other spaces (other than weather enclosures) open to the atmosphere and arranged to prevent the entrapment of flammable gases in the watercraft. *(Natural Resources Commission; 312 IAC 5-2-25; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2366, eff Jan 1, 2002)*

**312 IAC 5-2-26 “Permanent structure” defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14

Sec. 26. “Permanent structure” means a structure that reasonably requires the use of machinery for installation and removal. Generally included is any structure in or over a public water that uses poured concrete, steel sheet piling, timber piling, or fill material for support. *(Natural Resources Commission; 312 IAC 5-2-26; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2367, eff Jan 1, 2002)*

**312 IAC 5-2-27 “Personal flotation device” defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14

Sec. 27. “Personal flotation device” means a device that is approved by the United States Coast Guard under 46 CFR 160. *(Natural Resources Commission; 312 IAC 5-2-27; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2367, eff Jan 1, 2002)*

**312 IAC 5-2-28 “Public freshwater lake” defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14

Sec. 28. “Public freshwater lake” has the meaning set forth in 312 IAC 11-2-17. *(Natural Resources Commission; 312 IAC 5-2-28; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2367, eff Jan 1, 2002)*

**312 IAC 5-2-29 “Public water” defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14

Sec. 29. “Public water” means every lake, river, stream, canal, ditch, and body of water that is subject to the jurisdiction of Indiana or owned or controlled by a public utility. *(Natural Resources Commission; 312 IAC 5-2-29; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2367, eff Jan 1, 2002)*

**312 IAC 5-2-30 "Recreational watercraft" defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3  
Affected: IC 14

Sec. 30. "Recreational watercraft" means a watercraft not used for carrying passengers for hire that is either:  
(1) manufactured or used primarily for noncommercial use; or  
(2) leased, rented, or chartered to another person for noncommercial use.

*(Natural Resources Commission; 312 IAC 5-2-30; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2367, eff Jan 1, 2002)*

**312 IAC 5-2-31 "Ring life buoy" defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3  
Affected: IC 14

Sec. 31. "Ring life buoy" is a Type IV personal flotation device that is shaped round or as a horse collar. *(Natural Resources Commission; 312 IAC 5-2-31; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2367, eff Jan 1, 2002)*

**312 IAC 5-2-32 "Sailboat" defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3  
Affected: IC 14

Sec. 32. "Sailboat" means a watercraft propelled primarily by sail. *(Natural Resources Commission; 312 IAC 5-2-32; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2367, eff Jan 1, 2002)*

**312 IAC 5-2-33 "Small lake" defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3  
Affected: IC 14

Sec. 33. "Small lake" means a body of public water having a surface area that does not exceed three hundred (300) acres. An adjoining channel shall not be considered in determining the surface area. Small lakes connected by a natural or manmade channel less than five hundred (500) feet wide at its narrowest point shall be considered separately in determining the surface area. *(Natural Resources Commission; 312 IAC 5-2-33; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2367, eff Jan 1, 2002)*

**312 IAC 5-2-34 "State boating law administrator" defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3  
Affected: IC 14

Sec. 34. "State boating law administrator" means a conservation officer assigned to administer boating statutes, rules, and education programs for boating safety. *(Natural Resources Commission; 312 IAC 5-2-34; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2367, eff Jan 1, 2002)*

**312 IAC 5-2-35 "Suitable material" defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3  
Affected: IC 14

Sec. 35. "Suitable material" means the marine inspector has determined an item is in keeping with good marine practice and standards. *(Natural Resources Commission; 312 IAC 5-2-35; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2367, eff Jan 1, 2002)*

**312 IAC 5-2-36 "Type I personal flotation device" defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3  
Affected: IC 14

Sec. 36. "Type I personal flotation device" means a wearable personal flotation device designed to turn most unconscious persons in the water from a face down position to a vertical or slightly backward position. The adult size device provides minimum buoyancy of twenty-two (22) pounds, and the child size provides a minimum buoyancy of eleven (11) pounds. (*Natural Resources Commission; 312 IAC 5-2-36; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2367, eff Jan 1, 2002*)

**312 IAC 5-2-37 "Type II personal flotation device" defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14

Sec. 37. "Type II personal flotation device" means a wearable personal flotation device designed to turn a person in a vertical or slightly backward position in the water, although the turning action is not as pronounced as with a Type I personal flotation device. An adult size device provides a minimum buoyancy of fifteen and one-half (15½) pounds, the medium child size provides a minimum buoyancy of eleven (11) pounds, and the infant and small child sizes provide a minimum buoyancy of seven (7) pounds. (*Natural Resources Commission; 312 IAC 5-2-37; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2367, eff Jan 1, 2002*)

**312 IAC 5-2-38 "Type III personal flotation device" defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14

Sec. 38. "Type III personal flotation device" means a wearable personal flotation device designed so the wearer can place himself or herself in a vertical or slightly backward position. A Type III personal flotation device has the same buoyancy as a Type II personal flotation device but has little or no turning ability. (*Natural Resources Commission; 312 IAC 5-2-38; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2368, eff Jan 1, 2002*)

**312 IAC 5-2-39 "Type IV personal flotation device" defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14

Sec. 39. "Type IV personal flotation device" means a personal flotation device designed to be thrown to a person in the water and grasped and held by the person until rescued. A Type IV personal flotation device is not designed to be worn. (*Natural Resources Commission; 312 IAC 5-2-39; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2368, eff Jan 1, 2002*)

**312 IAC 5-2-40 "Type V personal flotation device" defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14

Sec. 40. "Type V personal flotation device" means a personal flotation device approved by the United States Coast Guard for a restricted use. (*Natural Resources Commission; 312 IAC 5-2-40; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2368, eff Jan 1, 2002*)

**312 IAC 5-2-41 "Visible" defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14

Sec. 41. "Visible" means capable of being seen, by a person of normal vision, on a dark and clear night. (*Natural Resources Commission; 312 IAC 5-2-41; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2368, eff Jan 1, 2002*)

**312 IAC 5-2-42 "Wake or wash" defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14

Sec. 42. "Wake or wash" means a track left by a watercraft causing waves that:

- (1) disrupt other water sport activities; or
- (2) may cause injury or damage to persons, watercraft, or property.

*(Natural Resources Commission; 312 IAC 5-2-42; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2368, eff Jan 1, 2002)*

**312 IAC 5-2-43 "Water recreation structure" defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14

Sec. 43. "Water recreation structure" means a device that is used for the purpose of swimming or extending the use of water skis, water sleds, or aquaplanes. The term includes slalom courses and ski jumps. *(Natural Resources Commission; 312 IAC 5-2-43; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2368, eff Jan 1, 2002)*

**312 IAC 5-2-44 "Water ski event" defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14

Sec. 44. "Water ski event" means a contest or exhibition among water skiers. The term includes practice sessions, qualifications, and parades on a public water preparatory to the event. The term also includes a water ballet. *(Natural Resources Commission; 312 IAC 5-2-44; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2368, eff Jan 1, 2002)*

**312 IAC 5-2-45 "Watercraft" defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14

Sec. 45. "Watercraft" means any instrumentality or device in or by means of which a person may be transported upon the public waters of this state, and includes every motorboat, sailboat, rowboat, skiff, dinghy, or canoe of whatever length or size whether or not it is used to carry passengers for hire. *(Natural Resources Commission; 312 IAC 5-2-45; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2368, eff Jan 1, 2002)*

**312 IAC 5-2-46 "Waterline or shoreline" defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14

Sec. 46. "Waterline or shoreline" refers to the waterline or shoreline of a public freshwater lake as defined in 312 IAC 11-2-28. *(Natural Resources Commission; 312 IAC 5-2-46; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2368, eff Jan 1, 2002)*

**312 IAC 5-2-47 "Waters of concurrent jurisdiction" defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14

Sec. 47. "Waters of concurrent jurisdiction" refers to the following waters within Indiana:

- (1) Lake Michigan.
- (2) Ohio River.
- (3) Wabash River where it forms the boundary between Indiana and Illinois.
- (4) Great Miami River.

*(Natural Resources Commission; 312 IAC 5-2-47; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2368, eff Jan 1, 2002; filed Jul 23, 2003, 10:15 a.m.: 26 IR 3868)*

**312 IAC 5-2-48 “Weather deck” defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3  
Affected: IC 14

Sec. 48. “Weather deck” means those portions of the foredeck and afterdeck of a watercraft that are open and exposed to the weather. (*Natural Resources Commission; 312 IAC 5-2-48; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2369, eff Jan 1, 2002*)

**312 IAC 5-2-49 “Whistle” defined**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3  
Affected: IC 14

Sec. 49. “Whistle” means a sound signaling appliance capable of producing frequencies between the following limits:

- (1) One hundred thirty (130) to three hundred fifty (350) hertz for a watercraft seventy-five (75) meters long, but less than two hundred (200) meters long.
- (2) Two hundred fifty (250) to five thousand two hundred forty-five (5,245) hertz for a watercraft less than seventy-five (75) meters long.

(*Natural Resources Commission; 312 IAC 5-2-49; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2369, eff Jan 1, 2002*)

**Rule 3. Boat Races, Water Ski Events, and Major Organized Boating Activities**

**312 IAC 5-3-1 Boat races, water ski events, and major organized boating activities; applicability**

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

Sec. 1. (a) This rule governs the conduct of any boat race, water ski event, and major organized boating activity.

(b) No person shall sponsor, conduct, participate, or compete in a boat race, water ski event, or major organized boating activity upon the public waters of this state, including ice, unless a license for a boat race, water ski event, or major organized boating activity is issued by the division under this rule.

(c) A license application must be made on a department form and delivered to the central office for the division. The application shall include a description of the proposed boat race or water ski event course, capable of being marked and fixed. An application that is not filed with the division at least sixty (60) days before the proposed race or event will be denied unless the requirements of this rule are satisfied pertaining to permit review by the division and notice to interested persons. (*Natural Resources Commission; 312 IAC 5-3-1; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2369, eff Jan 1, 2002; filed May 27, 2003, 12:35 p.m.: 26 IR 3321, eff Oct 1, 2003*)

**312 IAC 5-3-2 Site inspection by a conservation officer before issuance of a license for a boat race, water ski event, or major organized boating activity**

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

Sec. 2. (a) Upon the receipt of a license application, a conservation officer shall inspect the areas that would be affected by the event.

(b) The conservation officer shall consider the following factors in reviewing the permit application:

- (1) The density of water traffic on the public water.
- (2) The physical characteristics of the public water.
- (3) The proximity of the proposed event to land owned by a person other than the license applicant.
- (4) The kinds of watercraft that would be involved.
- (5) Any other factors that are appropriate to at least one (1) of the following:
  - (A) Preventing the existence of unusual conditions or hazards.
  - (B) Promoting scientific fish, wildlife, or botanical resource management.

(C) Assisting in the protection of users.

(c) A written report of the inspection shall be submitted by the conservation officer to the division director, together with recommendations for approval, disapproval, or the placement of conditions on the license. (*Natural Resources Commission; 312 IAC 5-3-2; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2369, eff Jan 1, 2002; filed May 27, 2003, 12:35 p.m.: 26 IR 3322, eff Oct 1, 2003*)

**312 IAC 5-3-3 Public notice before the issuance of a license for a boat race, water ski event, or major organized boating activity**

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

Affected: IC 4-21.5; IC 14

Sec. 3. (a) This section establishes notification requirements before a license is issued under this rule. Subsequent to the issuance of a license by the division, IC 4-21.5 applies.

(b) At least thirty (30) days before the division can issue a license, an applicant shall provide, at its expense, notice of the license application as follows:

(1) Once in one (1) newspaper of general circulation in the county or counties where the boat race, water ski event, or major organized boating activity will occur.

(2) In person, by certified mail with return receipt requested, or by first class mail with proof of mailing, to the following:

(A) Any person who provides the division with a written request to be notified if a boat race, water ski event, or major organized boating activity permit is requested. A request under this clause is valid during the year in which it is received for the waterway named in the request.

(B) If the affected area for the boat race, water ski event, or major organized boating activity is located on a public freshwater lake or Lake Michigan, to at least one (1) of the owners of each parcel of property reasonably known to be located within two hundred (200) feet of the course.

(C) If the affected area for the boat race, water ski event, or major organized boating activity is located within a municipality, to the municipality.

(c) A notice under this section shall do the following:

(1) Provide the name and address of the applicant.

(2) Specify that the license is sought under this rule and whether the license will authorize a boat race, water ski event, or major organized boating activity.

(3) Describe or illustrate the area affected by the event and when the event will occur.

(4) Include an explanation of the options available to the persons served. These options are as follows:

(A) File a petition with the central office of the division requesting an informal hearing that is signed by at least twenty-five (25) individuals who are at least eighteen (18) years old and who reside in the county where the event will occur. A hearing under this clause is governed by 312 IAC 2-3.

(B) Request the division to notify the person in writing when an initial determination is made to issue or deny the license. Following the receipt of notice under this clause, a person may request administrative review of the determination under 312 IAC 3-1.

(*Natural Resources Commission; 312 IAC 5-3-3; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2369, eff Jan 1, 2002; filed May 27, 2003, 12:35 p.m.: 26 IR 3322, eff Oct 1, 2003*)

**312 IAC 5-3-4 General conditions on a license issued for a boat race or water ski event**

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

Affected: IC 14

Sec. 4. (a) A license issued under this rule is subject to immediate suspension by a conservation officer if severe weather or other hazardous conditions threaten public safety.

(b) A license issued under this rule terminates on the earlier of the following:

(1) The termination date set forth in the license.

(2) One hundred eighty (180) days after issuance of the license.

(*Natural Resources Commission; 312 IAC 5-3-4; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2370, eff Jan 1, 2002*)



**Rule 4. Navigation Aids and Water Recreation Structures**

**312 IAC 5-4-1 Navigation aids and water recreation structures; applicability**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3; IC 14-29-1-8

Affected: IC 14-15-3-17

Sec. 1. (a) This rule governs the placement of any navigation aid or water recreation structure.

(b) A person must comply with this rule before placing a navigation aid or water recreation structure on or along a public water. Except as provided in subsections (d) and (e), a license from the division is required for the placement of a navigation aid or water recreation structure.

(c) Except as provided in subsections (d) and (e), each navigation aid must be colored white with international orange geometric shapes. If placed on the water, a navigation aid must be a buoy.

(d) A buoy that identifies a point two hundred (200) feet from the shoreline of any lake or channel under IC 14-15-3-17 is exempted from subsection (c). This exemption does not apply to Lake Michigan or where the division determines the exemption will be contrary to safe and lawful watercraft usage.

(e) This rule does not apply to a navigation aid or water recreation structure located within one hundred fifty (150) feet from the waterline or shoreline of a public freshwater lake or to a mooring buoy. The placement of a navigation aid or water recreation structure under this subsection is governed by 312 IAC 11. A mooring buoy located on a navigable waterway is governed by 312 IAC 6. (*Natural Resources Commission; 312 IAC 5-4-1; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2370, eff Jan 1, 2002*)

**312 IAC 5-4-2 Application for a license for a navigation aid or water recreation structure; general requirements**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3; IC 14-29-1-8

Affected: IC 14

Sec. 2. An application for a license under this rule must be completed on a department form and contain information sufficient to describe the purpose for which the license is sought. The application shall include the following information:

(1) The name and address of the applicant.

(2) The name, address, and telephone number of an individual who can be contacted concerning placement, maintenance, and removal of the navigation aid or water recreation structure.

(3) A description of any navigation aid or water recreation structure to be placed under the license.

(4) The date, location, and duration of placement.

(*Natural Resources Commission; 312 IAC 5-4-2; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2370, eff Jan 1, 2002*)

**312 IAC 5-4-3 License application; additional information; notice to affected persons; consolidated applications**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3; IC 14-29-1-8

Affected: IC 14

Sec. 3. (a) In addition to the information required under section 2 of this rule, the department may require the following information to be included in an application:

(1) The name and address of any adjacent property owner, municipality, or other interested person who may be affected by placement of the navigation aid or water recreation structure.

(2) Information that will assist in determining whether issuance of the permit is likely to result in any hazard to persons, property, or the environment.

(3) Any other information deemed appropriate by the director.

(b) The department shall require an applicant to provide notice to any person that will be affected by issuance of a license.

(c) A consolidated application may be made for a license to govern all navigation aids or water recreation structures (or all navigation aids or water recreation structures of a particular type) on a specified public freshwater lake, navigable waterway, or segment of a public freshwater lake or navigable waterway. (*Natural Resources Commission; 312 IAC 5-4-3; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2370, eff Jan 1, 2002*)

**312 IAC 5-4-4 Buoy used as navigation aids; general requirements**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3; IC 14-29-1-8

Affected: IC 14

Sec. 4. (a) Except as provided in subsection (b), a buoy used as a navigation aid must be white with horizontal bands of international orange placed completely around the buoy circumference. One (1) band must be at the top of the buoy body, with a second band just above the waterline of the buoy so that both international orange bands are clearly visible to approaching vessels. The bands must be at least two (2) inches wide. The area of the buoy, which is visible between the two (2) bands, must be white and provide adequate space for the placement of geometric shapes. The buoy must be constructed of materials that are shatter-resistant and unsinkable within anticipated usage. The buoy must be anchored adequately to prevent movement by wind, current, and wave action.

(b) Lateral marks, safe water marks, isolated danger marks, and special marks shall, to the extent practicable, conform with 33 CFR 62.25 through 33 CFR 62.31. Sections 6 and 7 of this rule do not apply to this subsection. (*Natural Resources Commission; 312 IAC 5-4-4; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2371, eff Jan 1, 2002*)

**312 IAC 5-4-5 Buoy used as navigation aids on Lake Michigan; construction standards**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3; IC 14-29-1-8

Affected: IC 14

Sec. 5. A buoy used as a navigation aid on Lake Michigan must conform to the following construction standards:

- (1) The exterior diameter of the buoy is at least eight (8) inches.
- (2) The buoy is constructed of materials that are shatter-resistant and unsinkable within anticipated usage.
- (3) The buoy is anchored in a manner that is suitable for use on the waters of Lake Michigan.
- (4) Letters and numbers are placed on the regulatory marker as follows:
  - (A) Solid black.
  - (B) To enable them to be clearly visible to an approaching or passing watercraft, but not less than three (3) inches high.
  - (C) In block style and well-proportioned.

(*Natural Resources Commission; 312 IAC 5-4-5; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2371, eff Jan 1, 2002*)

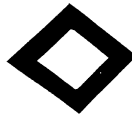
**312 IAC 5-4-6 Buoy used as navigation aids; geometric shapes and designations**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3; IC 14-29-1-8

Affected: IC 14

Sec. 6. (a) Geometric shapes must be placed on the white portion of the body of a buoy. The geometric shapes must be colored international orange. The authorized geometric shapes and meanings associated with them are as follows:

- (1) A vertical, open-faced diamond shape means danger. This shape is illustrated as follows:



- (2) A vertical, open-faced diamond shape with a cross centered in the diamond designates a zone which is excluded from usage by a watercraft or from some other designated purpose. This shape is illustrated as follows:



- (3) A circular shape designates a zone where a watercraft may be operated only if the operation complies with certain restrictions. This shape is illustrated as follows:



(4) A square or rectangular shape means information or directions are provided. This shape is illustrated as follows:



(b) If a diamond or circular geometric shape associated with the meaning of the marker is included, the meaning must be centered on the sign. If a regulatory marker consists of a square or rectangular shaped sign displayed from a structure, the sign shall be white with an international orange border. (*Natural Resources Commission; 312 IAC 5-4-6; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2371, eff Jan 1, 2002*)

**312 IAC 5-4-7 Restricted use zones**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3; IC 14-29-1-8

Affected: IC 14

Sec. 7. A buoy may be placed under section 6(a)(2) or 6(a)(3) of this rule only as provided as follows:

(1) The commission adopts a rule to establish and delineate a restricted use zone.

(2) The restricted use zone designates one (1) of the following:

(A) Watercraft are excluded from the zone.

(B) Swimming is excluded from the zone.

(C) Scuba is excluded from the zone.

(D) Watercraft and swimming are excluded from the zone.

(E) Watercraft are prohibited from towing water skis or similar objects in the zone.

(F) Watercraft are prohibited from operating in excess of idle speed in the zone.

(G) Watercraft are prohibited from operating in excess of a designated speed limit in the zone.

(*Natural Resources Commission; 312 IAC 5-4-7; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2372, eff Jan 1, 2002*)

**312 IAC 5-4-8 Tampering with a navigation aid**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3; IC 14-29-1-8

Affected: IC 14

Sec. 8. A person must not move, remove, deface, destroy, obscure, or otherwise interfere with a navigation aid placed under this rule, except at the direction of the division or the United States Coast Guard. (*Natural Resources Commission; 312 IAC 5-4-8; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2372, eff Jan 1, 2002*)

**Rule 5. Waste Disposal**

**312 IAC 5-5-1 Application**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14

Sec. 1. This rule governs the disposal or discharge of sewage, graywater, and other wastes from a watercraft that is located upon public water. (*Natural Resources Commission; 312 IAC 5-5-1; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2372, eff Jan 1, 2002*)

**312 IAC 5-5-2 Sewage disposal from a watercraft**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14

Sec. 2. (a) Except as provided in subsection (c), a person must not keep, maintain, or operate upon public water a watercraft

that is equipped with a water closet or toilet unless the water closet or toilet is equipped with a Type III marine sanitation device with the capacity to store wastes for subsequent disposal at:

- (1) an approved shoreside facility or incinerator; or
- (2) a treatment system approved by the Indiana department of environmental management according to rules adopted by the:
  - (A) solid waste management board; or
  - (B) water pollution control board.

(b) Except as provided in subsection (c), a person may not dispose of sewage accumulated in a Type III marine sanitation device or any other container on a watercraft in a manner that the sewage reaches or may reach public waters, except through a sewage disposal facility approved by the Indiana department of environmental management according to rules adopted by the:

- (1) solid waste management board; or
- (2) water pollution control board.

(c) A person who maintains or operates a watercraft, upon Lake Michigan or another waterway described in 40 CFR 140.3, that is equipped with a Type I marine sanitation device or a Type II marine sanitation, must comply with 33 CFR 159 and 40 CFR 140.

(d) The following definitions apply throughout this section:

- (1) "Sewage" means human bodily wastes.
- (2) "Type I marine sanitation device" has the meaning set forth at 40 CFR 140.3.
- (3) "Type II marine sanitation device" has the meaning set forth at 40 CFR 140.3.
- (4) "Type III marine sanitation device" has the meaning set forth at 40 CFR 140.3.

*(Natural Resources Commission; 312 IAC 5-5-2; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2372, eff Jan 1, 2002)*

### **312 IAC 5-5-3 Litter and other waste disposal from a watercraft**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14

Sec. 3. (a) Except as provided in subsection (b), a person must not dispose of litter or other waste from a watercraft maintained or operated upon public water.

(b) A person who maintains or operates a watercraft upon Lake Michigan or another waterway described in 40 CFR 1700 must not violate 40 CFR 1700 in treatment or disposal of litter or other waste from a watercraft.

(c) The following definitions apply throughout this section:

- (1) "Litter" includes the following:
  - (A) Bottles.
  - (B) Glass.
  - (C) Crockery.
  - (D) Cans.
  - (E) Scrap metal.
  - (F) Junk.
  - (G) Paper.
  - (H) Garbage.
  - (I) Rubbish.
  - (J) Plastic.
  - (K) Similar refuse.
- (2) "Other waste" includes the following:
  - (A) Filth.
  - (B) A putrid substance.
  - (C) An unwholesome substance.
  - (D) Contents of a catch basin.
  - (E) Contents of a grease trap.
  - (F) Any other graywater.

*(Natural Resources Commission; 312 IAC 5-5-3; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2372, eff Jan 1, 2002)*

**Rule 6. Specified Public Freshwater Lakes; Restrictions**

**312 IAC 5-6-1 Watercraft operation restrictions on specified public freshwater lakes; applicability**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14

Sec. 1. (a) This rule establishes zones on specified public freshwater lakes to govern the operation of watercraft for any of the following purposes:

- (1) Addressing unusual conditions or hazards.
- (2) Fish, wildlife, or botanical resource management.
- (3) The protection of users.

(b) This rule may modify or supplement 312 IAC 11.

(c) In order to be effective, a zone established under this rule must be identified on-site by buoys placed under 312 IAC 5-4. (*Natural Resources Commission; 312 IAC 5-6-1; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2373, eff Jan 1, 2002*)

**312 IAC 5-6-2 Barbee Chain of Lakes; special watercraft zones**

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

Affected: IC 14

Sec. 2. (a) This section establishes special watercraft zones on the Barbee Chain of Lakes in Kosciusko County. The Barbee Chain of Lakes includes the following:

- (1) Bantam Lake (also known as Banning Lake).
- (2) Big Barbee Lake.
- (3) Irish Lake.
- (4) Kuhn Lake.
- (5) Little Barbee Lake.
- (6) Sawmill Lake.
- (7) Sechrist Lake.

(b) Except on Big Barbee Lake, a person must not operate a watercraft in excess of ten (10) miles per hour on the Barbee Chain of Lakes. (*Natural Resources Commission; 312 IAC 5-6-2; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2373, eff Jan 1, 2002*)

**312 IAC 5-6-3 Bass Lake; special watercraft zones and pier standards**

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

Affected: IC 14-26-2

Sec. 3. (a) Notwithstanding 312 IAC 11-3-1(b)(5), a pier or boat lift is authorized on Bass Lake in Starke County without a license under IC 14-26-2 if the structure conforms with both of the following:

(1) Satisfies 312 IAC 11-3-1(b)(1) through 312 IAC 11-3-1(b)(4), 312 IAC 11-3-1(b)(7), and 312 IAC 11-3-1(b)(8).

(2) Does either of the following:

(A) Extends no more than one hundred fifty (150) feet from the waterline or shoreline and satisfies 312 IAC 11-3-1(b)(6).

(B) Extends no more than three hundred (300) feet from the waterline or shoreline and does not extend over water that is continuously more than three (3) feet deep.

(b) A person must not operate a watercraft in excess of ten (10) miles per hour within three hundred fifty (350) feet of the shoreline or waterline.

(c) A person must not operate a watercraft at a site within the swimming area adjacent to Bass Lake State Beach with:

- (1) the southwestern boundary beginning at a point on the shoreline and one hundred forty-eight (148) feet southwest of the southwestern corner of the bath house and running perpendicular to the shoreline for three hundred forty-five (345) feet;
- (2) the northeastern boundary beginning at a point on the shoreline and two hundred fifteen (215) feet northeast of the northwest corner of the bath house and running perpendicular to the shoreline for three hundred forty-five (345) feet; and

(3) the northwestern boundary formed by a line, approximately four hundred thirty-five (435) feet long, running parallel to the shoreline and terminating at the lakeward-most points of the southwestern boundary and the northeastern boundary. *(Natural Resources Commission; 312 IAC 5-6-3; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2373, eff Jan 1, 2002)*

**312 IAC 5-6-4 Indian Lakes Chain of Lakes; special watercraft zones**

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

Affected: IC 14

Sec. 4. (a) This section establishes special watercraft zones on the Indian Lakes Chain of Lakes in LaGrange County. The Indian Lakes Chain of Lakes includes the following:

- (1) Dallas Lake.
- (2) Hackenburg Lake.
- (3) Messick Lake.
- (4) Westler Lake.
- (5) Whitmer Lake.

(b) Except on Dallas Lake and Whitmer Lake, a person must not operate a watercraft in excess of ten (10) miles per hour on the Indian Lakes Chain of Lakes. *(Natural Resources Commission; 312 IAC 5-6-4; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2373, eff Jan 1, 2002)*

**312 IAC 5-6-5 Lake James; special watercraft zones**

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

Affected: IC 14

Sec. 5. A person must not operate a watercraft at either of the following sites located within Lake James in Steuben County:

- (1) Adjacent to the Pokagon Beach in Pokagon State Park with:

- (A) the southern boundary beginning at a point on the shoreline at the southern edge of the Pokagon Beach, the point being located north fifty (50) degrees west, a distance of one hundred twenty-four (124) feet from the northwest corner of the concession building;
- (B) the northern boundary beginning at a point on the shoreline five hundred (500) feet north of the point on the shoreline described in clause (A) and running perpendicular to the shoreline for one hundred fifty (150) feet; and
- (C) the western boundary formed by a line running parallel to the shoreline and terminating at the lakeward-most points of the southern boundary and the northern boundary.

- (2) Adjacent to the Potawatomi Inn Beach in Pokagon State Park with:

- (A) the western boundary beginning at a point on the shoreline at the western edge of the Potawatomi Inn Beach and running perpendicular to the shoreline for one hundred fifty (150) feet;
- (B) the eastern boundary beginning at a point on the west end of a concrete seawall in front of the boat rental and running perpendicular to the shoreline for one hundred fifty (150) feet; and
- (C) the southern boundary formed by a line running parallel to the shoreline, approximately three hundred (300) feet long, and terminating at the lakeward-most points of the western boundary and the northern boundary.

*(Natural Resources Commission; 312 IAC 5-6-5; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2374, eff Jan 1, 2002)*

**312 IAC 5-6-6 Lake Wawasee and Syracuse Lake; special watercraft zones**

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

Affected: IC 14; IC 32-19-1-1

Sec. 6. (a) This section establishes restrictions on the operation of watercraft on and between Lake Wawasee and Syracuse Lake in Kosciusko County. The coordinates used in this section are on the Indiana coordinate system of 1983, east zone, in United States Survey feet as defined in IC 32-19-1-1, hereinafter referred to as SPC.

- (b) A person must not operate a watercraft in excess of idle speed in any of the following locations:

- (1) In an area known as Johnson Bay on Lake Wawasee and more particularly described as east and north of buoys placed

along a boundary in the northeastern portion of the bay. The boundary:

(A) begins at its southernmost point with a buoy placed at SPC 2244173.23 (UTM 4585045.15) north and SPC 323786.03 (UTM 610130.52) east;

(B) continues in a northwesterly direction, including, but not limited to, buoys placed at:

(i) SPC 2244348.87 (UTM 4585097.04) north and SPC 323439.20 (UTM 610024.02) east;

(ii) SPC 2244959.54 (UTM 4585282.60) north and SPC 323331.64 (UTM 609988.38) east; and

(iii) SPC 2245188.84 (UTM 4585350.69) north and SPC 322952.76 (UTM 609871.86) east; and

(C) concludes with the northernmost buoy placed at SPC 2245460.99 (UTM 4585431.22) north and SPC 322442.69 (UTM 609715.17) east.

(2) In an area known as Johnson Bay on Lake Wawasee and more particularly described as west of buoys forming a boundary in the western portion of the bay. The boundary:

(A) begins at its southernmost point with a buoy placed at SPC 2242916.32 (UTM 4584652.79) north and SPC 321786.06 (UTM 609527.03) east;

(B) continues north, including, but not limited to, buoys placed at:

(i) SPC 2243201.20 (UTM 4584740.07) north and SPC 321889.40 (UTM 609557.18) east; and

(ii) SPC 2243594.17 (UTM 4584859.59) north and SPC 321842.69 (UTM 609541.11) east; and

(C) concludes with the northernmost buoy placed at SPC 2243903.36 (UTM 4584954.47) north and SPC 321985.50 (UTM 609583.17) east.

(3) In the area known as Conklin Bay on Lake Wawasee and more particularly described as southeasterly, southerly, and southwesterly of buoys placed along a boundary in the central portion of the bay. The boundary:

(A) begins at its westerly end with a buoy placed at SPC 2242788.82 (UTM 4584545.75) north and SPC 307249.00 (UTM 605098.25) east;

(B) continues in a southeasterly, easterly, and northeasterly direction, including, but not limited to, buoys placed at:

(i) SPC 2242718.09 (UTM 4584524.69) north and SPC 307352.68 (UTM 605130.17) east;

(ii) SPC 2242565.10 (UTM 4584478.30) north and SPC 307401.91 (UTM 605145.89) east;

(iii) SPC 2242497.48 (UTM 4584458.00) north and SPC 307465.11 (UTM 605165.46) east;

(iv) SPC 2242521.75 (UTM 4584465.68) north and SPC 307526.81 (UTM 605184.15) east;

(v) SPC 2242525.13 (UTM 4584466.99) north and SPC 307585.84 (UTM 605202.12) east;

(vi) SPC 2242474.80 (UTM 4584452.16) north and SPC 307694.90 (UTM 605235.58) east;

(vii) SPC 2242498.23 (UTM 4584459.61) north and SPC 307759.98 (UTM 605255.30) east;

(viii) SPC 2242567.77 (UTM 4584481.05) north and SPC 307813.45 (UTM 605271.27) east;

(ix) SPC 2242659.47 (UTM 4584509.22) north and SPC 307862.22 (UTM 605285.70) east;

(x) SPC 2242742.59 (UTM 4584534.73) north and SPC 307901.47 (UTM 605297.27) east;

(xi) SPC 2242822.16 (UTM 4584559.27) north and SPC 307964.83 (UTM 605316.20) east;

(xii) SPC 2242840.80 (UTM 4584565.12) north and SPC 308000.91 (UTM 605327.11) east;

(xiii) SPC 2242834.77 (UTM 4584563.55) north and SPC 308059.05 (UTM 605344.85) east;

(xiv) SPC 2242805.66 (UTM 4584554.98) north and SPC 308123.49 (UTM 605364.62) east;

(xv) SPC 2242814.46 (UTM 4584558.09) north and SPC 308213.15 (UTM 605391.90) east;

(xvi) SPC 2242828.98 (UTM 4584562.98) north and SPC 308312.37 (UTM 605422.06) east;

(xvii) SPC 2242887.79 (UTM 4584581.21) north and SPC 308379.96 (UTM 605442.38) east;

(xviii) SPC 2242958.99 (UTM 4584602.94) north and SPC 308387.17 (UTM 605444.24) east;

(xix) SPC 2243095.28 (UTM 4584644.80) north and SPC 308458.38 (UTM 605465.30) east;

(xx) SPC 2243116.97 (UTM 4584651.58) north and SPC 308495.63 (UTM 605476.55) east;

(xxi) SPC 2243128.91 (UTM 4584655.80) north and SPC 308619.23 (UTM 605514.15) east;

(xxii) SPC 2243071.61 (UTM 4584638.69) north and SPC 308693.71 (UTM 605537.12) east;

(xxiii) SPC 2243045.71 (UTM 4584631.56) north and SPC 308854.70 (UTM 605586.29) east;

(xxiv) SPC 2243044.62 (UTM 4584631.50) north and SPC 308912.74 (UTM 605603.98) east;

(xxv) SPC 2243022.03 (UTM 4584624.84) north and SPC 308961.85 (UTM 605619.05) east;

(xxvi) SPC 2243024.71 (UTM 4584625.98) north and SPC 309030.45 (UTM 605639.94) east;

(xxvii) SPC 2242991.47 (UTM 4584616.19) north and SPC 309101.67 (UTM 605661.79) east;

- (xxviii) SPC 2242960.27 (UTM 4584607.03) north and SPC 309176.01 (UTM 605684.59) east;
- (xxix) SPC 2242952.81 (UTM 4584605.10) north and SPC 309248.88 (UTM 605706.83) east;
- (xxx) SPC 2242922.97 (UTM 4584596.21) north and SPC 309291.55 (UTM 605719.97) east;
- (xxxi) SPC 2242842.09 (UTM 4584571.77) north and SPC 309335.57 (UTM 605733.76) east;
- (xxxii) SPC 2242744.94 (UTM 4584542.60) north and SPC 309426.58 (UTM 605761.95) east;
- (xxxiii) SPC 2242709.93 (UTM 4584532.22) north and SPC 309487.98 (UTM 605780.82) east;
- (xxxiv) SPC 2242717.16 (UTM 4584534.90) north and SPC 309590.62 (UTM 605812.06) east;
- (xxxv) SPC 2242677.69 (UTM 4584523.74) north and SPC 309775.22 (UTM 605868.49) east;
- (xxxvi) SPC 2242666.43 (UTM 4584520.55) north and SPC 309826.05 (UTM 605884.03) east; and
- (xxxvii) SPC 2242691.59 (UTM 4584528.88) north and SPC 309969.02 (UTM 605927.48) east; and

(C) concludes with the easterly most buoy placed at SPC 2242703.63 (UTM 4584532.75) north and SPC 310011.72 (UTM 605940.43) east.

(4) In the area of Lake Wawasee, commonly referred to as the channel area and Mud Lake, that lies between the main body of Lake Wawasee and Syracuse Lake.

(5) In the southeastern portion of Syracuse Lake, more particularly described as east and south of buoys forming a boundary that:

(A) begins at its northernmost point with a buoy placed at SPC 2249799.53 (UTM 4586701.18) north and SPC 311364.04 (UTM 606319.19) east;

(B) continues in a southwesterly direction to include buoys placed at:

(i) SPC 2249436.77 (UTM 4586585.73) north and SPC 310315.97 (UTM 606001.55) east; and

(ii) SPC 2249156.14 (UTM 4586498.97) north and SPC 310047.98 (UTM 605921.21) east; and

(C) concludes at its southernmost point with a buoy placed at SPC 2248558.17 (UTM 4586316.32) north and SPC 309952.51 (UTM 605894.93) east.

(6) In an area commonly referred to as the north bay on Lake Wawasee, more particularly described as north of the boundary between buoys placed at:

(A) SPC 2246336.50 (UTM 4585656.83) north and SPC 313670.41 (UTM 607038.18) east; and

(B) SPC 2246294.91 (UTM 4585640.40) north and SPC 312868.18 (UTM 606793.94) east.

(c) In addition to subsection (b)(6), a person must not operate, anchor, or moor a watercraft in either of the following restricted zones located in the area commonly referred to as the north bay on Lake Wawasee:

(1) Within the rectangular shaped area bounded by buoys designating the:

(A) southwestern corner of the area at SPC 2246372.00 (UTM 4585665.57) north and SPC 313226.16 (UTM 606902.65) east;

(B) northwestern corner at SPC 2246561.00 (UTM 4585723.15) north and SPC 313224.59 (UTM 606901.28) east;

(C) northeastern corner at SPC 2246576.75 (UTM 4585729.42) north and SPC 313538.09 (UTM 606996.73) east; and

(D) southeastern corner at SPC 2246382.25 (UTM 4585670.21) north and SPC 313549.53 (UTM 607001.13) east.

(2) Within the rectangular shaped area bounded by buoys designating the southwestern corner of the:

(A) area at SPC 2246371.25 (UTM 4585664.08) north and SPC 312958.88 (UTM 606821.21) east;

(B) northwestern corner at SPC 2246558.25 (UTM 4585721.04) north and SPC 312954.19 (UTM 606818.91) east;

(C) northeastern corner at SPC 2246558.50 (UTM 4585721.75) north and SPC 313090.28 (UTM 606860.37) east; and

(D) southeastern corner at 2246374.50 (UTM 4585665.70) north and SPC 313091.94 (UTM 606861.74) east.

(d) The coordinates used in this section apply the Indiana coordinate system of 1983, east zone, in United States Survey feet as defined in IC 32-19-1-1 and here referenced as "SPC". (*Natural Resources Commission; 312 IAC 5-6-6; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2374, eff Jan 1, 2002; filed Jan 16, 2003, 10:55 a.m.: 26 IR 1900; filed Sep 9, 2003, 9:30 a.m.: 27 IR 59; errata filed May 3, 2004, 5:30 p.m.: 27 IR 2742; errata filed Jun 9, 2004, 3:40 p.m.: 27 IR 3078*)

### **312 IAC 5-6-7 Lime Lake; special watercraft zones**

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

Affected: IC 14

Sec. 7. A person must not operate a watercraft in excess of ten (10) miles per hour on Lime Lake in Steuben County. (*Natural*



*Resources Commission; 312 IAC 5-6-7; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2374, eff Jan 1, 2002)*

**312 IAC 5-6-8 Oliver Chain of Lakes; special watercraft zones**

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

Affected: IC 14

Sec. 8. (a) This section establishes special watercraft zones on the Oliver Chain of Lakes in LaGrange County. The Oliver Chain of Lakes includes the following:

(1) Martin Lake.

(2) Olin Lake.

(3) Oliver Lake.

(b) A person must not operate a watercraft in excess of ten (10) miles per hour on Martin Lake.

(c) A person must not operate a watercraft in excess of idle speed on Olin Lake. *(Natural Resources Commission; 312 IAC 5-6-8; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2374, eff Jan 1, 2002)*

**312 IAC 5-6-9 Tippecanoe Lake; special watercraft zones**

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

Affected: IC 14

Sec. 9. (a) Except as provided in subsection (b), a person must not operate a watercraft in excess of ten (10) miles per hour on Tippecanoe Lake in Kosciusko County west of the east entrance to an area known as Bellrohr Channel. Bellrohr Channel leads to a basin of Lake Tippecanoe that is sometimes referred to as Oswego Lake.

(b) Oswego Lake is exempted from subsection (a) and is controlled by 312 IAC 5-11-12. *(Natural Resources Commission; 312 IAC 5-6-9; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2374, eff Jan 1, 2002)*

**312 IAC 5-6-10 West Chain of Lakes; special watercraft zones**

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

Affected: IC 14

Sec. 10. (a) This section establishes special watercraft zones on the West Chain of Lakes in Noble County. The West Chain of Lakes includes each of the following:

(1) Jones Lake.

(2) Steinbarger Lake.

(3) Tamarack Lake.

(4) Waldron Lake.

(b) Except as provided in subsection (c), a person must not operate a watercraft in excess of ten (10) miles per hour on the West Chain of Lakes.

(c) Subsection (b) does not apply between 10 a.m. and 5 p.m. to the large basin of Waldron Lake. The large basin is bounded on the northeast by a channel to Steinbarger Lake and on the southwest by an opening into a smaller basin of Waldron Lake (defined by a line formed where the opening narrows to six hundred fifty (650) feet between opposite waterlines or shorelines). *(Natural Resources Commission; 312 IAC 5-6-10; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2374, eff Jan 1, 2002)*

**Rule 7. Specified Navigable Waterways Other Than Lake Michigan; Restrictions**

**312 IAC 5-7-1 Watercraft operation restrictions on specified navigable waterways, other than Lake Michigan; applicability**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3; IC 14-29-1-8

Affected: IC 14

Sec. 1. (a) This rule establishes zones on specified navigable waterways, other than Lake Michigan and its tributaries in Lake,

Porter, and LaPorte Counties, to govern the operation of watercraft for any of the following purposes:

- (1) Addressing unusual conditions or hazards.
- (2) Fish, wildlife, or botanical resource management.
- (3) The protection of users.
- (b) This rule may modify or supplement 312 IAC 6.

(c) In order to be effective, a zone established under this rule must be identified on-site by buoys placed under 312 IAC 5-4.  
(*Natural Resources Commission; 312 IAC 5-7-1; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2375, eff Jan 1, 2002*)

**312 IAC 5-7-2 Kankakee River; watercraft speed zones**

Authority: IC 14-15-7-3; IC 14-29-1-8  
Affected: IC 14

Sec. 2. A person must not operate a watercraft in excess of idle speed in Lake County and Newton County on the Kankakee River from the U.S. 41 bridge upstream for two (2) miles. (*Natural Resources Commission; 312 IAC 5-7-2; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2375, eff Jan 1, 2002*)

**312 IAC 5-7-3 Ohio River embayments and tributaries; Arnolds Creek in Ohio County; watercraft speed zones**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3; IC 14-29-1-8  
Affected: IC 14

Sec. 3. A person must not operate a watercraft in excess of idle speed on Arnolds Creek in Ohio County for two thousand four hundred fifty (2,450) feet upstream from the confluence of the Ohio River and Arnolds Creek. (*Natural Resources Commission; 312 IAC 5-7-3; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2375, eff Jan 1, 2002*)

**312 IAC 5-7-4 Big Oil Creek, Perry County**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3; IC 14-29-1-8  
Affected: IC 14

Sec. 4. A person must not operate a watercraft in excess of idle speed on Big Oil Creek in Perry County from buoys placed three hundred (300) feet downstream from the boat ramp for Bayou Ridge Campground to buoys placed three hundred (300) feet upstream from the boat ramp for Bayou Ridge Campground. (*Natural Resources Commission; 312 IAC 5-7-4; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2375, eff Jan 1, 2002*)

**312 IAC 5-7-5 Ohio River embayments and tributaries; Bryant Creek and Turtle Creek in Switzerland County; watercraft speed zones**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3; IC 14-29-1-8  
Affected: IC 14

Sec. 5. A person must not operate a watercraft in excess of idle speed for the following embayments and tributaries of the Ohio River located in Switzerland County:

- (1) On Bryant Creek within two hundred (200) feet of a boat launching ramp located in the northeast quarter of the northwest quarter of the northwest quarter of section 34, township 2 north, range 1 west as designated by buoys placed by the department.
- (2) On Turtle Creek for one thousand one hundred fifty (1,150) feet upstream from the confluence of the Ohio River and Turtle Creek.

(*Natural Resources Commission; 312 IAC 5-7-5; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2375, eff Jan 1, 2002*)

**312 IAC 5-7-6 Deer Creek and its tributaries, Perry County**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3; IC 14-29-1-8  
Affected: IC 14

Sec. 6. (a) A person must not operate a watercraft on Deer Creek or its tributaries in Perry County in excess of twenty (20) miles per hour.

(b) In addition to the restrictions established under subsection (a), a person must not operate a watercraft in excess of idle speed:

(1) on Deer Creek:

(A) from its mouth on the Ohio River to buoys placed six hundred (600) feet upstream from the confluence of Deer Creek with Little Deer Creek; or

(B) between buoys placed three hundred (300) feet downstream and three hundred (300) feet upstream of the State Road 66 bridge in section 5, township 7 south, range 2 west; and

(2) on Little Deer Creek to buoys placed three hundred (300) feet upstream from the confluence of Deer Creek with Little Deer Creek.

*(Natural Resources Commission; 312 IAC 5-7-6; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2375, eff Jan 1, 2002)*

**312 IAC 5-7-7 Ohio River embayments and tributaries; Fourteenmile Creek in Clark County; watercraft operation zone**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3; IC 14-29-1-8

Affected: IC 14

Sec. 7. (a) Except as provided in subsection (b), a person must not operate a watercraft that is being propelled by an engine or motor on Fourteenmile Creek upstream from the confluence of the Ohio River to the Charlestown-Bethlehem Road (Old Highway 62) bridge.

(b) A person is exempted from subsection (a) if the person operates a watercraft that is being propelled by an electric motor.

*(Natural Resources Commission; 312 IAC 5-7-7; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2376, eff Jan 1, 2002)*

**312 IAC 5-7-8 Ohio River embayments and tributaries; Grants Creek in Ohio County and Switzerland County; watercraft speed zones**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3; IC 14-29-1-8

Affected: IC 14

Sec. 8. A person must not operate a watercraft in excess of idle speed on Grants Creek in Ohio County and Switzerland County for four thousand five hundred seventy-five (4,575) feet upstream from buoys placed by the department within the northeast quarter of the southeast quarter of the northeast quarter in section 28, township 3 north, range 1 west. *(Natural Resources Commission; 312 IAC 5-7-8; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2376, eff Jan 1, 2002)*

**312 IAC 5-7-9 Ohio River embayments and tributaries; Indian-Kentuck Creek in Jefferson County; watercraft speed zones**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3; IC 14-29-1-8

Affected: IC 14

Sec. 9. A person must not operate a watercraft in excess of idle speed on Indian-Kentuck Creek in Jefferson County from the State Road 56 bridge upstream for three thousand two hundred (3,200) feet. *(Natural Resources Commission; 312 IAC 5-7-9; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2376, eff Jan 1, 2002)*

**312 IAC 5-7-10 Ohio River embayments and tributaries; Laughery Creek in Dearborn County and Ohio County; watercraft speed zones**

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-29-1-8

Affected: IC 14

Sec. 10. A person must not operate a watercraft in excess of idle speed on Laughery Creek in Dearborn County and Ohio County within either of the following zones:

(1) Beginning at Old State Road 56 then downstream to the confluence of the Ohio River and Laughery Creek.

(2) Beginning sixteen thousand five hundred (16,500) feet upstream of the confluence of the Ohio River and Laughery Creek then downstream to the western boundary of section 9, township 4 north, range 1 west.

*(Natural Resources Commission; 312 IAC 5-7-10; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2376, eff Jan 1, 2002)*

**312 IAC 5-7-11 Millstone Creek and Kelly Hollow, Perry County**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3; IC 14-29-1-8

Affected: IC 14

Sec. 11. A person must not operate a watercraft in excess of idle speed on Millstone Creek or on the waters of Kelly Hollow in Perry County. *(Natural Resources Commission; 312 IAC 5-7-11; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2376, eff Jan 1, 2002)*

**312 IAC 5-7-12 Ohio River embayments and tributaries; Tanners, Wilson, North Hogan, and South Hogan Creeks in Dearborn County; watercraft speed zones**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3; IC 14-29-1-8

Affected: IC 14

Sec. 12. A person must not operate a watercraft in excess of idle speed for the following embayments and tributaries of the Ohio River located in Dearborn County:

(1) On Tanners Creek for one thousand four hundred (1,400) feet upstream from buoys placed by the department in the southeast quarter of the northwest quarter of the southwest quarter of section 16, township 5 north, range 1 west.

(2) On Wilson Creek for two thousand two hundred (2,200) feet upstream from the confluence of the Ohio River and Wilson Creek.

(3) On North Hogan Creek for eight hundred (800) feet upstream from buoys placed by the department in the northwest quarter of the northwest quarter of the northeast quarter of section 32, township 5 north, range 1 west.

(4) On South Hogan Creek for one thousand nine hundred (1,900) feet upstream from buoys placed by the department in the northwest quarter of the northwest quarter of the northeast quarter of section 32, township 5 north, range 1 west.

*(Natural Resources Commission; 312 IAC 5-7-12; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2376, eff Jan 1, 2002)*

**312 IAC 5-7-13 St. Joseph River in St. Joseph County; watercraft speed restrictions**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3; IC 14-29-1-8

Affected: IC 14

Sec. 13. (a) This section establishes special watercraft restrictions on the St. Joseph River in St. Joseph County.

(b) No person may operate a watercraft upon the St. Joseph River in St. Joseph County within a zone that lies between the Twin Branch Hydroelectric Dam and the western boundary of the zone. More particularly, the western boundary zone begins at the point that is located on the northern shore of the St. Joseph River that lies three hundred (300) feet from the nearest point of the Twin Branch Hydroelectric Dam. The line then runs parallel to the northern spillway and tainter gates of the dam for two hundred sixty (260) feet. The boundary line then turns one hundred twenty (120) degrees to the southeast and runs in a straight line for approximately two hundred sixty (260) feet to a point that is no closer than fifty (50) feet from the nearest point of the powerhouse of the dam. The boundary line then runs parallel to the powerhouse and ends at the south shore of the St. Joseph River. *(Natural Resources Commission; 312 IAC 5-7-13; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2377, eff Jan 1, 2002)*

**312 IAC 5-7-14 Tippecanoe River in White County and Carroll County; watercraft speed restrictions**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3; IC 14-29-1-8

Affected: IC 14

Sec. 14. (a) This section governs the operation of watercraft on the Tippecanoe River in White County and Carroll County. Included are Lake Shafer, Lake Freeman, the navigable portions of Big Monon Creek, and their embayments.

(b) A person must not operate a watercraft at greater than idle speed on any of the following:

(1) The Tippecanoe River beginning at the Washington Street Bridge (U.S. Highway 24) located in Monticello and extending north to a water control structure known as the Norway Dam.

(2) The Tippecanoe River beginning at the Washington Street Bridge and extending south for ten thousand (10,000) feet. However, within a channel marked with buoys (placed by the department), a person may operate a watercraft at a speed not to exceed thirty (30) miles per hour, if the person does not tow a water ski, a water sled, a similar object, or a person.

(3) On an embayment of Lake Shafer formed by Timmon's Ditch (and sometimes referred to as Kean's Bay). The idle speed zone begins immediately east of a line running north and south at the mouth of Kean's Bay on the main body of Lake Shafer.

(4) On Big Monon Creek west of the bridge for Lake Shafer Drive.

(c) A person must not operate a watercraft in excess of twenty (20) miles per hour on an embayment of Lake Freeman formed by Snow Ditch and located northwest of the Oakdale Dam. The restricted zone shall be west of markers placed as follows:

(1) A monument shall be placed on the southeasterly most point of Clark Island in the mouth of the Snow Ditch Embayment and used as a turning point for the zone.

(2) The zone shall be marked with buoys in the water and a terrestrial marker on the island and on the western shore.

(3) North of Clark Island, the line shall be placed in a due northerly direction.

(4) South of Clark Island, the line shall angle southwesterly to the west shore where it will be marked by a monument placed at a thirty (30) degree angle from the monument on Clark Island.

*(Natural Resources Commission; 312 IAC 5-7-14; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2377, eff Jan 1, 2002)*

### **312 IAC 5-7-15 White River (West Fork); watercraft speed restrictions**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3; IC 14-29-1-8

Affected: IC 14

Sec. 15. Watercraft restrictions are established on the west fork of the White River and its embayments in Marion County as follows:

(1) A person must not operate a watercraft in excess of idle speed within the channel that connects the embayment at the Landings Apartments to the White River.

(2) A person must not operate a motorboat from the Indianapolis Water Company's low-head dam upstream to the 82nd Street Bridge, if the electronic measuring device of the United States Geological Survey (located at the 82nd Street Bridge) registers at least eleven (11) feet. This elevation is seven hundred twenty-one and ninety-four hundredths (721.94) feet above mean sea level.

*(Natural Resources Commission; 312 IAC 5-7-15; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2377, eff Jan 1, 2002)*

## **Rule 8. Lake Michigan; Restrictions**

### **312 IAC 5-8-1 Watercraft operation restrictions on Lake Michigan and its navigable tributaries in Lake, Porter, and LaPorte Counties; applicability**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3; IC 14-29-1-8

Affected: IC 14

Sec. 1. (a) This rule establishes zones on Lake Michigan and its tributaries in Lake, Porter, and LaPorte Counties to govern the operation of watercraft for any of the following purposes:

(1) Addressing unusual conditions or hazards.

(2) Fish, wildlife, or botanical resource management.

(3) The protection of users.

(b) This rule may modify or supplement 312 IAC 6.

(c) In order to be effective, a zone established under this rule must be identified on-site by buoys placed under 312 IAC 5-4.

*(Natural Resources Commission; 312 IAC 5-8-1; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2377, eff Jan 1, 2002)*

**312 IAC 5-8-2 Lake County waters of Lake Michigan; watercraft restrictions**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3; IC 14-29-1-8

Affected: IC 14

Sec. 2. A person must not operate a watercraft in the following Lake County zones on Lake Michigan:

(1) Near Hammond, adjacent to lands managed by the Hammond Department of Parks and Recreation, at the following locations:

(A) The site known as the Lake Front Beach with:

- (i) the western boundary beginning at the Southern Electric Company breakwall and the Lake Michigan shoreline extending lakeward and perpendicular to the shoreline for two hundred (200) feet;
- (ii) the eastern boundary beginning at a point one thousand two hundred (1,200) feet from the western boundary and extending lakeward and perpendicular to the shoreline for two hundred (200) feet; and
- (iii) the northern boundary formed by a line running parallel to the shoreline and terminating at the lakeward-most points of the eastern boundary and the western boundary.

(B) The site known as the Hammond Marina Beach with:

- (i) the western boundary beginning at a point two thousand four hundred (2,400) feet east of the Southern Electric breakwall and the Lake Michigan shoreline and extending lakeward and perpendicular to the shoreline for two hundred (200) feet;
- (ii) the eastern boundary at the Hammond Marina breakwall and the Lake Michigan shoreline extending lakeward and perpendicular to the shoreline for two hundred (200) feet; and
- (iii) the northern boundary formed by a line running parallel to the shoreline terminating at the lakeward-most points of the eastern boundary and the western boundary.

(2) Near Whiting, adjacent to the Whihala Beach County Park at the following locations:

(A) The site known as the West Swimming Beach with:

- (i) the western boundary beginning at the intersection of the Whihala Beach County Park fishing pier and the Lake Michigan shoreline and extending lakeward and parallel to the fishing pier for two hundred (200) feet;
- (ii) the eastern boundary beginning at a point three hundred eighty (380) feet east of the western boundary and extending lakeward and perpendicular to the shoreline for two hundred (200) feet; and
- (iii) the northern boundary formed by a line running parallel to the shoreline and terminating at the lakeward-most points of the eastern boundary and the western boundary.

(B) The site known as the Pocket Beach with:

- (i) the western boundary beginning at a point one thousand (1,000) feet east of the Whihala Beach County Park fishing pier and extending lakeward and perpendicular to the shoreline for two hundred (200) feet;
- (ii) the eastern boundary beginning at a point five hundred ten (510) feet east of the western boundary and extending lakeward and perpendicular to the shoreline for two hundred (200) feet; and
- (iii) the northern boundary formed by a line running parallel to the shoreline and terminating at the lakeward-most points of the eastern boundary and the western boundary.

(C) The site known as the East Swimming Beach with:

- (i) the eastern boundary beginning at the intersection of the western breakwater of the boat launch facility at Whihala Beach County Park and the Lake Michigan shoreline and extending lakeward and parallel to the breakwater for two hundred (200) feet;
- (ii) the western boundary beginning at a point one thousand six hundred (1,600) feet west of the eastern boundary and extending lakeward and perpendicular to the shoreline for two hundred (200) feet; and
- (iii) the northern boundary formed by a line running parallel to the shoreline and terminating at the lakeward-most points of the eastern boundary and the western boundary.

(3) Adjacent to East Chicago, at a site known as the Jeorse Park Beach Swimming Area with:

- (A) the western boundary being formed by the breakwall of the Jeorse Park Beach front;
- (B) the eastern boundary being formed by a north-south line aligned with the rock revetment located at the East Chicago corporation boundary; and
- (C) the northern boundary being formed by a line running two hundred (200) feet from and parallel to the shoreline and

terminating at the eastern boundary and the western boundary.

(4) Adjacent to Gary, as follows:

(A) At a site known as the Lake Street Swimming Area with:

- (i) the western boundary beginning at the intersection of a line parallel to the eastern edge of the Lake Street parking lot and the Lake Michigan shoreline and extending lakeward and perpendicular to the shoreline for two hundred (200) feet;
- (ii) the eastern boundary beginning at a point seven hundred ninety-eight (798) feet east of the western boundary and extending lakeward and perpendicular to the shoreline for two hundred (200) feet; and
- (iii) the northern boundary formed by a line running parallel to the shoreline and terminating at the lakeward-most points of the western boundary and the eastern boundary.

(B) At a site known as the Marquette Park Swimming Area with:

- (i) the western boundary beginning at the intersection of a line parallel to the western edge of the Marquette Park main parking lot and the Lake Michigan shoreline and extending lakeward and perpendicular to the shoreline for two hundred (200) feet;
- (ii) the eastern boundary beginning at the intersection of the centerline of Montgomery Street and the Lake Michigan shoreline and extending lakeward and perpendicular to the shoreline for two hundred (200) feet; and
- (iii) the northern boundary formed by a line running parallel to the shoreline and terminating at the lakeward-most points of the western boundary and the eastern boundary.

*(Natural Resources Commission; 312 IAC 5-8-2; filed Mar 23, 2001, 2:50 p.m.; 24 IR 2378, eff Jan 1, 2002)*

### **312 IAC 5-8-3 Porter County waters of Lake Michigan; watercraft restrictions**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3; IC 14-29-1-8

Affected: IC 14

Sec. 3. A person must not operate a watercraft in the following Porter County zones on Lake Michigan:

(1) Near Gary and Ogden Dunes, at a site adjacent to the Indiana Dunes National Lakeshore known as the West Beach Swimming Area, with:

- (A) the western boundary beginning at the intersection of the Lake-Porter County line and the shoreline and extending two hundred (200) feet lakeward along the county line;
- (B) the eastern boundary beginning at the intersection of the Ogden Dunes pump house and the shoreline and extending lakeward and perpendicular to the shoreline for two hundred (200) feet; and
- (C) the northern boundary formed by a line running parallel to the shoreline and terminating at the lakeward-most points of the western boundary and the eastern boundary.

(2) Adjacent to Porter, at a site known as the Porter Beach Association Swimming Area, with:

- (A) the western boundary beginning at the intersection of the centerline of Dearborn Street and the shoreline and extending lakeward and perpendicular to the shoreline for a distance of two hundred (200) feet;
- (B) the eastern boundary beginning at the intersection of the western edge of State Street and the shoreline and extending perpendicular to the shoreline for two hundred (200) feet; and
- (C) the northern boundary formed by a line running parallel to the shoreline and terminating at the lakeward-most points of the western boundary and the eastern boundary.

(3) Adjacent to Porter, at a site known as the Porter Beach Swimming Area, with:

- (A) the western boundary beginning at the intersection of the western edge of State Street and the shoreline and extending lakeward and perpendicular to the shoreline for a distance of two hundred (200) feet;
- (B) the eastern boundary coextensive with the western boundary of the zone established in subdivision (4); and
- (C) the northern boundary formed by a line running parallel to the shoreline and terminating at the lakeward-most points of the western boundary and the eastern boundary.

However, excluded from this zone is a boat channel, with its western boundary beginning at the intersection of the western edge of Wabash Street and the shoreline and extending entirely through the zone lakeward and perpendicular to the shoreline, and with its eastern boundary beginning at the intersection of the eastern edge of Wabash Street and the shoreline and extending lakeward and parallel to the western boundary of the boat channel.

- (4) Adjacent to the Indiana Dunes State Park, at a site known as Indiana Dunes State Park Swimming Area, with:
  - (A) the western boundary beginning at the intersection of the western park boundary and the shoreline and extending lakeward and perpendicular to the shoreline for two hundred (200) feet;
  - (B) the eastern boundary beginning at a point one thousand eight hundred (1,800) feet east of the western boundary and extending lakeward and perpendicular to the shoreline for two hundred (200) feet; and
  - (C) the northern boundary formed by a line running parallel to the shoreline and terminating at the lakeward-most points of the western boundary and the eastern boundary.
- (5) Near Beverly Shores, at a site adjacent to the Indiana Dunes National Lakeshore and known as the Kemil Beach Swimming Area, with:
  - (A) the western boundary at the eastern boundary of the Indiana Dunes State Park;
  - (B) the eastern boundary six hundred (600) feet east of the western boundary and extending lakeward and perpendicular to the shoreline for two hundred (200) feet; and
  - (C) the northern boundary formed by a line running parallel to the shoreline and terminating at the lakeward-most points of the eastern boundary and the western boundary.
- (6) Near Beverly Shores, at a site adjacent to the Indiana Dunes National Lakeshore and known as the Central Avenue Beach Swimming Area, with:
  - (A) the western boundary beginning on the shoreline four hundred (400) feet west of the intersection of the centerline of Central Avenue and the shoreline and extending lakeward and perpendicular to the shoreline for two hundred (200) feet;
  - (B) the eastern boundary eight hundred (800) feet east of the western boundary and extending lakeward and perpendicular to the shoreline for two hundred (200) feet; and
  - (C) the northern boundary formed by a line running parallel to the shoreline and terminating at the lakeward-most points of the eastern boundary and the western boundary.

*(Natural Resources Commission; 312 IAC 5-8-3; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2379, eff Jan 1, 2002)*

**312 IAC 5-8-4 LaPorte County waters of Lake Michigan and Trail Creek; watercraft restrictions**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3; IC 14-29-1-8

Affected: IC 14

Sec. 4. (a) A person must not operate a watercraft in the following LaPorte County zones on Lake Michigan:

- (1) Adjacent to the Indiana Dunes National Lakeshore at a site known as the Mt. Baldy Beach Swimming Area, with:
  - (A) the western boundary beginning where the centerline of the north dune staircase would intersect the shoreline, if the staircase were extended due north, and extending lakeward from that point and perpendicular to the shoreline for two hundred (200) feet;
  - (B) the eastern boundary three hundred (300) feet east of the western boundary and extending lakeward and perpendicular to the shoreline for two hundred (200) feet; and
  - (C) the northern boundary formed by a line running parallel to the shoreline and terminating at the lakeward-most points of the eastern boundary and the western boundary.
- (2) Adjacent to Michigan City, at a site known as the Washington Park Swimming Area, with:
  - (A) the western boundary beginning where the eastern edge of the Washington Park parking lot would intersect the shoreline, if the parking lot were extended due north, and extending lakeward from that point and perpendicular to the shoreline for two hundred (200) feet;
  - (B) the eastern boundary beginning at a point four hundred forty (440) feet east of the western boundary and extending lakeward and perpendicular to the shoreline for two hundred (200) feet; and
  - (C) the northern boundary formed by a line running parallel to the shoreline and terminating at the lakeward-most points of the eastern boundary and the western boundary.

(b) A person shall not operate a watercraft at greater than idle speed in an unnamed channel that enters the east bank of Trail Creek approximately five hundred (500) feet upstream from the U.S. 12 bridge over Trail Creek in Michigan City. *(Natural Resources Commission; 312 IAC 5-8-4; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2380, eff Jan 1, 2002)*



**Rule 9. Specified Waters Owned by Public Utilities; Restrictions**

**312 IAC 5-9-1 Watercraft operation restrictions on specified waters owned or controlled by public utilities; applicability**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14

Sec. 1. (a) This rule establishes zones on specified waters owned or controlled by public utilities to govern the operation of watercraft for any of the following purposes:

- (1) Addressing unusual conditions or hazards.
- (2) Fish, wildlife, or botanical resource management.
- (3) The protection of users.

(b) In order to be effective, a zone established under this rule must be identified on-site by buoys placed under 312 IAC 5-4.

*(Natural Resources Commission; 312 IAC 5-9-1; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2380, eff Jan 1, 2002)*

**312 IAC 5-9-2 Geist Reservoir**

Authority: IC 14-15-7-3

Affected: IC 14-15

Sec. 2. (a) This section establishes restrictions on the operation of watercraft in Geist Reservoir in Hamilton County, Marion County, and Hancock County.

(b) A person must not operate a watercraft at greater than idle speed in any of the following locations:

- (1) East of a line seven hundred (700) feet west and parallel to the Olio Road causeway.
- (2) South of the Fall Creek Road bridge and causeway to a line one hundred (100) feet south and parallel to the western prolongation of the center line of 96th Street.
- (3) In an area known as Devil's Elbow and more particularly described as east, south, and upstream from a line extended shoreline to shoreline beginning at a point described as latitude 39° 54' 42.0021756" north and longitude 85° 58' 12.826398" west; extending east northeasterly to a point described as latitude 39° 54' 43.20567" north and 85° 58' 5.5123356" west; and extending north northeasterly to a point described as latitude 39° 54' 47.1218976" north and 85° 58' 2.3784852" west.
- (4) In an area known as the Indianapolis Yacht Club Harbor and located east and southeast of a line within the southeast quarter of section 10 and part of the southwest quarter of section 11 in township 17 north, range 5 east, being more particularly described as beginning at a point which lies one hundred eighty (180) feet southeast from the east corner of the southeast abutment of the most westerly bridge over the reservoir, which point lies nineteen (19) feet northeast of the centerline of the pavement (assumed bearing of north fifty-four (54) degrees, ten (10) minutes west) of Fall Creek Road, thence across a bay of the reservoir north fifty-three (53) degrees, seventeen (17) minutes east one thousand one hundred eighty-six (1,186) feet, to the shoreline of the reservoir.
- (5) In an area known as the Indianapolis Sailing Club Harbor, within the southeast quarter of section 10, township 17 north, range 5 east, and being more particularly described as commencing at the southeast corner of section 10, thence west along the south line of the section a distance of three thousand five hundred (3,500) feet, thence north at right angles to the south section line a distance of three hundred eighty (380) feet to the point of beginning of the description in this subdivision (assumed bearing of north twenty-three (23) degrees, thirty-seven (37) minutes west), thence a distance of seven hundred forty-six and four-tenths (746.4) feet to the north end of a retaining wall along the shoreline of the reservoir, thence following the meanders of the shoreline of the reservoir northeasterly, southerly, and southwesterly to the point of beginning.
- (6) In an area known as Mast Head Bay, within the southeast quarter and part of the northeast quarter of section 9, township 17 north, range 5 east, and more particularly described as upstream and north of Fall Creek Road and east of Geist Road.
- (7) In an area known as Cocktail Cove.
- (8) North of 96th Street and west of Olio Road in Fall Creek Township, Hamilton County. The zone is the area east of an arc formed commencing at the point where the idle zone described in subdivision (4) intersects the east shoreline, then extending northward and connecting with the chain of islands and including the embayments east of the chain of islands, to a point four thousand (4,000) feet from the point of beginning.

(c) A person must not operate a watercraft within a rectangular area within the reservoir three hundred (300) feet and parallel to the concrete crest of the dam spillway and extending one hundred (100) feet along the dam from the east and west abutments of the dam spillway. The overall dimensions of the zone created by this subsection are three hundred (300) feet by seven hundred (700) feet.

(d) No person shall anchor a watercraft or tie a watercraft to another watercraft (except to tow a watercraft from one (1) point to another) in a traveled portion of the reservoir so as to do either of the following:

(1) Interfere with the safe passage of another watercraft.

(2) Create a safety hazard to any person.

*(Natural Resources Commission; 312 IAC 5-9-2; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2380, eff Jan 1, 2002; filed May 16, 2002, 10:03 a.m.: 25 IR 3044)*

### **312 IAC 5-9-3 Morse Reservoir**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3; IC 14-29-1-8

Affected: IC 14

Sec. 3. (a) This section establishes restrictions on the operation of watercraft on Morse Reservoir in Hamilton County.

(b) A person must not operate a watercraft at greater than idle speed in any of the following locations:

(1) North of a line eight hundred (800) feet south and parallel to 236th Street.

(2) Between Carrigan Road and a line four hundred (400) feet south and parallel to Carrigan Road.

(3) East of a line extended shoreline to shoreline defined by the following points:

(A) Commencing at the northeast corner of section 23, township 19 north, range 4 east, thence one thousand five hundred (1,500) feet west along the north line of the section, thence one thousand one hundred (1,100) feet south to point 1.

(B) Again commencing at the northeast corner of section 23, township 19 north, range 4 east, thence one thousand seven hundred (1,700) feet west along the north line of the section, thence one thousand six hundred (1,600) feet south to point 2.

(4) West of Little Chicago Road.

(5) North, west, and upstream from a line extended shoreline to shoreline defined by the following points:

(A) Commencing at the southeast corner of section 22, township 19 north, range 4 east, thence west eight hundred (800) feet along the south line of the section, thence north one thousand one hundred fifty (1,150) feet to point 1.

(B) Again commencing at the southeast corner of section 22, township 19 north, range 4 east, thence west one thousand one hundred (1,100) feet along the south line of the section, thence north eight hundred fifty (850) feet to point 2.

(6) Within part of the east half of section 14, township 19 of range 4 east and part of the west half of section 13, township 19, commencing at the southeast corner of the northeast quarter of the southeast quarter of section 14 (which point is the intersection of 209th Street and Stringtown Pike); thence north zero (0) degrees, forty-eight (48) minutes, and thirty-three (33) seconds one thousand thirty-eight and ninety-hundredths (1,038.90) feet along the east line of section 14; thence north eighty-nine (89) degrees, eleven (11) minutes, and twenty-seven (27) seconds west one thousand forty-five and three-hundredths (1,045.03) feet to the point of beginning on the shoreline of Morse Reservoir on the northerly side of East Harbor section 3 addition; thence across the Morse Reservoir north twenty (20) degrees, twenty (20) minutes, and nineteen (19) seconds east two thousand one hundred twenty-nine (2,129) feet to a point on the shoreline; thence south, southeasterly, south, southwesterly, and westerly along the shoreline to the place of beginning, containing approximately thirty-nine (39) acres.

(c) A person must not operate a watercraft in the following locations:

(1) Within three hundred (300) feet and parallel to the concrete crest of the dam spillway for the reservoir.

(2) Within two hundred (200) feet from the shoreline of South Harbor beach.

(3) Within two hundred (200) feet from the shoreline of Morse Park beach.

*(Natural Resources Commission; 312 IAC 5-9-3; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2381, eff Jan 1, 2002)*

### **312 IAC 5-9-4 Watercraft operation restrictions on Prairie Creek Reservoir in Delaware County**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3; IC 14-29-1-8

Affected: IC 14

Sec. 4. (a) This section establishes special watercraft restrictions on Prairie Creek Reservoir in Delaware County.

(b) A person must not operate a watercraft in excess of twenty (20) miles per hour.

(c) A person operating a motorboat must not tow a water ski, a water sled, an aquaplane, or a similar object north of a line extending westerly from the bridge over Huffman Creek on County Road 560 East (also known as Gates Road). (*Natural Resources Commission; 312 IAC 5-9-4; filed May 16, 2002, 12:23 p.m.: 25 IR 3044*)

#### **Rule 10. Specified Lakes and Reservoirs with State or Federal Funding; Restrictions**

##### **312 IAC 5-10-1 Watercraft operation restrictions on specified lakes and reservoirs with state or federal funding; applicability**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-3-18; IC 14-15-7-3

Affected: IC 14

Sec. 1. (a) This rule establishes special watercraft zones on lakes and reservoirs financed either wholly or in part with state or federal funds.

(b) The zones established under this rule may do any of the following:

(1) Provide for the safe operation of watercraft where unusual conditions or hazards exist.

(2) Provide for the protection of any person who uses the lake or reservoir.

(3) Establish quiet areas where the use of watercraft is limited or prohibited in order to aid fish and wildlife management.

(c) A zone established under this rule is identified on-site by buoys placed under 312 IAC 5-4.

(d) A person or watercraft doing business for the department is exempt from a provision which prohibits a person or watercraft from entering a zone. (*Natural Resources Commission; 312 IAC 5-10-1; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2382, eff Jan 1, 2002*)

##### **312 IAC 5-10-2 Brookville Lake; special watercraft zones**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-3-18; IC 14-15-7-3

Affected: IC 14

Sec. 2. The following zones are established for Brookville Lake:

(1) A person must not operate a watercraft in excess of idle speed in any of the following locations:

(A) Within three hundred (300) feet from the dam.

(B) Within two hundred (200) feet from any shoreline.

(C) In any area where the distance between opposite shorelines is not more than one thousand two hundred (1,200) feet.

(D) Upstream from the east-west section line separating sections 4 and 9, township 10 north, range 2 west in Union County.

(2) From October 1 through March 1, a person must not (unless a license is issued by the department under this subdivision) operate a watercraft or enter the lake upstream from the Dunlapsville Causeway to the State Road 44 bridge and within the bounds of elevation seven hundred forty-eight (748) feet mean sea level.

(*Natural Resources Commission; 312 IAC 5-10-2; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2382, eff Jan 1, 2002*)

##### **312 IAC 5-10-3 Cagles Mill Lake; special watercraft zones**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-3-18; IC 14-15-7-3

Affected: IC 14

Sec. 3. The following zones are established for Cagles Mill Lake:

(1) A person must not operate a watercraft in excess of idle speed in any of the following locations:

(A) Within the west fork embayment, north of the south line of the north half of the northeast quarter of section 13, township 12 north, range 5 west.

(B) Within the east fork embayment, north of the south line of the north half of the northeast quarter of section 18, township 12 north, range 4 west.

(C) Upstream from the south line of the north half of the northwest quarter of section 28, township 12 north, range 4

west to the Lower Cataract Falls.

(2) A person must not operate a watercraft from the base of the Lower Cataract Falls to the boundary of the Lieber State Recreation Area (where Mill Creek is crossed by the Old Covered Bridge).

*(Natural Resources Commission; 312 IAC 5-10-3; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2382, eff Jan 1, 2002)*

**312 IAC 5-10-4 Cecil M. Harden Lake; special watercraft zones**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-3-18; IC 14-15-7-3

Affected: IC 14

Sec. 4. The following zones are established for Cecil M. Harden Lake where a person must not operate a watercraft in excess of idle speed:

(1) Upstream on Troutman's Branch north of the section lines between sections 16, 17, 20, and 21, township 15 north, range 6 west.

(2) On Raccoon Creek, upstream or north of a line commencing at a point eight hundred (800) feet north, seven hundred fifty (750) feet west of the southeast corner of section 10, township 15 north and range 6 west thence in a westerly direction to a point thirty (30) feet south of the Hollandsburg ramp.

*(Natural Resources Commission; 312 IAC 5-10-4; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2383, eff Jan 1, 2002)*

**312 IAC 5-10-5 Hardy Lake; special watercraft zones**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-3-18; IC 14-15-7-3

Affected: IC 14

Sec. 5. The following zones are established for Hardy Lake in Scott and Jefferson Counties where a person must not operate a watercraft in excess of idle speed:

(1) On an embayment.

(2) Within two hundred (200) feet of a shoreline.

(3) South of the east-west center line of section 14, township 4 north, range 7 east beginning at the spillway and extending east to the closest point of land.

(4) Upstream from a northeast-southwest line across the lake. The northerly end of the line is approximately one thousand four hundred eighty (1,480) feet west and approximately three thousand sixty (3,060) feet south of the northeast corner of the southeast quarter of the northeast quarter of section 13, township 4 north, range 7 east. The southerly end of the line is approximately six hundred twenty-five (625) feet east and approximately one thousand fifty (1,050) feet north of the southwest corner of the northwest quarter of the northeast quarter of section 24, township 4 north, range 7 east.

*(Natural Resources Commission; 312 IAC 5-10-5; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2383, eff Jan 1, 2002)*

**312 IAC 5-10-6 Huntington Lake; special watercraft zones**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-3-18; IC 14-15-7-3

Affected: IC 14

Sec. 6. The following zones are established for Huntington Lake where a person must not operate a watercraft in excess of idle speed:

(1) On an embayment.

(2) Within two hundred (200) feet of a shoreline.

(3) Within the timbered area on the north side of the lake and downstream from County Road 200E.

(4) Upstream from County Road 200E.

*(Natural Resources Commission; 312 IAC 5-10-6; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2383, eff Jan 1, 2002)*

**312 IAC 5-10-7 Mississinewa Lake; special watercraft zones**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-3-18; IC 14-15-7-3

Affected: IC 14

Sec. 7. The following zones are established for Mississinewa Lake:

(1) A person must not operate a watercraft in excess of idle speed in any of the following locations:

- (A) On any embayment.
- (B) Within two hundred (200) feet of a shoreline.
- (C) Upstream from State Road 13.

(2) From October 1 through January 15, a person must not (unless a license is issued by the department under this subdivision) either operate a watercraft or otherwise enter land or water administered by the department east of Red Bridge Road and above elevation seven hundred thirty-seven (737) feet mean sea level in sections 19 and 20, township 26 north, range 6 east, Wabash County.

*(Natural Resources Commission; 312 IAC 5-10-7; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2383, eff Jan 1, 2002)*

**312 IAC 5-10-8 Monroe Lake; special watercraft zones**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-3-18; IC 14-15-7-3

Affected: IC 14

Sec. 8. The following zones are established for Monroe Lake:

(1) A person must not operate a watercraft in excess of idle speed in any of the following locations:

- (A) On any embayment less than one thousand five hundred (1,500) feet wide at its mouth.
- (B) On the Moore Creek embayment north of the south section lines of sections 31 and 32, township 8 north, range 1 east.
- (C) Northwest of a line between the most southeasterly point of the Fairfax Beach peninsula and the most southeasterly point of the Fairfax peninsula.
- (D) East of the State Road 446 causeway.

(2) A person must not, without a license issued by the department under this subdivision, either operate a watercraft or otherwise enter the following:

- (A) Within the Middle Fork Waterfowl Resting Area from October 1 through April 1. This area extends upstream from the line between Brown County and Monroe County to the south side of the north half of the northwest quarter of section 5, township 7 north, range 2 east.
- (B) Within the North Fork Waterfowl Resting Area from October 1 through April 15. This area extends from the west side of the southeast quarter of the southeast quarter, section 22, township 8 north, range 1 east, to the south side of the southeast quarter of section 16, township 8 north, range 1 east.

*(Natural Resources Commission; 312 IAC 5-10-8; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2383, eff Jan 1, 2002)*

**312 IAC 5-10-9 Patoka Lake; special watercraft zones**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-3-18; IC 14-15-7-3

Affected: IC 14

Sec. 9. The following zones are established for Patoka Lake in Dubois County, Orange County, and Crawford County:

(1) A person must not operate a watercraft that tows a water ski, water sled, aquaplane, a similar object, or another person in any of the following locations:

- (A) South of a line commencing at a point on the south section line of section 14, township 1 south, range 3 west. The point is one thousand one hundred (1,100) feet west of the southeast corner of the section. The line continues west along the south line of section 14 to the nearest shoreline.
- (B) East of a line commencing at a point on the east section line of section 16, township 1 south, range 2 west. The point is three thousand three hundred (3,300) feet north of the southeast corner of section 16, township 1 south, range 2 west. The point is three thousand three hundred (3,300) feet north of the southeast corner of section 16. The line continues north along the east lines of sections 16 and 9 to the nearest shoreline.
- (C) South and east of a line commencing at a point which is three thousand eight hundred (3,800) feet north and four thousand five hundred (4,500) feet west of the southeast corner of section 35, township 1 south, range 2 west. The line continues north forty-seven (47) degrees east one thousand seven hundred (1,700) feet, then four (4) degrees west to

a point on the north section line of section 35.

(D) South of a line commencing at a point which is four thousand four hundred (4,400) feet north and two thousand six hundred (2,600) feet west of the southeast corner of section 34, township 1 south, range 2 west. The line continues west and parallel to the south line of section 34 to the nearest shoreline.

(2) A person must not operate a watercraft in excess of idle speed in any of the following locations:

(A) South of a line commencing at a point on the east section line of section 26, township 1 south, range 3 west. The point is three thousand (3,000) feet north of the southeast corner of section 26. The line is parallel to the south line of section 26 and continues west from the point until it intersects with the nearest shoreline.

(B) South and east of a line commencing at a point on the east section line of section 26, township 1 south, range 3 west. The point is three thousand (3,000) feet north of the southeast corner of section 26. The line continues north from the point until it intersects with the nearest shoreline.

(C) West of a line commencing at a point which is one thousand two hundred (1,200) feet north and one thousand nine hundred (1,900) feet west of the southeast corner of section 14, township 1 south, range 3 west. The line continues north from the point and parallel to the east line of section 14 until it intersects with the nearest shoreline.

(D) North of a line commencing at a point on the east section line of section 14, township 1 south, and range 3 west. The point is three thousand one hundred (3,100) feet north of the southeast corner of section 14. The line continues from the point south seventy-three (73) degrees west to the nearest shoreline.

(E) North of a line commencing at a point on the south section line of section 12, township 1 south, range 3 west. The point is five hundred (500) feet east of the southwest corner of section 12. The line continues east along the south line of section 12 to the nearest shoreline.

(F) North of a line commencing at a point located in section 18, township 1 south, range 2 west. The point is three thousand two hundred (3,200) feet north and three thousand four hundred (3,400) feet west of the southeast corner of section 18. The line continues north eighty-seven (87) degrees east for five thousand seven hundred (5,700) feet, then south seventy-five (75) degrees east to the nearest shoreline.

(G) North of a line commencing at a point located in section 16, township 1 south, range 2 west. The point is three thousand seven hundred (3,700) feet west of the southeast corner of section 16. The line continues north thirty-two (32) degrees east to the nearest shoreline.

(H) North of a line commencing at a point located in section 16, township 1 south, range 2 west. The point is four thousand nine hundred (4,900) feet north and two thousand two hundred (2,200) feet west of the southeast corner of section 16. The line continues north seventy (70) degrees east to the nearest shoreline.

(I) North of a line commencing at a point located in section 10, township 1 south, range 2 west. The point is five hundred (500) feet north and four thousand two hundred (4,200) feet west of the southeast corner of section 10. The line continues south eighty (80) degrees east to the nearest shoreline.

(J) East of the State Road 145 causeway over Patoka Lake. The causeway is located in section 14, township 1 south, range 2 west.

(K) East of a line commencing at a point which is three thousand two hundred (3,200) feet north and two thousand six hundred (2,600) feet west of the southeast corner of section 21, township 1 south, range 2 west. The line continues north and parallel to the east line of section 21 to the nearest shoreline.

(L) North and east of a line commencing at a point on the south section line of section 26, township 1 south, range 2 west. The point is three thousand two hundred (3,200) feet west of the southeast corner of section 26. The line continues north thirty (30) degrees west to the nearest shoreline.

(M) South and east of a line commencing at a point on the west section line of section 1, township 2 south, range 2 west. The point is two thousand five hundred (2,500) feet north of the southwest corner of section 1. The line continues north eighty (80) degrees east five hundred (500) feet, then north forty-eight (48) degrees east to the nearest shoreline.

(N) South of a line commencing at a point on the east section line of section 2, township 2 south, range 2 west. The point is two thousand five hundred (2,500) feet north of the southeast corner of section 2. The line continues west and parallel to the south line of section 2 to the nearest shoreline.

(O) South of the State Road 45 causeway over Patoka Lake. The causeway is located in section 3, township 2 south, range 2 west.

(P) West of a line commencing at a point which is four thousand five hundred (4,500) feet north and two thousand

seven hundred (2,700) feet west of the southeast corner of section 33, township 1 south, range 2 west. The line continues north and parallel to the east line of section 33 to the nearest shoreline.

(Q) South of a line commencing at a point located in section 21, township 1 south, range 2 west. The point is five hundred (500) feet north and five thousand two hundred (5,200) feet west of the southeast corner of section 21. The line continues north sixty-nine (69) degrees west to the nearest shoreline.

(R) South of a line commencing at a point located in section 20, township 1 south, range 2 west. The point is one thousand seven hundred (1,700) feet north and two thousand four hundred (2,400) feet west of the southeast corner of section 20. The line continues north fifty-five (55) degrees west to the nearest shoreline.

(S) South and east of a line commencing at a point on the east line of section 19, township 1 south, range 2 west. The point is three thousand six hundred (3,600) feet north of the southeast corner of section 19. The line continues south forty-six (46) degrees west for three thousand one hundred (3,100) feet, then north sixty-eight (68) degrees west to the nearest shoreline.

(T) Any embayment where the distance between shorelines is not more than one thousand two hundred (1,200) feet.

(3) A person must not, without a license issued by the department under this subdivision, either operate a watercraft or otherwise enter from October 1 through March 1 into the areas set forth in this subdivision. From March 2 through September 30, a person must not operate a watercraft in the following areas in excess of idle speed:

(A) South of the State Road 164 causeway over Patoka Lake. The causeway is located in section 1, township 2 south, range 3 west.

(B) East of a line commencing at a point on the east section line of section 25, township 1 south, range 2 west. The point is two thousand three hundred (2,300) feet north of the southeast corner of section 25. The line continues north along the east line of section 25 to the nearest shoreline.

(C) South and east of a line commencing at a point on the west section line of section 1, township 2 south, range 2 west. The point is two thousand five hundred (2,500) feet north of the southwest corner of section 1. The line continues north eighty (80) degrees east five hundred (500) feet, then north forty-eight (48) degrees east to the nearest shoreline.

(D) South of a line commencing at a point on the east section line of section 2, township 2 south, range 2 west. The point is two thousand five hundred (2,500) feet north of the southeast corner of section 2. The line continues west and parallel to the south line of section 2 to the nearest shoreline.

(4) Notwithstanding subdivisions (2) and (3), the department may establish running channels for the safe and orderly flow of watercraft. A running channel established under this subdivision shall be designated by buoys. A person must not operate a watercraft in a running channel in excess of ten (10) miles per hour unless otherwise designated by buoys. A running channel does not authorize entry into a zone where watercraft and persons are excluded, under subdivision (3), from October 1 through March 1.

*(Natural Resources Commission; 312 IAC 5-10-9; filed Mar 23, 2001, 2:50 p.m.; 24 IR 2384, eff Jan 1, 2002)*

### **312 IAC 5-10-10 Salamonie Lake; special watercraft zones**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-3-18; IC 14-15-7-3

Affected: IC 14

Sec. 10. The following zones are established for Salamonie Lake:

(1) A person must not operate a watercraft in excess of idle speed in any of the following locations:

(A) Within two hundred (200) feet of a shoreline.

(B) Within an embayment.

(C) Upstream from State Road 9.

(2) A person must not, without a license issued under this subdivision, either operate a watercraft or otherwise enter the following:

(A) From October 1 through January 15 within sections 23 or 30 of township 27 north, range 8 east (Huntington County).

(B) On or within three hundred (300) feet of the shoreline of Monument Island. The shoreline is determined when Salamonie Lake is at the seasonal pool level of seven hundred fifty-five (755) feet. The island is located in sections 23 and 30 of township 27 north, range 8 east (Huntington County).

*(Natural Resources Commission; 312 IAC 5-10-10; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2385, eff Jan 1, 2002)*

**312 IAC 5-10-11 Summit Lake; special watercraft zones**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-3-18; IC 14-15-7-3

Affected: IC 14

Sec. 11. A person on Summit Lake must not do either of the following:

(1) Operate a watercraft in excess of idle speed.

(2) Operate a watercraft within the following zones:

(A) The embayment which contains the public swimming beach.

(B) Within two hundred (200) feet and parallel to the earthen embankment and spillway which form the lake.

(C) East of County Road 500E.

*(Natural Resources Commission; 312 IAC 5-10-11; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2386, eff Jan 1, 2002)*

**Rule 11. Prohibition Against High Speed Watercraft on Specified Small Lakes; Exemptions**

**312 IAC 5-11-1 Exemptions from the prohibition against high speed watercraft on specified small lakes; applicability**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-3-11; IC 14-15-7-3

Affected: IC 14-15-3-10

Sec. 1. This rule exempts specified small lakes that contain more than seventy (70) acres from the prohibition under IC 14-15-3-10 against the operation of a motorboat at a rate of speed greater than ten (10) miles per hour. *(Natural Resources Commission; 312 IAC 5-11-1; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2386, eff Jan 1, 2002)*

**312 IAC 5-11-2 Beaver Dam Lake, Dubois County; small lake watercraft exemption**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-3-11; IC 14-15-7-3

Affected: IC 14-15-3-10; IC 36-1-2-13

Sec. 2. (a) Beaver Dam Lake in Dubois County is a small lake that is owned, leased, or operated by the city of Jasper, a political subdivision as defined in IC 36-1-2-13.

(b) Beaver Dam Lake is exempt from the prohibition established under IC 14-15-3-10 against the operation of a motorboat in excess of ten (10) miles per hour each day of the week (Sunday through Saturday) from sunrise to sunset. *(Natural Resources Commission; 312 IAC 5-11-2; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2386, eff Jan 1, 2002)*

**312 IAC 5-11-3 Big Cedar Lake, Whitley County; small lake watercraft exemption**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-3-11; IC 14-15-7-3

Affected: IC 14-15-3-8

Sec. 3. Big Cedar Lake in Whitley County is exempt from the prohibition established under IC 14-15-3-8 against the operation of a watercraft in excess of ten (10) miles per hour from 1 p.m. to 4 p.m. each day of the week (Sunday through Saturday). *(Natural Resources Commission; 312 IAC 5-11-3; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2386, eff Jan 1, 2002)*

**312 IAC 5-11-4 Big Lake, Noble County**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-3-11; IC 14-15-7-3

Affected: IC 14-15-3-8

Sec. 4. Big Lake in Noble County is exempt from the prohibition established under IC 14-15-3-8 against the operation of a watercraft in excess of ten (10) miles per hour from 1 p.m. to 4 p.m. each day of the week (Sunday through Saturday). *(Natural Resources Commission; 312 IAC 5-11-4; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2386, eff Jan 1, 2002)*



**312 IAC 5-11-5 Blue Lake, Whitley County**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-3-11; IC 14-15-7-3  
Affected: IC 14-15-3-8

Sec. 5. Blue Lake in Whitley County is exempt from the prohibition established under IC 14-15-3-8 against the operation of a watercraft in excess of ten (10) miles per hour from 1 p.m. to 4 p.m. each day of the week (Sunday through Saturday). (*Natural Resources Commission; 312 IAC 5-11-5; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2386, eff Jan 1, 2002*)

**312 IAC 5-11-6 Fox Lake, Steuben County; small lake watercraft exemption**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-3-11; IC 14-15-7-3  
Affected: IC 14-15-3-8

Sec. 6. Fox Lake in Steuben County is exempt from the prohibition established under IC 14-15-3-8 against the operation of a motorboat in excess of ten (10) miles per hour from 1 p.m. to 4 p.m. each day of the week (Sunday through Saturday). (*Natural Resources Commission; 312 IAC 5-11-6; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2386, eff Jan 1, 2002*)

**312 IAC 5-11-7 Heaton Lake, Elkhart County; small lake watercraft exemption**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-3-11; IC 14-15-7-3  
Affected: IC 14-15-3-8

Sec. 7. Heaton Lake in Elkhart County is exempt from the prohibition established under IC 14-15-3-8 against the operation of a motorboat in excess of ten (10) miles per hour from 1 p.m. to 4 p.m. each day of the week (Sunday through Saturday). (*Natural Resources Commission; 312 IAC 5-11-7; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2386, eff Jan 1, 2002*)

**312 IAC 5-11-8 Little Long Lake, Steuben County; small lake watercraft exemption**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-3-11; IC 14-15-7-3  
Affected: IC 14-15-3-8

Sec. 8. Little Long Lake in Steuben County is exempt from the prohibition established under IC 14-15-3-8 against the operation of a motorboat in excess of ten (10) miles per hour from 1 p.m. to 4 p.m. each day of the week (Sunday through Saturday). (*Natural Resources Commission; 312 IAC 5-11-8; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2387, eff Jan 1, 2002*)

**312 IAC 5-11-9 Lake Beaver Dam, Kosciusko County; small lake watercraft exemption**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-3-11; IC 14-15-7-3  
Affected: IC 14-15-3-8

Sec. 9. Lake Beaver Dam in Kosciusko County is exempt from the prohibition established under IC 14-15-3-8 against the operation of a motorboat in excess of ten (10) miles per hour from 1 p.m. to 4 p.m. each day of the week (Sunday through Saturday). (*Natural Resources Commission; 312 IAC 5-11-9; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2387, eff Jan 1, 2002*)

**312 IAC 5-11-10 Lake of the Woods, LaGrange County and Steuben County; small lake watercraft exemption**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-3-11; IC 14-15-7-3  
Affected: IC 14-15-3-8

Sec. 10. Lake of the Woods in LaGrange County and Steuben County is exempt from the prohibition established under IC 14-15-3-8 against the operation of a motorboat in excess of ten (10) miles per hour from 1 p.m. to 4 p.m. each day of the week (Sunday through Saturday). (*Natural Resources Commission; 312 IAC 5-11-10; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2387, eff Jan 1, 2002*)

**312 IAC 5-11-11 Loon Lake, Whitley County and Noble County; small lake watercraft exemption**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-3-11; IC 14-15-7-3

Affected: IC 14-15-3-8

Sec. 11. Loon Lake in Whitley County and Noble County is exempt from the prohibition established under IC 14-15-3-8 against the operation of a motorboat in excess of ten (10) miles per hour from 1 p.m. to 4 p.m. each day of the week (Sunday through Saturday). (*Natural Resources Commission; 312 IAC 5-11-11; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2387, eff Jan 1, 2002*)

**312 IAC 5-11-12 Oswego Lake, Kosciusko County; small lake watercraft exemption**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-3-11; IC 14-15-7-3

Affected: IC 14-15-3-8

Sec. 12. (a) Oswego Lake in Kosciusko County is a small lake connected by a natural channel to Tippecanoe Lake (a lake that has a surface area of more than three hundred (300) acres).

(b) Oswego Lake is exempt each day of the week (Sunday through Saturday) from sunrise to sunset from the prohibition established by IC 14-15-3-8 against the operation of a motorboat in excess of ten (10) miles per hour. (*Natural Resources Commission; 312 IAC 5-11-12; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2387, eff Jan 1, 2002*)

**312 IAC 5-11-13 Pretty Lake, Marshall County; small lake watercraft exemption**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-3-11; IC 14-15-7-3

Affected: IC 14-15-3-8

Sec. 13. Pretty Lake in Marshall County is exempt from the prohibition established under IC 14-15-3-8 against the operation of a motorboat in excess of ten (10) miles per hour from 1 p.m. to 4 p.m. each day of the week (Sunday through Saturday). (*Natural Resources Commission; 312 IAC 5-11-13; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2387, eff Jan 1, 2002*)

**312 IAC 5-11-14 Shriner Lake, Whitley County; small lake watercraft exemption**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-3-11; IC 14-15-7-3

Affected: IC 14-15-3-8

Sec. 14. Shriner Lake in Whitley County is exempt from the prohibition established under IC 14-15-3-8 against the operation of a motorboat in excess of ten (10) miles per hour from 1 p.m. to 4 p.m. each day of the week (Sunday through Saturday). (*Natural Resources Commission; 312 IAC 5-11-14; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2387, eff Jan 1, 2002*)

**312 IAC 5-11-15 Skinner Lake, Noble County; small lake watercraft exemption**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-3-11; IC 14-15-7-3

Affected: IC 14-15-3-8

Sec. 15. Skinner Lake in Noble County is exempt from the prohibition established under IC 14-15-3-8 against the operation of a motorboat in excess of ten (10) miles per hour from 1 p.m. to 4 p.m. each day of the week (Sunday through Saturday). (*Natural Resources Commission; 312 IAC 5-11-15; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2387, eff Jan 1, 2002*)

**312 IAC 5-11-16 Yellow Creek Lake, Kosciusko County; small lake watercraft exemption**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-3-11; IC 14-15-7-3

Affected: IC 14-15-3-8

Sec. 16. Yellow Creek Lake in Kosciusko County is exempt from the prohibition established under IC 14-15-3-8 against the operation of a motorboat in excess of ten (10) miles per hour from 1 p.m. to 4 p.m. each day of the week (Sunday through Saturday). (*Natural Resources Commission; 312 IAC 5-11-16; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2387, eff Jan 1, 2002*)

**Rule 12. Temporary Modification or Closure of Public Waters to Watercraft Operations**

**312 IAC 5-12-1 Authorization of the director to modify or close public waters to watercraft operations; applicability**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 4-21.5-4; IC 14

Sec. 1. (a) This rule controls the issuance by the director of a temporary order to modify, restrict, or close any public waters of this state to watercraft operations.

(b) A temporary order under this rule is subject to IC 4-21.5-4. (*Natural Resources Commission; 312 IAC 5-12-1; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2388, eff Jan 1, 2002*)

**312 IAC 5-12-2 Notification of hazard; inspection**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14

Sec. 2. (a) As soon as practicable after receiving notice of an unusual condition and hazard upon any public waters of this state, a conservation officer shall inspect the site to determine the severity of the condition or hazard.

(b) A report of the inspection shall be made promptly to the director together with any recommendation for action. (*Natural Resources Commission; 312 IAC 5-12-2; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2388, eff Jan 1, 2002*)

**312 IAC 5-12-3 Temporary order by director**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 14-15

Sec. 3. (a) The director may, by temporary order, modify or close public waters to watercraft operations if unusual conditions and hazards exist.

(b) A temporary order under subsection (a) may be issued to do any of the following:

(1) Close public waters to watercraft operations.

(2) Restrict watercraft to daytime operations.

(3) Prohibit the operation of motorboats.

(4) Limit watercraft to operation not to exceed idle speed.

(5) Impose any other restriction appropriate under IC 14-15.

(*Natural Resources Commission; 312 IAC 5-12-3; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2388, eff Jan 1, 2002*)

**312 IAC 5-12-4 Public notification of temporary order**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3

Affected: IC 4-21.5-4; IC 14

Sec. 4. The division shall make a reasonable and conscientious effort to inform the public of a temporary order made under section 3 of this rule. Notice shall include posting at places of entry to the public waters affected, by notification to the media, and as is otherwise practicable to persons who are required to comply with the order. (*Natural Resources Commission; 312 IAC 5-12-4; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2388, eff Jan 1, 2002*)

**Rule 12.5. Boat Excise Tax**

**312 IAC 5-12.5-1 Excise tax decals**

Authority: IC 6-6-11-24

Affected: IC 6-6-11

Sec. 1. If both excise tax decals that are required by IC 6-6-11-24(2) would not be clearly visible when a sailboat is underway,

the taxpayer may display the decals on the mast or boom if the decals are clearly visible in both directions. (*Natural Resources Commission; 312 IAC 5-12.5-1; filed Jul 22, 2004, 10:10 a.m.: 27 IR 3885*)

### **Rule 13. Equipment and Operational Standards on Waters of Concurrent Jurisdiction**

#### **312 IAC 5-13-1 Modification of equipment and operational standards on waters of concurrent jurisdiction; applicability**

Authority: IC 14-10-2-4; IC 14-15-7-5

Affected: IC 14-15

Sec. 1. This rule varies the equipment and operational standards specified in IC 14-15 for waters of concurrent jurisdiction. (*Natural Resources Commission; 312 IAC 5-13-1; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2388, eff Jan 1, 2002*)

#### **312 IAC 5-13-2 Children wearing personal flotation devices on waters of concurrent jurisdiction**

Authority: IC 14-10-2-4; IC 14-15-7-5

Affected: IC 14-15

Sec. 2. A person must not use a recreational watercraft on waters of concurrent jurisdiction unless each child onboard under thirteen (13) years of age is wearing an appropriate personal flotation device approved by the United States Coast Guard except where:

- (1) the child is below deck;
- (2) the child is in an enclosed cabin; or
- (3) the watercraft is docked or at anchor.

(*Natural Resources Commission; 312 IAC 5-13-2; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2388, eff Jan 1, 2002; filed Jul 23, 2003, 10:15 a.m.: 26 IR 3869*)

#### **312 IAC 5-13-3 Firefighting equipment used on waters of concurrent jurisdiction**

Authority: IC 14-10-2-4; IC 14-15-7-5

Affected: IC 14

Sec. 3. (a) A person must not use a motorboat less than twenty-six (26) feet long unless at least one (1) B-1 hand portable fire extinguisher (no fixed system) is maintained in the machinery space. This subsection does not apply if the motorboat is as follows:

- (1) Propelled by outboard motors.
- (2) Not carrying passengers for hire.
- (3) Constructed so explosive or flammable gases or vapors cannot be entrapped.

(b) A person must not use a motorboat at least twenty-six (26) feet long, but less than forty (40) feet long, unless at least two (2) B-1 hand portable fire extinguishers (no fixed system) and one (1) B-1 hand portable fire extinguisher (fixed system) are maintained in the machinery space.

(c) A person must not use a motorboat at least forty (40) feet long, but less than sixty-five (65) feet long, unless at least three (3) B-1 hand portable fire extinguishers (no fixed system) and two (2) B-1 hand portable fire extinguishers (fixed system) are maintained in the machinery space.

(d) Where two (2) B-1 hand portable fire extinguishers are required under subsection (b) or (c), one (1) B-2 hand portable fire extinguisher may be substituted. (*Natural Resources Commission; 312 IAC 5-13-3; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2388, eff Jan 1, 2002*)

#### **312 IAC 5-13-4 Whistles, bells, and gongs on waters of concurrent jurisdiction**

Authority: IC 14-10-2-4; IC 14-15-7-5

Affected: IC 14-15-3-21

Sec. 4. (a) A watercraft less than twelve (12) meters long must be provided with a means for making an efficient sound signal.

(b) A watercraft at least twelve (12) meters long shall be provided with a whistle and a bell.

(c) A bell required under this section may be substituted by other equipment with the same sound characteristics if manual sounding is impracticable. (*Natural Resources Commission; 312 IAC 5-13-4; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2389, eff Jan 1, 2002*)

**312 IAC 5-13-5 Water skiing on the Ohio River**

Authority: IC 14-11-2-1; IC 14-15-7-5

Affected: IC 14-15-3-8; IC 14-15-3-20

Sec. 5. (a) The following requirements apply to the portions of the Ohio River on which Indiana and Kentucky have concurrent jurisdiction:

(1) A person must not operate a watercraft while towing or otherwise assisting the propulsion of a person on water skis, a water sled, a surfboard, a kite, or a similar device during the period from one (1) hour after sunset to one (1) hour before sunrise. A person must not manipulate any of the devices described in this subdivision on the water from one (1) hour after sunset to one (1) hour before sunrise.

(2) A person being towed on water skis, a surfboard, a kite, or a similar device must wear a Type I personal flotation device, a Type II personal flotation device, or a Type III personal flotation device.

(3) A person operating a watercraft which is towing a person on water skis, a surfboard, or a similar device must have on-board either of the following:

(A) In addition to the operator, a person at least twelve (12) years of age to act as an observer.

(B) A rear view mirror with at least a one hundred sixty (160) degree wide angle field of vision mounted to enable the operator to observe any person being towed.

(4) A person operating a watercraft which is towing a kite or a similar airborne device must have on-board, in addition to the operator, a person at least twelve (12) years of age to act as an observer.

(b) This section does not apply to a lawful race, regatta, or similar activity. (*Natural Resources Commission; 312 IAC 5-13-5; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2389, eff Jan 1, 2002*)

**Rule 14. Watercraft Carrying Passengers for Hire**

**312 IAC 5-14-1 Watercraft carrying passengers for hire; delegation of authority; maintenance of equipment in a good and serviceable condition**

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5

Affected: IC 14

Sec. 1. (a) This rule governs the inspection, maintenance, and operation of watercraft carrying passengers for hire.

(b) The division director may authorize a qualified person, other than an employee of the department, to conduct an inspection or other function of the department under this rule.

(c) An owner must maintain all equipment associated with a watercraft carrying passengers for hire in a good and serviceable condition as determined by a marine inspector.

(d) All operations relating to a watercraft carrying passengers for hire must be performed by or on behalf of the owner according to good marine practice and standards. (*Natural Resources Commission; 312 IAC 5-14-1; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2389, eff Jan 1, 2002*)

**312 IAC 5-14-2 Inspections of watercraft carrying passengers for hire**

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5

Affected: IC 14

Sec. 2. (a) Every watercraft carrying passengers for hire and its equipment shall be inspected by the department to determine the watercraft conforms to good marine practice and standards and to determine the watercraft otherwise conforms with this rule. An inspection shall be conducted at least as frequently as follows:

(1) One (1) dockside inspection every year.

(2) One (1) drydock inspection every sixty (60) months.

(b) The department may inspect a watercraft carrying passengers for hire at any other reasonable time. (*Natural Resources Commission; 312 IAC 5-14-2; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2389, eff Jan 1, 2002*)

**312 IAC 5-14-3 Drydock inspections; shutoff valves for through-hull fittings**

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5

Affected: IC 14

Sec. 3. (a) A watercraft must satisfy a drydock inspection conducted by a marine inspector before carrying passengers for hire. The department shall subsequently require successful completion of a drydock inspection at intervals not to exceed sixty (60) months.

(b) Before an inspection, the owner must remove or store each of the following:

(1) Fishing gear.

(2) Coolers.

(3) Personal belongings.

(4) Any other equipment that may impede the inspection process.

(c) Before or during an inspection, the owner must do both of the following:

(1) Open or remove all hatches or inspection ports.

(2) Cause the watercraft to be clean and orderly.

(d) During an inspection, the owner must make available for inspection all of the following:

(1) The hull and appendages.

(2) Propellers.

(3) Shafting.

(4) Stern bearings.

(5) Rudders.

(6) Through-hull fittings.

(7) Sea valves.

(8) Strainers.

(9) Outdrive units.

(10) Outboard power units.

(11) Entire interior and exterior of the watercraft.

(e) To assure that a watercraft conforms to good marine practice and standards, a marine inspector may require the owner of the watercraft to remove portions of the following:

(1) Lining.

(2) Decking.

(3) Ceiling.

(4) Any other obstructions to a complete inspection.

(f) An owner must fit any through-hull fittings located below the waterline of a watercraft with a readily accessible shutoff valve. The shutoff valve shall be located as closely as practicable to the through-hull fitting. (*Natural Resources Commission; 312 IAC 5-14-3; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2390, eff Jan 1, 2002*)

**312 IAC 5-14-4 Main and auxiliary engines**

Authority: IC 14-11-2-1; IC 14-15-7-3; IC 14-15-7-5

Affected: IC 14

Sec. 4. (a) A watercraft designed for inboard or inboard/outboard (stern drive) main engines shall be fitted with the appropriate number of engines.

(b) The main engine shall be an appropriate type and design for the propulsion requirements of the hull in which the engine is installed and shall be capable of operating at a constant marine load without exceeding design limitations.

(c) The head, block, and exhaust manifold of the main engine shall be water-jacketed and cooled by water from a pump. This

subsection does not apply to a drystack exhaust system.

(d) If a main engine is fitted with an updraft or sidedraft carburetor, the carburetor shall have integral or properly connected drip collectors of adequate capacity for the return of all drip and overflow to the engine intake manifold.

(e) The exhaust pipe system of a main engine shall be:

- (1) gastight to the hull interior;
- (2) designed and installed to prevent water from returning to an engine;
- (3) accessible for complete inspection and repair; and
- (4) supported to prevent undue stress.

A hanger, bracket, or other support shall be made of fireproof material and installed to prevent heat from being transmitted to a combustible material. A water jacket, lag, shield, or another suitable guard shall be provided to protect an individual or a combustible material from contact with any hot surface.

(f) After consulting with the state boating law administrator, a boating inspector may establish special requirements, which conform to good marine practice and standards, to inspect and evaluate a main engine that uses:

- (1) steam;
- (2) electricity;
- (3) a gas turbine;
- (4) an air screw;
- (5) a hydraulic jet; or
- (6) another unusual mechanism.

(g) Any auxiliary engine must be installed on a watercraft according to good marine practice and standards. (*Natural Resources Commission; 312 IAC 5-14-4; filed Mar 23, 2001, 2:50 p.m.; 24 IR 2390, eff Jan 1, 2002*)

### **312 IAC 5-14-5 Gasoline engines; ventilation**

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5

Affected: IC 14

Sec. 5. (a) A watercraft with a gasoline engine or fuel tank in an enclosed space must have a ventilation system that minimizes and safely removes flammable vapors. The ventilation system shall be constructed and installed as follows:

(1) If a gasoline engine or fuel tank is in the same enclosed or interconnected compartment, at least two (2) supply ducts shall be located at an end or side of the compartment and extend halfway into the compartment so as to be lower than the carburetor air intake. At least two (2) exhaust ducts, including one (1) that is power assisted, shall be located at the opposite end or side of the compartment and extend to the lowest portion of the compartment.

(2) If a gasoline engine and fuel tank is not in the same enclosed or interconnected compartment, each compartment shall be ventilated as described in subdivision (1). However, instead of providing ventilation, a separate fuel tank compartment may be treated with foam as approved by the United States Coast Guard.

(3) The exterior of a ventilation duct shall be fitted with a cowl, scoop, or louver (trimmed for maximum effectiveness) and properly elevated to prevent the return of flammable vapors to an enclosed space.

(b) A ventilation duct on a watercraft shall be as follows:

(1) Constructed of material that is noncombustible, gastight, and resistant to collapse.

(2) Installed so that low spots do not collect water and the ordinary collection of water in the bilge does not block the duct.

(3) Connected as directly as practicable to the lower portion of the compartment.

(4) Fastened and properly supported.

(c) The internal cross section of each intake and exhaust ventilation duct in a compartment shall be the same. The aggregate internal cross sectional area of the intake ventilation ducts shall be at least one and one-half (1½) square inches per foot of beam. Each round duct shall have an inside diameter of at least three (3) inches. Each rectangular duct shall have inside dimensions of at least two (2) inches by three and one-half (3½) inches.

(d) A cowl, scoop, or louver shall have a mouth area at least twice the required duct area. The mouth area shall be increased to compensate for screen wire. No damper shall be fitted to a duct.

(e) At least one (1) exhaust duct of each compartment required to be ventilated shall be fitted with a power operated exhaust blower with a pickup capacity of at least one hundred (100) cubic feet per minute and approved for marine use. The exhaust blower

shall be installed as high above the bilges as practicable.

(f) If a helm position has a main engine ignition switch, both of the following must be satisfied:

(1) There is either:

(A) an exhaust blower at the helm that is independent from the ignition system; or

(B) a blower switch that has an automatic delay interlock with the ignition system.

(2) Posted in plain view of the operator, and as close to the ignition switch as practicable, is the notice, "Warning—Before starting engine(s) operate the blower(s).".

*(Natural Resources Commission; 312 IAC 5-14-5; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2391, eff Jan 1, 2002)*

### **312 IAC 5-14-6 Diesel engines; ventilation**

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5

Affected: IC 14

Sec. 6. (a) An enclosed or interconnected compartment that contains a diesel engine shall be provided with at least one (1) air supply duct at an end or side of the compartment and at least one (1) exhaust duct at the opposite end or side of the compartment. These ducts shall be installed, constructed, and fitted as required in section 5 of this rule for ducts for gasoline engines.

(b) An air supply duct shall be large enough for proper operation of a diesel engine and for the ventilation of vapors from the compartment.

(c) An exhaust duct shall have a goose-neck vent with an inside diameter of at least one and one-half (1½) inches. The duct is not required to be power assisted. *(Natural Resources Commission; 312 IAC 5-14-6; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2391, eff Jan 1, 2002)*

### **312 IAC 5-14-7 Fixed fuel tanks**

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5

Affected: IC 14

Sec. 7. (a) A fixed fuel tank on a watercraft must be installed as follows:

(1) To permit examination with a minimum disturbance to the hull structure.

(2) With adequate support and bracing to prevent movement. The support and braces shall be insulated from contact with the tank surfaces with a nonabrasive and nonabsorbent material.

(3) With openings for fill and vent pipes and for fuel level gauges, where used, on the topmost surfaces of the tank. The tank shall not have openings in the bottom, sides, or ends, except that an opening fitted with a threaded plug or cap may be used for cleaning the tank.

(b) Fixed fuel tank piping must be installed as follows:

(1) Fuel supply lines to the engine shall be tubing of copper, nickel-copper, steel, or United States Coast Guard approved Type A flexible fuel line and shall run as directly as practicable from the tank to the engine. Fuel supply lines shall have suitable support and a readily accessible manually operated, in-line shutoff valve installed as close to the fuel tank as practicable. Fuel supply lines shall have suitable protection from mechanical injury at supports and where passing through bulkheads and structural members.

(2) Metal fuel supply lines shall be fitted with flexible vibration hose placed as closely as practicable to the engine.

(3) A filling pipe shall be fitted to the highest point of the fuel tank and shall have an inside diameter of at least one and one-fourth (1¼) inches.

(4) A fuel tank shall be fitted with a marine-type fuel gauge or a sounding pipe if sounding cannot be accomplished through the filling pipe.

(5) A filling or sounding pipe shall not permit overflow of liquid or vapor to escape to the inside of a watercraft.

(6) A vent pipe shall be connected to the top of the fuel tank and shall be as follows:

(A) Installed to prevent accidental water contamination of the fuel.

(B) Fitted with a removable flame screen at the point of termination.

(C) Having an inside diameter of at least seven-sixteenths ( $\frac{7}{16}$ ) of an inch.

(D) Terminating on the hull exterior as far as practicable from hull openings and below the deck spaces.



(7) No device shall allow fuel to be drawn below the decks.

(8) Accessories in a fuel line shall be properly supported.

(c) The owner or operator of a watercraft with a fixed fuel system shall not transport fuel on-board the watercraft outside the fixed fuel system unless the fuel is transported in conjunction with an auxiliary outboard engine. Fuel may be transported only in portable fuel tanks provided by a manufacturer of outboard engines and shall be safely secured outside the engine or living compartment.

(d) During a fueling operation, a person must not smoke on-board a watercraft.

(e) During a fueling operation, the operator of a watercraft must not allow passengers on-board.

(f) A fixed fuel system shall be grounded by an electrical connection to a common ground, by welding or bolting to a metal bulkhead of a metal hull vessel or by electrical connection to the rudder, struts, or metal grounding plate. If flexible vibration hose is installed, metal grounding straps or wires shall maintain ground continuity. (*Natural Resources Commission; 312 IAC 5-14-7; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2391, eff Jan 1, 2002*)

### **312 IAC 5-14-8 Portable fuel tanks**

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5

Affected: IC 14

Sec. 8. (a) The operator of a watercraft with a portable fuel tank system must carry fuel on-board in an approved fuel tank.

(b) A portable fuel tank must be secured to prevent shifting while under way.

(c) A portable fuel tank must be connected to an approved flexible fuel line that is long enough to fill the tank without removal from its secured location. (*Natural Resources Commission; 312 IAC 5-14-8; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2392, eff Jan 1, 2002*)

### **312 IAC 5-14-9 Electrical systems**

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5

Affected: IC 14

Sec. 9. (a) An electrical system must be properly grounded and safe for any anticipated usage.

(b) Electrical wiring shall be placed as follows:

(1) As high as practicable above the bilges.

(2) Supported with fasteners that will not damage the wiring or structural members of the watercraft.

(3) Protected against chafing where passing through bulkheads or other structural members.

(c) An electrical storage battery must be as follows:

(1) Compatible with the electrical system.

(2) Located so gas generated in charging the battery is properly ventilated.

(3) Easily accessible.

(4) Suitably supported and secured against shifting with the motion of the watercraft.

(5) Located in a tray or box which is liquid tight and large enough to retain normal spillage or boilover of the electrolyte. The tray or box shall be protected by noncorrosive material.

(6) Covered or otherwise suitably protected against an accidental short-circuiting of battery terminals.

(*Natural Resources Commission; 312 IAC 5-14-9; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2392, eff Jan 1, 2002*)

### **312 IAC 5-14-10 Electrical equipment**

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5

Affected: IC 14

Sec. 10. (a) Electrical equipment, appliances, and fixtures installed on a watercraft must be insulated from exposed metal parts by an electrical insulating material suitable for use in damp locations and must be properly connected to the electrical ground system of the watercraft. Electrical equipment, appliances, and fixtures installed or used in machinery spaces or where flammable vapors may be present shall be designed, enclosed, or protected to prevent ignition of the flammable vapors.

(b) Switches, circuit breakers, and fuse boxes or blocks on a watercraft must be either:

- (1) approved by Underwriters Laboratories for marine use; or
- (2) a type commonly manufactured for use on a watercraft.

The devices described in this subsection shall have suitable protection against accidental shorting. (*Natural Resources Commission; 312 IAC 5-14-10; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2392, eff Jan 1, 2002*)

### **312 IAC 5-14-11 Bilge pumps and bailout devices**

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5

Affected: IC 14

Sec. 11. (a) A watercraft constructed with bilges or enclosed spaces below the decks must be fitted with at least two (2) electrical bilge pumps. All bilge areas must be accessible by a bilge pump.

(b) A bilge pump must be equipped with an indicator light or an alarm system. At least one (1) of the bilge pumps must activate automatically if excessive water accumulates in the bilges.

(c) A bilge pump indicator light must be located at the helm position used most often and as close to the bilge pump switch as practicable.

(d) A watercraft must be equipped with a bailing device that is manually operated. (*Natural Resources Commission; 312 IAC 5-14-11; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2393, eff Jan 1, 2002*)

### **312 IAC 5-14-12 Passenger capacity**

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5

Affected: IC 14

Sec. 12. (a) The maximum passenger capacity on a watercraft is the greatest number that results from application of the following alternative formulae:

(1) For a watercraft that does not have a watercraft capacity plate, the following:

(A) One (1) passenger per thirty (30) inches of rail space available to passengers at the sides and across the transom of the watercraft.

(B) One (1) passenger for ten (10) square feet of deck available for passenger use. In computing deck area, the areas occupied by concession stands, toilets and washrooms, companionways, and stairways are excluded.

(C) One (1) passenger per eighteen (18) inches of width of fixed seating.

(2) For a watercraft that has or is required to have a watercraft capacity plate, the following:

(A) (Weight capacity minus maximum motor and gear weight) 150 = number of passengers.

(B) (Watercraft length multiplied by watercraft beam) 15 = number of passengers.

(b) The marine inspector shall calculate the number of passengers that may safely be transported on a watercraft carrying passengers for hire. The number shall be set forth on the certificate of inspection. (*Natural Resources Commission; 312 IAC 5-14-12; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2393, eff Jan 1, 2002*)

### **312 IAC 5-14-13 Repairs and alterations; reinspections**

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5

Affected: IC 14

Sec. 13. (a) If a watercraft is involved in an accident resulting in damage, including grounding, or is to be hauled out and drydocked for major repairs or alterations affecting the seaworthiness of the watercraft, the owner must immediately report to the department the nature of the damage repairs or alterations. Damage does not include breakage of glass, lights, or decorative items.

(b) All repairs and alterations shall be approved in advance by the marine inspector. A marine inspector may require drawings, sketches, or written specifications.

(c) A watercraft must not be returned to service or returned to the water until all repairs or alterations are completed and the watercraft is reinspected and approved by a marine inspector. A marine inspector shall reinspect the watercraft as soon as practicable after being notified alterations are completed.

(d) If corrections or repairs to a watercraft or associated equipment result from an inspection by a marine inspector, the owner must notify the marine inspector before returning the watercraft to service or to the water. A marine inspector shall reinspect the watercraft as soon as practicable after being notified repairs are completed.

(e) A marine inspector shall require an owner to remove a watercraft from the water or to correct any equipment or condition that poses a safety hazard.

(f) The department shall deny the issuance of a certificate of inspection if a watercraft is determined to be unsafe to carry passengers for hire.

(g) Notification to the department is not required for general maintenance drydocking or hauling out. (*Natural Resources Commission; 312 IAC 5-14-13; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2393, eff Jan 1, 2002*)

### **312 IAC 5-14-14 Dockside inspections**

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5

Affected: IC 14

Sec. 14. During a dockside inspection, the owner of a watercraft shall do both of the following:

(1) Submit all required safety apparatus for dockside inspection.

(2) Operate all machinery, steerage, and bilge pumps as needed to determine if they are in satisfactory condition and fit for safe and constant operation.

(*Natural Resources Commission; 312 IAC 5-14-14; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2394, eff Jan 1, 2002*)

### **312 IAC 5-14-15 Main engine gauges**

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5

Affected: IC 14

Sec. 15. On a watercraft designed for inboard or inboard/outboard (stern drive) main engines, the following gauges shall be readable from each helm position:

(1) A gauge to indicate the main engine cooling water temperature for each main engine.

(2) A gauge to indicate main engine lubrication oil pressure for each main engine.

(*Natural Resources Commission; 312 IAC 5-14-15; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2394, eff Jan 1, 2002*)

### **312 IAC 5-14-16 Personal flotation devices (life preservers)**

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5

Affected: IC 14

Sec. 16. (a) If a marine inspector determines a personal flotation device carried on-board a watercraft is not in good and serviceable condition, the marine inspector shall write on the personal flotation device that the device is no longer serviceable. The owner of a watercraft must immediately replace any nonserviceable personal flotation device or must reduce the number of passengers carried on-board the watercraft so as not to exceed the number of serviceable personal flotation devices carried.

(b) Each personal flotation device must be carried in a suitable location that is readily accessible to passengers.

(c) A container for personal flotation devices must be clearly marked "Life Preservers" and must set forth the number of serviceable devices. Letters and numbers must be at least one (1) inch high and must be a color contrasting with the color of the container. The container shall indicate the size of the devices. Differing sizes must be separately stored.

(d) A personal flotation device on a documented watercraft must be marked with the name or documentation number of the watercraft in characters at least one (1) inch high which contrast with the color of the device.

(e) A personal flotation device on an undocumented watercraft must be marked with the name or registration number of the watercraft in characters at least one (1) inch high which contrast with the color of the device. (*Natural Resources Commission; 312 IAC 5-14-16; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2394, eff Jan 1, 2002*)

**312 IAC 5-14-17 Fire extinguishers**

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5

Affected: IC 14

Sec. 17. (a) A watercraft must be equipped with at least the minimum number of portable fire extinguishers located as follows:

Compartmented Watercraft	Class	Minimum Number of Extinguishers	Locations
Less than 26 feet	B1	2	Helmsman's position and cabin
26 feet to less than 40 feet	B1	3	Accessible to the engine compartment, helmsman's position, and galley
40 feet or over	B1	4	Accessible to the engine compartment, helmsman's position, crew quarters, and galley

(b) Where at least three (3) B1 units are required, the extinguishing capacity may consist of a small number of B2 units if each location is protected with a readily accessible extinguisher.

(c) The owner of a watercraft shall regularly examine all fire extinguishers for tampering, corrosion, and other damage.

(d) A foam extinguisher must be annually discharged, cleaned, inspected for mechanical defects or corrosion, and recharged.

(e) A dry chemical extinguisher must maintain the specified chemical weight. The cartridge must be reweighed annually. A cartridge that weighs less than specified must be replaced with a full cartridge or recharged. An extinguisher with a gauge must be recharged if the pressure falls below the prescribed operating limits.

(f) A carbon dioxide extinguisher must be reweighed annually. A cylinder must be recharged which weighs less than the weight indicated on the name-plate.

(g) The maintenance required under subsections (c) through (e) shall be performed by a qualified firefighting equipment repair service. (*Natural Resources Commission; 312 IAC 5-14-17; filed Mar 23, 2001, 2:50 p.m.; 24 IR 2394, eff Jan 1, 2002*)

**312 IAC 5-14-18 First aid equipment; emergency procedures**

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5

Affected: IC 14

Sec. 18. (a) The owner shall maintain on-board a watercraft at least one (1) standard sixteen (16) unit first aid kit.

(b) The owner must post, in a conspicuous location on-board the watercraft, an emergency procedures list to include the following:

(1) The following for radio-telephone distress:

(A) Switch to channel 16 (United States Coast Guard).

(B) Signal "MAYDAY" three (3) times.

(C) Give the boat name, type, and color.

(D) Give the position.

(E) Describe the emergency.

(2) The following for a person overboard:

(A) Post a lookout.

(B) Throw over a flotation device or the water light.

(C) Do not jump into the water unless the person is a small child, elderly, or handicapped.

(D) Maneuver to return for pickup.

(E) Use additional markers.

(F) Get victim on-board.

(G) Call for help if necessary.

(3) The following for an explosion:

(A) Be ready to go overboard with personal flotation device (life preserver).

(B) When clear of danger, account for all passengers and assist.

- (C) Stay together.
- (4) The following for a fire:
  - (A) If possible, use fire extinguisher.
  - (B) If practicable, jettison burning materials.
  - (C) Reduce air supply.
  - (D) Assemble at opposite end of boat.
  - (E) Prepare to abandon ship. Put on life preserver and signal for help by radio or any means available.
- (5) The following for leaks or damage control:
  - (A) Put on life preserver.
  - (B) Check bilge pump operation.
  - (C) Pull up all decks and floorboards to search for leaks.
  - (D) Slow or stop boat as needed. You may need to stay on plane to keep hole above water if appropriate.
  - (E) Stop engine, close sea cock for engine cooling, disconnect hose and place end in bilge. Start engine to act as bilge pump.
  - (F) Cover large hole from outside of boat with mattress or similar device.
  - (G) Use radio to call for help. Channel 16 (United States Coast Guard).

*(Natural Resources Commission; 312 IAC 5-14-18; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2395, eff Jan 1, 2002)*

### **312 IAC 5-14-19 Cooking and heating appliances**

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5

Affected: IC 14

Sec. 19. (a) While carrying passengers, galley stoves shall be operated only by the owner, the operator, or a crew member. The owner, the operator, or a crew member shall be present in the galley if the galley stove is being operated.

(b) Heating and cooking appliances must be each of the following:

- (1) Electrically powered.
- (2) Commonly manufactured for use on-board a watercraft.
- (3) Installed in adequately ventilated areas.
- (4) Securely fastened to the watercraft.

(c) Woodwork and other combustible materials immediately surrounding heating appliances must be effectively insulated with noncombustible material. *(Natural Resources Commission; 312 IAC 5-14-19; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2395, eff Jan 1, 2002)*

### **312 IAC 5-14-20 Visual distress signals**

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5

Affected: IC 14

Sec. 20. (a) The owner of a watercraft which operates on navigable waters shall have on-board the watercraft at least one (1) option from the following Coast Guard-approved visual distress signals:

Option	Number Required	Type	Accepted
(1)	3	Hand-held red flare with manufactured date of October 1, 1980, or later	Day and night
(2)	3	Hand-held, rocket-propelled parachute red flare	Day and night
(3)	1	Orange flag distress signal for boats and electric	Day only
		distress light for boats	Night only
(4)	3	Floating or hand-held orange smoke and electric	Day only
		distress light for boats	Night only
(5)	3	Floating or hand-held orange smoke and option (1) or option (2)	Day only Day and night

- |     |   |   |                           |
|-----|---|---|---------------------------|
| (6) | 1 | Orange distress flag for boats and option (1) or option (2) | Day only<br>Day and night |
|-----|---|---|---------------------------|

(b) A person must not display a visual distress signal on the waters of the state except in an emergency.

(c) A Coast Guard-approved electric distress light for boats that activates automatically upon contact with the water and flashes a high intensity light (CG 161.010) meets the nighttime requirements of this section.

(d) The owner must have on-board the watercraft at least one (1) portable battery operated light (flashlight) that is powered by D cells or larger size batteries. (*Natural Resources Commission; 312 IAC 5-14-20; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2395, eff Jan 1, 2002*)

### **312 IAC 5-14-21 Certificate of inspection; issuance; posting; revocation**

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5

Affected: IC 4-21.5-3-8; IC 4-21.5-4; IC 14-15

Sec. 21. (a) Upon satisfactory completion of the required drydock and annual dockside inspections, the department shall issue a certificate of inspection to expire on May 31 of the following year. The department may extend the expiration date for a period not to exceed thirty (30) days if an inspection is incomplete on May 31.

(b) The owner shall frame the certificate of inspection under transparent material and post the certificate conspicuously on the watercraft. However, if posting is impracticable, the certificate shall be kept on-board and shown on demand.

(c) Stickers shall be issued with each certificate and affixed conspicuously to the port and starboard sides of the watercraft.

(d) The department may, under IC 4-21.5-3-8 or IC 4-21.5-4, revoke a certificate issued under this section for any of the following reasons:

(1) Changes occur to a watercraft after the issuance of the certificate so that the watercraft no longer meets the minimum standards for certification.

(2) The owner, the captain, or a crew member violates IC 14-15 or this rule.

(3) Information significant to the issuance of the certificate has been falsified or concealed.

(*Natural Resources Commission; 312 IAC 5-14-21; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2396, eff Jan 1, 2002*)

### **312 IAC 5-14-22 Pilot's license; display**

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5

Affected: IC 14

Sec. 22. The license of a pilot operating a watercraft carrying passengers for hire shall be framed under transparent material and posted conspicuously on the watercraft. If display is impracticable, the pilot's license shall be carried on-board and shown on demand. A pilot's license is not required for a watercraft operating solely on inland waters. (*Natural Resources Commission; 312 IAC 5-14-22; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2396, eff Jan 1, 2002*)

### **312 IAC 5-14-23 Marine liability insurance**

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5

Affected: IC 14

Sec. 23. The owner of a watercraft carrying passengers for hire must maintain marine liability insurance for bodily injury in the lesser of the following amounts:

(1) Eighty-five thousand dollars (\$85,000) per passenger per accident.

(2) One million dollars (\$1,000,000) in the aggregate.

(*Natural Resources Commission; 312 IAC 5-14-23; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2396, eff Jan 1, 2002*)

### **312 IAC 5-14-24 Watercraft carrying six or fewer passengers for hire (except sailboats)**

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5

Affected: IC 14-15-2-7; IC 14-15-2-8

Sec. 24. (a) This section establishes requirements for watercraft carrying six (6) or fewer passengers for hire, other than sailboats, which are supplemental to the other requirements of this rule.

(b) The requirements for deck rails are as follows:

(1) A watercraft must have deck rails or an equivalent protection at the periphery of weather decks, including the cockpit, that are accessible to the passengers and crew. The top rail course of the deck rails shall be at least twenty-six (26) inches above the deck. However, this subdivision does not apply to an open boat operating exclusively on rivers.

(2) Deck rails must consist of evenly spaced horizontal courses. The spacing between courses must not be greater than thirteen (13) inches. Rail courses are not required if the space between the top rail course and the deck is fitted with a bulwark, chain link fencing, wire mesh, or an equivalent protection.

(3) A watercraft with a flying bridge must have suitable deck rails or an equivalent protection at the periphery of the flying bridge deck.

(4) An open boat that operates exclusively on rivers must have suitable deck rails or an equivalent protection.

(5) A deck rail may be removed or modified while a watercraft is anchored and passengers are engaged in a diving operation.

(c) The requirements for personal flotation devices and water lights are as follows:

(1) The owner of a watercraft, except an open boat operating exclusively on inland waters, must carry on-board one (1) Type I personal flotation device of proper size for each passenger and crew member. Each device shall be inspected during the dockside inspection.

(2) The owner of a watercraft shall affix in a suitable manner, to both the outside and the inside of each Type I personal flotation device, two hundred (200) square centimeters (approximately thirty-one and one-half (31.5) square inches) of Coast Guard-approved retroreflective material.

(3) The owner of a watercraft operating on navigable waters or inland lakes must have on-board the watercraft a ring life buoy at least twenty (20) inches in diameter. The ring life buoy must be properly marked, readily accessible, and suitably attached to at least fifty (50) feet of floating line.

(4) The owner of a watercraft, except an open boat operating exclusively on inland waters, must provide a Coast Guard-approved water light that is self-activating upon contact with the water. The light shall be stored in a readily accessible location near the ring life buoy. If the light is attached to a ring life buoy, the attachment line must be at least one (1) foot long.

(5) The owner of an open boat operating exclusively on inland waters must provide one (1) Type I personal flotation device, Type II personal flotation device, or Type III personal flotation device of proper size for each passenger or crew member. One (1) unicellular plastic foam Type IV throwable device must also be carried. Each device shall be inspected at the dockside inspection.

(d) The owner of a watercraft that operates on Lake Michigan must have on-board in good working condition a marine radio-telephone and a marine compass. The owner must maintain a current Federal Communication Commission operator's license for the marine radio-telephone.

(e) A watercraft, except an open boat or other watercraft where suitable privacy enclosures are not practicable, must be equipped with at least one (1) toilet which complies with IC 14-15-2-7 and IC 14-15-2-8. No bypass shall be attached to a system line or hose which will allow wastewater to be discharged into the waters of this state.

(f) The requirements for anchors and anchor lines are as follows:

(1) A watercraft must be equipped with an anchor of a suitable size and type.

(2) A line must be attached to the anchor by eye splice, thimble, and shackle. The anchor line must be readily available on-board the watercraft and must have a minimum length as follows:

(A) At least thirty (30) feet for a watercraft that operates exclusively on rivers.

(B) At least seventy-five (75) feet for a watercraft that operates exclusively on rivers and lakes other than Lake Michigan.

(C) At least seventy-five (75) feet attached to a sea anchor and at least one hundred fifty (150) feet attached to ground tackle for a watercraft that operates on Lake Michigan.

*(Natural Resources Commission; 312 IAC 5-14-24; filed Mar 23, 2001, 2:50 p.m.; 24 IR 2396, eff Jan 1, 2002)*

### **312 IAC 5-14-25 Watercraft carrying more than six passengers for hire (except sailboats)**

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5

Affected: IC 14-15-2-7; IC 14-15-2-8

Sec. 25. (a) This section establishes requirements for watercraft carrying more than six (6) passengers for hire, other than sailboats, that are supplemental to the other requirements of this rule.

(b) A deck rail on a passenger deck must be at least thirty-six (36) inches high. The space between the top rail course and the deck must be fitted with a bulwark, chain link fencing, wire mesh, or an equivalent protection. Deck rails may be removed or modified while a boat is anchored and passengers are engaged in a diving operation.

(c) Fixed or portable seats must be placed so that aisles not more than fifteen (15) feet long are at least twenty-four (24) inches wide and aisles more than fifteen (15) feet long are at least thirty (30) inches wide. If seats are in rows, the distance from seat front to seat front must be at least thirty (30) inches. Seat spacing must provide for ready escape during a fire or another emergency.

(d) A watercraft that carries vehicles must have suitable chains, cable, or other barriers at the end of a vehicle runway. Suitable gates, rails, or other devices must also be installed as a continuation of the regularly required rails.

(e) The requirements for personal flotation devices and water lights are as follows:

(1) The owner of a watercraft must carry on-board one (1) Type I personal flotation device, Type II personal flotation device, or Type III personal flotation device of proper size for each passenger and crew member. Each device shall be inspected at the dockside inspection.

(2) The owner of a watercraft shall affix in a suitable manner, to both the outside and the inside of each personal flotation device, two hundred (200) square centimeters (approximately thirty-one and one-half (31.5) square inches) of Coast Guard-approved retroreflective material.

(3) The owner of a watercraft must have on-board the watercraft a ring life buoy at least twenty (20) inches in diameter. The ring life buoy must be properly marked, readily accessible, and suitably attached to at least fifty (50) feet of floating line.

(4) The owner of a watercraft, except a watercraft operating exclusively on rivers, must provide a Coast Guard-approved water light that is self-activating upon contact with the water. The light shall be stored in a readily accessible location near the ring life buoy. If the light is attached to a ring life buoy, the attachment line must be at least one (1) foot long.

(f) A watercraft must be equipped with at least one (1) toilet that complies with IC 14-15-2-7 and IC 14-15-2-8. No bypass shall be attached to a system line or hose which will allow wastewater to be discharged into the waters of this state.

(g) Firefighting equipment must be provided as follows:

(1) In addition to the fire extinguishers required by section 17 of this rule, a power driven fire pump system shall be carried on-board a watercraft which is authorized to carry more than forty-nine (49) passengers. The power driven fire pump system shall be self-priming and large enough to discharge an effective stream from a hose connected to the highest outlet of the pump. The power driven fire pump may be driven by a propulsion engine or another source of power. The pump may also be connected by the bilge system to serve either as a fire pump or a bilge pump.

(2) The power driven fire pump system shall be adequate to allow any part of the watercraft to be reached with an effective stream of water from one (1) length of hose.

(3) At least one (1) length of fire hose shall be attached to each power driven fire pump or hydrant. Fire hose may be commercial hose or an equivalent which is not more than one and one-half (1½) inches in diameter or garden hose not less than five-eighths (⅝) inch nominal inside diameter. A fire hose shall be in one (1) piece and between twenty-five (25) and fifty (50) feet long. Garden hose must be a good commercial grade that includes each of the following:

(A) An inner tube.

(B) Plies made with braided cotton reinforcement.

(C) An outer cover made with rubber or an equivalent material.

(D) A commercial garden hose nozzle made with brass or an equivalent material.

(h) The requirements for anchors and anchor lines are as follows:

(1) A watercraft must be equipped with an anchor of a suitable size and type.

(2) A line must be attached to the anchor by eye splice, thimble, and shackle. The anchor line must be readily available on-board the watercraft and must have a minimum length as follows:

(A) At least thirty (30) feet for a watercraft that operates exclusively on rivers.

(B) At least seventy-five (75) feet for a watercraft that operates exclusively on rivers and lakes other than Lake Michigan.

*(Natural Resources Commission; 312 IAC 5-14-25; filed Mar 23, 2001, 2:50 p.m.; 24 IR 2397, eff Jan 1, 2002)*



**312 IAC 5-14-26 Sailboats carrying passengers for hire**

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-15-7-5

Affected: IC 14-15-2-7; IC 14-15-2-8

Sec. 26. (a) This section establishes requirements for watercraft carrying passengers for hire on sailboats that are supplemental to the other requirements of this rule.

(b) The requirements for deck rails are as follows:

(1) A sailboat must have deck rails or an equivalent protection at the periphery of weather decks, including the cockpit, that are accessible to the passengers and crew. The top course of the deck rails shall be located at least twenty-four (24) inches above the deck where accompanied by handgrabs and at least twenty-six (26) inches above the deck where not accompanied by handgrabs.

(2) Passengers must not be allowed forward of the cabin unless the deck rails are at least twenty-six (26) inches high.

(3) Deck rails must have evenly spaced courses. The spaces between courses shall be no more than twelve (12) inches on twenty-four (24) inch high deck rails and no more than thirteen (13) inches on twenty-six (26) inch high deck rails. Rail courses are not required where the space between the top rail course and the deck is fitted with a bulwark, chain link fencing, wire mesh, or an equivalent protection.

(c) The requirements for personal flotation devices and water lights are as follows:

(1) The owner of a sailboat must carry on-board one (1) Type I personal flotation device of proper size for each passenger and crew member. Each device shall be inspected at the dockside inspection.

(2) The owner of a sailboat that operates on Lake Michigan shall affix in a suitable manner, to both the outside and the inside of each Type I personal flotation device, two hundred (200) square centimeters (approximately thirty-one and one-half (31.5) square inches) of Coast Guard-approved retroreflective material.

(3) The owner must have on-board the sailboat a ring life buoy at least twenty (20) inches in diameter. The ring life buoy must be properly marked, readily accessible, and suitably attached to at least fifty (50) feet of floating line.

(4) The owner of a sailboat must provide a Coast Guard-approved light that is self-activating upon contact with the water. The light shall be stored in a readily accessible location near the ring life buoy. If the light is attached to a ring life buoy, the attachment line must be at least one (1) foot long.

(d) The owner of a sailboat that operates on Lake Michigan must have on-board in good working condition a marine radio-telephone and a marine compass. The owner must maintain a current Federal Communication Commission operator's license for the marine radio-telephone.

(e) A sailboat, except an open boat or another sailboat where suitable privacy enclosures are not practicable, must be equipped with at least one (1) toilet that complies with IC 14-15-2-7 and IC 14-15-2-8. No bypass shall be attached to a system line or hose that will allow wastewater to be discharged into the waters of this state.

(f) The requirements for anchors and anchor lines are as follows:

(1) A sailboat must be equipped with an anchor of suitable size and type.

(2) A line must be attached to the anchor by eye splice, thimble, and shackle. The anchor line must be readily available on-board the sailboat and must have a minimum length as follows:

(A) At least thirty (30) feet for a sailboat that does not operate on Lake Michigan.

(B) At least seventy-five (75) feet attached to a sea anchor and at least one hundred fifty (150) feet attached to ground tackle for a watercraft which operates on Lake Michigan.

*(Natural Resources Commission; 312 IAC 5-14-26; filed Mar 23, 2001, 2:50 p.m.; 24 IR 2398, eff Jan 1, 2002)*

**ARTICLE 6. NAVIGABLE WATERS**

**Rule 1. Applicability**

**312 IAC 6-1-1 Application of article**

Authority: IC 14-10-2-4; IC 14-29-1-8

Affected: IC 14-19-1-1; IC 14-21-1; IC 14-28-1; IC 14-29-1; IC 14-29-3; IC 14-29-4-5; IC 14-34; IC 14-37

Sec. 1. (a) This article governs an activity relative to a license, and an activity for which a license is required whether or not a permit is sought or held, under IC 14-19-1-1, IC 14-29-1, IC 14-29-3, IC 14-29-4 (if IC 14-29-4-5(2) applies), or another statute administered by the department as a result of a waterway being navigable.

(b) In the absence of a contrary state boundary, the line of demarcation for a navigable waterway is the ordinary high watermark.

(c) A separate license is not required under this article and IC 14-29-1 for an activity permitted under IC 14-21-1, IC 14-28-1, IC 14-29-3, IC 14-34, or IC 14-37.

(d) Compliance with this article satisfies the licensing requirements for IC 14-29-1, IC 14-29-3, and IC 14-29-4 (if IC 14-29-4-5(2) applies).

(e) Before issuing a license under IC 14-21-1, IC 14-28-1, IC 14-34, or IC 14-37, the department shall apply the requirements of IC 14-29-1-8 and this article with respect to an activity within a navigable waterway.

(f) Before issuing a license under this rule, the department shall consider the following:

(1) The public trust doctrine.

(2) The likely impact upon the applicant and other affected persons, including the accretion or erosion of sand or sediments.

(g) A separate license is not required under IC 14-29-1-8 for an activity which is exempted from licensing by IC 14-29-1-8(e).  
(*Natural Resources Commission; 312 IAC 6-1-1; filed Sep 11, 1997, 8:50 a.m.: 21 IR 366; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

### **312 IAC 6-1-2 Transfer of license**

Authority: IC 14-10-2-4; IC 14-29-1-8

Affected: IC 14

Sec. 2. (a) A person cannot transfer or assign a license issued under this article unless prior written approval for the transfer or assignment is obtained from the director.

(b) The director shall not unreasonably deny a request to transfer or assign a permit issued under this article. (*Natural Resources Commission; 312 IAC 6-1-2; filed Sep 11, 1997, 8:50 a.m.: 21 IR 367; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

### **312 IAC 6-1-3 License application; limitations; revocation; general sanctions**

Authority: IC 14-10-2-4; IC 14-29-1-8

Affected: IC 4-21.5; IC 14-9-3; IC 14-10-2-6; IC 14-29

Sec. 3. (a) A license issued under this article is subject to the conditions, terms, or limitations contained on or attached to the license.

(b) A license may be suspended or revoked by the department under IC 4-21.5 for a violation of IC 14-29, this article, or a condition contained on or attached to the license.

(c) Any deputy director referenced in IC 14-9-3 may file a complaint with the commission that seeks the issuance of a notice of violation and the imposition of a charge, where authorized by IC 14-10-2-6, for any of the following:

(1) A violation of IC 14-29.

(2) A violation of this article.

(3) A violation of a condition contained on or attached to a license issued under this article.

(4) Conduct of an activity for which a license is required under this article but for which no license is obtained.

(d) The issuance of a license under this article does not divest the United States, Indiana, the department, or a riparian or littoral owner of a proprietary interest in a navigable waterway or adjacent lands. (*Natural Resources Commission; 312 IAC 6-1-3; filed Sep 11, 1997, 8:50 a.m.: 21 IR 367; errata filed Nov 24, 1997, 4:30 p.m.: 21 IR 1347; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

## **Rule 2. Definitions**

**312 IAC 6-2-1 Applicability**

Authority: IC 14-10-2-4; IC 14-29-1-8

Affected: IC 14

Sec. 1. (a) The definitions contained in this rule apply throughout this article.

(b) The definitions contained in 312 IAC 1 also apply. *(Natural Resources Commission; 312 IAC 6-2-1; filed Sep 11, 1997, 8:50 a.m.: 21 IR 367; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 6-2-2 "Abandoned shipwreck" defined**

Authority: IC 14-10-2-4; IC 14-21-1-31; IC 14-29-1-8

Affected: IC 14

Sec. 2. "Abandoned shipwreck" means a shipwreck to which title has been given up by the owner with the intent of never claiming a right or interest in the future. An intention to give up title may be demonstrated where an owner:

(1) takes steps to collect insurance or pay a salvage award to a person who salvages the vessel's cargo; or

(2) takes no action after a wreck incident to recovering or removing the vessel and its cargo.

*(Natural Resources Commission; 312 IAC 6-2-2; filed Sep 11, 1997, 8:50 a.m.: 21 IR 367; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 6-2-3 "Beach nourishment" defined**

Authority: IC 14-10-2-4; IC 14-29-1-8

Affected: IC 14

Sec. 3. "Beach nourishment" means the placement of sand to mitigate beach erosion:

(1) within the ordinary high watermark of Lake Michigan; or

(2) within such proximity to the shoreline of Lake Michigan that wind or water erosion is likely to transport sand into the lake.

*(Natural Resources Commission; 312 IAC 6-2-3; filed Sep 11, 1997, 8:50 a.m.: 21 IR 367; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 6-2-4 "Historic shipwreck" defined**

Authority: IC 14-10-2-4; IC 14-21-1-31; IC 14-29-1-8

Affected: IC 14

Sec. 4. "Historic shipwreck" means a shipwreck that is located within a historic site. *(Natural Resources Commission; 312 IAC 6-2-4; filed Sep 11, 1997, 8:50 a.m.: 21 IR 367; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 6-2-5 "Historic site" defined**

Authority: IC 14-10-2-4; IC 14-21-1-31; IC 14-29-1-8

Affected: IC 14-8-2-125

Sec. 5. "Historic site" has the meaning set forth in IC 14-8-2-125. *(Natural Resources Commission; 312 IAC 6-2-5; filed Sep 11, 1997, 8:50 a.m.: 21 IR 367; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 6-2-6 "Marina" defined**

Authority: IC 14-10-2-4; IC 14-29-1-8

Affected: IC 14

Sec. 6. "Marina" means a structure that:

(1) can service simultaneously at least five (5) watercraft; and

(2) provides, for a fee, one (1) or more of the following:

- (A) Watercraft engine fuel.
- (B) Docks.
- (C) Watercraft repair.
- (D) Watercraft sales or rental.

*(Natural Resources Commission; 312 IAC 6-2-6; filed Sep 11, 1997, 8:50 a.m.: 21 IR 368; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 6-2-7 “Public or municipal water utility” defined**

Authority: IC 14-10-2-4; IC 14-29-1-8

Affected: IC 8-1-2-1; IC 14

Sec. 7. “Public or municipal water utility” means a “public utility” under IC 8-1-2-1(a) or a “municipally owned utility” under IC 8-1-2-1(h), which is operated to furnish water. *(Natural Resources Commission; 312 IAC 6-2-7; filed Sep 11, 1997, 8:50 a.m.: 21 IR 368; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 6-2-8 “Shipwreck” defined**

Authority: IC 14-10-2-4; IC 14-21-1-31; IC 14-29-1-8

Affected: IC 14

Sec. 8. (a) “Shipwreck” means a vessel or wreck, its cargo, and other contents.

(b) As used in subsection (a), a “vessel or wreck” includes each of the following:

- (1) Hull.
- (2) Rigging.
- (3) Armaments.
- (4) Apparel.
- (5) Tackle.
- (6) Cargo.
- (7) Other contents of the watercraft.

*(Natural Resources Commission; 312 IAC 6-2-8; filed Sep 11, 1997, 8:50 a.m.: 21 IR 368; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 6-2-9 “Waterway” defined (Repealed)**

Sec. 9. *(Repealed by Natural Resources Commission; filed Feb 7, 2000, 3:31 p.m.: 23 IR 1367)*

**Rule 3. Shipwrecks and Other Historic Sites**

**312 IAC 6-3-1 Applicability**

Authority: IC 14-10-2-4; IC 14-21-1-31; IC 14-29-1-8

Affected: IC 14-21-1

Sec. 1. (a) This rule establishes standards applicable to the issuance of licenses, license conditions, and the conduct of investigations and scientific investigations needed to satisfy IC 14-21-1 and IC 14-29-1-8 for an abandoned shipwreck or historic site located in whole or in part within a navigable waterway.

(b) In addition to the purposes described in subsection (a), this rule is intended to effectuate the Abandoned Shipwreck Act (43 U.S.C. 2101) in Indiana. To the extent not inconsistent with this article, the department may apply guidelines of the National Park Service, Department of Interior, published on December 4, 1990, at 55 FR 50116 through 55 FR 50145 in considering an activity that may affect an abandoned shipwreck. *(Natural Resources Commission; 312 IAC 6-3-1; filed Sep 11, 1997, 8:50 a.m.: 21 IR 368; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 6-3-2 Administration of shipwrecks through division of historic preservation**

Authority: IC 14-10-2-4; IC 14-21-1-31; IC 14-29-1-8

Affected: IC 14

Sec. 2. (a) The division of historic preservation and archeology of the department shall conduct the technical and professional functions of the department under this rule with respect to a determination or regulation of a historic site (including an abandoned shipwreck located within an historic site).

(b) The director of the division of historic preservation and archeology may issue a license under this rule. (*Natural Resources Commission; 312 IAC 6-3-2; filed Sep 11, 1997, 8:50 a.m.: 21 IR 368; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 6-3-3 Licensing**

Authority: IC 14-10-2-4; IC 14-21-1-31; IC 14-29-1-8

Affected: IC 14-21-1

Sec. 3. (a) No person may remove, disturb, salvage, or destroy an abandoned shipwreck or a historic site located in whole or in part within a navigable waterway except under a license issued under this rule.

(b) A license application, with respect to a historic site (including a shipwreck located at a historic site), must include a plan (as defined in 310 IAC 20-1-20) that is proposed by the applicant to satisfy 310 IAC 20. The applicant must also satisfy 310 IAC 19. Except as provided in section 4 of this rule, the application shall be filed with the department at least thirty (30) days before a licensed activity is scheduled to begin.

(c) A person who wishes to recover or salvage an abandoned shipwreck that is not believed to be located at a historic site shall file a notification with the department. The notification must:

(1) provide the location of the abandoned shipwreck; and

(2) identify how the application determined:

(A) the abandoned ship is not located at a historic site; and

(B) that the proposed activity:

(i) does not otherwise violate IC 14-29-1-8; or

(ii) is subject to the exclusive jurisdiction of a federal court or federal agency.

(d) A license issued under this rule may be revoked for a violation of IC 14-21-1, IC 14-29-1-8, this article, or a term of the license. (*Natural Resources Commission; 312 IAC 6-3-3; filed Sep 11, 1997, 8:50 a.m.: 21 IR 368; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 6-3-4 Emergency licenses**

Authority: IC 14-21-1-31; IC 14-29-1-8

Affected: IC 4-21.5-4; IC 14

Sec. 4. (a) The department may, under IC 4-21.5-4, issue a license for a scientific investigation or for salvage of a historic site (including an abandoned shipwreck located at a historic site) if the director determines both of the following:

(1) Imminent and irreparable damage or loss is likely to occur to the historic site due to natural or cultural causes.

(2) Complete review of an application under this rule is impracticable.

(b) To the extent practicable, a license issued under this section shall meet the requirements of this rule.

(c) A permit cannot be issued under this section if its issuance would preclude the recovery of archeological, historical, or architectural information that forms the basis for site significance. (*Natural Resources Commission; 312 IAC 6-3-4; filed Sep 11, 1997, 8:50 a.m.: 21 IR 369; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**Rule 4. Marinas**

**312 IAC 6-4-1 Applicability**

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-29-1-8

Affected: IC 14-29-1

Sec. 1. (a) This rule establishes standards for the placement or maintenance of a marina along a navigable waterway.

(b) This rule is administered by the division of water and the division of law enforcement of the department. (*Natural Resources Commission; 312 IAC 6-4-1; filed Sep 11, 1997, 8:50 a.m.: 21 IR 369; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 6-4-2 Marina license**

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-29-1-8

Affected: IC 14-29-1-8

Sec. 2. (a) A written license is required from the department to place a new marina along a navigable waterway.

(b) A license issued under subsection (a) satisfies IC 14-29-1-8 and IC 14-15-7-3. (*Natural Resources Commission; 312 IAC 6-4-2; filed Sep 11, 1997, 8:50 a.m.: 21 IR 369; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 6-4-3 Sewage pumpout facilities for watercraft**

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-29-1-8

Affected: IC 14-29-1-8

Sec. 3. (a) Except as provided in subsection (c), a person must not operate a marina unless the person provides a pumpout that is in good working order and readily accessible to patrons of the marina and secures and maintains one (1) of the following:

- (1) A license under 327 IAC 3-2 for the construction and operation of a wastewater treatment facility or sanitary sewer.
- (2) A license under 410 IAC 6-10 for the construction of a commercial on-site wastewater disposal facility.
- (3) An alternative written approval for wastewater disposal from an authorized governmental agency.

(b) The department shall require compliance with subsection (a) as a condition for the issuance of a license under section 2 of this rule.

(c) A person may apply to the division of law enforcement for an exemption from this section. The exemption shall be granted, for a period not to exceed five (5) years, where the person demonstrates either of the following:

- (1) The marina is designed to serve exclusively watercraft that are neither required nor likely to be equipped with a marine sanitation device.
- (2) The operator of the marina has entered a binding agreement with another marina or similar facility along the waterway to provide pumpout services where the other marina or similar facility:
  - (A) maintains a lawful pumpout as described in subsection (a);
  - (B) is in proximity to the marina seeking the exemption so patrons to be served at a pumpout, which would otherwise be required at the exempted marina, would not be significantly inconvenienced; and
  - (C) has sufficient pumpout capacity and accessibility to effectively serve the patrons of both parties to the agreement.

(*Natural Resources Commission; 312 IAC 6-4-3; filed Sep 11, 1997, 8:50 a.m.: 21 IR 369; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; filed Jul 22, 2004, 10:05 a.m.: 27 IR 3885*)

**Rule 5. Mineral Extractions**

**312 IAC 6-5-1 Applicability**

Authority: IC 14-10-2-4; IC 14-28-1-5; IC 14-29-1-8

Affected: IC 14-34; IC 14-37

Sec. 1. (a) This rule establishes standards applicable to the extraction of sand, gravel, stone, or another mineral from or under the bed of a navigable waterway.

(b) Except as provided in subsections (c) through (d), this rule is administered by the division of water of the department.

(c) The division of reclamation of the department administers an activity under this rule that is also controlled by IC 14-34.

(d) The division of oil and gas of the department administers an activity under this rule that is also controlled by IC 14-37.

(*Natural Resources Commission; 312 IAC 6-5-1; filed Sep 11, 1997, 8:50 a.m.: 21 IR 369; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 6-5-2 Procedures**

Authority: IC 14-10-2-4; IC 14-29-1-8

Affected: IC 4-21.5; IC 14-11-4

Sec. 2. (a) Before the department takes an agency action to issue or deny a license under this rule, IC 14-11-4 and 312 IAC 2-3 govern.

(b) After the department takes an agency action, IC 4-21.5 and 312 IAC 3-1 govern. (*Natural Resources Commission; 312 IAC 6-5-2; filed Sep 11, 1997, 8:50 a.m.: 21 IR 370; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 6-5-3 License to extract minerals**

Authority: IC 14-10-2-4; IC 14-28-1-5; IC 14-29-1-8

Affected: IC 14-28-1; IC 14-29-1; IC 14-29-3; IC 14-34; IC 14-37

Sec. 3. (a) Except as provided in subsections (b) through (d), a written license is required under this rule before a person can lawfully extract sand, gravel, stone, coal, oil, gas, or another mineral from or under the bed of a navigable waterway.

(b) A separate license is not required under this rule for the extraction of coal from or under the bed of a navigable waterway if a license is issued under IC 14-34 and 310 IAC 12 that also applies the requirements of this rule.

(c) A separate license is not required under this rule for the extraction of oil or gas from or under the bed of a navigable waterway if a license is issued under IC 14-37 and 312 IAC 16-3 that also applies the requirements of this rule.

(d) A license is not required under this rule for the extraction of sand, gravel, or stone from the bed of a navigable waterway that is within a floodway if the extraction activity is exempted or excluded from the licensing requirements of IC 14-28-1.

(e) A license under this section shall conform to IC 14-29-1 and IC 14-29-3.

(f) The standards and requirements of this rule govern a license issued under this rule and any activity for which a license is required under this rule. (*Natural Resources Commission; 312 IAC 6-5-3; filed Sep 11, 1997, 8:50 a.m.: 21 IR 370; filed Feb 7, 2000, 3:31 p.m.: 23 IR 1365; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 6-5-4 License fees**

Authority: IC 14-10-2-4; IC 14-28-1-5; IC 14-29-1-8; IC 14-34-2-1; IC 14-37-3-15

Affected: IC 14-34; IC 14-37

Sec. 4. (a) Except as provided in subsection (b), the fee for a license under this rule is fifty dollars (\$50).

(b) A separate license fee is not required under this rule for an activity for which a permit is issued under IC 14-34 or IC 14-37. (*Natural Resources Commission; 312 IAC 6-5-4; filed Sep 11, 1997, 8:50 a.m.: 21 IR 370; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 6-5-5 Bonds**

Authority: IC 14-10-2-4; IC 14-29-1-8; IC 14-34-2-1; IC 14-37-3-5

Affected: IC 14-29; IC 14-34; IC 14-37

Sec. 5. (a) Except as provided in this section, a bond shall be posted by the license applicant with the department to assure prompt compliance with the terms and conditions of the license. Bond shall be in the form of a surety bond, a cash bond, or a certificate of deposit. No surety bond shall be approved unless issued by a company holding an applicable certificate of authority from the department of insurance, state of Indiana.

(b) The bond for any extraction resulting from surface coal mining operations shall be as determined under IC 14-34 and 310 IAC 12.

(c) The bond for any well for oil and gas purposes shall be as determined under IC 14-37 and 312 IAC 16-4. (*Natural Resources Commission; 312 IAC 6-5-5; filed Sep 11, 1997, 8:50 a.m.: 21 IR 370; filed Feb 7, 2000, 3:31 p.m.: 23 IR 1365; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 6-5-6 License duration**

Authority: IC 14-10-2-4; IC 14-29-1-8; IC 14-34-2-1; IC 14-37-3-15

Affected: IC 14-37-4-10

Sec. 6. (a) Except as provided in subsection (b), a license issued under this rule, including a license for the extraction of coal, terminates upon the earlier of the following:

(1) The termination date set forth in the license.

(2) Five (5) years after the date on which the department sent notice of the agency action to issue the license.

(b) For the extraction of oil or gas, the duration of the license is as provided in IC 14-37-4-10 unless otherwise specified in the license. *(Natural Resources Commission; 312 IAC 6-5-6; filed Sep 11, 1997, 8:50 a.m.: 21 IR 370; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 6-5-7 Conditions for the extraction of minerals**

Authority: IC 14-10-2-4; IC 14-29-1-8

Affected: IC 14-28-1; IC 14-34; IC 14-37

Sec. 7. The works, workings, and operations of a license issued under this rule must not do any of the following:

(1) Impede or unreasonably impair the navigation of the navigable waterway.

(2) Damage or endanger a bridge, highway, railroad, public work, or utility.

(3) Damage the property of a riparian owner, an adjoining proprietor, or a person who holds a license under this rule and conducts mineral extraction on adjacent property. The department may waive the requirements of this subdivision if the license applicant obtains written consent from the affected person.

(4) Cause significant harm to the environment.

(5) Violate IC 14-28-1, IC 14-34, or IC 14-37.

*(Natural Resources Commission; 312 IAC 6-5-7; filed Sep 11, 1997, 8:50 a.m.: 21 IR 370; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 6-5-8 Compensation for extracted minerals**

Authority: IC 14-10-2-4; IC 14-29-1-8

Affected: IC 13-11-2-116; IC 14

Sec. 8. (a) Except as provided in subsection (b), a person shall pay to the department a reasonable value for extracted minerals. The value shall be as determined by the department and set forth in the license.

(b) An extraction is exempt from subsection (a) if the mineral is authorized by the department for placement, and is lawfully placed:

(1) for beach nourishment; or

(2) in a landfill as defined in IC 13-11-2-116.

*(Natural Resources Commission; 312 IAC 6-5-8; filed Sep 11, 1997, 8:50 a.m.: 21 IR 371; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**Rule 6. General Authorization for Beach Nourishment to Lake Michigan****312 IAC 6-6-1 Applicability**

Authority: IC 14-10-2-4; IC 14-29-1-8

Affected: IC 14-29-1

Sec. 1. (a) This rule establishes terms for a general authorization to place sand for beach nourishment within Indiana Dunes National Lakeshore or Indiana Dunes State Park.

(b) A person who acts under this rule is not required to complete an application or to obtain a written license from the department under IC 14-29-1. A person may, however, elect to seek a written license under IC 14-29-1 rather than apply this rule.



*(Natural Resources Commission; 312 IAC 6-6-1; filed Sep 11, 1997, 8:50 a.m.: 21 IR 371; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 6-6-2 Notice to the department of natural resources**

Authority: IC 14-10-2-4; IC 14-29-1-8

Affected: IC 14

Sec. 2. A person who wishes to obtain a general authorization under this rule must provide a written notice to the division of water of the department, including the following:

(1) The name, address, and telephone number of any person seeking the authorization. Persons for which the information shall be provided include:

(A) the owner of the sand before placement for beach nourishment; and

(B) if other than the owner, the person who transports the sand.

(2) The site, and the ownership of the site, from which sand will be removed or extracted.

(3) The results of any testing or other documentation to establish the sand is unlikely to contain contaminants harmful to humans or aquatic life.

(4) The method by which the sand is to be transported.

(5) The site where the sand is to be deposited for the purpose of providing beach nourishment and written acceptance of the riparian owner for its deposit.

(6) The period for which the general authorization is sought.

*(Natural Resources Commission; 312 IAC 6-6-2; filed Sep 11, 1997, 8:50 a.m.: 21 IR 371; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 6-6-3 Department project review**

Authority: IC 14-10-2-4; IC 14-29-1-8

Affected: IC 14

Sec. 3. (a) Following the receipt of a written notice under section 2 of this rule, the department shall inspect the site from which the sand is to be extracted and the site at which the sand is to be deposited. Within fourteen (14) days after the receipt of the written notice, the department shall inform the person seeking the general authorization whether:

(1) the person may proceed;

(2) the person must comply with additional conditions in order to act under this rule, which general conditions may include successful completion of testing criteria; or

(3) the person cannot act except according to a license issued under IC 14-29-1-8.

(b) In performing its review, the department shall consider whether removal, transport, or placement of the sand is likely to pose a hazard to either of the following:

(1) Public health or safety.

(2) The environment.

(c) If the department does not respond within fourteen (14) days of the receipt of a written notice, the request for the general authorization is deemed to have been approved. *(Natural Resources Commission; 312 IAC 6-6-3; filed Sep 11, 1997, 8:50 a.m.: 21 IR 371; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 6-6-4 Posting**

Authority: IC 14-10-2-4; IC 14-29-1-8

Affected: IC 14

Sec. 4. The department may require a person who acts upon the general authorization to post a copy of the written notice, together with the acceptance and any terms or conditions required by the department, at the site where the sand is deposited. *(Natural Resources Commission; 312 IAC 6-6-4; filed Sep 11, 1997, 8:50 a.m.: 21 IR 371; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 6-6-5 Compliance with terms and sanctions for violations**

Authority: IC 14-10-2-4; IC 14-29-1-8

Affected: IC 14

Sec. 5. (a) A person who acts upon a general authorization must comply with the terms of the written notice provided under section 2 of this rule and any conditions under section 3 of this rule.

(b) A violation of subsection (a) may result in a revocation or suspension of the general authorization or in any other sanction provided by law for the violation of a license issued by the department. (*Natural Resources Commission; 312 IAC 6-6-5; filed Sep 11, 1997, 8:50 a.m.: 21 IR 371; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**Rule 7. Emergency Construction Activities in Lake Michigan**

**312 IAC 6-7-1 Application**

Authority: IC 14-10-2-4; IC 14-28-3-2; IC 14-29-1-8

Affected: IC 14-28-1; IC 14-29-1

Sec. 1. (a) This rule establishes standards for determining whether an emergency condition warrants the approval of a construction activity along or within the ordinary high watermark of Lake Michigan where a license application, review, and approval are not completed before conducting the activity. An emergency authorization under this rule applies to IC 14-28-1 and IC 14-29-1.

(b) The presumption is a license application, review, and approval process must be completed before a construction activity can be approved. An emergency action is authorized only if the division director finds the action is supported by extraordinary circumstances as described in this rule.

(c) This rule also sets procedures for seeking approval of an emergency activity and the status of improvements made as a result of the activity. (*Natural Resources Commission; 312 IAC 6-7-1; filed Jan 23, 2001, 10:17 a.m.: 24 IR 1610; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 6-7-2 Request for approval of emergency construction**

Authority: IC 14-10-2-4; IC 14-28-3-2; IC 14-29-1-8

Affected: IC 14-28-1; IC 14-29-1

Sec. 2. (a) A person who wishes to perform emergency construction along or within the ordinary high watermark of Lake Michigan, without first obtaining license approval under IC 14-29-1 and this article, must notify the department and the applicable county emergency management agency.

(b) The notice shall describe the nature of the emergency and the construction requested to be performed in response to the emergency. The notice must provide sufficient information for the department to review the request under the terms set forth in this rule.

(c) An authorization issued under this rule also satisfies the need to obtain a license under IC 14-28-1 for the period the authorization is in effect. (*Natural Resources Commission; 312 IAC 6-7-2; filed Jan 23, 2001, 10:17 a.m.: 24 IR 1610; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 6-7-3 Response to request for emergency construction approval**

Authority: IC 14-10-2-4; IC 14-28-3-2; IC 14-29-1-8

Affected: IC 14-28; IC 14-29

Sec. 3. Upon the receipt of a request for emergency construction approval, the department shall perform an on-site inspection. To the extent practicable, the department shall consult with other agencies before responding to the request. Included among these agencies are the U.S. Army Corps of Engineers and the appropriate county emergency management agency. (*Natural Resources Commission; 312 IAC 6-7-3; filed Jan 23, 2001, 10:17 a.m.: 24 IR 1611; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 6-7-4 Determining if an emergency exists**

Authority: IC 14-10-2-4; IC 14-28-3-2; IC 14-29-1-8

Affected: IC 14-28; IC 14-29

Sec. 4. The department may grant a request to approve emergency construction if, without performing the construction, there is an imminent risk of harm to public safety or major damage to property and at least one (1) of the following conditions exist:

- (1) No erosion protection structure is present at the site.
- (2) A failure or significant structural deterioration of an existing erosion protection structure has occurred. Examples include the following:

(A) Erosion of the lake bottom has occurred adjacent to a sheet steel wall.

(B) Stones in a rock revetment have shifted.

- (3) Major shoreline erosion has occurred.
- (4) A bluff face is excessively steep and threatens mass slumping.
- (5) Without the construction, there would be a likelihood of significant harm to the environment or to public health and safety.

*(Natural Resources Commission; 312 IAC 6-7-4; filed Jan 23, 2001, 10:17 a.m.: 24 IR 1611; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**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 14-28; 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)*

**312 IAC 6-7-6 Disposition of emergency license**

Authority: IC 14-10-2-4; IC 14-28-3-2; IC 14-29-1-8

Affected: IC 14-28; IC 14-29

Sec. 6. (a) The department may approve, approve with conditions, or deny a request for an emergency authorization under this rule. This disposition may be made orally if conditions warrant but shall be memorialized in writing as quickly as practicable.

(b) The department may terminate an application for an emergency license if the applicant fails to provide supporting documentation in a timely fashion.

(c) Unless otherwise specified in writing by the department, an approval under this rule is effective for ninety (90) days.

*(Natural Resources Commission; 312 IAC 6-7-6; filed Jan 23, 2001, 10:17 a.m.: 24 IR 1611; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 6-7-7 After-the-fact license**

Authority: IC 14-10-2-4; IC 14-28-3-2; IC 14-29-1-8

Affected: IC 14-18-6; IC 14-28-1; IC 14-29-1

Sec. 7. (a) A person who obtains and acts upon an emergency authorization under this rule must file with the department a completed application, under IC 14-29-1 and this article, for a permanent after-the-fact license within ninety (90) days of commencing the emergency activity. The department may, for good cause, grant an extension of time for filing an after-the-fact license application.

(b) If the activity for which an emergency authorization is granted also requires a license under IC 14-28-1, a completed application for a permanent after-the-fact license under IC 14-28-1 must also be filed with the department within ninety (90) days of commencing the emergency activity.

(c) Subsections (a) and (b) do not apply if the person granted an emergency authorization conducts no activity over which the department has jurisdiction under IC 14-28-1 or IC 14-29-1.

(d) The receipt of an emergency authorization creates no inference of entitlement to an after-the-fact license or to ownership of the bed of Lake Michigan. The department may require modification or removal of any material or structure placed on or within the ordinary high watermark of Lake Michigan if appropriate to IC 14-29-1 and this article. A person may obtain title to lands within the ordinary high watermark of Lake Michigan only upon compliance with IC 14-18-6. (*Natural Resources Commission; 312 IAC 6-7-7; filed Jan 23, 2001, 10:17 a.m.: 24 IR 1611; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

### **312 IAC 6-7-8 Administrative review**

Authority: IC 14-10-2-4; IC 14-28-3-2; IC 14-29-1-8

Affected: IC 4-21.5; IC 14-28; IC 14-29

Sec. 8. (a) An affected person may obtain administrative review under IC 4-21.5 and 312 IAC 3-1 of a determination under this rule. The division of hearings of the commission shall, as soon as practicable, conduct any appropriate proceeding.

(b) Unless otherwise agreed by the parties, a hearing under this section shall be held in an Indiana county that borders Lake Michigan. (*Natural Resources Commission; 312 IAC 6-7-8; filed Jan 23, 2001, 10:17 a.m.: 24 IR 1612; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

## **Rule 8. Placement of Permanent Structures in Lake Michigan**

### **312 IAC 6-8-1 Application of rule**

Authority: IC 14-10-2-4; IC 14-28-3-2; IC 14-29-1-8

Affected: IC 14-28; IC 14-29-1

Sec. 1. (a) This rule establishes standards for determining whether to grant approval for the placement of a permanent structure in Lake Michigan under IC 14-29-1.

(b) If the permanent structure is a marina, approval must be obtained under 312 IAC 6-4 in addition to this rule.

(c) As used in this rule, "permanent structure" means a:

- (1) marina;
- (2) seawall;
- (3) breakwater;
- (4) detached breakwater;
- (5) jetty;
- (6) boat launch;
- (7) "z" wall;
- (8) binwall;
- (9) sinusoidal wall;
- (10) bulkhead;
- (11) groin;
- (12) grout tube;
- (13) cable;
- (14) pipeline;
- (15) wharf;

- (16) pier;
- (17) piling;
- (18) rock revetment; or
- (19) similar structure.

*(Natural Resources Commission; 312 IAC 6-8-1; filed Jan 23, 2001, 10:17 a.m.: 24 IR 1612; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

### **312 IAC 6-8-2 License for the placement of a structure**

Authority: IC 14-10-2-4; IC 14-28-3-2; IC 14-29-1-8

Affected: IC 14-28; IC 14-29

Sec. 2. (a) A person who wishes to place a permanent structure on or within the ordinary high watermark of Lake Michigan must file a license application with the department that is completed under this article.

(b) The applicant must include plans, drawings, other specifications reasonably required for the department to determine whether placement of the permanent structure would satisfy 312 IAC 6-1-1.

(c) The applicant must demonstrate the permanent structure will not do any of the following:

(1) Unreasonably impair the navigability of the lake or an adjacent navigable waterway.

(2) Cause significant harm to the environment.

(3) Pose an unreasonable hazard to life or property.

(d) The applicant shall evaluate the likely impact of the permanent structure on coastal dynamics, including the following:

(1) Shoreline erosion and accretion.

(2) Sand movement within the lake.

(3) The interaction with existing structures.

(e) The applicant must demonstrate either that it is the fee owner of land immediately adjacent to the site where the construction would take place or that the applicant has written authorization from the fee owner of that land.

(f) The applicant must provide notice to persons adjacent to the affected real property as described in 312 IAC 2-3. *(Natural Resources Commission; 312 IAC 6-8-2; filed Jan 23, 2001, 10:17 a.m.: 24 IR 1612; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

### **312 IAC 6-8-3 Action by department**

Authority: IC 14-10-2-4; IC 14-28-3-2; IC 14-29-1-8

Affected: IC 4-21.5-3-5; IC 14-28; IC 14-29-1

Sec. 3. (a) The department may determine to approve, approve with conditions, or deny a license sought under this rule and IC 14-29-1. Those conditions may include any action needed to mitigate a negative impact identified under section 2 of this rule. Notice of the determination shall be provided to the applicant and any other person required to be notified under IC 4-21.5-3-5.

(b) The department may terminate a license application where the applicant fails to provide supporting documentation in a timely fashion.

(c) If the department determines the placement of a structure as described in the application would violate the public trust doctrine, the department shall either deny the application or condition approval of the application upon terms that would allow placement of the structure without violation of the public trust doctrine. The license may be conditioned to assure that any public access will not be impeded and to provide for complete removal of the structure and site restoration, at the expense of the riparian landowner, when the structure is no longer required.

(d) As a condition of approval, the department may require monitoring of the structure or of affected lands and waters to determine the impact of the structure upon coastal dynamics or other environmental factors. If monitoring or other documentation identifies a negative impact that was not fully addressed when the license was approved, the department may require removal, modification, or improvement to the structure (or another action needed) to mitigate the negative impact. *(Natural Resources Commission; 312 IAC 6-8-3; filed Jan 23, 2001, 10:17 a.m.: 24 IR 1613; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

## **ARTICLE 7. TRAILS AND SCENIC RIVERS**

**Rule 1. Snowmobile Trails**

**312 IAC 7-1-1 Applicability**

Authority: IC 14-10-2-4

Affected: IC 14

Sec. 1. This rule governs the use of snowmobile trails that have been designated by the department. *(Natural Resources Commission; 312 IAC 7-1-1; filed Aug 20, 1997, 7:15 a.m.: 21 IR 25; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 7-1-2 Snowmobile trails; seasons and controls**

Authority: IC 14-10-2-4

Affected: IC 14

Sec. 2. (a) A snowmobile trail is open only:

- (1) from December 1 through March 31;
- (2) if there are at least four (4) inches of snow on the ground; and
- (3) if the trail is generally covered with snow.

(b) The department shall designate persons to determine whether the requirements of subsection (a) are satisfied. These persons shall cause the trails to be posted as either open or closed at each trailhead. *(Natural Resources Commission; 312 IAC 7-1-2; filed Aug 20, 1997, 7:15 a.m.: 21 IR 25; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 7-1-3 Use of wheeled vehicles prohibited; exceptions**

Authority: IC 14-10-2-4

Affected: IC 14

Sec. 3. (a) Except as provided in subsection (b), a person must not operate a wheeled vehicle on a designated snowmobile trail.

(b) The following are exempted from the general prohibition against the operation of a wheeled vehicle on a snowmobile trail:

- (1) A person operating a wheeled vehicle on a road where it intersects with a snowmobile trail.
- (2) A person operating equipment for the purpose of grooming a snowmobile trail.
- (3) A person who operates a wheeled vehicle while crossing a snowmobile trail on land which the person owns or leases.

*(Natural Resources Commission; 312 IAC 7-1-3; filed Aug 20, 1997, 7:15 a.m.: 21 IR 25; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**Rule 2. Natural, Scenic, and Recreational Rivers and Streams**

**312 IAC 7-2-1 Applicability**

Authority: IC 14-10-2-4; IC 14-29-6-9

Affected: IC 14-29-6

Sec. 1. This rule identifies the waterways that are included by the commission in the Indiana natural, scenic, and recreational river system. *(Natural Resources Commission; 312 IAC 7-2-1; filed Aug 20, 1997, 7:15 a.m.: 21 IR 25; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 7-2-2 Blue River in Harrison, Crawford, and Washington Counties**

Authority: IC 14-10-2-4; IC 14-29-6-9

Affected: IC 14-29-6

Sec. 2. (a) The Blue River in Harrison, Crawford, and Washington Counties is included in the Indiana natural, scenic, and recreational river system from river mile 57 downstream to river mile 11.5.

(b) The portion of the Blue River described in subsection (a) is divided into the following segments:

- (1) From river mile 57 downstream to river mile 42, the river is designated as a scenic river.
- (2) From river mile 42 downstream to river mile 32, the river is designated as a recreational river.
- (3) From river mile 32 downstream to river mile 22, the river is designated as a natural river.
- (4) From river mile 22 downstream to river mile 11.5, the river is designated as a recreational river.

*(Natural Resources Commission; 312 IAC 7-2-2; filed Aug 20, 1997, 7:15 a.m.: 21 IR 25; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 7-2-3 Cedar Creek in Allen and DeKalb Counties**

Authority: IC 14-10-2-4; IC 14-29-6-9

Affected: IC 14-29-6

Sec. 3. Cedar Creek in Allen and DeKalb Counties from river mile 13.7 to the confluence with the St. Joseph River is included in the Indiana natural, scenic, and recreational river system and is designated as a recreational river. *(Natural Resources Commission; 312 IAC 7-2-3; filed Aug 20, 1997, 7:15 a.m.: 21 IR 26; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 7-2-4 Wildcat Creek in Tippecanoe and Carroll Counties**

Authority: IC 14-10-2-4; IC 14-29-6-9

Affected: IC 14-29-6

Sec. 4. The North Fork of Wildcat Creek in Tippecanoe and Carroll Counties from river mile 43.11 to river mile 4.82 and the South Fork of Wildcat Creek in Tippecanoe County from river mile 10.21 to river mile 0.00 are included in the Indiana natural, scenic, and recreational river system and are collectively designated as a scenic river. *(Natural Resources Commissions 312 IAC 7-2-4; filed Aug 20, 1997, 7:15 a.m.: 21 IR 26; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**ARTICLE 8. PUBLIC USE OF NATURAL AND RECREATIONAL AREAS**

**Rule 1. Administration and Definitions**

**312 IAC 8-1-1 Application**

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

Affected: IC 14

Sec. 1. This article applies to use by a person of any DNR property. *(Natural Resources Commission; 312 IAC 8-1-1; filed Oct 28, 1998, 3:32 p.m.: 22 IR 738, eff Jan 1, 1999)*

**312 IAC 8-1-2 Administration**

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

Affected: IC 14

Sec. 2. (a) Except as provided in subsection (b), this article is administered by the department.

(b) This article does not apply to a person who has contracted with the department, if the person is conducting business of the department, or to any of the following while performing official duties for the department or commission:

- (1) An employee of the department.
- (2) A member of the commission.
- (3) An employee of the commission.
- (4) A member of the advisory council.
- (5) A member of the museum board of trustees.
- (6) A law enforcement officer.

*(Natural Resources Commission; 312 IAC 8-1-2; filed Oct 28, 1998, 3:32 p.m.: 22 IR 738, eff Jan 1, 1999; filed Sep 19, 2003, 8:14*

a.m.: 27 IR 455)

**312 IAC 8-1-3 Entrance and use requirements**

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

Affected: IC 14

Sec. 3. The commission may, in a master plan or by resolution, establish any of the following:

(1) Fees for entrance into a DNR property or for a particular use within a DNR property.

(2) Entrance and exit sites for a DNR property.

(3) Conditions upon or prohibitions against particular uses within a DNR property or a portion of a DNR property.

*(Natural Resources Commission; 312 IAC 8-1-3; filed Oct 28, 1998, 3:32 p.m.: 22 IR 738, eff Jan 1, 1999)*

**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 14-8-2-261; IC 14-16-1-3; IC 14-22-11-1; 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:

(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; and

(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.

(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 CO<sub>2</sub> 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:

(A) cherries;

(B) grapes;

(C) apples;



- (D) hawthorns;
  - (E) persimmons;
  - (F) plums;
  - (G) pears;
  - (H) pawpaws; and
  - (I) roses.
- (7) "Greens" means the aboveground shoots or leaves of:
- (A) asparagus;
  - (B) dandelion;
  - (C) mustard;
  - (D) plantain; and
  - (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) 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:
- (A) hazelnuts;
  - (B) hickories;
  - (C) oaks;
  - (D) pecans; and
  - (E) walnuts.
- (13) "Off-road vehicle" has the meaning set forth in IC 14-16-1-3.
- (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)*

## **Rule 2. General Restrictions on the Use of DNR Properties**

### **312 IAC 8-2-1 Posted special requirements**

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

Affected: IC 14

Sec. 1. (a) A sign may be posted to authorize a particular use, to identify conditions upon a particular use, or to establish prohibitions against a particular use within a DNR property or a portion of a DNR property. A sign may close an area to entry by the public.

(b) A person must not violate a sign posted under this section. *(Natural Resources Commission; 312 IAC 8-2-1; filed Oct 28,*

1998, 3:32 p.m.: 22 IR 739, eff Jan 1, 1999)

**312 IAC 8-2-2 Trash, refuse, and sanitation**

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

Affected: IC 14-15-2-7; IC 14-15-2-8

Sec. 2. (a) Trash, refuse, waste, garbage, glass, petroleum products, sewage, or another material must not be:

(1) maintained, treated, or disposed in a manner that violates a federal or state law; or

(2) brought onto a DNR property for disposal.

(b) A watercraft equipped with a toilet or galley may be inspected by a department representative at any time for compliance with IC 14-15-2-7 and IC 14-15-2-8. Before entering a property, a person must make inoperative any outside drain of a toilet or galley.

(c) A vehicle, watercraft, aircraft, waste receptacle, or personal item must not be washed except in a designated area. (*Natural Resources Commission; 312 IAC 8-2-2; filed Oct 28, 1998, 3:32 p.m.: 22 IR 739, eff Jan 1, 1999*)

**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 rifle, pistol, shotgun, or archery range.

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

(A) a wild animal on a DNR property authorized for that purpose; or

(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:

(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; or

(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 obtain the permit and record while in the field for the authorized date and must, 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 during the lawful pursuit of wild animals, or 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 a:

- (1) campsite;
- (2) boat dock;
- (3) launching ramp;
- (4) picnic area; or
- (5) 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(j).

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

- (1) A person must not use a shooting range unless the person is at least eighteen (18) years of age or accompanied by a person who is at least eighteen (18) years of age.
- (2) A person must register with the department 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 larger than size six (6) must be used on a shotgun range.
- (5) A person must not discharge a firearm using automatic fire.
- (6) A person must not use tracer, armor-piercing, or incendiary rounds.
- (7) A person must not play on, climb on, walk on, or shoot into or from the side berms.
- (8) A person must not 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.
- (9) A person must dispose of the targets used by the person under section 2(a) of this rule.
- (10) 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 cash, awards, trophies, citations, or prizes.
  - (C) The exclusive use of the range or facilities.
  - (D) A portion of the event occurring between sunset and sunrise.
- (11) 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 turtles taken under 312 IAC 9-5-2 and 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*)

### **312 IAC 8-2-4 Fishing**

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

Affected: IC 14-22-11-1; IC 14-31-1

Sec. 4. (a) A person must comply with all federal and state fishing laws.

(b) Except on the waters of a reservoir property administered by the division of state parks and reservoirs, a person who is on a waterway must not:

- (1) clean or process fish; or
- (2) possess fish that have been cleaned or processed.
- (c) A person must not fish in a nature preserve dedicated under IC 14-31-1, except as follows:
  - (1) At a site posted to authorize fishing.
  - (2) From a watercraft in a river, stream, or lake where access to the waterway was lawfully obtained outside the nature

preserve.

(3) In a nature preserve that is also a fish and wildlife area.

*(Natural Resources Commission; 312 IAC 8-2-4; filed Oct 28, 1998, 3:32 p.m.: 22 IR 740, eff Jan 1, 1999; filed Nov 5, 1999, 10:14 a.m.: 23 IR 554, eff Jan 1, 2000)*

### **312 IAC 8-2-5 Alcoholic beverages**

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

Affected: IC 14

Sec. 5. A person must not possess or consume an alcoholic beverage at any of the following locations:

(1) Indiana Dunes State Park.

(2) A swimming beach or pool.

(3) A shooting range.

*(Natural Resources Commission; 312 IAC 8-2-5; filed Oct 28, 1998, 3:32 p.m.: 22 IR 740, eff Jan 1, 1999)*

### **312 IAC 8-2-6 Animals brought by people to DNR properties**

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

Affected: IC 14-22-11-1; IC 35-46-3-11.5

Sec. 6. (a) A person who possesses a pet or service animal must keep the animal caged or on a leash no more than six (6) feet long. A person must attend to a pet or service animal at all times. This subsection does not apply to activities governed by section 3(e) of this rule.

(b) If a pet or service animal appears likely to endanger a person or property or to create a nuisance, the owner may be required to immediately remove the pet or service animal from a DNR property.

(c) A person must not take or possess a cat, a dog, or other pet to a:

(1) swimming beach;

(2) swimming pool enclosure;

(3) rental facility; or

(4) public building.

A service animal used by a person with a disability is exempted from this subsection.

(d) A horse tag must be acquired and possessed for each horse that is brought into designated DNR properties from April 1 through November 30. At Brown County and Versailles State Parks and at Salamonie, the horse tag or pass must be prominently displayed on the left side of the bridle.

(e) A person must not allow livestock or domesticated animals to enter or remain upon a DNR property. These animals may be removed by the department and disposed or held at the owner's expense.

(f) A person must not release an animal on DNR property except under license issued by an authorized representative under this subsection. To receive a license, a person must demonstrate the animal is healthy and unlikely to endanger public safety or the environment. A person in violation of this subsection shall reimburse the department for any expenses reasonably incurred.

(g) For purposes of this section, a pet is not a service animal under IC 35-46-3-11.5. *(Natural Resources Commission; 312 IAC 8-2-6; filed Oct 28, 1998, 3:32 p.m.: 22 IR 741, eff Jan 1, 1999; filed Nov 5, 1999, 10:14 a.m.: 23 IR 554, eff Jan 1, 2000; filed Nov 30, 2001, 10:55 a.m.: 25 IR 1074, eff Jan 1, 2002; filed Jun 17, 2002, 4:13 p.m.: 25 IR 3715; filed Sep 19, 2003, 8:14 a.m.: 27 IR 457)*

### **312 IAC 8-2-7 Fires and flammable liquids**

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

Affected: IC 14

Sec. 7. (a) A person must not start or maintain a fire except in a public use area designated for that purpose. A fire must be extinguished immediately after use. An authorized representative may prohibit fires even in a designated area for public safety or to protect property.

(b) A person must extinguish a lighted match, cigarette, cigar, or similar item before discarding the item. (*Natural Resources Commission; 312 IAC 8-2-7; filed Oct 28, 1998, 3:32 p.m.: 22 IR 741, eff Jan 1, 1999*)

**312 IAC 8-2-8 Vehicles, trails, watercraft, and aircraft**

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

Affected: IC 14-22-11-1

Sec. 8. (a) A person must not operate a vehicle:

(1) at a speed greater than:

(A) thirty (30) miles per hour on straight, open stretches of road; or

(B) fifteen (15) miles per hour on steep grades, curves, or where posted; or

(2) other than on a public road.

(b) A person must not park a vehicle, watercraft, or associated equipment, except at a site designated by the department.

(c) A person moving cross-country on a trail must remain on the designated pathway for the trail. A person must not hike, bike, ski, horseback ride, or operate an off-road vehicle or snowmobile, except on a trail designated for the purpose. A person must not ride, lead, drive, or hitch an animal, except where designated by the department.

(d) A person must not operate or maintain a watercraft on a lake:

(1) containing fewer than three hundred (300) acres unless powered only by an electric trolling motor with not more than two

(2) 12-volt or one (1) 24-volt battery;

(2) except under motor horsepower and speed zone requirements applicable to the lake; and

(3) for fourteen (14) consecutive days without removal from the lake unless otherwise moored in a designated area.

(e) A person must not launch, dock, or moor a watercraft or another floating device, except for approved periods and at sites designated by the department for those purposes. A person must not leave a watercraft unattended in a courtesy dock provided by the department. A person must not moor a watercraft at a designated group dock or mooring post unless the watercraft exhibits a valid mooring permit.

(f) A person must not leave a vehicle, watercraft, or associated equipment at a public access site or a public fishing area unless the person is actively engaged in the use of a DNR property or adjacent public freshwater lake or navigable waterway.

(g) A person must not leave a vehicle, watercraft, or associated equipment in a public parking lot for longer than forty-eight (48) hours.

(h) A person must not land, taxi, take-off, park, or moor an aircraft, hang glider, ultralite, powered model aircraft, or hot air balloon, except at a site designated for that purpose or pursuant to a license. (*Natural Resources Commission; 312 IAC 8-2-8; filed Oct 28, 1998, 3:32 p.m.: 22 IR 741, eff Jan 1, 1999; filed Nov 5, 1999, 10:14 a.m.: 23 IR 555, eff Jan 1, 2000; filed Jun 17, 2002, 4:13 p.m.: 25 IR 3715*)

**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 [*sic.*, *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)*

**312 IAC 8-2-10 Preservation of habitat and natural and cultural resources**

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

Affected: IC 14

Sec. 10. Except as authorized by a license, a person must not do any of the following within a DNR property:

- (1) Molest an animal den or bird nest.
- (2) Collect any wild animal, except as authorized by section 3 or 4 of this rule.
- (3) Damage or collect a plant or pick flowers. Exempted from this subdivision are the following:
  - (A) Berries.
  - (B) Fruits.
  - (C) Nuts.
  - (D) Fallen cones.
  - (E) Mushrooms.
  - (F) Leaves.
  - (G) Greens.
- (4) Pick berries, fruits, nuts, fallen cones, mushrooms, leaves, or greens on a nature preserve unless the nature preserve is located at any of the following:
  - (A) State park.
  - (B) Reservoir property.
  - (C) Fish and wildlife area.
  - (D) State forest.
- (5) Damage, interfere with, or remove:
  - (A) a work of art;
  - (B) an artifact;
  - (C) a rock or mineral;
  - (D) a shipwreck;
  - (E) an archeological site;
  - (F) a historic site;
  - (G) a building; or
  - (H) a sign.
- (6) Place or maintain a:
  - (A) structure;
  - (B) device;
  - (C) dock;
  - (D) buoy;
  - (E) ramp; or
  - (F) sign.

- (7) Use a metal detector, except on a sand, swimming beach as approved by an authorized representative.
- (8) Rock climb or rappel.
- (9) Collect firewood on a state park.
- (10) Dig or excavate any material from the ground.
- (11) Regardless of whether taken lawfully, sell any material taken from a DNR property. Exempted from this subdivision are materials taken under a license issued by the department that specifically authorizes the sale of the material.

*(Natural Resources Commission; 312 IAC 8-2-10; filed Oct 28, 1998, 3:32 p.m.: 22 IR 742, eff Jan 1, 1999)*

### **312 IAC 8-2-11 Campsites and camping**

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

Affected: IC 14

Sec. 11. (a) A person must not place or maintain a camp, tent, or trailer except during periods and at sites authorized by the department for camping. Between 11 p.m. and 7 a.m., a person must not occupy a site other than a designated campsite, cabin, or inn room unless otherwise authorized by a written permit.

(b) No more than six (6) individuals may lawfully occupy one (1) campsite in a family campground unless otherwise approved by an authorized representative.

(c) An individual at least eighteen (18) years of age must register at a campground on behalf of the persons in a group. The responsible person registering for a campsite must remain with the group during the camping period. Campers under eighteen (18) years of age must be accompanied by a person at least eighteen (18) years of age.

(d) A camping fee shall be paid in advance and entitles a group or family to occupy one (1) campsite for one (1) overnight period. The department may provide, on the written fee receipt, restrictions on use of the campsite that supplement the restrictions contained in this article.

(e) Campground occupancy is limited to fourteen (14) consecutive nights unless another period is designated by the department. The property manager or another designated representative of the department may extend the duration of the occupancy for a period not to exceed sixty (60) days where a medical need is established. At the end of the camping period, a camping family or group must vacate the property and remove all equipment for at least forty-eight (48) hours.

(f) A person must not lease or sublease a campsite or equipment on-site to another person.

(g) A person must not:

(1) bathe; or

(2) wash a:

(A) pet;

(B) dish or other cooking utensil; or

(C) other personal property;

at a drinking fountain, lavatory, or laundry tub. Dishwater must be disposed through proper sanitary facilities and must not be discharged on the ground. A boat or a vehicle must not be washed in a camping area.

(h) Quiet hours shall be observed from 11 p.m. until 7 a.m.

(i) Equine animals and llamas are allowed in a horsemen's campground but are prohibited from entering a family campground.

(j) A person must not dispose of refuse or garbage, except in a receptacle provided for that purpose.

(k) Check-out time from a campground is 2 p.m. on Monday through Saturday and 5 p.m. on Sunday or a holiday. *(Natural Resources Commission; 312 IAC 8-2-11; filed Oct 28, 1998, 3:32 p.m.: 22 IR 742, eff Jan 1, 1999; errata filed Dec 17, 1998, 9:32 a.m.: 22 IR 1525; filed Jun 17, 2002, 4:13 p.m.: 25 IR 3716; filed Sep 19, 2003, 8:14 a.m.: 27 IR 458)*

### **312 IAC 8-2-12 Other personal activities**

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

Affected: IC 14

Sec. 12. (a) A person must leave a recreation area by 11 p.m. unless the person is:

(1) lawfully using a camp, cabin, trailer, or inn; or

(2) otherwise engaged in an authorized activity.

(b) A person must not use an audible device in a way or at a time that unduly disturbs another person. As used in this subsection, "audible device" includes any of the following:

- (1) A radio.
- (2) A television.
- (3) An audio tape player.
- (4) A compact disc player.
- (5) A musical instrument.
- (6) A motor.
- (7) An engine.
- (8) An electronic generator.
- (9) A similar device that produces sound.
- (c) A person must not operate a public address system, except according to a license.
- (d) A person must not possess fireworks.

(e) Except as approved by an authorized representative, a person must not enter a cave or the remains of a subsurface mine.  
(*Natural Resources Commission; 312 IAC 8-2-12; filed Oct 28, 1998, 3:32 p.m.: 22 IR 743, eff Jan 1, 1999*)

### **312 IAC 8-2-13 Marinas and wastewater holding facilities for watercraft**

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

Affected: IC 14

Sec. 13. (a) As used in this section, "marina" means a structure that:

- (1) services simultaneously at least five (5) watercraft; and
- (2) provides, for a fee, one (1) or more of the following:
  - (A) Watercraft engine fuel.
  - (B) Docks.
  - (C) Watercraft repair.
  - (D) Watercraft sales or rental.

(b) Except as provided in subsection (d), a person must not operate a marina unless the person provides a pumpout that is in good working order and readily accessible to patrons of the marina and secures and maintains one (1) of the following:

- (1) A license under 327 IAC 3-2 for the construction and operation of a wastewater treatment facility or sanitary sewer.
- (2) A license under 410 IAC 6-10 for the construction of a commercial on-site wastewater disposal facility.
- (3) An alternative written approval for wastewater disposal from an authorized governmental agency.

(c) The requirements of subsection (b) shall be made a condition for a license issued by the department to construct a new marina or to modify an existing marina.

(d) A person may apply to the division of law enforcement for an exemption from subsection (b). The exemption shall be granted, for a period not to exceed five (5) years, where the person demonstrates either of the following:

- (1) The marina is designed to serve exclusively watercraft that are neither required nor likely to be equipped with a marine sanitation device.
- (2) The operator of the marina has entered a binding agreement with another marina or similar facility along the waterway to provide pumpout services where the other marina or similar facility:
  - (A) maintains a lawful pumpout as described in subsection (b);
  - (B) is in proximity to the marina seeking the exemption so patrons to be served at a pumpout, which would otherwise be required at the exempted marina, would not be significantly inconvenienced; and
  - (C) has sufficient pumpout capacity and accessibility to effectively serve the patrons of both parties to the agreement.

(*Natural Resources Commission; 312 IAC 8-2-13; filed Oct 28, 1998, 3:32 p.m.: 22 IR 743, eff Jan 1, 1999; filed Jul 22, 2004, 10:05 a.m.: 27 IR 3886*)

### **312 IAC 8-2-14 Advertisements and solicitations**

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

Affected: IC 14



Sec. 14. (a) A person must not post a private notice or advertisement, except as approved by an authorized representative.

(b) A person must not solicit or engage in business, except as approved by an authorized representative. (*Natural Resources Commission; 312 IAC 8-2-14; filed Oct 28, 1998, 3:32 p.m.: 22 IR 743, eff Jan 1, 1999*)

### **312 IAC 8-2-15 Use by private organizations**

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

Affected: IC 4-21.5; IC 14

Sec. 15. (a) This section governs the use of an area within a DNR property that is open to the public by a person to conduct a public meeting, parade, demonstration, ceremony, contest, competition, sporting activity, or other special event. For the purposes of this section, an area is not open to the public if the director or an authorized representative determines that the proposed activity would unduly disturb the environmental, biological, ecological, archeological, or historic characteristics of the area.

(b) An area open to the public may not be used by a person to conduct a public meeting, parade, demonstration, or ceremony unless the person has obtained a license for the use under this section.

(c) An application for a license designated in subsection (b) shall be delivered to the department at least thirty (30) days in advance of the proposed event and shall set forth each of the following:

- (1) The name, address, and telephone number of the applicant.
- (2) The date, time, and duration of the proposed activity.
- (3) An estimate of the number of individuals expected to attend and to participate in the activity.
- (4) A statement of any equipment or facilities to be used in connection with the activity.

(d) An application for a license under subsection (b) shall be granted unless the property manager determines at least one (1) of the following:

- (1) The activity will present or be conducted in a manner that will present a clear and immediate danger to public health or safety.
- (2) The activity will cause undue interference to other users in the area.
- (3) The activity will conflict with another license previously issued by the property manager.

(e) An area open to the public may not be used for a contest, competition, sporting event, or other similar activity unless authorized by a license. An application for a license under this subsection shall be delivered to the department at least thirty (30) days before the proposed event and shall set forth the following:

- (1) The name, address, and telephone number of the applicant.
- (2) The date, time, and duration of the proposed activity.
- (3) An estimate of the number of individuals expected to attend and participate in the activity.
- (4) A description of any equipment or facilities to be used in connection with the activity.
- (f) To receive a license under subsection (e), the applicant must demonstrate each of the following:

- (1) The activity will not present or be conducted in a manner that will present a clear and immediate danger to public health or safety.
- (2) The activity will not cause undue interference to other users of the area.
- (3) The activity will not conflict with another permit previously issued by the property manager.
- (4) The activity is consistent with the property master plan, or, if a master plan has not been adopted, is consistent with the purposes for which the area was established.
- (5) The activity is consistent with any site designated under subsection (h).

(g) The property manager shall make an initial determination to issue or deny an application for a license sought under this section within a reasonable period of time after receipt of the application. The license may include conditions that are reasonably necessary to satisfy the purposes of this section. An applicant or other affected person who is aggrieved may take administrative review to the commission under IC 4-21.5 and 312 IAC 3-1.

(h) An area open to the public is available to the general public by reservation on a first-come, first-served basis.

(i) A license issued under this section does not authorize a person to establish, construct, or erect a structure unless otherwise specified in the license.

(j) This section does not apply to a private expression of religious preference. (*Natural Resources Commission; 312 IAC 8-2-15; filed Oct 28, 1998, 3:32 p.m.: 22 IR 744, eff Jan 1, 1999; errata filed Dec 17, 1998, 9:32 a.m.: 22 IR 1525*)

**Rule 3. Fishing Tournaments (Repealed)**

*(Repealed by Natural Resources Commission; filed Aug 3, 2001, 10:54 a.m.: 24 IR 3933, eff Jan 1, 2002)*

**Rule 4. Group Boat Docks**

**312 IAC 8-4-1 Application**

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

Affected: IC 14-22-11-1

Sec. 1. (a) This rule governs the placement of a group boat dock on Monroe Lake or Mississinewa Lake.

(b) No group boat dock may be placed on Monroe Lake or Mississinewa Lake, except as provided under this rule. *(Natural Resources Commission; 312 IAC 8-4-1; filed Oct 28, 1998, 3:32 p.m.: 22 IR 746, eff Jan 1, 1999; filed Nov 5, 1999, 10:14 a.m.: 23 IR 555, eff Jan 1, 2000)*

**312 IAC 8-4-2 Participation in a group boat dock; minimum requirements**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-19-1-1

Affected: IC 14

Sec. 2. (a) To qualify for a group boat dock, one (1) of the following must be satisfied:

(1) Each person who has a boat slip must own real estate adjoining federal project land.

(2) Each person who has a boat slip must own a lot in an incorporated subdivision composed of contiguous lots where at least twenty-five percent (25%) of the lots adjoin project land. The person who owns one (1) of these lots is eligible for a slip in the group boat dock.

(3) Each person who has a boat slip must be a joint owner in property managed by a corporation where the corporation has managed the property continuously since December 31, 1968. This subdivision does not apply if the corporation becomes dissolved, merged, or transferred to another entity.

(b) For a property to qualify under subsection (a), the property must have a size and shape that is adequate for cabin-type development adjoining federal project lands. *(Natural Resources Commission; 312 IAC 8-4-2; filed Oct 28, 1998, 3:32 p.m.: 22 IR 746, eff Jan 1, 1999)*

**312 IAC 8-4-3 Installation and maintenance of a group boat dock**

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

Affected: IC 14-22-11-1

Sec. 3. A group boat dock must be installed and maintained as follows:

(1) The person who holds a license under this rule must be a corporation, association, partnership, or other group with at least six (6) separate parcels of land and landowners. An affidavit of land ownership must be filed for each member of the permit application or license holder. A license applicant must submit a copy of the articles of incorporation, bylaws, partnership agreement, or other similar document.

(2) A surety bond and insurance must be maintained for the group boat dock in an amount determined by the department.

(3) A license for a group boat dock must be renewed annually with a service fee due upon renewal.

(4) Dock construction must be approved by the department.

(5) Boat slips shall be located as close to the edge of the water as practicable.

(6) A dock shall be securely moored or anchored to prevent drifting during high wind, waves, and fluctuation of the pool elevation of Lake Monroe.

(7) A group boat dock and any adjacent area must be kept free from trash, garbage, floating debris, and other materials that may pose a hazard to safety or the environment.

(8) The license holder shall supply a responsible person to provide uninterrupted operation and surveillance of the group boat dock.

(9) No sign shall be placed on the group boat dock or an adjacent area that indicates the site is private property.

(10) A group boat dock shall display its license number so that the number can be easily read from passing watercraft. The number shall be:

- (A) at least two (2) feet high;
- (B) black on white background; and
- (C) three (3) feet above the deck of the dock.

(11) Land access can be provided to a group boat dock only by a foot path consisting of rock, stone, or gravel. Approval for the foot path must also be obtained from the United States Army Corps of Engineers. Vehicles are prohibited from using the foot path.

(12) The license holder must promptly notify the department in writing of a change in its membership or legal structure. The notification must include a description of the land that is transferred and an affidavit of ownership for the new owner.

*(Natural Resources Commission; 312 IAC 8-4-3; filed Oct 28, 1998, 3:32 p.m.: 22 IR 747, eff Jan 1, 1999; errata filed Dec 17, 1998, 9:32 a.m.: 22 IR 1525; filed Nov 5, 1999, 10:14 a.m.: 23 IR 555, eff Jan 1, 2000)*

### **312 IAC 8-4-4 Locations where group boat docks may be placed**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-19-1-1

Affected: IC 14

Sec. 4. The following are the sites on Lake Monroe where group boat docks may be placed if those docks otherwise satisfy the requirements of this rule:

Dock Site	Maximum Number of Boats	Location
A-1	10	Wisely Farm
A-2	30	Cove West of Dam
A-3	30	Three Fingers Cove
C-6	21	Hardin Ridge
C-7	15	West of Mouth of Ramp Creek
D-8	15	Persimmon Ridge
D-9	12	Sugarcamp Hollow
E-10	15	Boy Scout Bay
I-14	10	I.U. Bay
J-15	50	Bay Northeast of the Causeway
K-17	40	Hooks Point

*(Natural Resources Commission; 312 IAC 8-4-4; filed Oct 28, 1998, 3:32 p.m.: 22 IR 747, eff Jan 1, 1999)*

### **312 IAC 8-4-5 Inspections and revocations**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-19-1-1

Affected: IC 4-21.5-3-8; IC 14-10-2-6

Sec. 5. (a) The department may perform, at any reasonable time, an inspection of a group boat dock and its records to determine whether the requirements of this rule are satisfied.

(b) If the department determines that the holder of a license for a group boat dock has violated this rule, in addition to the sanctions provided in 312 IAC 8-5:

- (1) the deputy director for the bureau of lands and cultural resources may issue a complaint for the issuance of a notice of violation under IC 14-10-2-6;
- (2) the director of the division of state parks and reservoirs may issue a complaint under IC 4-21.5-3-8 to revoke the license;
- or
- (3) the director of the department may authorize any other lawful enforcement action.

*(Natural Resources Commission; 312 IAC 8-4-5; filed Oct 28, 1998, 3:32 p.m.: 22 IR 747, eff Jan 1, 1999)*

**Rule 5. Enforcement, Penalties, and Other Administrative Actions**

**312 IAC 8-5-1 Infraction**

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

Affected: IC 14-10-2-6

Sec. 1. (a) A person who violates this article commits a Class C infraction.

(b) A violation of this article may be enforced by a prosecuting attorney or through the initiation of a commission complaint for a notice of violation under IC 14-10-2-6. (*Natural Resources Commission; 312 IAC 8-5-1; filed Oct 28, 1998, 3:32 p.m.: 22 IR 748, eff Jan 1, 1999*)

**312 IAC 8-5-2 License sanctions**

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

Affected: IC 4-21.5-3-8; IC 4-21.5-4; IC 14

Sec. 2. The department may file a complaint under IC 4-21.5-3-8, or seek emergency relief under IC 4-21.5-4, to revoke or suspend the license of a person who violates a term of the license, this article, or another law. (*Natural Resources Commission; 312 IAC 8-5-2; filed Oct 28, 1998, 3:32 p.m.: 22 IR 748, eff Jan 1, 1999; filed Aug 3, 2001, 10:54 a.m.: 24 IR 3933, eff Jan 1, 2002*)

**312 IAC 8-5-3 Ejection from a DNR property**

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

Affected: IC 4-21.5; IC 14

Sec. 3. (a) A property manager or another authorized representative may require a person to leave a DNR property or may otherwise restrict a person's use of a DNR property.

(b) An ejection or restriction imposed under subsection (a) is effective immediately and applies for twenty-four (24) hours unless the property manager or other authorized representative specifies a shorter duration.

(c) Notwithstanding subsection (b), a property manager or another authorized representative may designate in writing that the ejection or restriction shall remain in effect for not more than one (1) year. An ejection or restriction under this subsection is subject to administrative review to the commission under IC 4-21.5.

(d) An ejection or restriction imposed under this section may be made applicable to all or a portion of particular DNR property, to multiple DNR properties, or to all DNR properties. (*Natural Resources Commission; 312 IAC 8-5-3; filed Oct 28, 1998, 3:32 p.m.: 22 IR 748, eff Jan 1, 1999; filed Nov 30, 2001, 10:55 a.m.: 25 IR 1074, eff Jan 1, 2002*)

**ARTICLE 9. FISH AND WILDLIFE**

**Rule 1. Definitions**

**312 IAC 9-1-1 General application of definitions**

Authority: IC 14-11-2-1; IC 14-22-2-6

Affected: IC 14-22

Sec. 1. The definitions provided in this rule apply throughout this article. (*Natural Resources Commission; 312 IAC 9-1-1; filed May 12, 1997, 10:00 a.m.: 20 IR 2698; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-1-1.5 "Amphibian" defined**

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

Affected: IC 14-22

Sec. 1.5. "Amphibian" means the following:

(1) A frog, toad, salamander, caecilian, or other animal of the class Amphibia.

(2) The parts, eggs, or offspring of a species of the class Amphibia.

*(Natural Resources Commission; 312 IAC 9-1-1.5; filed Jul 9, 1999, 5:55 p.m.: 22 IR 3671; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 9-1-2 “Antlered deer” defined**

Authority: IC 14-11-2-1; IC 14-22-2-6

Affected: IC 14-22

Sec. 2. “Antlered deer” means a deer with an antler at least three (3) inches long. *(Natural Resources Commission; 312 IAC 9-1-2; filed May 12, 1997, 10:00 a.m.: 20 IR 2698; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 9-1-3 “Antlerless deer” defined**

Authority: IC 14-11-2-1; IC 14-22-2-6

Affected: IC 14-22

Sec. 3. “Antlerless deer” means a deer other than an antlered deer. *(Natural Resources Commission; 312 IAC 9-1-3; filed May 12, 1997, 10:00 a.m.: 20 IR 2698; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 9-1-4 “Bait” defined**

Authority: IC 14-11-2-1; IC 14-22-2-6

Affected: IC 14-22

Sec. 4. “Bait” means to place, expose, deposit, distribute, or scatter grain, salt, or other feed to lure, attract, or entice a wild animal to an area where a person may take the wild animal. *(Natural Resources Commission; 312 IAC 9-1-4; filed May 12, 1997, 10:00 a.m.: 20 IR 2698; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 9-1-5 “Bird” defined**

Authority: IC 14-11-2-1; IC 14-22-2-6

Affected: IC 14-22

Sec. 5. “Bird” means the class of warm blooded vertebrate wild animals distinguished by having the body more or less covered with feathers and the forelimbs modified as wings, and includes the eggs of the animal. *(Natural Resources Commission; 312 IAC 9-1-5; filed May 12, 1997, 10:00 a.m.: 20 IR 2698; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 9-1-6 “Exempted wild animal” defined**

Authority: IC 14-11-2-1; IC 14-22-2-6

Affected: IC 14-22

Sec. 6. “Exempted wild animal” means a wild animal, which is unprotected and may be taken at any time. *(Natural Resources Commission; 312 IAC 9-1-6; filed May 12, 1997, 10:00 a.m.: 20 IR 2699; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 9-1-7 “Falconry” defined**

Authority: IC 14-11-2-1; IC 14-22-2-6

Affected: IC 14-22

Sec. 7. “Falconry” means the sport of taking quarry by means of a trained raptor. *(Natural Resources Commission; 312 IAC 9-1-7; filed May 12, 1997, 10:00 a.m.: 20 IR 2699; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 9-1-8 “Handicap” defined**

Authority: IC 14-11-2-1; IC 14-22-2-6

Affected: IC 14-22

Sec. 8. “Handicap” means a physical impairment to an individual resulting from an injury or disease, but excludes an impairment which is attributable to the normal aging process. *(Natural Resources Commission; 312 IAC 9-1-8; filed May 12, 1997, 10:00 a.m.: 20 IR 2699; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 9-1-9 “Hunter orange” defined**

Authority: IC 14-11-2-1; IC 14-22-2-6

Affected: IC 14-22

Sec. 9. “Hunter orange” means a daylight fluorescent orange with the dominant wave length 595-605 nm, a purity of not less than eighty-five percent (85%), and a luminance factor of not less than forty percent (40%). *(Natural Resources Commission; 312 IAC 9-1-9; filed May 12, 1997, 10:00 a.m.: 20 IR 2699; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 9-1-10 “Motor driven conveyance” defined**

Authority: IC 14-11-2-1; IC 14-22-2-6

Affected: IC 14-22

Sec. 10. “Motor driven conveyance” means:

- (1) an automobile;
- (2) a truck;
- (3) a tractor;
- (4) a combine;
- (5) a wagon;
- (6) a bus;
- (7) an off-road vehicle;
- (8) a recreational vehicle;
- (9) a motorcycle;
- (10) a moped;
- (11) a dune buggy;
- (12) a go-cart;
- (13) a motorboat;
- (14) an airplane; or
- (15) other motorized conveyance capable of transporting an individual.

*(Natural Resources Commission; 312 IAC 9-1-10; filed May 12, 1997, 10:00 a.m.: 20 IR 2699; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 9-1-11 “Navigable waterway” defined (Repealed)**

Sec. 11. *(Repealed by Natural Resources Commission; filed Feb 7, 2000, 3:31 p.m.: 23 IR 1367)*

**312 IAC 9-1-12 “Possession” defined**

Authority: IC 14-11-2-1; IC 14-22-2-6

Affected: IC 14-22

Sec. 12. “Possession” means to have direct physical control or to knowingly have the power and the intention to exercise dominion or control. *(Natural Resources Commission; 312 IAC 9-1-12; filed May 12, 1997, 10:00 a.m.: 20 IR 2699; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 9-1-13 “Raptor” defined**

Authority: IC 14-11-2-1; IC 14-22-2-6

Affected: IC 14-22

Sec. 13. “Raptor” means a bird of prey. (*Natural Resources Commission; 312 IAC 9-1-13; filed May 12, 1997, 10:00 a.m.: 20 IR 2699; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-1-13.3 “Reptile” defined**

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

Affected: IC 14-22

Sec. 13.3. “Reptile” means the following:

(1) A turtle, snake, lizard, amphisbaenian, crocodilian, tuatara, or other animal of the class Reptilia.

(2) The parts, eggs, or offspring of a species of the class Reptilia.

(*Natural Resources Commission; 312 IAC 9-1-13.3; filed Jul 9, 1999, 5:55 p.m.: 22 IR 3671; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-1-14 “Threatened species” defined**

Authority: IC 14-11-2-1; IC 14-22-2-6

Affected: IC 14-22

Sec. 14. “Threatened species” means a species or subspecies of wild animal likely to become endangered within the foreseeable future, including all species or subspecies classified as threatened by the federal government which occur in Indiana. (*Natural Resources Commission; 312 IAC 9-1-14; filed May 12, 1997, 10:00 a.m.: 20 IR 2699; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-1-14.5 “Venomous reptile” defined**

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

Affected: IC 14-22; IC 35-41-1-25

Sec. 14.5. “Venomous reptile” means a reptile that is normally considered a venomous or poisonous species where found in its native habitat and that can inflict serious bodily injury (as defined by IC 35-41-1-25) or death upon a human being, regardless of whether an individual animal has been surgically altered. (*Natural Resources Commission; 312 IAC 9-1-14.5; filed Jul 9, 1999, 5:55 p.m.: 22 IR 3671; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-1-15 “Wears hunter orange” defined**

Authority: IC 14-11-2-1; IC 14-22-2-6

Affected: IC 14-22

Sec. 15. “Wears hunter orange” means a person exposes as an outer garment one (1) or more of the following articles which are solid hunter orange in color:

(1) A vest.

(2) A coat.

(3) A jacket.

(4) Coveralls.

(5) A hat.

(6) A cap.

(*Natural Resources Commission; 312 IAC 9-1-15; filed May 12, 1997, 10:00 a.m.: 20 IR 2699; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**Rule 2. Restrictions and Standards Applicable to Wild Animals**

**312 IAC 9-2-1 Taking, chasing, and possessing wild animals**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 1. (a) It is unlawful to take, chase, or possess a wild animal except as provided by statute or by this article.

(b) Notwithstanding subsection (a), this article does not apply to groundhogs. (*Natural Resources Commission; 312 IAC 9-2-1; filed May 12, 1997, 10:00 a.m.: 20 IR 2700; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-2-2 Prohibition against motor driven conveyances**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 2. (a) It is unlawful to take or chase a wild mammal or bird from, by the use of, or with the aid of a motor driven conveyance, except:

(1) as authorized for a handicapped individual under 312 IAC 9-10-10; and

(2) as provided in subsection (b).

(b) A motorboat may be used:

(1) to check traps which are lawfully set and maintained; or

(2) to retrieve a dead or crippled waterfowl.

(c) A motorboat may be used to hunt waterfowl if the motorboat is:

(1) beached;

(2) resting at anchor;

(3) tied to a stationary object; or

(4) otherwise without motion except as provided by wind, water current, or hand-operated oars or paddles.

(d) It is unlawful to discharge a firearm or bow and arrows from a motor driven conveyance while the conveyance is in motion.

(*Natural Resources Commission; 312 IAC 9-2-2; filed May 12, 1997, 10:00 a.m.: 20 IR 2700; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-2-3 Application of article to wild animal parts**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 3. (a) Except as provided in subsection (b), a prohibition against the:

(1) possession;

(2) sale;

(3) offer for sale;

(4) purchase;

(5) offer for purchase;

(6) shipment;

(7) transportation;

(8) delivery; or

(9) receipt;

of a wild animal also applies to any part or portion of that wild animal.

(b) The prohibition established under subsection (a) does not apply to the:

(1) tanned hides;

(2) furs; or

(3) cured feathers;

of wild animals taken lawfully.



(c) Any portion of legally taken:

- (1) furbearers;
- (2) squirrel tails;
- (3) deer hides;
- (4) antlers; and
- (5) hooves;

may be sold. (*Natural Resources Commission; 312 IAC 9-2-3; filed May 12, 1997, 10:00 a.m.: 20 IR 2700; filed May 28, 1998, 5:14 p.m.: 21 IR 3712; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-2-4 Restrictions on the placement of traps**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 4. It is unlawful to set or place a stake, chain, drag, or another portion of a trap which is designed to take a wild animal except during a season established for trapping that wild animal. (*Natural Resources Commission; 312 IAC 9-2-4; filed May 12, 1997, 10:00 a.m.: 20 IR 2700; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-2-5 Netting and trapping wild birds prohibited**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 5. (a) It is unlawful to possess in the field a net or trap for the purpose of netting or trapping a wild bird protected by law.

(b) It is unlawful to place or cause to be placed a trap (set or unset) capable of taking a migratory bird on a pole or post, except where both of the following are obtained:

- (1) A permit issued by the U.S. Fish and Wildlife Service under 50 CFR, Subpart D, 21.42 (October 1, 1995, edition).
- (2) A permit issued by the department under 312 IAC 9-10-6.

(*Natural Resources Commission; 312 IAC 9-2-5; filed May 12, 1997, 10:00 a.m.: 20 IR 2700; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-2-6 Prohibitions applicable at fish hatcheries**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 6. (a) It is unlawful to take a wild animal in a fish hatchery or fish rearing unit owned, controlled, or supervised by the state or the United States.

(b) It is unlawful to discharge a firearm in or over a fish rearing unit owned, controlled, or supervised by the state or the United States. (*Natural Resources Commission; 312 IAC 9-2-6; filed May 12, 1997, 10:00 a.m.: 20 IR 2700; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-2-7 Endangered and threatened species (Repealed)**

Sec. 7. (*Repealed by Natural Resources Commission; filed May 16, 2002, 12:25 p.m.: 25 IR 3049*)

**312 IAC 9-2-8 Possession restrictions where bag limit established**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 8. (a) A person must not possess, ship, carry, or transport more than two (2) times the daily bag limit of a wild animal after the beginning of the second day of the season established to take that wild animal.

(b) A person must not take more than the daily bag limit of a wild animal in a calendar day.

(c) A person must maintain possession of any wild animal taken, and for which a bag limit is established, while the person is either:

- (1) hunting or fishing; or
- (2) returning, after hunting or fishing, to the person's automobile or other principal means of transportation.

(d) A person must not transport a wild animal for another person, which is in excess of the bag limit for the person providing transportation, unless the wild animal is tagged by either of the following:

- (1) A tag issued by the department and properly completed, if the wild animal is one for which a department tag is required.
- (2) If a department tag is not required, a tag signed by the person taking the animal which includes the following information:
  - (A) The person's address.
  - (B) The total number and species of wild animals taken.
  - (C) The date the wild animal was taken.

*(Natural Resources Commission; 312 IAC 9-2-8; filed May 12, 1997, 10:00 a.m.: 20 IR 2701; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

### **312 IAC 9-2-9 Chasing; use of dogs**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 9. (a) Dogs may be used to chase a wild animal at any time unless prohibited by law.

(b) A restriction or season established with respect to chasing wild animals applies to an individual and to a dog owned, possessed, or controlled by the individual. *(Natural Resources Commission; 312 IAC 9-2-9; filed May 12, 1997, 10:00 a.m.: 20 IR 2701; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

### **312 IAC 9-2-10 Violations of law or license terms; revocations**

Authority: IC 14-22-2-6

Affected: IC 4-21.5; IC 14-22-6-1

Sec. 10. (a) The failure by a license holder to comply with the law or a term of the license may result in its revocation by the director under IC 4-21.5.

(b) A violation of a license issued under this article is a violation of this article and IC 14-22-6-1. *(Natural Resources Commission; 312 IAC 9-2-10; filed May 12, 1997, 10:00 a.m.: 20 IR 2701; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

### **312 IAC 9-2-11 State parks and state historic sites**

Authority: IC 14-22-2-6

Affected: IC 4-21.5; IC 14-22-6-1

Sec. 11. A person must not take or chase a wild animal, other than a fish, in a state park or a state historic site. *(Natural Resources Commission; 312 IAC 9-2-11; filed May 12, 1997, 10:00 a.m.: 20 IR 2701; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; filed Sep 19, 2003, 8:14 a.m.: 27 IR 459)*

### **312 IAC 9-2-12 Hunting, fishing, and the discharge of firearms and bow and arrows within 200 feet of a property administered by the department**

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-22-2-6; IC 14-29-1-8

Affected: IC 14-22; IC 14-29-1

Sec. 12. (a) A restriction which applies to taking or chasing a wild animal on a property owned or administered by the department also applies to the portion of a navigable waterway located within two hundred (200) feet of the property. However, exempted from this subsection is any area of the navigable waterway which is immediately adjacent to and within one hundred (100) feet of land owned by a person other than the department.

(b) On a navigable waterway which is located within two hundred (200) feet of a property owned or administered by the

division of state parks, the division of state museums and historic sites, or the division of nature preserves (other than a nature preserve administered by the division of fish and wildlife) of the department, a person must not discharge:

- (1) a firearm; or
- (2) an arrow.

*(Natural Resources Commission; 312 IAC 9-2-12; filed May 12, 1997, 10:00 a.m.: 20 IR 2701; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 9-2-13 Administration of chemical to nondomestic animals, to animals held on a game breeder license, to animals held on a wild animal possession permit, or to animals held under a rehabilitation permit**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 13. (a) A person may not administer any drug, vaccine, steroid, micro-organism, or other chemical to any:

- (1) noncaptive wild bird or mammal;
- (2) animal held under a game breeder license;
- (3) animal held under a wild animal possession permit; or
- (4) animal held under a rehabilitation permit;

without a permit for such administration issued by the director of the division of fish and wildlife.

(b) Notwithstanding subsection (a), an animal held under a:

- (1) game breeder license;
- (2) wild animal possession permit; or
- (3) rehabilitation permit;

may be administered a pharmaceutical product approved by a state or federal agency for the purpose of prevention or treatment of malnutrition, illness, disease, injury, or stress. Normal reproductive functions and the potential for pregnancy do not qualify under this subsection.

(c) Notwithstanding subsection (a), a licensed veterinarian, county animal control agent, municipal animal control agent, holder of a nuisance wild animal control permit, or holder of a scientific purposes license may administer to an animal an immobilizing agent, tranquilizer, or drug for euthanasia. *(Natural Resources Commission; 312 IAC 9-2-13; filed May 28, 1998, 5:14 p.m.: 21 IR 3713; errata filed Aug 25, 1998, 3:02 p.m.: 22 IR 125; filed Nov 15, 2002, 3:42 p.m.: 26 IR 1068; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**Rule 3. Mammals**

**312 IAC 9-3-1 Applicability**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 1. This rule governs wild animals that are mammals. *(Natural Resources Commission; 312 IAC 9-3-1; filed May 12, 1997, 10:00 a.m.: 20 IR 2702; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 9-3-2 General requirements for deer; exemptions; tagging; tree blinds; maximum taking of antlered deer in a calendar year**

Authority: IC 14-22-2-6

Affected: IC 14-22-11-1; IC 14-22-11-11

Sec. 2. (a) This section and sections 3 through 10 of this rule govern the hunting, transportation, and disposal of deer.

(b) Species of deer other than white-tailed deer (*Odocoileus virginianus*) are exempted from this section and sections 3 through 9 of this rule. A person who claims the exemption provided under this subsection must prove the deer is other than a white-tailed deer.

(c) The licenses identified by sections 3 through 8 of this rule are nonexclusive. An individual may apply for one (1) or more

of these licenses.

(d) Before September 1, 2007, a person must not take more than one (1) antlered deer during the seasons for an annual deer license.

(e) The use or aid of a food product that is transported and placed for consumption, salt, mineral blocks, prepared solid or liquid intended for ingestion (herein called bait), snares, dogs, or other domesticated animals to take deer is prohibited. A person must not hunt by the aid of bait or on or over a baited area. An area is considered baited for ten (10) days after the removal of the bait or the baited soil. Hunting an orchard or another area which may be attractive to deer as the result of normal agricultural activity is not prohibited. The use of manufactured scents and lures or similar chemical or natural attractants is not prohibited.

(f) Except as provided under IC 14-22-11-1 and IC 14-22-11-11, a person must not hunt deer unless the person possesses a completed and signed license bearing the person's name. The license must be accompanied by a temporary transportation tag bearing the license number and the year of issuance. A person must not hunt with a deer license or tag issued to another person.

(g) The temporary transportation tag described in subsection (f) must, immediately upon taking a deer, be notched as to the sex of the deer and the month and day of the kill. A tag which is notched other than three (3) times is void. A person must not tag a deer other than with a tag issued to the person who took the deer. A deer leg must be tagged before leaving the field. A deer which is in the field is not required to be tagged if the person who kills the deer maintains immediate custody of, and constant visual contact with, the deer carcass.

(h) A person who takes a deer must deliver the deer carcass to an official checking station for registration on the occurrence of the earlier of one (1) of the following:

- (1) Within twenty-four (24) hours of taking of the deer.
- (2) Before the deer is removed from this state.

(i) After the checking station operator records the permanent seal number on the log and collects the upper portion of the license, where applicable, along with the temporary transportation tag, the hunter is provided with that seal. The seal must be affixed by the hunter and sealed to prevent its removal (without cutting the seal or the body part to which it is affixed), before processing of the deer begins, by affixing the seal:

- (1) between a tendon and bone;
- (2) through a section of skin or flesh; or
- (3) around a branched antler.

(j) The checking station operator must accurately and legibly complete all forms provided by the department and must make those forms available to department personnel upon request.

(k) An individual authorized to act under this subsection must attach a paper to a deer carcass which states the name and address of the individual and the date and sex of the deer taken. The requirements of subsections (f) through (g) also apply except to the extent those subsections identify the physical characteristics of a tag. The individuals authorized to act under this subsection are as follows:

- (1) A lifetime license holder.
- (2) A youth license holder.
- (3) For a deer taken on a landowner's land, each of the following:
  - (A) The resident landowner.
  - (B) The spouse of the resident landowner.
  - (C) A child of the resident landowner who is living with the landowner.
- (4) For a deer taken on farmland leased from another person, each of the following:
  - (A) The resident lessee who farms the land.
  - (B) The spouse of the resident lessee.
  - (C) A child of the resident lessee who is living with the lessee.
- (5) An Indiana serviceman or servicewoman who is hunting under IC 14-22-11-11.

(l) A person must not erect, place, or hunt from a permanent tree blind on state-owned lands. A tree blind placed on state-owned or state-leased lands, U.S. Forest Service lands, the Muscatatuck National Wildlife Refuge, or the Big Oaks National Wildlife Refuge must be portable and may be left overnight only between September 1 and January 10. A fastener used in conjunction with a tree blind and a tree or pole climber which penetrates a tree more than one-half (½) inch is prohibited. Each portable tree blind must be legibly marked with the name, address, and telephone number of the owner of the tree blind.

(m) The head of a deer must remain attached to the carcass until the tag is attached and locked at the deer checking station.

(n) The use of infrared sensors to locate or take deer is prohibited. It is unlawful to hunt or to retrieve deer with the aid of an infrared detector.

(o) Notwithstanding subsection (e), dogs may be used only while on a leash to track or trail wounded deer.

(p) Notwithstanding subsection (e), donkeys, mules, and horses may be used for transportation to and from a hunt but may not be used while hunting. (*Natural Resources Commission; 312 IAC 9-3-2; filed May 12, 1997, 10:00 a.m.: 20 IR 2702; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1528; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

### **312 IAC 9-3-3 Hunting deer by firearms**

Authority: IC 14-22-2-6

Affected: IC 14-22-11-1; IC 14-22-12-1; IC 35-47-2

Sec. 3. (a) This section is supplemental to section 2 of this rule and governs the activities of an individual who is either:

(1) issued a license to hunt deer by firearms under IC 14-22-12-1(12), IC 14-22-12-1(13), IC 14-22-12-1(15), or IC 14-22-12-1(16); or

(2) hunting by the use of firearms under IC 14-22-11-1.

(b) The season for hunting deer with firearms is as follows:

(1) The firearms season using shotgun, shotgun with rifled barrel, handgun, muzzle loading gun, or muzzle loading handgun is from the first Saturday after November 11 and continuing for an additional fifteen (15) days.

(2) The seasonal limit for hunting deer under this subsection is one (1) antlered deer.

(c) In addition to the season established under subsection (b), the season for using a muzzle loading gun or muzzle loading handgun only extends from the first Saturday after the firearms season established under subsection (b) and continues for fifteen (15) additional days. The seasonal limit for hunting deer under this extended season is one (1) deer of either sex.

(d) A person must not hunt deer except from one-half (½) hour before sunrise to one-half (½) hour after sunset.

(e) A person must not hunt deer unless that person wears hunter orange.

(f) Bow and arrows must not be possessed by a person while hunting under this section.

(g) The following requirements apply to the use of firearms under this section:

(1) A shotgun must have a gauge 10, 12, 16, 20, or .410 bore loaded with a single projectile. A shotgun may be possessed in the field outside lawful shooting hours only if there are no shells in the chamber or magazine.

(2) A handgun must:

(A) conform to the requirements of IC 35-47-2;

(B) have a barrel at least four (4) inches long; and

(C) fire a bullet of .243 inch diameter or larger.

All 38 special ammunition is prohibited. The handgun cartridge case, without bullet, must be at least one and sixteen-hundredths (1.16) inches long. A handgun must not be concealed. Full metal jacketed bullets are unlawful. A handgun may be possessed in the field outside lawful shooting hours only if there are no shells in the chamber or magazine. All 25/20, 32/20, 30 carbine, and 38 special ammunition is prohibited.

(3) A muzzle loading gun must be .44 caliber or larger, loaded with a single ball-shaped or elongated bullet of at least .44 caliber. A muzzle loading handgun must be single shot, .50 caliber or larger, loaded with bullets at least .44 caliber and have a barrel at least twelve (12) inches long. The length of a muzzle loading handgun barrel is determined by measuring from the base of the breech plug, excluding tangs and other projections, to the end of the barrel, including the muzzle crown. A muzzle loading firearm must be loaded from the muzzle. A muzzle loading firearm may be possessed in the field outside lawful shooting hours only if:

(A) for percussion firearms, the cap or primer is removed from the nipple or primer adapter; or

(B) for flintlock firearms, the pan is not primed.

(4) Over-and-under combination rifle-shotguns are prohibited.

(*Natural Resources Commission; 312 IAC 9-3-3; filed May 12, 1997, 10:00 a.m.: 20 IR 2703; filed Nov 13, 1997, 12:09 p.m.: 21 IR 1272; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1530; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-3-4 Hunting deer by bow and arrows**

Authority: IC 14-22-2-6

Affected: IC 14-22-11-1; IC 14-22-12-1

Sec. 4. (a) This section is supplemental to section 2 of this rule and governs the activities of an individual who is either:

(1) issued a license to hunt deer with bow and arrows under IC 14-22-12-1(14) or IC 14-22-12-1(17) and is supplemental to section 2 of this rule; or

(2) hunting by the use of bow and arrows under IC 14-22-11-1.

(b) The season for hunting deer with bow and arrows during the early bow season is from October 1 through the firearms season (set forth in section 3(b) of this rule) and during the late bow season from the first Saturday after the firearms season through the first Sunday in January.

(c) The urban deer season is from September 15 through the firearms season (set forth in section 3(b) of this rule) and during the late bow season from the first Saturday after the firearms season through the first Sunday in January.

(d) The seasonal limit for hunting under this section is one (1) deer of either sex. A person must not take an antlered deer by means of a crossbow.

(e) A person must not hunt deer under this section except from one-half (½) hour before sunrise to one-half (½) hour after sunset.

(f) A person must not hunt deer under this section unless that person wears hunter orange. However, this subsection does not apply before the commencement of the firearms season set forth in section 3(b) of this rule and after the muzzle loading gun season set forth in section 3(c) of this rule.

(g) A person must not hunt under this section unless that person possesses only one (1) bow. A firearm must not be possessed by the person hunting under this section.

(h) The following requirements apply to the use of archery equipment under this section:

(1) No person shall use a long bow or compound bow of less than thirty-five (35) pounds pull.

(2) Arrows must be equipped with metal or metal-edged (or flint, chert, or obsidian napped) broadheads.

(3) Poisoned or explosive arrows are unlawful.

(4) Bows drawn, held, or released other than by hand or hand-held releases are unlawful.

(5) A long bow or compound bow may be possessed in the field before and after lawful shooting hours only if the nock of the arrow is not placed on the bow string.

(6) No portion of the bow's riser (handle) or any track, trough, channel, arrow rest, or other device that attaches to the bow's riser shall contact, support, or guide the arrow from a point rearward of the bow's brace height.

(i) Notwithstanding subsection (h), a person may use a crossbow to take antlerless deer during the late bow season from the first Saturday after the firearms season through the first Sunday in January if the following restrictions are met:

(1) No person shall use a crossbow of less than one hundred twenty-five (125) pounds pull.

(2) No person shall use a crossbow that does not have a mechanical safety.

(3) A crossbow may be possessed in the field before and after lawful shooting hours only if the nock of the arrow is not placed on the bow string.

(j) As used in this rule, "crossbow" means a device for propelling an arrow by means of traverse limbs mounted on a stock and a string and having a working safety. The crossbow may be drawn, held, and released by a mechanical device. (*Natural Resources Commission; 312 IAC 9-3-4; filed May 12, 1997, 10:00 a.m.: 20 IR 2703; filed Nov 5, 1997, 3:25 p.m.: 21 IR 930; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1530; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-3-5 Hunting deer with bow and arrows by authority of an extra deer license**

Authority: IC 14-22-2-6

Affected: IC 14-22-11-1; IC 14-22-12-1

Sec. 5. (a) This section is supplemental to section 2 of this rule and governs the activities of an individual who is either:

(1) issued a license to take an extra deer under IC 14-22-12-1(18) or IC 14-22-12-1(19) by means of bow and arrows; or

(2) hunting under IC 14-22-11-1 with an extra deer license by means of bow and arrows.

(b) Except as specified in subsection (d), the statewide seasonal limit for hunting under this section is one (1) deer of either

sex. A person must not take an antlered deer by means of a crossbow.

(c) The restrictions contained in section 4(b) and 4(e) through 4(i) of this rule also apply to a license issued under this section.

(d) The seasonal limit for hunting deer in an urban deer zone is four (4) deer of which only one (1) may be antlered. A person must possess a valid extra deer license for each deer taken. A deer taken under this subsection does not count against a bag limit for deer set elsewhere in this rule.

(e) The following areas have been designated as urban deer zones:

(1) The Indianapolis urban deer zone includes all of Marion County, that portion of Hendricks County east of State Highway 267, the southeast portion of Boone County as bounded by State Highway 267, Interstate Highway 65, State Highway 32, and that portion of Hamilton County south of State Highway 32.

(2) The Fort Wayne urban deer zone includes that portion of Allen County lying within the bounds of Interstate Highway 69 and State Highway 469.

(3) The Evansville urban deer zone includes all of Vanderburgh County.

(4) The Lafayette urban deer zone includes the portion of Tippecanoe County north of State Highway 28.

(5) The Gary urban deer zone includes that portion of Lake County north of U.S. Highway 30.

(6) The Crown Point urban deer zone includes that portion of Lake County within the corporate limits of Crown Point.

(7) The Chesterton urban deer zone includes the portion of Porter County north of U.S. Highway 94.

(8) The Michigan City urban deer zone includes that portion of LaPorte County north of U.S. Highway 94.

(9) The Madison urban deer zone includes that portion of Jefferson County bounded on the east by U.S. Highway 421 as well as bounded on the north and west by State Highway 62 and on the south by State Highway 56.

*(Natural Resources Commission; 312 IAC 9-3-5; filed May 12, 1997, 10:00 a.m.: 20 IR 2704; filed Nov 5, 1997, 3:25 p.m.: 21 IR 931; filed May 28, 1998, 5:14 p.m.: 21 IR 3713; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1531; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

### **312 IAC 9-3-6 Hunting deer in a depredation zone by authority of an extra deer license**

Authority: IC 14-22-2-6

Affected: IC 14-22-11-1; IC 14-22-12-1

Sec. 6. (a) This section is supplemental to section 2 of this rule and governs the activities of an individual who is either:

(1) issued a license to take an extra deer under IC 14-22-12-1(18) or IC 14-22-12-1(19) for a deer depredation zone established by the director; or

(2) hunting under IC 14-22-11-1 with the use of an extra deer license under IC 14-22-12-1(18) or IC 14-22-12-1(19) for a deer depredation zone established by the director.

(b) Licenses will be issued under this section if the director determines that severe crop depredations have occurred or a severe safety hazard exists and that deer numbers cannot otherwise be adequately controlled.

(c) The season for hunting deer under this section is from the first Saturday after November 11 and continuing for an additional fifteen (15) days.

(d) The seasonal limit for hunting under this section is one (1) antlerless deer for each license issued. An individual may receive not more than two (2) licenses.

(e) A person must not hunt a deer under this section except with a shotgun, handgun, or muzzle loading gun.

(f) A person who hunts by authority of an extra deer hunting license issued under this section must obtain an extra deer license. Section 2 of this rule, governing the use of tags, applies to extra deer tags.

(g) The restrictions contained in section 3(d) through 3(f) of this rule also apply to a license issued under this section. *(Natural Resources Commission; 312 IAC 9-3-6; filed May 12, 1997, 10:00 a.m.: 20 IR 2704; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

### **312 IAC 9-3-7 Hunting deer in a designated county by authority of an extra deer license**

Authority: IC 14-22-2-6

Affected: IC 14-22-11-1; IC 14-22-12-1

Sec. 7. Hunting deer in a designated county, by authority of an extra deer license, shall be addressed on an annual basis by

an emergency rule approved by the director. (*Natural Resources Commission; 312 IAC 9-3-7; filed May 12, 1997, 10:00 a.m.: 20 IR 2705; filed Aug 15, 1997, 8:36 a.m.: 21 IR 29; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1532; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-3-8 Hunting deer on designated military reserves, Big Oaks National Wildlife Reserve, and Muscatatuck National Wildlife Refuge; regular and extra deer hunting licenses**

Authority: IC 14-22-2-6

Affected: IC 14-22-12-1

Sec. 8. (a) This section governs the activities of an individual who is hunting deer on each of the following military reserves and wildlife refuges:

- (1) Naval Weapons Support Center-Crane.
- (2) Big Oaks National Wildlife Refuge.
- (3) Atterbury Reserve Forces Training Area.
- (4) Indiana Army Ammunition Plant (Charlestown).
- (5) Newport Army Ammunition Plant.
- (6) Muscatatuck National Wildlife Refuge.
- (7) Leiber State Recreation Area (holders of handicap permits under 312 IAC 9-10-10 only).

(b) The season for hunting deer under this section by firearms is from November 1 through December 31.

(c) The season for hunting deer under this section by bow and arrows is from October 1 through December 31.

(d) Except as provided under subsections (b) through (c), a person who hunts by the authority of a firearms license issued under section 3 of this rule or bow and arrows license under section 4 or 5 of this rule is also subject to those sections.

(e) An individual may enter a drawing to hunt deer on the military reserves or on Big Oaks National Wildlife Reserve or Muscatatuck National Wildlife Refuge. If selected in the drawing, that individual may apply for:

- (1) an extra firearms military or refuge deer license;
- (2) an extra deer muzzle loader military or refuge license; or
- (3) an extra deer archery military or refuge license;

to hunt during the seasons established under subsections (b) through (c).

(f) Except as provided in subsection (g), the seasonal bag limit for hunting under this section is one (1) deer of either sex for each license, whether that license is issued under subsection (d) or (e). An antlered deer taken under this section is exempted from the limitations placed on the taking of antlered deer set forth in this rule.

(g) In addition to the other licenses authorized by this section, the division may issue an extra deer license under this subsection. This extra deer license authorizes the taking by bow and arrows of a deer of either sex from a site listed in subsection (a). This subsection is governed by IC 14-22-12-1(18) and IC 14-22-12-1(19).

(h) Section 2 of this rule, which governs the use of tags, generally, also applies to extra deer tags under this section. (*Natural Resources Commission; 312 IAC 9-3-8; filed May 12, 1997, 10:00 a.m.: 20 IR 2705; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1532; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-3-9 Deer killed by other means; disposition**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 9. (a) If a deer dies following a collision with a motor vehicle, a conservation officer, another law enforcement officer, or a property manager or assistant property manager for the department may issue a departmental permit to an individual to possess the carcass of the deer for not more than sixty (60) days.

(b) If a deer is found dead, a conservation officer or a person designated by the conservation officer may issue a departmental permit to possess the deer. (*Natural Resources Commission; 312 IAC 9-3-9; filed May 12, 1997, 10:00 a.m.: 20 IR 2706; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)



**312 IAC 9-3-10 Commercial processing of deer**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 10. (a) A person who receives deer for processing and charges a fee must maintain accurate daily records of the following:

- (1) The dates deer are received and disposed of.
- (2) The name and address of the owner of the deer.
- (3) The state or province from which the deer was taken.
- (4) The official tag and seal number or certificate of ownership number.

(b) These records shall be retained by the person or persons responsible for preparation or maintenance for at least eighteen (18) months following that preparation.

(c) A law enforcement officer may enter premises used for deer preparation at all reasonable hours to inspect those premises and the daily records required under subsection (a). (*Natural Resources Commission; 312 IAC 9-3-10; filed May 12, 1997, 10:00 a.m.: 20 IR 2706; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-3-11 Beavers**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 11. (a) The season for taking beavers is from 8 a.m. on November 15 until noon on March 15 of the following year.

(b) It is unlawful to possess a beaver except from November 15 until March 22 of the following year. (*Natural Resources Commission; 312 IAC 9-3-11; filed May 12, 1997, 10:00 a.m.: 20 IR 2706; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-3-12 Foxes, coyotes, and skunks**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 12. (a) Except as provided in subsection (c), the season for hunting red foxes, gray foxes, and coyotes is from noon on October 15 until noon on February 28 of the following year.

(b) Except as provided in subsection (c), the season for trapping red foxes, gray foxes, coyotes, and skunks is from 8 a.m. on October 15 until noon on January 31 of the following year.

(c) It is lawful for:

- (1) a person who possesses land; or
- (2) another person designated in writing by that person;

to take coyotes on that land at any time.

(d) It is unlawful to possess a red fox or gray fox except from October 15 until March 7 of the following year.

(e) It is unlawful to possess a skunk except from October 15 until February 7 of the following year. (*Natural Resources Commission; 312 IAC 9-3-12; filed May 12, 1997, 10:00 a.m.: 20 IR 2706; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-3-13 Minks, muskrats, and long-tailed weasels**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 13. (a) The season for trapping minks, muskrats, and long-tailed weasels is from 8 a.m. on November 15 until noon on January 31 of the following year.

(b) It is unlawful to possess a mink, muskrat, or long-tailed weasel except from November 15 until February 7 of the following year. (*Natural Resources Commission; 312 IAC 9-3-13; filed May 12, 1997, 10:00 a.m.: 20 IR 2706; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-3-14 Opossums and raccoons**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 14. (a) Except as provided in subsection (b), the seasons applicable to raccoons and opossums are as follows:

- (1) Hunting from noon on November 8 until noon on January 31 of the following year.
- (2) Trapping from 8 a.m. on November 15 until noon on January 31 of the following year.
- (3) Chasing from noon on February 15 until noon on October 14.

(b) A nonresident may hunt raccoons under subsection (a)(1) and may trap raccoons under subsection (a)(2) only to the extent that these raccoon seasons in the state of the nonresident are open to Indiana residents.

(c) It is unlawful for an individual or hunting party to possess a firearm, air rifle, or another device capable of taking a raccoon or opossum while chasing a raccoon or opossum during the chasing season established under subsection (a)(3).

(d) It is unlawful to remove, attempt to remove, dislodge, or attempt to dislodge a raccoon from a tree hollow, hole, den, pocket, cavity, burrow, tile, or other place where the raccoon has secreted itself for security or protection or in which the raccoon maintains a nest or den.

(e) It is unlawful to possess an opossum or a raccoon except from November 8 through February 7 of the following year. (*Natural Resources Commission; 312 IAC 9-3-14; filed May 12, 1997, 10:00 a.m.: 20 IR 2707; filed May 28, 1998, 5:14 p.m.: 21 IR 3714; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-3-15 Taking beavers, minks, muskrats, long-tailed weasels, red foxes, gray foxes, opossums, skunks, or raccoons to protect property**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 15. (a) Notwithstanding the requirements of this rule, a resident landowner or a tenant may, without a permit at any time, take a beaver, mink, muskrat, long-tailed weasel, red fox, gray fox, opossum, skunk, or raccoon that is discovered while damaging property.

(b) It is unlawful to take a mammal under subsection (a) unless the landowner or tenant reports the taking to the division director or to a conservation officer within seventy-two (72) hours of the taking. The mammal shall be disposed of in a lawful manner. (*Natural Resources Commission; 312 IAC 9-3-15; filed May 12, 1997, 10:00 a.m.: 20 IR 2707; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-3-16 Cottontail rabbits**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 16. (a) Except as provided in subsection (c), the season for taking and possessing cottontail rabbits is from the first Friday of November after November 3 through January 31 of the following year.

(b) The daily bag limit is five (5) cottontail rabbits.

(c) The season for taking and possessing cottontail rabbits within the boundaries of:

- (1) Atterbury, Brush Creek, Crosley, Glendale, Jasper-Pulaski, Kingsbury, LaSalle, Sugar Ridge, Pigeon River, Tri-County, Wilbur Wright, Minnehaha, Hillenbrand, and Willow Slough;
- (2) Winamac Fish and Wildlife Areas; and
- (3) Salamonie, Huntington, Mississinewa, Brookville, Hardy, Monroe, and Patoka lakes;

is from October 1 through January 31 of the following year.

(d) It is unlawful for a person to hunt rabbits unless that person wears hunter orange.

(e) It is unlawful to remove, dislodge, or attempt to remove or dislodge a rabbit from a hole, den, cavity, or tree hollow with the aid of a ferret or other small animal, mechanical device, chemical, smoke, fire, or fume. (*Natural Resources Commission; 312 IAC 9-3-16; filed May 12, 1997, 10:00 a.m.: 20 IR 2707; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-3-17 Squirrels**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 17. (a) The season for hunting and possessing gray squirrels and fox squirrels is as follows:

(1) From August 15 through December 31 north of U.S. 40.

(2) From August 15 through January 31 of the following year south of U.S. 40.

(b) The daily bag limit is five (5) squirrels.

(c) Unless hunting from a boat, it is unlawful for a person to hunt squirrels after the first Friday of November after November 3 through January 31 of the following year unless that person wears hunter orange.

(d) It is unlawful to shoot into or to otherwise disturb the leaf nest or den of a squirrel.

(e) It is unlawful to hunt or possess a flying squirrel. (*Natural Resources Commission; 312 IAC 9-3-17; filed May 12, 1997, 10:00 a.m.: 20 IR 2707; filed Nov 13, 1997, 12:09 p.m.: 21 IR 1272; filed May 28, 1998, 5:14 p.m.: 21 IR 3714; errata filed Aug 25, 1998, 3:02 p.m.: 22 IR 125; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-3-18 Prohibited methods of pursuit and taking furbearing mammals**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 18. (a) It is unlawful to take a furbearing mammal with a leg-hold trap possessing saw-toothed or spiked jaws.

(b) It is unlawful to take a furbearing mammal with a leg-hold trap sized number three (3) or larger without offset jaws unless the trap is completely covered by water.

(c) It is unlawful to take a furbearing mammal with a Conibear, Dahlgren, Bigelow, or other killer trap which is seven and one-half (7½) inches or larger in diameter or which is larger than seven and one-half (7½) inches by seven and one-half (7½) inches unless the trap is completely covered by water.

(d) It is unlawful to use a snare to trap a wild animal, except upon land owned by the user or with the written permission of the landowner. No snare shall be used that permits a circumference greater than fifteen (15) inches unless:

(1) at least fifty percent (50%) of the loop of the snare is covered by water; or

(2) the snare employs a relaxing snare lock (a lock that will allow the snare's loop size to increase once pulling tension is no longer exerted along the snare from its anchored end).

(e) It is unlawful to disturb the den or house of a mammal protected by sections 11 through 14 of this rule:

(1) by shooting, digging, cutting, or chipping into the leaf nest, hole, burrow, tree, or den; or

(2) with:

(A) the aid of smoke, fire, fumes, chemicals, ferret, or other small animal; or

(B) any mechanical device introduced into the hole, burrow, tree, or den;

where the animal is hidden or sheltered.

(f) It is unlawful to wear or use a device to climb poles or trees for the purpose of dislodging a mammal described in sections 11 through 14 of this rule.

(g) It is unlawful to possess an ax, a saw, or a device to climb poles or trees while in the field or woods at night for the purpose of dislodging a mammal described sections 11 through 14 of this rule.

(h) It is unlawful to chase or take a furbearing mammal between sundown and sunrise without carrying a continuous shining light which is visible for at least five hundred (500) feet.

(i) It is unlawful to hunt a furbearing mammal from a boat. (*Natural Resources Commission; 312 IAC 9-3-18; filed May 12, 1997, 10:00 a.m.: 20 IR 2708; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-3-19 Endangered and threatened species of mammals**

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

Affected: IC 14-22-34-2; IC 14-22-34-12

Sec. 19. The following species of mammals are threatened or endangered and are subject to the protections provided under

IC 14-22-34-12:

- (1) Bobcat (*Felis rufus*).
- (2) Indiana bat (*Myotis sodalis*).
- (3) Gray bat (*Myotis grisescens*).
- (4) Southeastern bat (*Myotis austroriparius*).
- (5) Evening bat (*Nycticeius humeralis*).
- (6) Badger (*Taxidea taxus*).
- (7) Eastern wood rat (*Neotoma floridana*).
- (8) Swamp rabbit (*Sylvilagus aquaticus*).
- (9) Franklin's ground squirrel (*Spermophilus franklinii*).
- (10) River otter (*Lutra canadensis*).

*(Natural Resources Commission; 312 IAC 9-3-19; filed May 12, 1997, 10:00 a.m.: 20 IR 2708; filed May 16, 2002, 12:25 p.m.: 25 IR 3046; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

### **312 IAC 9-3-20 Exempted mammals**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 20. Any mammal not identified in this article is an exempted wild animal. *(Natural Resources Commission; 312 IAC 9-3-20; filed May 12, 1997, 10:00 a.m.: 20 IR 2708; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

## **Rule 4. Birds**

### **312 IAC 9-4-1 Applicability**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 1. This rule governs wild animals that are birds. *(Natural Resources Commission; 312 IAC 9-4-1; filed May 12, 1997, 10:00 a.m.: 20 IR 2708; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

### **312 IAC 9-4-2 Migratory birds and waterfowl**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 2. (a) The restrictions in this section supplement state statutes and federal laws which protect migratory birds and waterfowl.

(b) A person must not hunt migratory birds and waterfowl unless the person is registered with the Harvest Information Program and possesses an identification number issued through the Harvest Information Program. Exempted from this subsection is a person who is hunting on property where the person is either of the following:

- (1) A landowner.
- (2) A lessee.
- (3) A resident of Indiana on leave from one of the armed services of the United States.

(c) A person must not take or possess a Virginia rail. *(Natural Resources Commission; 312 IAC 9-4-2; filed May 12, 1997, 10:00 a.m.: 20 IR 2708; filed May 28, 1998, 5:14 p.m.: 21 IR 3714; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

### **312 IAC 9-4-3 Nontoxic shot requirements while hunting waterfowl**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 3. It is unlawful to hunt waterfowl while possessing shot, other than steel shot or another nontoxic shot. *(Natural*

*Resources Commission; 312 IAC 9-4-3; filed May 12, 1997, 10:00 a.m.: 20 IR 2708; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 9-4-4 Hunting blinds on lakes**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 4. (a) A person must not construct a hunting blind on the waters of this state unless the name and address of the person who constructs the blind is legibly indicated on the blind.

(b) The person who constructs a hunting blind must cause the removal of the blind from the waters of this state from April 1 through August 15.

(c) This section does not apply to waters owned or leased by the department. *(Natural Resources Commission; 312 IAC 9-4-4; filed May 12, 1997, 10:00 a.m.: 20 IR 2709; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 9-4-5 Geese**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 5. (a) Except as provided under subsection (d), the annual seasons, bag limits, hunting restrictions, and shooting hours for geese are as determined under 50 CFR 20.

(b) The director may close the season established under subsection (a) upon a determination that the allowable harvest of geese for the year has been reached. A closure under this subsection is effective seventy-two (72) hours after the declaration is made.

(c) The director may close the Posey County goose season upon a determination the allowable goose harvest for Posey County has been reached. A closure under this subsection is effective seventy-two (72) hours after the notification of closure is made. Notification of the closure will be posted at locations in Posey County.

(d) It is unlawful for an individual to possess more than the number of shotgun shells designated in this subsection, while hunting geese from designated shooting units or sites within Atterbury, Hovey Lake, Kankakee, Jasper-Pulaski, or Pigeon River Fish and Wildlife Areas. If the daily limit is one (1) Canada goose, the individual may possess no more than four (4) shotgun shells. If the daily limit is two (2) Canada geese, the individual may possess no more than eight (8) shotgun shells. If the daily limit is three (3) Canada geese, the individual may possess no more than ten (10) shotgun shells. If the daily limit is four (4) Canada geese, the individual may possess no more than twelve (12) shotgun shells. If the daily limit is five (5) Canada geese, the individual may possess no more than fourteen (14) shotgun shells. *(Natural Resources Commission; 312 IAC 9-4-5; filed May 12, 1997, 10:00 a.m.: 20 IR 2709; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 9-4-6 Woodcock**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 6. (a) The annual seasons, bag limits, and shooting hours for woodcock are as determined under 50 CFR 20.

(b) It is unlawful for a person to hunt woodcock unless that person wears hunter orange.

(c) No person may hunt woodcock unless the person is registered with the Harvest Information Program and possesses an identification number issued through the Harvest Information Program. Exempted from this subsection is a person who is hunting on property where the person is either of the following:

(1) A landowner.

(2) A lessee.

(3) A resident of Indiana on leave from the armed forces of the United States.

*(Natural Resources Commission; 312 IAC 9-4-6; filed May 12, 1997, 10:00 a.m.: 20 IR 2709; filed May 28, 1998, 5:14 p.m.: 21 IR 3715; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 9-4-7 Hungarian partridges**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 7. It is unlawful to take or possess a Hungarian partridge. (*Natural Resources Commission; 312 IAC 9-4-7; filed May 12, 1997, 10:00 a.m.: 20 IR 2709; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-4-8 Pheasants**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 8. (a) Except as provided in subsection (c), the season for hunting and possessing pheasants is from the first Friday of November after November 3 and continuing an additional forty-four (44) days.

(b) Except as provided in subsection (d), the daily bag limit is two (2) cock pheasants.

(c) The season for hunting and possessing pheasants from Atterbury, Crosley, Glendale, Jasper-Pulaski, LaSalle, Pigeon River (west of State Road 3), Tri-County, Willow Slough (north of County Road 100 North), and Winamac (south of the abandoned C & O Railroad) Fish and Wildlife Areas and from Huntington Lake is from the first Friday of November after November 3 through January 15 of the following year.

(d) From the Saturday before Thanksgiving through January 15 of the following year, the daily bag limit is two (2) pheasants of either sex on Atterbury, Crosley, Pigeon River (west of State Road 3), Tri-County, Glendale, Willow Slough (north of County Road 100 North), and Winamac (south of the abandoned C & O Railroad) Fish and Wildlife Areas and from Huntington Lake. During the season established under this subsection, whenever applicable, a hunter must pay designated fees and must hunt within assigned units.

(e) It is unlawful for a person to hunt pheasants unless that person wears hunter orange.

(f) The head and head plumage of a pheasant must remain attached to the carcass while the pheasant is in transit from the site of taking. (*Natural Resources Commission; 312 IAC 9-4-8; filed May 12, 1997, 10:00 a.m.: 20 IR 2709; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-4-9 Quail**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 9. (a) The season for hunting and possessing quail is as follows:

(1) South of State Road 26, from the first Friday of November after November 3 through January 15 of the following year.

(2) North of State Road 26, from the first Friday of November after November 3 and continuing an additional forty-four (44) days.

(b) The daily bag limit is:

(1) five (5) quail north of State Road 26; and

(2) eight (8) quail south of State Road 26.

(c) It is unlawful for a person to hunt quail unless the person wears hunter orange. (*Natural Resources Commission; 312 IAC 9-4-9; filed May 12, 1997, 10:00 a.m.: 20 IR 2710; filed May 28, 1998, 5:14 p.m.: 21 IR 3715; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-4-10 Ruffed grouse**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 10. (a) The season for hunting and possessing ruffed grouse is from October 1 through December 31.

(b) The daily bag limit is two (2) ruffed grouse.

(c) A person must not hunt ruffed grouse except in the following counties:

- (1) Bartholomew.
- (2) Brown.
- (3) Clark.
- (4) Crawford.
- (5) Dearborn (south of U.S. 50).
- (6) Greene (east of U.S. 231).
- (7) Jackson.
- (8) Jefferson.
- (9) Jennings (south of U.S. 50).
- (10) Johnson.
- (11) LaGrange (except Pigeon River Fish and Wildlife Area).
- (12) Lawrence.
- (13) Martin.
- (14) Morgan.
- (15) Monroe.
- (16) Ohio.
- (17) Orange.
- (18) Owen.
- (19) Putnam (south of U.S. 40).
- (20) Perry.
- (21) Ripley (south of U.S. 50).
- (22) Scott.
- (23) Steuben (except Pigeon River Fish and Wildlife Area).
- (24) Switzerland.
- (25) Washington.

(d) A person must not hunt ruffed grouse unless that person wears hunter orange. (*Natural Resources Commission; 312 IAC 9-4-10; filed May 12, 1997, 10:00 a.m.: 20 IR 2710; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

### **312 IAC 9-4-11 Wild turkeys**

Authority: IC 14-22-2-6

Affected: IC 14-22-11-1; IC 14-22-11-11

Sec. 11. (a) Except as provided in subsection (b), the season for hunting and possessing wild turkeys is from the first Wednesday after April 20 and continuing for an additional eighteen (18) consecutive days.

(b) The season for hunting and possessing wild turkeys on Camp Atterbury and the Big Oaks National Wildlife Refuge will be determined on an annual basis by the director.

(c) The limit for taking and possessing is one (1):

(1) bearded wild turkey; or

(2) male wild turkey.

(d) A person must not hunt wild turkeys except between one-half ( $\frac{1}{2}$ ) hour before sunrise and sunset.

(e) A person must not take a wild turkey except with the use of one (1) of the following:

(1) A 10, 12, 16, or 20 gauge shotgun loaded only with shot of 4, 5, 6, 7, or  $7\frac{1}{2}$ .

(2) A muzzle loading shotgun loaded only with shot of 4, 5, 6, 7, or  $7\frac{1}{2}$ .

(3) Bow and arrows.

(f) A person must not hunt wild turkeys in the following counties:

(1) Rush.

(2) Shelby.

(g) The use of a dog, another domesticated animal, a live decoy, a recorded call, an electronically powered or controlled decoy, or bait to take a wild turkey is prohibited. An area is considered baited for ten (10) days after the removal of the bait, but an area is not considered to be baited which is attractive to wild turkeys resulting from:

- (1) normal agricultural practices; or
- (2) the use of a manufactured scent, a lure, or a chemical attractant.
- (h) A person must not possess a handgun while hunting wild turkeys.

(i) Except as provided under IC 14-22-11-1 and IC 14-22-11-11, a person must not hunt wild turkeys unless that person possesses a completed and signed license bearing the person's name. The license must be accompanied by a temporary transportation tag bearing the license number and the year of issuance. A person must not hunt with a wild turkey license or tag issued to another person.

(j) The temporary transportation tag described in subsection (i) must, immediately after taking a wild turkey, be notched as to the month and day of the taking and attached to a leg of the turkey directly above the spur. A tag which is notched more than twice is void. The temporary transportation tag must be attached to a leg of the wild turkey directly above the spur. The turkey must be transported to an official turkey checking station within twenty-four (24) hours of taking for registration. After the checking station operator records the permanent seal number on the log, the hunter is provided with that seal. The hunter shall immediately and firmly affix the seal to the leg of the turkey directly above the temporary transportation tag. The seal must remain affixed until processing of the turkey begins. The official turkey checking station operator shall accurately and legibly complete all forms provided by the department and make those forms available to department personnel on request.

(k) Each of the following individuals must tag a turkey carcass immediately after taking with a paper that states the name and address of the individual and the date the turkey was taken:

- (1) A lifetime license holder.
- (2) A youth license holder.
- (3) For a wild turkey taken on a landowner's land, each of the following:
  - (A) The resident landowner.
  - (B) The spouse of the resident landowner.
  - (C) A child of the resident landowner who is living with the landowner.
- (4) For a wild turkey taken on land leased from another person, each of the following:
  - (A) The resident lessee who farms the land.
  - (B) The spouse of the resident lessee.
  - (C) A child of the resident lessee who is living with the lessee.
- (5) An Indiana serviceman or servicewoman hunting under IC 14-22-11-11.

(l) The feathers and beard of a wild turkey must remain attached while the wild turkey is in transit from the site where taken.

*(Natural Resources Commission; 312 IAC 9-4-11; filed May 12, 1997, 10:00 a.m.: 20 IR 2710; filed May 28, 1998, 5:14 p.m.: 21 IR 3715; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1533; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

### **312 IAC 9-4-12 Crows**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 12. (a) The seasons for hunting and possessing crows is from July 1 through August 15 and from December 13 through March 1 of the following year.

(b) There is no limit on the number of crows which may be taken. *(Natural Resources Commission; 312 IAC 9-4-12; filed May 12, 1997, 10:00 a.m.: 20 IR 2712; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

### **312 IAC 9-4-13 Brown-headed cowbirds, common grackles, red-winged blackbirds, rusty blackbirds, Brewer's blackbirds, and crows**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 13. Brown-headed cowbirds, common grackles, red-winged blackbirds, rusty blackbirds, Brewer's blackbirds, and crows may be taken if the birds:

- (1) are committing or about to commit depredations upon ornamental or shade trees, agricultural crops, livestock, or wildlife;
- or



(2) are concentrated in numbers and in a manner which constitutes a health hazard or nuisance as provided under 50 CFR 16. (*Natural Resources Commission; 312 IAC 9-4-13; filed May 12, 1997, 10:00 a.m.: 20 IR 2712; filed May 28, 1998, 5:14 p.m.: 21 IR 3717; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-4-14 Endangered and threatened species of birds**

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

Affected: IC 14-22-34-12

Sec. 14. The following species of birds are threatened or endangered and are subject to the protections provided under IC 14-22-34-12:

- (1) American bittern (*Botaurus lentiginosus*).
- (2) Least bittern (*Ixobrychus exilis*).
- (3) Black-crowned night-heron (*Nycticorax nycticorax*).
- (4) Yellow-crowned night-heron (*Nyctanassa violacea*).
- (5) Trumpeter swan (*Sygnus buccinator*).
- (6) Osprey (*Pandion haliaetus*).
- (7) Bald eagle (*Haliaeetus leucocephalus*).
- (8) Northern harrier (*Circus cyaneus*).
- (9) Peregrine falcon (*Falco peregrinus*).
- (10) Black rail (*Laterallus jamaicensis*).
- (11) King rail (*Rallus elegans*).
- (12) Virginia rail (*Rallus limicola*).
- (13) Sandhill crane (*Grus canadensis*).
- (14) Piping plover (*Charadrius melodus*).
- (15) Upland sandpiper (*Bartramia longicauda*).
- (16) Least tern (*Sterna antillarum*).
- (17) Black tern (*Chlidonias niger*).
- (18) Barn owl (*Tyto alba*).
- (19) Short-eared owl (*Asio flammeus*).
- (20) Bewick's wren (*Thryomanes bewickii*).
- (21) Sedge wren (*Cisothorus platensis*).
- (22) Marsh wren (*Cisothorus palustris*).
- (23) Loggerhead shrike (*Lanius ludovicianus*).
- (24) Golden-winged warbler (*Vermivora chrysoptera*).
- (25) Kirtland's warbler (*Dendroica kirtlandii*).
- (26) Bachman's sparrow (*Aimophila aestivalis*).
- (27) Henslow's sparrow (*Ammodramus henslowii*).
- (28) Yellow-headed blackbird (*Xanthocephalus xanthocephalus*).

(*Natural Resources Commission; 312 IAC 9-4-14; filed May 12, 1997, 10:00 a.m.: 20 IR 2712; filed May 28, 1998, 5:14 p.m.: 21 IR 3717; filed Dec 26, 2001, 2:40 p.m.: 25 IR 2535; filed May 16, 2002, 12:25 p.m.: 25 IR 3046; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-4-15 English sparrows, starlings, and feral pigeons**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 15. English sparrows, starlings, and feral pigeons (not including homing pigeons) may be taken at any time. (*Natural Resources Commission; 312 IAC 9-4-15; filed May 12, 1997, 10:00 a.m.: 20 IR 2712; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**Rule 5. Reptiles and Amphibians**

**312 IAC 9-5-1 Reptiles and amphibians**

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

Affected: IC 14-22

Sec. 1. (a) This rule governs wild animals that are reptiles and amphibians.

(b) All reptiles and amphibians native to Indiana are wild animals protected by law.

(c) A person must not take, chase, or possess a reptile or amphibian, except as provided by IC 14-22 or this rule. A person has the burden of proving the person qualifies for an exception under IC 14-22 or this rule. (*Natural Resources Commission; 312 IAC 9-5-1; filed May 12, 1997, 10:00 a.m.: 20 IR 2712; filed Jul 9, 1999, 5:55 p.m.: 22 IR 3671; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-5-2 Taking turtles**

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

Affected: IC 14-22-11-1; IC 14-22-11-8; IC 14-22-12-1

Sec. 2. (a) The following species of turtles, and no others, may be taken under this section:

(1) Common snapping turtle (*Chelydra serpentina serpentina*).

(2) Smooth softshell turtle (*Apalone mutica*).

(3) Spiny softshell turtle (*Apalone spinifera*).

(b) The season for taking turtles is unlimited.

(c) The daily bag limit is twenty-five (25) turtles.

(d) A person must not take a turtle except by:

(1) a trap, a net, or other mechanical device which has no opening below the surface of the water;

(2) hands;

(3) a gaff; or

(4) any method provided by statute or by 312 IAC 9-7 for sport fishing.

(e) Except as provided under IC 14-22-11-1, a resident must possess a hunting license or a fishing license issued under IC 14-22-11-8 to take a turtle. A nonresident must possess a nonresident yearly license to hunt under IC 14-22-12-1(6). (*Natural Resources Commission; 312 IAC 9-5-2; filed May 12, 1997, 10:00 a.m.: 20 IR 2713; filed Jul 9, 1999, 5:55 p.m.: 22 IR 3672; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-5-3 Taking bullfrogs and green frogs**

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

Affected: IC 14-22-11-1; IC 14-22-11-8; IC 14-22-12-1

Sec. 3. (a) The following species of frogs, and no others, may be taken under this section:

(1) Bullfrog (*Rana catesbeiana*).

(2) Green frog (*Rana clamitans*).

(b) The season for taking and possessing frogs is from June 15 through April 30 of the following year.

(c) The daily bag limit is twenty-five (25) frogs.

(d) A person must not take frogs except by one (1) of the following methods:

(1) A gig or spear having a head not more than three (3) inches wide and a single row of tines.

(2) Bow and arrows.

(3) A club.

(4) Hands.

(5) A single pole or hand line with not more than one (1) hook or artificial lure affixed.

(6) A .22 caliber firearm, as long as the projectiles discharged from the barrel of the firearm are birdshot.

(e) A person may use a spotlight, a searchlight, or another artificial light to assist in taking frogs under subsection (d).

(f) Except as provided under IC 14-22-11-1, a resident must possess a hunting license or a fishing license issued under IC 14-22-11-8 to take frogs. A nonresident must possess a nonresident yearly license to hunt under IC 14-22-12-1(6). (*Natural Resources Commission; 312 IAC 9-5-3; filed May 12, 1997, 10:00 a.m.: 20 IR 2713; filed Jul 9, 1999, 5:55 p.m.: 22 IR 3672; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-5-4 Endangered and threatened species of reptiles and amphibians**

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

Affected: IC 14-22-34-12

Sec. 4. The following species of reptiles and amphibians are threatened or endangered and are subject to the protections provided under IC 14-22-34-12:

- (1) Hellbender (*Cryptobranchus alleganensis*).
- (2) Northern red salamander (*Pseudotriton ruber*).
- (3) Four-toed salamander (*Hemidactylium scutatum*).
- (4) Green salamander (*Aneides aeneus*).
- (5) Copperbelly water snake (*Nerodia erythrogaster*).
- (6) Butler's garter snake (*Thamnophis butleri*).
- (7) Kirtland's snake (*Clonophis kirtlandi*).
- (8) Scarlet snake (*Cemophora coccinea*).
- (9) Smooth green snake (*Ophedrys vernalis*).
- (10) Crowned snake (*Tantilla coronata*).
- (11) Cottonmouth (*Agkistrodon piscivorus*).
- (12) Massasauga (*Sistrurus catenatus*).
- (13) Timber rattlesnake (*Crotalus horridus*).
- (14) Eastern mud turtle (*Kinosternon subrubrum*).
- (15) Spotted turtle (*Clemmys guttata*).
- (16) Heiroglyphic turtle (*Pseudemys concinna*).
- (17) Alligator snapping turtle (*Macrochelys temminckii*).
- (18) Blanding's turtle (*Emydoidea blandingi*).
- (19) Crawfish frog (*Rana areolata*).
- (20) Ornate box turtle (*Terrapene ornata*).

(*Natural Resources Commission; 312 IAC 9-5-4; filed May 12, 1997, 10:00 a.m.: 20 IR 2713; filed May 16, 2002, 12:25 p.m.: 25 IR 3047; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-5-5 Exempted reptiles and amphibians (Repealed)**

Sec. 5. (*Repealed by Natural Resources Commission; filed Jul 9, 1999, 5:55 p.m.: 22 IR 3678*)

**312 IAC 9-5-6 Collection 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 14-22-11-1; IC 14-22-11-8; IC 14-22-12-1

Sec. 6. (a) A resident must not collect reptiles or amphibians from the wild unless the person:

- (1) holds a valid hunting license, or is excepted from holding a valid hunting license, under IC 14-22-11-1; or
- (2) holds a valid fishing license, or is excepted from holding a fishing license, under IC 14-22-11-8.

(b) A nonresident must not collect reptiles or amphibians from the wild unless the person possesses a nonresident yearly license to hunt under IC 14-22-12-1(6).

(c) Except as provided in sections 2 and 3 of this rule, the possession limit is four (4) with respect to any species of reptile or amphibian collected under this section.

(d) A person must not collect reptile or amphibian eggs from the wild.

(e) Except for a reptile lawfully possessed and fitted with a passive integrated transponder under section 9(h) of this rule, a reptile or amphibian collected under this section must not be sold.

(f) The offspring of an amphibian taken under this section must not be sold.

(g) The offspring of a reptile taken under this section may be sold by a reptile captive breeder (who is in compliance with section 9 of this rule) to any person. (*Natural Resources Commission; 312 IAC 9-5-6; filed Jul 9, 1999, 5:55 p.m.: 22 IR 3672; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

### **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 20-1-1-6; IC 20-1-1.6-2

Sec. 7. (a) This section governs the sale, transport for sale, or 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, a reptile or amphibian native to Indiana is prohibited.

(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) Mudpuppy (*Necturus maculosus*).
- (3) Streamside salamander (*Ambystoma barbouri*).
- (4) Jefferson's salamander (*Ambystoma jeffersonianum*).
- (5) Blue-spotted salamander (*Ambystoma laterale*).
- (6) Spotted salamander (*Ambystoma maculatum*).
- (7) Marbled salamander (*Ambystoma opacum*).
- (8) Smallmouth salamander (*Ambystoma texanum*).
- (9) Eastern tiger salamander (*Ambystoma tigrinum tigrinum*).
- (10) Eastern newt (*Notophthalmus viridescens*).
- (11) Green salamander (*Aneides aeneus*).
- (12) Northern dusky salamander (*Desmognathus fuscus*).
- (13) Two-lined salamander (*Eurycea cirrigera*).
- (14) Longtailed salamander (*Eurycea longicauda*).
- (15) Cave salamander (*Eurycea lucifuga*).
- (16) Four-toed salamander (*Hemidactylium scutatum*).
- (17) Redbacked salamander (*Plethodon cinereus*).
- (18) Zigzag salamander (*Plethodon dorsalis*).
- (19) Slimy salamander (*Plethodon glutinosus*).
- (20) Ravine salamander (*Plethodon richmondi*).
- (21) Red salamander (*Pseudotriton ruber*).
- (22) Lesser siren (*Siren intermedia*).
- (23) Eastern spadefoot toad (*Scaphiopus holbrooki*).
- (24) American toad (*Bufo americanus*).
- (25) Fowler's toad (*Bufo fowleri*).
- (26) Cricket frog (*Acris crepitans*).
- (27) Cope's gray tree frog (*Hyla chrysoscelis*).
- (28) Eastern gray tree frog (*Hyla versicolor*).
- (29) Spring peeper (*Pseudacris crucifer*).
- (30) Striped chorus frog (*Pseudacris triseriata*).
- (31) Crawfish frog (*Rana areolata*).
- (32) Plains leopard frog (*Rana blairi*).
- (33) Bullfrog (*Rana catesbeiana*).

- (34) Green frog (*Rana clamitans*).
- (35) Northern leopard frog (*Rana pipiens*).
- (36) Pickerel frog (*Rana palustris*).
- (37) Southern leopard frog (*Rana utricularia*).
- (38) Wood frog (*Rana sylvatica*).
- (39) Common snapping turtle (*Chelydra serpentina serpentina*).
- (40) Smooth softshell turtle (*Apalone mutica*).
- (41) Spiny softshell turtle (*Apalone spinifera*).
- (42) Alligator snapping turtle (*Macrolemys temmincki*).
- (43) Eastern mud turtle (*Kinosternon subrubrum*).
- (44) Musk turtle (*Sternotherus odoratus*).
- (45) Midland painted turtle (*Chrysemys picta marginata*).
- (46) Western painted turtle (*Chrysemys picta bellii*).
- (47) Spotted turtle (*Clemmys guttata*).
- (48) Blanding's turtle (*Emydoidea blandingii*).
- (49) Map turtle (*Graptemys geographica*).
- (50) False map turtle (*Graptemys pseudogeographica*).
- (51) Ouachita map turtle (*Graptemys ouachitensis*).
- (52) Heiroglyphic river cooter (*Pseudemys concinna*).
- (53) Eastern box turtle (*Terrapene carolina*).
- (54) Ornate box turtle (*Terrapene ornata*).
- (55) Red-eared slider (*Trachemys scripta elegans*).
- (56) Eastern fence lizard (*Sceloporus undulatus*).
- (57) Slender glass lizard (*Ophisaurus attenuatus*).
- (58) Six-lined racerunner (*Cnemidophorus sexlineatus*).
- (59) Five-lined skink (*Eumeces fasciatus*).
- (60) Broad-headed skink (*Eumeces laticeps*).
- (61) Ground skink (*Scincella lateralis*).
- (62) Worm snake (*Carphophis amoenus*).
- (63) Scarlet snake (*Cemophora coccinea*).
- (64) Racer (*Coluber constrictor*).
- (65) Kirtland's snake (*Clonophis kirtlandii*).
- (66) Northern ringneck snake (*Diadophis punctatus*).
- (67) Black rat snake (*Elaphe obsoleta obsoleta*).
- (68) Gray rat snake (*Elaphe obsoleta spiloides*).
- (69) Western fox snake (*Elaphe vulpina vulpina*).
- (70) Mud snake (*Farancia abacura*).
- (71) Eastern hognose snake (*Heterodon platirhinos*).
- (72) Prairie king snake (*Lampropeltis calligaster calligaster*).
- (73) Black king snake (*Lampropeltis getula nigra*).
- (74) Eastern milk snake (*Lampropeltis triangulum triangulum*).
- (75) Red milk snake (*Lampropeltis triangulum sypila*).
- (76) Northern copperbelly (*Nerodia erythrogaster*).
- (77) Diamondback water snake (*Nerodia rhombifer*).
- (78) Northern banded water snake (*Nerodia sipedon*).
- (79) Rough green snake (*Opheodrys aestivus*).
- (80) Smooth green snake (*Opheodrys vernalis*).
- (81) Bull snake (*Pituophis melanoleucus sayi*).
- (82) Queen snake (*Regina septemvittata*).
- (83) Brown snake (*Storeria dekayi*).

- (84) Redbellied snake (*Storeria occipitomaculata*).
- (85) Crowned snake (*Tantilla coronata*).
- (86) Butler's garter snake (*Thamnophis butleri*).
- (87) Western ribbon snake (*Thamnophis proximus*).
- (88) Plains garter snake (*Thamnophis radix*).
- (89) Eastern ribbon snake (*Thamnophis sauritus*).
- (90) Common garter snake (*Thamnophis sirtalis*).
- (91) Western earth snake (*Virginia valeriae*).
- (92) Northern copperhead (*Agkistrodon contortrix*).
- (93) Cottonmouth moccasin (*Agkistrodon piscivorus*).
- (94) Timber rattlesnake (*Crotalus horridus*).
- (95) Eastern massasauga (*Sistrurus catenatus*).

(d) As used in this section, "sale" means:

- (1) barter, purchase, trade, or offer to sell, barter, purchase, or trade; or
- (2) serving as part of a meal by a restaurant, a hotel, a boardinghouse, or an eating house keeper; however, a hotel, a boardinghouse, or an eating house keeper 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 to move, carry, or ship a wild animal protected by law by any means and 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) Exempted from this section is 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 a sale made under a reptile captive breeding license governed by section 9 of this rule.

(i) Exempted from this section is the sale to and purchase of reptiles or amphibians by a public school accredited under IC 20-1-1-6(8) or nonpublic school accredited under IC 20-1-1-6(11) and IC 20-1-1.6-2. 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 the sale and purchase of a bullfrog (*Rana catesbeiana*) tadpole or 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, a tadpole is 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. (*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*)

### **312 IAC 9-5-8 Possession, sale, and transport of dangerous reptiles**

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

Affected: IC 14-22; IC 35-41-1-25

Sec. 8. (a) This section governs the possession, sale, transport for sale, or offer to sell any dangerous reptile.

(b) The possession, sale, transport for sale, or offer to sell or transport for sale of any dangerous reptile (other than by a zoological park) is prohibited.

(c) Exempted from this section is a person who is transporting dangerous reptiles in interstate commerce to be sold outside Indiana.

(d) Exempted from this section is a person who is in possession of a dangerous reptile under a Class III Wild Animal Possession permit issued under 312 IAC 9-11.

(e) Exempted from this section is 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.

(f) As used in this section, "dangerous reptile" includes both of the following:

(1) A venomous reptile.

(2) A crocodilian that is at least five (5) feet long.

(g) As used in this section, "sale" includes:

(1) barter, purchase, trade, or offer to sell, barter, purchase, or trade; and

(2) serving as part of a meal by a restaurant, a hotel, a boardinghouse, or an eating house keeper; however, a hotel, a boardinghouse, or an eating house keeper 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 legally taken by the guest, patron, or boarder during the open season.

(h) As used in this section, "transport" means to move, carry, or ship a wild animal protected by law by any means and for any common or contract carrier knowingly to move, carry, or receive for shipment a wild animal protected by law.

(i) As used in this section, "zoological park" means an entity which satisfies one (1) of the following:

(1) A permanent establishment that is a member of the American Association of Zoological Parks and Aquariums (also known as the American Zoo and Aquarium Association).

(2) An agency of local government, open to and administered for the public, to provide education, conservation, and preservation of the earth's fauna.

*(Natural Resources Commission; 312 IAC 9-5-8; filed Jul 9, 1999, 5:55 p.m.: 22 IR 3674; errata filed Oct 26, 1999, 2:40 p.m.: 23 IR 589; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

### **312 IAC 9-5-9 Reptile captive breeding license**

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

Affected: IC 14-22

Sec. 9. (a) This section establishes the reptile captive breeding license and sets the requirements for a person who wishes to apply for and maintain the license.

(b) The application must be made on a department form.

(c) The annual fee for a license under this section is fifteen dollars (\$15).

(d) An application for a license under this section must be made within thirty (30) days of the effective date of this section for a reptile described in subsection (e) and possessed by the applicant before the effective date of this section. Any subsequent license application must be made within five (5) days after the applicant took possession of the first reptile described in subsection (e) and taken for captive breeding purposes.

(e) A reptile captive breeding license authorizes a person who holds the license to possess, breed, and sell the reptiles listed in this section. In the following list, where both scientific names and common names are provided, common names are for public convenience but the scientific names control:

(1) Black rat snake (*Elaphe obsoleta obsoleta*).

(2) Western fox snake (*Elaphe vulpina*).

(3) Eastern hognose snake (*Heterodon platirhinos*).

(4) Prairie kingsnake (*Lampropeltis calligaster calligaster*).

(5) Black kingsnake (*Lampropeltis getula nigra*).

(6) Eastern milk snake (*Lampropeltis triangulum triangulum*).

(7) Red milk snake (*Lampropeltis triangulum sypila*).

(8) Bull snake (*Pituophis melanoleucus sayi*).

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

(A) albinistic (an animal lacking brown or black pigment);

(B) leucistic (a predominately white animal); or

(C) xanthic (a predominately yellow animal);

if it was not collected from the wild.

(f) Captive breeding stock other than a reptile described in subsection (e)(9) must be identified with an individually unique passive integrated transponder. A transponder must be implanted in each specimen. The type of transponder shall be approved by the commission. The imbedded transponder's code and other required information concerning the general health and condition of the animal must be provided on a departmental form, and verified by a supervising veterinarian, within fourteen (14) days after obtaining the animal.

(g) A reptile held under this section must be confined in a cage or other enclosure that makes escape of the animal unlikely. Each animal must be provided with ample space and kept in a sanitary and humane manner. Animals and cages must be made available for inspection upon request by a conservation officer.

(h) Each animal possessed under this section must be lawfully acquired. No more than four (4) animals of each species described in subsection (e) may be collected annually from the wild. A receipted invoice, bill of lading, or other satisfactory evidence of lawful acquisition for animals not taken from the wild shall be presented to a conservation officer upon request. A person licensed under this section who collects an animal from the wild must document, on a departmental form, when and where the animal was collected. The animal must be fitted with a passive integrated transponder within fourteen (14) days of taking possession.

(i) A person licensed under this section must not possess an animal larger than the maximum sale length described in this subsection unless the animal is fitted with a transponder as part of the breeding stock of the person. Captive-bred offspring may only be sold before an individual attains the following total length:

(1) Fifteen (15) inches for an eastern hognose snake.

(2) Eighteen (18) inches for a black rat snake, western fox snake, black king snake, prairie king snake, eastern milk snake, or red milk snake.

(3) Twenty-eight (28) inches for a bull snake.

(j) A person licensed under this section must maintain accurate records on a calendar year basis on the number and disposition of breeding stock and captive breed young. The records shall include the species and number of animals captured, received, or sold and the birth dates of captive born animals. In addition, the records shall include the complete name and complete address of the person from whom an animal was purchased or to whom an animal was sold. The records shall be maintained at the place of business of the license holder for at least two (2) years after the end of the license year. The records must be made available for inspection upon request by a conservation officer.

(k) A person licensed under this section must not release to the wild a captive breeder or the offspring of a captive breeder. (*Natural Resources Commission; 312 IAC 9-5-9; filed Jul 9, 1999, 5:55 p.m.: 22 IR 3675; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

### **312 IAC 9-5-10 Possession and captive breeding of reptiles acquired before January 1, 1999**

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

Affected: IC 14-22; IC 35-41-1-25

Sec. 10. A person who possesses or uses for captive breeding a reptile that was lawfully acquired by the person before September 1, 1999, does not violate section 8 or 9 of this rule if the person does each of the following:

(1) Describes the reptile on a department form by November 1, 1999.

(2) Identifies the reptile with an individually unique transponder, a unique notch, or another method of permanent marking approved by the director.

(3) Manages the reptile in a manner that is likely to assure the safety of the public and the health of the animal.

(*Natural Resources Commission; 312 IAC 9-5-10; filed Jul 9, 1999, 5:55 p.m.: 22 IR 3676; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

### **Rule 6. Sport Fishing, Commercial Fishing; Definitions, Restrictions, and Standards**



**312 IAC 9-6-1 Definitions pertaining to fish and fishing activities**

Authority: IC 14-22-2-6

Affected: IC 14-22-34-12

Sec. 1. In addition to the definitions contained in 312 IAC 9-1, the following definitions apply throughout 312 IAC 9-7, 312 IAC 9-8, and 312 IAC 9-10:

- (1) "Alewife" means the species *Alosa pseudoharengus*.
- (2) "American eel" means the species *Anguilla rostrata*.
- (3) "Aquarium pet trade" means the business of importing, producing, or selling live fish for display in aquariums, tanks, or other continuing exhibits.
- (4) "Atlantic salmon" means the species *Salmo salar*.
- (5) "Bar mesh" means the length of one (1) side of the square mesh measure or as measured between two (2) knots on the same line.
- (6) "Bighead carp" means the species *Hypophthalmichthys nobilis*.
- (7) "Black bass" means the species *Micropterus salmoides*, *Micropterus dolomieu*, and *Micropterus punctulatus*.
- (8) "Black carp" means the species *Mylopharyngodon piceus*.
- (9) "Black crappie" means the species *Pomoxis nigromaculatus*.
- (10) "Blue catfish" means the species *Ictalurus furcatus*.
- (11) "Bluegill" means the species *Lepomis macrochirus*.
- (12) "Bluntnose minnow" means the species *Pimephales notatus*.
- (13) "Bowfin" means the species *Amia calva*.
- (14) "Brook trout" means the species *Salvelinus fontinalis*.
- (15) "Brown trout" means the species *Salmo trutta*.
- (16) "Buffalo" means the genus *Ictiobus*.
- (17) "Bullhead" means the species *Ictalurus melas*, *Ictalurus nebulosus*, and *Ictalurus natalis*.
- (18) "Burbot" means the species *Lota lota*.
- (19) "Carp" means the species *Cyprinus carpio*.
- (20) "Cast net" means a net not more than ten (10) feet in diameter and having stretch mesh not larger than three-fourths ( $\frac{3}{4}$ ) inch.
- (21) "Cavefish" means a fish of the family Amblyopsidae.
- (22) "Chain pickerel" means the species *Esox niger*.
- (23) "Channel catfish" means the species *Ictalurus punctatus*.
- (24) "Chinook salmon" means the species *Oncorhynchus tshawytscha*.
- (25) "Chub" means the species *Coregonus hoyi* and the species *Coregonus kiyi*.
- (26) "Cisco" means the species *Coregonus artedii*.
- (27) "Closed aquaculture system" means a rearing facility designed to prevent the escape of cultured organisms to the wild.
- (28) "Coho salmon" means the species *Oncorhynchus kisutch*.
- (29) "Crappie" means white crappie and black crappie.
- (30) "Dip net" means a dip net not exceeding three (3) feet square, without sides or walls, and having stretch mesh not larger than one-half ( $\frac{1}{2}$ ) inch.
- (31) "Diploid" means a cell or organism that has two (2) complete sets of chromosomes.
- (32) "Exotic catfish" means a walking catfish or other member of the family Clariidae.
- (33) "Exotic fish" means an exotic catfish, bighead carp, black carp, silver carp, white perch, snakehead, rudd, ruffe, tubenose goby, round goby, or a hybrid or genetically altered fish of any of these species.
- (34) "Fathead minnow" means the species *Pimephales promelas*.
- (35) "Flathead catfish" means the species *Pylodictis olivaris*.
- (36) "Freshwater drum" means the species *Aplodinotus grunniens*.
- (37) "Gaff" or "gaff hook" means an implement of metal or another hard or tough material with or without barbs, making a single hook having a shank with or without a handle, which may be hand held to seize, hold, or sustain fish.
- (38) "Gar" means the genus *Lepisosteus*.

- (39) "Genetically altered fish" means a fish which is the product of genetic manipulation, including polyploidy, gynogenesis, gene transfer, and hormonal sex control.
- (40) "Gizzard shad" means the species *Dorosoma cepedianum*.
- (41) "Golden shiner" means the species *Notemigonus crysoleucas*.
- (42) "Goldfish" means the species *Carassius auratus*.
- (43) "Grab hook" means a device or implement used as a tong to clutch, close down upon, or grasp fish.
- (44) "Grass carp" means the genus *Ctenopharyngodon*.
- (45) "Green sunfish" means the species *Lepomis cyanellus*.
- (46) "Hybrid striped bass" means the hybrid of striped bass and white bass.
- (47) "Hybrid sunfish" means a hybrid of the genus *Lepomis*.
- (48) "Lake herring" means the species *Coregonus artedii*.
- (49) "Lake sturgeon" means the species *Acipenser fulvescens*.
- (50) "Lake trout" means the species *Salvelinus namaycush*.
- (51) "Lake whitefish" means the species *Coregonus clupeaformis*.
- (52) "Largemouth bass" means the species *Micropterus salmoides*.
- (53) "Minnow seine" means a seine or net not more than twelve (12) feet long and four (4) feet deep, and having stretch mesh not larger than one-half (½) inch.
- (54) "Minnow trap" means a fish trapping device not exceeding twenty-four (24) inches long. The opening of the throat shall not exceed one (1) inch in diameter.
- (55) "Mosquitofish" means the species *Gambusia affinis*.
- (56) "Muskellunge" means the species *Esox masquinongy*.
- (57) "Northern pike" means the species *Esox lucius*.
- (58) "Quagga mussel" means the species *Dreissena bugensis*.
- (59) "Paddlefish" means the species *Polyodon spathula*.
- (60) "Rainbow trout" means the species *Oncorhynchus mykiss*.
- (61) "Redear sunfish" means the species *Lepomis microlophus*.
- (62) "Rock bass" means the species *Ambloplites rupestris*.
- (63) "Rough fish" means any species of fish not defined as a sport fish or protected under IC 14-22-34-12.
- (64) "Round goby" mean the species *Neogobius melanostomus*.
- (65) "Rudd" means the species *Scardinius erythrophthalmus*.
- (66) "Ruffe" means the species *Gymnocephalus cernuus*.
- (67) "Sauger" means the species *Stizostedion canadense*.
- (68) "Saugeye" means the hybrid of walleye and sauger.
- (69) "Shad" means the genera *Alosa* and *Dorosoma*.
- (70) "Silver carp" means the species *Hypophthalmichthys molitrix*.
- (71) "Single hook" means a fishing hook consisting of one (1) shank and one (1) point.
- (72) "Smallmouth bass" means the species *Micropterus dolomieu*.
- (73) "Smelt" means the genus *Osmerus*.
- (74) "Snakehead" means all species of the family Channidae, including the genera *Channa* and *Parachanna*.
- (75) "Sockeye salmon" means the species *Oncorhynchus nerka*.
- (76) "Sport fish" means largemouth bass, smallmouth bass, spotted bass, rock bass, white crappie, black crappie, walleye, sauger, saugeye, striped bass, white bass, hybrid striped bass, yellow bass, muskellunge, tiger muskellunge, northern pike, chain pickerel, and trout or salmon.
- (77) "Spotted bass" means the species *Micropterus punctulatus*.
- (78) "Steelhead" means the species *Oncorhynchus mykiss*.
- (79) "Stretch mesh" means the extended distance or length between the extreme angles of a single mesh of net.
- (80) "Striped bass" means the species *Morone saxatilis*.
- (81) "Sucker" means the genera *Carpionides*, *Moxostoma*, *Hypentelium*, *Catostomus*, and *Erimyzon*.
- (82) "Tiger muskellunge" means the hybrid of muskellunge and northern pike.
- (83) "Tilapia" means all species of the genus *Tilapia*.

- (84) "Triploid" means a cell or organism having three (3) haploid sets of chromosomes.
- (85) "Trout or salmon" means lake trout, coho salmon, chinook salmon, sockeye salmon, brown trout, steelhead (or rainbow trout), brook trout, and Atlantic salmon.
- (86) "Tubenose goby" means the species *Proterorhinus marmoratus*.
- (87) "Walleye" means the species *Stizostedion vitreum*.
- (88) "Warmouth" means the species *Lepomis gulosus*.
- (89) "White bass" means the species *Morone chrysops*.
- (90) "White catfish" means the species *Ictalurus catus*.
- (91) "White perch" means the species *Morone americana*.
- (92) "White crappie" means the species *Pomoxis annularis*.
- (93) "Yellow bass" means the species *Morone mississippiensis*.
- (94) "Yellow perch" means the species *Perca flavescens*.
- (95) "Zebra mussel" means the species *Dreissena polymorpha*.

*(Natural Resources Commission; 312 IAC 9-6-1; filed May 12, 1997, 10:00 a.m.: 20 IR 2713; filed May 28, 1998, 5:14 p.m.: 21 IR 3717; errata filed Aug 25, 1998, 3:02 p.m.: 22 IR 125; filed May 16, 2002, 12:25 p.m.: 25 IR 3047; filed Jul 23, 2003, 10:30 a.m.: 26 IR 3866; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

### **312 IAC 9-6-2 Fish measurement**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 2. The measurement of the length of a fish shall be taken in a straight line from the tip of the snout with the mouth closed to the utmost end of the caudal (tail) fin when the fin is compressed so that the upper and lower lobes of the fin touch or overlap.  
*(Natural Resources Commission; 312 IAC 9-6-2; filed May 12, 1997, 10:00 a.m.: 20 IR 2715; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

### **312 IAC 9-6-3 Fish sorting restrictions and the prohibition of waste**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 3. (a) Except as provided in subsection (b), a person must not sort and release a fish taken previously in the day in order to replace the fish with another where the same bag limit applies to both fish.

(b) A fish may be released without counting toward the daily bag limit only if the fish is as follows:

- (1) Alive and in apparent good health.
- (2) Capable of swimming away normally under its own power.
- (3) Returned to the water from which it was taken before the end of the day.
- (4) In a place where the immediate escape of the fish is not prevented.

(c) The intentional waste or destruction of any species of fish taken under this rule is prohibited unless the species is required by law to be killed. A person must not mutilate and return a fish to the water. This section does not, however, apply if a fish is required by law to be released or is lawfully used as bait.

(d) Offal or filth resulting from catching, curing, cleaning, or shipping fish in or near state waters must be burned, buried, or otherwise disposed in a sanitary manner that:

- (1) does not pollute the water; and
- (2) is not or does not become detrimental to public health or comfort.

*(Natural Resources Commission; 312 IAC 9-6-3; filed May 12, 1997, 10:00 a.m.: 20 IR 2715; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1537; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

### **312 IAC 9-6-4 Release of fish which cannot lawfully be possessed**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 4. (a) A person who takes a fish which cannot lawfully be possessed by that person does not violate this article if:

- (1) the fish is taken at a lawful location and in a lawful manner; and
- (2) the fish is immediately returned to the waters from which the fish was taken without unreasonable injury.

(b) Notwithstanding subsection (a), a person who takes an exotic catfish must kill the fish immediately upon capture or otherwise comply with section 7 of this rule.

(c) Compliance with subsection (a) must be established by the person taking the fish. (*Natural Resources Commission; 312 IAC 9-6-4; filed May 12, 1997, 10:00 a.m.: 20 IR 2715; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

### **312 IAC 9-6-5 Fishing gear left unattended or unidentified**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 5. Fishing gear not properly attended or identified which is left in waters containing state-owned fish may be confiscated and destroyed by a conservation officer. (*Natural Resources Commission; 312 IAC 9-6-5; filed May 12, 1997, 10:00 a.m.: 20 IR 2715; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

### **312 IAC 9-6-6 Areas closed to fishing**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 6. A person must not take or possess fish at any of the following locations:

(1) From April 1 through June 15 from:

- (A) the east branch of the Little Calumet River in Porter County from U.S. 12 upstream to U.S. 20, excluding its tributaries; and
- (B) Trail Creek in LaPorte County from the Franklin Street Bridge in Michigan City upstream to U.S. 35, excluding its tributaries.

(2) Within one hundred (100) feet above or below the Linde Dame (Prax Air) on the East Branch of the Little Calumet River within Porter County (Northeast Quarter of Section 32, Township 37 North, Range 6 West).

(3) From the East Race waterway in the city of South Bend in St. Joseph County.

(4) From the St. Joseph River in St. Joseph County:

- (A) within one hundred (100) feet of the entrance or exit of the East Race waterway;
- (B) from the fish ladders located at the South Bend dam in the city of South Bend or the Downtown Mishawaka dam in the city of Mishawaka;
- (C) within one hundred (100) feet of the entrances and exits of those fish ladders located at the South Bend dam or the Downtown Mishawaka dam; and
- (D) while fishing from a boat within two hundred (200) feet downstream of the South Bend dam or downstream of the Downtown Mishawaka dam to the Main Street bridge in the city of Mishawaka.

(5) From April 20 to the last Saturday in April from:

- (A) the Pigeon River (and Pigeon Creek) in LaGrange County from the Steuben County line to County Road 410 East (Troxel's bridge), but excluding the impoundment known as the Mongo Mill Pond;
- (B) Harding Run, Curtis Creek, Bloody Run, and Graveyard Run (tributaries of the Pigeon River) in LaGrange County;
- (C) Turkey Creek north of County Road 100 South in LaGrange County; and
- (D) Rainbow Pit located in the Pigeon River Fish and Wildlife Area approximately one and one-tenth (1.1) miles east of Ontario in LaGrange County.

(*Natural Resources Commission; 312 IAC 9-6-6; filed May 12, 1997, 10:00 a.m.: 20 IR 2715; filed May 28, 1998, 5:14 p.m.: 21 IR 3719; errata filed Aug 25, 1998, 3:02 p.m.: 22 IR 125; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1537; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-6-7 Exotic fish**

Authority: IC 14-22-2-6

Affected: IC 14-22-2-3

Sec. 7. (a) Except as otherwise provided under this section, a person must not import, possess, propagate, buy, sell, barter, trade, transfer, loan, or release into public or private waters any of the following live fish or fry of live fish or their viable eggs or genetic material:

- (1) Exotic catfish.
- (2) Bighead carp.
- (3) Black carp
- (4) Silver carp.
- (5) White perch.
- (6) Snakehead.
- (7) Rudd.
- (8) Ruffe.
- (9) Tubenose goby.
- (10) Round goby.
- (11) A hybrid or genetically altered fish of any of these species.

(b) A person who takes a fish listed in subsection (a) does not violate this section if the fish listed in subsection (a) is killed immediately upon capture.

(c) This section does not apply to the following:

- (1) The use of a fish by a properly accredited zoological park as defined in 312 IAC 9-5-8(i).
- (2) During the lawful interstate shipment of fish through the state if the fish are not unloaded or do not leave the control of a common carrier.
- (3) A person who lawfully possesses an exotic fish under a permit issued under 312 IAC 9-10-17 for medical, educational, or scientific purposes.

(d) A person who possesses federally listed injurious species must also comply with 18 U.S.C. 42 and 50 CFR 16. (*Natural Resources Commission; 312 IAC 9-6-7; filed May 12, 1997, 10:00 a.m.: 20 IR 2716; filed May 28, 1998, 5:14 p.m.: 21 IR 3719; filed Jul 23, 2003, 10:30 a.m.: 26 IR 3868; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-6-8 Carp and gizzard shad as bait**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 8. (a) It is unlawful to use live carp as bait.

(b) Live gizzard shad shall not be used as bait except at Brookville Reservoir. (*Natural Resources Commission; 312 IAC 9-6-8; filed May 12, 1997, 10:00 a.m.: 20 IR 2716; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-6-9 Endangered and threatened species of fish**

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

Affected: IC 14-22-34-12

Sec. 9. The following species of fish are threatened or endangered and are subject to the protections provided under IC 14-22-34-12:

- (1) Lake sturgeon (*Acipenser fulvescens*).
- (2) Cavefishes (*Amblyopsidae* species).
- (3) Redside dace (*Clinostomus elongatus*).
- (4) Bluebreast darter (*Etheostoma camurum*).
- (5) Spotted darter (*Etheostoma maculatum*).
- (6) Spottail darter (*Etheostoma squamiceps*).

- (7) Tippecanoe darter (*Etheostoma tippecanoe*).
- (8) Variegate darter (*Etheostoma variatum*).
- (9) Gilt darter (*Percina evides*).
- (10) Harlequin darter (*Etheostoma histrio*).
- (11) Greater redhorse (*Moxostoma valenciennesi*).

*(Natural Resources Commission; 312 IAC 9-6-9; filed May 12, 1997, 10:00 a.m.: 20 IR 2716; filed May 16, 2002, 12:25 p.m.: 25 IR 3048; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 9-6-10 Exempted fish**

Authority: IC 14-22-2-6  
Affected: IC 14-22

Sec. 10. Any fish not defined in section 1 of this rule is an exempted wild animal. *(Natural Resources Commission; 312 IAC 9-6-10; filed May 12, 1997, 10:00 a.m.: 20 IR 2716; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**Rule 7. Sport Fishing**

**312 IAC 9-7-1 Applicability**

Authority: IC 14-22-2-6  
Affected: IC 14-22-11; IC 14-22-12-1

Sec. 1. This rule applies to an individual who fishes on waters containing state-owned fish and who:

- (1) is issued a license to fish under IC 14-22-12-1; or
- (2) is excepted under IC 14-22-11-1, IC 14-22-11-8, or IC 14-22-11-11 from the requirement of a license to fish.

*(Natural Resources Commission; 312 IAC 9-7-1; filed May 12, 1997, 10:00 a.m.: 20 IR 2716; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 9-7-2 Sport fishing methods, except on the Ohio River**

Authority: IC 14-22-2-6  
Affected: IC 14-22

Sec. 2. (a) Except as provided under section 13 of this rule with respect to the Ohio River, this section governs the lawful methods for fishing under this rule.

(b) An individual may take fish with the aid of illumination of a spotlight, search light, or artificial light.

(c) An individual may take fish with not more than three (3) poles, hand lines, or tip-ups at a time. Except as provided in subsection (g), affixed to each line shall be no more than (2) hooks or two (2) artificial baits or harnesses for use with live bait.

(d) A person must not take fish from waters containing state-owned fish, waters of this state, or boundary waters by means of a hook dragged or jerked through the water with the intent to snag fish on contact.

(e) A person must not take trout or salmon from a waterway unless the fish is hooked in the mouth.

(f) A person must not fish with more than ten (10) limb lines or drop lines at a time. Each line shall have not more than one (1) hook affixed and must bear a legible tag with the name and address of the user. Each line shall be attended at least once every twenty-four (24) hours. A limb line or drop line shall not be used within three hundred (300) yards of a dam which wholly or partly crosses a waterway.

(g) A person must not ice fish, except as provided as follows:

(1) A tip-up must be constantly in sight of the user and must have affixed a legible tag bearing the name and address of the user.

(2) An ice fishing enclosure that is placed on the waters of this state between sunset and sunrise must bear the name and address of the owner visibly in three (3) inch block letters on at least one (1) exterior vertical side. At least one (1) red reflector, or a three (3) inch by three (3) inch reflective material strip, must be mounted on each exterior side of an ice fishing enclosure.

(3) An ice fishing enclosure must be removed from waters of this state before ice-out.

(4) If an ice fishing enclosure is used after February 15 of a calendar year, the ice fishing enclosure must be removed daily.

(5) As used in this subsection, "ice fishing enclosure" means an ice shanty or ice fishing tent.

(h) A person must not take fish with more than one (1) trot line, set line, or throw line. A line must have no more than fifty (50) hooks affixed. A trot line must be anchored to the bottom or set not less than three (3) feet below the surface of the water. A legible tag with the name and address of the user must be affixed to each trot line. Each trot line must be attended at least once every twenty-four (24) hours. It is unlawful to take fish from Lake Michigan with a trot line, set line, or throw line.

(i) A person must not take fish from a lake with free float lines or to fish from a waterway with more than five (5) free-float lines. Not more than one (1) hook shall be affixed to each line. A float shall bear the name and address of the user and must not be constructed of glass. Each free-float line must be in constant attendance by the person fishing.

(j) A person must not possess a fish spear, gig, gaff, pitchfork, bowfishing equipment, crossbow, grab hook, spear gun, club, snag hook, or underwater spear in, on, or adjacent to:

(1) the Galena River (LaPorte County);

(2) Trail Creek (LaPorte County);

(3) the East Branch of the Little Calumet River (LaPorte and Porter Counties);

(4) Salt Creek (Porter County);

(5) the West Branch of the Little Calumet River (Lake and Porter Counties);

(6) Burns Ditch (Porter and Lake Counties);

(7) Deep River downstream from the dam at Camp 133 (Lake County); or

(8) the tributaries of these waterways.

(k) A person must not fish the waterways described in subsection (j) or from the St. Joseph River and its tributary streams from the Twin Branch dam downstream to the Michigan state line (St. Joseph County) with more than one (1) single hook per line or one (1) artificial bait or harness for use with live bait. Single hooks, including those on artificial baits, shall not exceed one-half (½) inch from point to shank. Double and treble hooks on artificial baits shall not exceed three-eighths (¾) inch from point to shank.

(l) A person must not take smelt from other than Lake Michigan and Oliver Lake in LaGrange County by the use of dip nets, seines, or nets except from March 1 through May 30 with either of the following:

(1) One (1) dip net not to exceed twelve (12) feet in diameter.

(2) One (1) seine or net not to exceed twelve (12) feet long and six (6) feet deep and having a stretch mesh larger than one and one-half (1½) inches.

Each seine or net shall have affixed a legible tag with the name and address of the user.

(m) An individual may, by means of a fish spear, gig, speargun, or underwater spear, take only any sucker, carp, gar, bowfin, buffalo, or shad and only from the following waterways:

(1) West Fork of the White River from its junction with the East Fork upstream to the dam below the Harding Street generating plant of the Indianapolis Power and Light Company in Marion County.

(2) East Fork of the White River from its junction with the West Fork upstream to the dam at the south edge of the city of Columbus in Bartholomew County.

(3) White River from its junction with the West Fork of the White River and East Fork of the White River to its junction with the Wabash River in Gibson, Knox, and Pike Counties.

(4) Wabash River from its junction with the Ohio River upstream to State Road 13 at the south edge of the city of Wabash in Wabash County.

(5) Tippecanoe River upstream from its junction with the Wabash River to one-half (½) mile below its junction with Big Creek in Carroll County. (It is unlawful to possess a fish spear or fish gig in, on, or adjacent to the Tippecanoe River from one-half (½) mile below its junction with Big Creek in Carroll County upstream to the Oakdale Dam which forms Lake Freeman.)

(6) Maumee River from the Ohio state line upstream to the Anthony Boulevard Bridge in the city of Fort Wayne.

(7) Kankakee River from the Illinois state line upstream to State Road 55 bridge south of the city of Shelby in Lake County.

(8) St. Joseph River in St. Joseph and Elkhart Counties.

(n) An individual may use a pitchfork or bow and arrow on a waterway only:

(1) to take any sucker, carp, gar, bowfin, buffalo, or shad; between

(2) sunrise and sunset.

(o) In addition to any other lawful method, an individual may take a sucker, carp, gar, bowfin, buffalo, or shad:

(1) by bow and arrows from Lake Michigan; or

(2) by spear, gig, spear gun, underwater spear, pitchfork, or bow and arrows from another lake.

(p) An individual may take a sucker, carp, gar, or bowfin with not more than one (1) snare only between sunrise and sunset.

*(Natural Resources Commission; 312 IAC 9-7-2; filed May 12, 1997, 10:00 a.m.: 20 IR 2716; filed May 28, 1998, 5:14 p.m.: 21 IR 3719; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1537; errata filed Feb 26, 2002, 6:00 p.m.: 25 IR 2254; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

### **312 IAC 9-7-3 Catfish**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 3. (a) A person must not possess channel catfish, blue catfish, or flathead catfish taken from a waterway unless those catfish are at least ten (10) inches long.

(b) Except as otherwise provided in subsection (c), the daily bag limit is ten (10) for any combination of channel catfish, blue catfish, and flathead catfish taken from a lake.

(c) Channel catfish may be taken from Gibson Lake (Gibson County) and Turtle Creek Reservoir (Sullivan County) without regard to a bag limit. *(Natural Resources Commission; 312 IAC 9-7-3; filed May 12, 1997, 10:00 a.m.: 20 IR 2718; filed May 28, 1998, 5:14 p.m.: 21 IR 3721; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1539; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

### **312 IAC 9-7-4 Muskellunge and tiger muskellunge**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 4. (a) It is unlawful to possess a muskellunge or tiger muskellunge unless that muskellunge or tiger muskellunge is at least thirty-six (36) inches long.

(b) The daily bag limit is one (1) in total for muskellunge and tiger muskellunge. *(Natural Resources Commission; 312 IAC 9-7-4; filed May 12, 1997, 10:00 a.m.: 20 IR 2718; filed May 28, 1998, 5:14 p.m.: 21 IR 3721; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

### **312 IAC 9-7-5 Northern pike**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 5. (a) It is unlawful to possess a northern pike unless that northern pike is at least twenty (20) inches long.

(b) The daily bag limit is three (3) for northern pike. *(Natural Resources Commission; 312 IAC 9-7-5; filed May 12, 1997, 10:00 a.m.: 20 IR 2718; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

### **312 IAC 9-7-6 Black bass**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 6. (a) Except as otherwise provided in this section, the aggregate daily bag limit is five (5) black bass.

(b) The aggregate daily bag limit is three (3) for black bass taken from Lake Michigan. A person must not possess more than three (3) black bass while fishing in or on Lake Michigan.

(c) Except as otherwise provided in this section, the minimum size limit for black bass taken from a waterway is twelve (12) inches but is fourteen (14) inches for black bass taken from lakes (including Lake Michigan).

(d) No minimum length limit for largemouth bass applies for the lakes listed in this subsection as follows:

(1) Brownstown Pit in Jackson County.

(2) Burdette Park Lakes in Vanderburgh County.



- (3) Chandler Town Lake in Warrick County.
- (4) Cypress Lake in Jackson County.
- (5) Deming Park Lakes in Vigo County.
- (6) Garvin Park Lake in Vanderburgh County.
- (7) Glen Miller Pond in Wayne County.
- (8) Hayswood Lake in Harrison County.
- (9) Henry County Memorial Park Lake in Henry County.
- (10) Hovey Lake in Posey County.
- (11) Krannert Lake in Marion County.
- (12) Lake Sullivan in Marion County.
- (13) Ruster Lake in Marion County.
- (14) Schnebelt Pond in Dearborn County.

(e) A person must not take or possess a largemouth bass unless the largemouth bass is less than twelve (12) inches long or more than fifteen (15) inches long from the following designated waters:

- (1) Buffalo Trace Lake in Harrison County.
- (2) Celina Lake in Perry County.
- (3) Delaney Park Lake in Washington County.
- (4) Indian Lake in Perry County.
- (5) Saddle Lake in Perry County.
- (6) Scales Lake in Warrick County.
- (7) Shakamak State Park Lakes in Clay County, Greene County, and Sullivan County.
- (8) Tipsaw Lake in Perry County.
- (9) Ferdinand State Forest Lake in Dubois County.

(f) The daily bag limit is one (1) largemouth bass from Turtle Creek Reservoir in Sullivan County. A person must not take or possess a largemouth bass from Turtle Creek Reservoir unless the largemouth bass is at least twenty (20) inches long.

(g) A person must not take or possess a largemouth bass from Patoka Lake (Orange, Crawford, and Dubois Counties) or Dogwood Lake (Daviess County) unless the largemouth bass is at least fifteen (15) inches long.

(h) A person must not take or possess a largemouth bass from Harden Lake (Parke County) unless the largemouth bass is at least sixteen (16) inches long.

(i) The daily bag limit is two (2) largemouth bass, and a person must not take or possess a largemouth bass unless the largemouth bass is at least eighteen (18) inches long, from the following designated waters:

- (1) Tri-County State Fish and Wildlife Area.
- (2) Robinson Lake in Whitley County and Kosciusko County.
- (3) Ball Lake in Steuben County.
- (4) Gibson Lake in Gibson County.

(j) A person must not take or possess a largemouth bass from Dove Hollow Lake at Glendale State Fish and Wildlife Area.

(k) If this section prohibits a person from taking or possessing a black bass from a specified lake or waterway, a person must not possess a bass of the prohibited class on or adjacent to the lake or waterway. (*Natural Resources Commission; 312 IAC 9-7-6; filed May 12, 1997, 10:00 a.m.: 20 IR 2718; filed May 28, 1998, 5:14 p.m.: 21 IR 3721; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1539; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

### **312 IAC 9-7-7 White bass; hybrid striped bass**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 7. (a) Except as provided in subsection (b), the daily bag limit is twelve (12) for any combination of white bass and hybrid striped bass.

(b) It is unlawful to possess any combination of more than two (2) white bass and hybrid striped bass which exceed seventeen (17) inches. (*Natural Resources Commission; 312 IAC 9-7-7; filed May 12, 1997, 10:00 a.m.: 20 IR 2719; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-7-8 Striped bass**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 8. The daily bag limit is two (2) striped bass. (*Natural Resources Commission; 312 IAC 9-7-8; filed May 12, 1997, 10:00 a.m.: 20 IR 2719; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-7-9 Crappies**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 9. The daily bag limit is twenty-five (25) crappies. (*Natural Resources Commission; 312 IAC 9-7-9; filed May 12, 1997, 10:00 a.m.: 20 IR 2719; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-7-10 Redear sunfish**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 10. The daily bag limit is twenty-five (25) redear sunfish. (*Natural Resources Commission; 312 IAC 9-7-10; filed May 12, 1997, 10:00 a.m.: 20 IR 2719; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-7-11 Rock bass**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 11. The daily bag limit is twenty-five (25) rock bass. (*Natural Resources Commission; 312 IAC 9-7-11; filed May 12, 1997, 10:00 a.m.: 20 IR 2719; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-7-12 Walleye; sauger; saugeye**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 12. (a) The daily bag limit is six (6) for any combination of walleye, sauger, or saugeye.

(b) Except on the Ohio River, and as provided in subsection (c), a person must not possess a walleye or saugeye unless it is at least fourteen (14) inches long.

(c) A person must not possess a walleye from the St. Joseph River in St. Joseph County or Elkhart County unless it is at least fifteen (15) inches long. (*Natural Resources Commission; 312 IAC 9-7-12; filed May 12, 1997, 10:00 a.m.: 20 IR 2719; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1540; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-7-13 Trout and salmon**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 13. (a) A person must not possess a brook trout, rainbow trout, or brown trout unless the trout is as follows:

(1) Except as provided in subsection (d), at least seven (7) inches long.

(2) Taken from the last Saturday of April after 5 a.m., local time, through December 31, if taken from other than a lake.

(b) Except as otherwise provided in this section, the daily bag limit is five (5) trout.

(c) Except as provided in subsection (d), the daily bag limit for lake trout is three (3).

(d) A person must not possess a brown trout from Oliver Lake, Olin Lake, or Martin Lake (LaGrange County) unless the trout is at least eighteen (18) inches long. The daily bag limit is five (5) trout of which no more than one (1) shall be brown trout.

(e) A person must not possess a trout or salmon taken from Lake Michigan or its tributaries unless the fish is at least fourteen (14) inches long. The daily bag limit is five (5) for any combination of trout and salmon taken under this subsection, of which no more than two (2) shall be lake trout. Exempted from this subsection, however, are trout taken from the St. Joseph River in St. Joseph and Elkhart Counties and its tributaries upstream from the Twin Branch Dam.

(f) A person must not possess more than a single day's bag limit identified in subsection (d) while fishing on Lake Michigan.

(g) The areas closed to trout and salmon fishing under this section are in addition to areas closed to all fishing under 312 IAC 9-6-6. (*Natural Resources Commission; 312 IAC 9-7-13; filed May 12, 1997, 10:00 a.m.: 20 IR 2720; filed May 28, 1998, 5:14 p.m.: 21 IR 3722; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1540; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-7-14 Fish with no bag limit, possession limit, or size limit**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 14. There is no bag limit, possession limit, or size limit for the following:

- (1) Alewife.
- (2) American eel.
- (3) Bluegill.
- (4) Bowfin.
- (5) Buffalo.
- (6) Bullhead.
- (7) Carp.
- (8) Chain pickerel.
- (9) Chub.
- (10) Cisco.
- (11) Gar.
- (12) Gizzard shad.
- (13) Lake herring.
- (14) Lake whitefish.
- (15) Shad.
- (16) Smelt.
- (17) Sucker.
- (18) Yellow bass.

(*Natural Resources Commission; 312 IAC 9-7-14; filed May 12, 1997, 10:00 a.m.: 20 IR 2720; filed May 28, 1998, 5:14 p.m.: 21 IR 3723; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-7-15 Minnows**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 15. (a) The season for taking minnows is unlimited.

(b) It is unlawful to take minnows except by:

- (1) a minnow trap;
- (2) a dip net;
- (3) a minnow seine;
- (4) a cast net; or
- (5) lawful sport fishing methods provided in this rule.

(c) It is unlawful to transport beyond the limits of this state more than one hundred (100) minnows in a twenty-four (24) hour period. This subsection does not apply to a person engaged in commercially raising minnows in private waters for sale. (*Natural Resources Commission; 312 IAC 9-7-15; filed May 12, 1997, 10:00 a.m.: 20 IR 2720; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-7-16 Sport fishing on the Ohio River**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 16. (a) This section governs fishing on the Ohio River, excluding all bays and tributaries.

(b) A person must not take sport fish except by any of the following:

(1) Fishing pole or hand line.

(2) Float fishing.

(3) Setlines:

(A) attached to a:

(i) tree limb;

(ii) tree trunk;

(iii) bank pole; or

(iv) the bank itself; and

(B) each bearing one (1) single or multibarbed hook.

(4) Not more than two (2) trotlines per individual. Each trotline shall have not more than fifty (50) single or multibarbed baited hooks placed not closer together than eighteen (18) inches. All trotlines shall be tended at least once every twenty-four (24) hours.

(c) An individual may take rough fish by the methods prescribed in subsection (b) or according to the following methods:

(1) Long bow, including compound bow, with an arrow having one (1) or more barbs and a line attached. Rough fish without scales shall not be taken with bow and arrow during nighttime hours (from one-half (½) hour after sunset until one-half (½) hour before sunrise).

(2) Giggling from February 1 through May 10 with any pronged or barbed instrument attached to the end of a rigid object. A person must not take fish by giggling from a boat or platform.

(3) Snagging from February 1 through May 10 with one (1) single or treble hook attached by line to a pole and jerked or pulled through the water. A person must not take fish by snagging from a boat or platform.

(d) A person must not take fish within two hundred (200) yards below any dam on the Ohio River except by fishing pole or hand line.

(e) A person must not take minnows from the Ohio River except by:

(1) a minnow trap not to exceed three (3) feet long and eighteen (18) inches in diameter nor having a throat opening greater than one (1) inch in diameter;

(2) a dip net not to exceed three (3) feet in diameter;

(3) a minnow seine not to exceed thirty (30) feet long and six (6) feet deep nor having mesh size larger than one-fourth (¼) inch bar mesh;

(4) a cast net not to exceed nine (9) feet in diameter nor having mesh size larger than three-eighths (¾) inch bar mesh; or

(5) lawful fishing methods provided in this section.

(f) The daily bag limits, possession limits, and size limits for taking fish by angling are as follows:

	Bag	Possession	Size (Inches)
Bass (largemouth, smallmouth, and spotted)	6	12	12 (except no size limit on spotted bass)
Bass (white, yellow, striped, and hybrids)	30	60	No more than four fish can be 15 or longer
Rock bass	15	30	none
Walleye, sauger, and saugeye	10	20	none
Muskellunge and tiger muskellunge	2	2	30
Crappie	30	60	none

(Natural Resources Commission; 312 IAC 9-7-16; filed May 12, 1997, 10:00 a.m.: 20 IR 2720; errata filed Nov 24, 1997, 4:30 p.m.: 21 IR 1347; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)

**312 IAC 9-7-17 Charter fishing boat operator's license**

Authority: IC 14-22-2-6; IC 14-22-15

Affected: IC 14-22-15-4

Sec. 17. (a) An individual may not take another individual sport fishing for hire on:

- (1) Indiana waters;
- (2) waters containing state-owned fish; or
- (3) state boundary waters;

without a charter fishing boat operator's license issued by the director under IC 14-22-15-4 and this section.

(b) A license holder under this section shall, on a departmental form, keep legible and accurate daily fishing records of the:

- (1) species;
- (2) numbers, locations, and dates of fish taken; and
- (3) number of fishermen and hours fished;

while engaged in charter fishing. These daily records shall be recorded before the licensed fishing person departs the boat at the conclusion of the fishing trip.

(c) A license holder under this section shall, on a departmental form, prepare a monthly report of the information maintained on the daily fishing records. The monthly report shall be submitted to the director or the director's representative before the fifteenth day of each month following the month covered. The report shall be submitted each month regardless of whether charter fishing activity occurs in the month covered unless the license holder has submitted an Inactive License Form to signify that no fishing activity will take place for the remainder of the calendar year. The Inactive License Form shall be submitted to the director or the director's representative before the fifteenth day of the month following the month the license is deemed inactive.

(d) The director or the director's representative may, at any reasonable time, inspect the daily fishing records required under subsection (b) or IC 14-22-15-4. (*Natural Resources Commission; 312 IAC 9-7-17; filed May 12, 1997, 10:00 a.m.: 20 IR 2721; filed May 28, 1998, 5:14 p.m.: 21 IR 3723; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1540; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

### **312 IAC 9-7-18 Yellow perch**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 18. (a) The daily bag limit is fifteen (15) yellow perch on Lake Michigan.

(b) A person must not possess more than fifteen (15) yellow perch while fishing on Lake Michigan. (*Natural Resources Commission; 312 IAC 9-7-18; filed May 28, 1998, 5:14 p.m.: 21 IR 3723; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1541; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

### **312 IAC 9-7-19 Paddlefish**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 19. (a) A person may not take or possess paddlefish from any public water except the Ohio River.

(b) The daily bag limit is two (2) paddlefish.

(c) The sorting or release of lawfully snagged paddlefish is prohibited.

(d) Snagging is prohibited for the remainder of the day after two (2) paddlefish are taken.

(e) Snagging is prohibited within two hundred (200) yards of a dam located on the Ohio River. (*Natural Resources Commission; 312 IAC 9-7-19; filed May 28, 1998, 5:14 p.m.: 21 IR 3723; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

## **Rule 8. Commercial Fishing**

### **312 IAC 9-8-1 Applicability**

Authority: IC 14-22-2-6; IC 14-22-13

Affected: IC 14-22

Sec. 1. This rule applies to a person who is issued a commercial fishing license by the department. (*Natural Resources Commission; 312 IAC 9-8-1; filed May 12, 1997, 10:00 a.m.: 20 IR 2721; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-8-2 Commercial fishing except on the Ohio River; general provisions**

Authority: IC 14-22-2-6; IC 14-22-13

Affected: IC 14-22-14-23

Sec. 2. (a) This section applies to commercial fishing on:

- (1) waters of this state;
- (2) boundary waters; or
- (3) waters containing state-owned fish;

other than the Ohio River.

(b) No person may take or sell fish except under this section and 312 IAC 9-10. A person may take fish with the aid of illumination of a spotlight, searchlight, or artificial light where lawfully engaged in commercial fishing.

(c) A person subject to this section must not possess trout or salmon.

(d) A person must not possess or sell any of the following taken from the waters described in subsection (a):

- (1) Chubs.
- (2) Northern pike.
- (3) Chain pickerel.
- (4) Muskellunge.
- (5) Tiger muskellunge.
- (6) White bass.
- (7) Yellow bass.
- (8) Striped bass.
- (9) Hybrid striped bass.
- (10) Walleye.
- (11) Sauger.
- (12) Saugeye.
- (13) Smallmouth bass.
- (14) Largemouth bass.
- (15) Spotted bass.
- (16) Bluegill.
- (17) Redear sunfish.
- (18) Rock bass.
- (19) Crappie.
- (20) American eel.
- (21) Paddlefish.
- (22) Lake sturgeon.
- (23) Lake herring.
- (24) Blue catfish less than ten (10) inches long.
- (25) Channel catfish less than ten (10) inches long.
- (26) Flathead catfish less than ten (10) inches long.
- (27) Lake whitefish less than eighteen (18) inches long.
- (28) Yellow perch.

A person who possesses or sells a fish described in this subsection must comply with 312 IAC 9-10-2.

(e) This subsection governs the reporting of fish catches as follows:

(1) A license holder, other than a license holder on Lake Michigan, shall keep accurate daily records on a departmental form of the following:

- (A) The pounds and species of fish caught.
- (B) The number of pieces of each type of gear fished by date.
- (C) The county fished.

The license holder shall submit the completed form to the division by the fifteenth day of each month for the preceding month whether the license holder fished or not. The license holder shall allow on-board and dockside inspections of the gear and

catch at any time by the director or the director's representative.

(2) A license holder on Lake Michigan must comply with the reporting requirements of IC 14-22-14-23 and section 3(g) of this rule.

*(Natural Resources Commission; 312 IAC 9-8-2; filed May 12, 1997, 10:00 a.m.: 20 IR 2721; filed May 28, 1998, 5:14 p.m.: 21 IR 3724; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

### **312 IAC 9-8-3 Commercial fishing on Lake Michigan**

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

Affected: IC 29-1-2

Sec. 3. (a) This section applies to commercial fishing on Lake Michigan and is supplemental to section 2 of this rule.

(b) Restrictions on the use of commercial fishing gear are as follows:

(1) A person must not set commercial fishing gear at any of the following locations:

(A) In water less than twenty-five (25) feet deep.

(B) Less than one-half ( $\frac{1}{2}$ ) mile from a pier, a harbor, a public beach, a boat launching ramp, or the Michigan City Reef located approximately three thousand (3,000) feet offshore and eleven thousand (11,000) feet northeasterly from the harbor lighthouse at Michigan City, LaPorte County (N41° 44.79 and W86° 52.61).

(C) Less than one (1) mile from the mouth of Black Ditch, Burns Ditch, or the detached breakwater near the mouth of Trail Creek.

(2) A person must not set, lift, retrieve, tend, or remove commercial fishing gear from the water between one-half ( $\frac{1}{2}$ ) hour after legal sunset to one-half ( $\frac{1}{2}$ ) hour before legal sunrise.

(c) Restrictions on the use of impoundment nets are as follows:

(1) The vertical height of impoundment net leads, wings, hearts, and pots shall not exceed five (5) feet.

(2) The total length of each lead or wing shall not exceed five hundred (500) feet. The total length of each impoundment net (heart and pot combined) shall not exceed forty (40) feet.

(3) The width of impoundment nets (heart and pot) shall not exceed ten (10) feet.

(4) The stretch mesh size of impoundment net leads, wings, and hearts shall be no smaller than two and one-half ( $2\frac{1}{2}$ ) inches and no larger than three and one-half ( $3\frac{1}{2}$ ) inches, including treated or tarred gear. The stretch mesh size of impoundment net pots shall not be smaller than two and one-fourth ( $2\frac{1}{4}$ ) inches, including treated or tarred gear.

(5) Impoundment net leads, wings, and hearts shall be constructed with size 12 twine (forty-eight thousandths (0.048) inch diameter) or larger. Impoundment net pots shall be constructed with size 15 twine (fifty-four thousandths (0.054) inch diameter) or larger from the heart to the last tunnel. The pots shall be constructed with size 18 twine (sixty-thousandths (0.060) inch diameter) or larger from the last tunnel to the end of the pot.

(6) The maximum number of meshes for each drop or hoop net pot is calculated as follows:

(A) Determine the diameter of a hoop, in inches, by measuring the distance across the widest point of the hoop.

(B) Multiply the diameter determined under clause (A) by three and fourteen-hundredths (3.14) to determine the circumference of the hoop.

(C) Divide the hoop circumference calculated under clause (B) by one and forty-five hundredths (1.45) to determine the number of meshes required to go around the hoop. Round the dividend to the nearest whole number.

(D) Add three (3) to the number calculated under clause (C). The resulting sum is the maximum number of meshes for each pot.

(7) Drop or hoop net pots must also comply as follows:

(A) All hoops on a net shall have the same diameter.

(B) Hoops shall not be spaced more than seventeen (17) meshes apart.

(8) The maximum number of meshes for each box-style trap net is calculated as follows:

(A) Determine the width of the back wall, in inches.

(B) Divide the width determined under clause (A) by one and forty-five hundredths (1.45).

(C) Add three (3) to the number calculated under clause (B). The resulting sum is the maximum allowable meshes for the width of the back wall.

(D) Determine the height of the pot, in inches.

- (E) Divide the height determined under clause (D) by one and forty-five hundredths (1.45).
- (F) Add three (3) to the number calculated under clause (E). The resulting sum is the maximum allowable meshes for the pot height.
- (9) Impoundment gear shall be marked at the end of the pot and at the end of each lead and wing with a buoy and flag. These buoys shall have a staff extending not less than five (5) feet above the surface of the water. An orange flag not less than twelve (12) inches square shall be affixed to the upper end of each staff. The base of each marker buoy shall legibly bear the license number in letters not less than two (2) inches high. Additional surface markers may be used by the license holder.
- (10) The license holder shall remove all fish from each impoundment net at least once every seventy-two (72) hours, weather permitting.
- (11) The maximum number of impoundment nets (pots) that may be fished at the same time by a license holder is as follows:
  - (A) Twenty-four (24) for the holder of a Class 1 license.
  - (B) Forty-eight (48) for the holder of a Class 2 license.
  - (C) Seventy-two (72) for the holder of a Class 3 license.
- (d) Restrictions on watercraft, ports, and operations are as follows:
  - (1) A person must not use a watercraft for commercial fishing unless the watercraft is properly registered and titled under 140 IAC 9. An application for a commercial fishing license must include a description of each watercraft to be used for fishing. This description must include the name, boat type, size, hull material, and registration number.
  - (2) The license holder must unload the daily catch at the Indiana port identified on the license application.
  - (3) A license holder may change the port or watercraft specified in this subsection only upon written notification, including documentation sufficient to identify the substituted port or watercraft, delivered to the department within ten (10) days of the change.
  - (4) A person must not take fish from a watercraft which is issued a certificate of inspection under 310 IAC 2.1-13 to carry passengers for hire.
  - (5) A person must not possess a fishing rod, pole, reel, or hand line while on-board a watercraft:
    - (A) from which commercial fishing gear is set, retrieved, or transported;
    - (B) which is en route to set or retrieve commercial fishing gear; or
    - (C) which is transporting fish captured with commercial fishing gear.
  - (6) A current commercial fishing license, or a duplicate copy of a current commercial fishing license validated by the department, must be carried on-board each boat engaged in fishing under this section.
- (e) Requirements for the use of a designated captain are as follows:
  - (1) The holder of a commercial fishing license must designate an individual as captain of a boat operated by the license holder. A designated captain must be on-board each commercial fishing boat of the license holder while the boat is being used for an activity related to commercial fishing. Each applicant to be a designated captain must demonstrate, to the satisfaction of the department, each of the following on a departmental form:
    - (A) The applicant is an Indiana resident.
    - (B) The applicant has had on-board commercial fishing experience with impoundment gear on the Great Lakes for at least eight (8) months during the past two (2) years.
    - (C) The applicant has had no felony conviction related to commercial fishing activities during the past three (3) years from a state or Canadian province located along the Great Lakes.
    - (D) Except as provided in subdivision (3), the applicant is neither a designated captain nor an employee for the holder of another commercial fishing license.
  - (2) The department shall approve the selection of a designated captain upon satisfaction of the requirements of subdivision (1). A license holder may, at any time, request a designated captain be changed, added, or deleted. A new approval is required if:
    - (A) a license is renewed or transferred; or
    - (B) a designated captain is changed or added.
  - (3) A license holder may use another license holder's designated captain during an emergency to retrieve commercial fishing gear from the water. As used in this subdivision, "emergency" means:
    - (A) the incapacitation or death of the license holder's designated captain; or
    - (B) a mechanical failure of the license holder's boat or essential gear retrieval equipment.



A written notification to justify the emergency designation must be provided to the department within ten (10) days of the emergency.

(f) The renewal, transfer, merger, or exchange of a commercial fishing license is regulated as follows:

(1) No person is eligible to receive or hold a commercial fishing license except as provided under IC 14-22-14.

(2) A person who holds a commercial fishing license may renew the license if the person is otherwise eligible to hold a commercial fishing license under IC 14-22 and this rule. License renewal will not be granted unless the person completes an application on a departmental form and the completed form and payment for the renewal fee are received by the department by February 1 of the year for which the license is sought. Licenses which are not renewed are permanently removed from the licensing system.

(3) No license may be transferred except upon prior consent of the director. Transfer shall be granted after delivery of a departmental form (with payment of the processing fee) establishing to the satisfaction of the director that the person to whom the transfer is to be made otherwise qualifies to hold a license under IC 14-22 and this article. If the person to whom the transfer is to be made holds an interest in another commercial fishing license at the time of the transfer, the second license is valid; the person is considered to have surrendered the first license. The first license is permanently removed from the licensing system and must, upon issuance of the new license, be immediately returned to the department.

(4) No license may be merged or converted except upon prior consent of the director. A license merger under IC 14-22-14-13 or a license conversion under IC 14-22-14-14 shall be granted after delivery of a completed departmental form and payment of the processing fee. Upon the issuance of a new license, any former license shall be immediately returned to the department.

(5) With the prior consent of the director and as provided under IC 14-22-14-16, a Class 2 license may be exchanged for a Class 1 license, or a Class 3 license may be exchanged for a Class 2 or a Class 1 license. A license exchange shall be granted after delivery of a completed departmental form and payment of the exchange processing fee. Upon issuance of the new license, the former license shall be immediately returned to the department.

(6) Upon the death or legal determination of incompetence of an individual license holder, a court may designate a family member (who would qualify for intestate succession from the decedent or incompetent under the principles set forth in IC 29-1-2) as the applicant for the same class license as held by the decedent or incompetent.

Notwithstanding subdivision (2), the director shall issue a new license to the designated applicant, if the applicant qualifies to hold a license under IC 14-22 and this article. If an individual designated under this subdivision does not submit a completed application on a department form by February 1 of the year immediately following the year in which the original license is valid, or within ninety (90) days after the death or incapacity of the individual to whom the license is issued, whichever is later, the license is permanently removed from the licensing system.

(g) A license holder shall keep legible and accurate daily fishing records on a departmental form of the following:

(1) The pounds and species of fish caught.

(2) The dates, locations, and depths fished.

(3) The type, quantity, and dimensions of gear used.

(h) The form required under subsection (g) must be completed no later than noon on the day following the day on which the fish were taken. Each form must be submitted to the director or the director's representative before the sixteenth day of the month following the month in which the fish were taken.

(i) A person who transfers or merges a license is responsible for submitting daily catch record for fish taken before the effective date of the transfer or merger. A person who receives a license is responsible for submitting daily catch records for fish taken beginning with the date of the transfer or merger.

(j) The director or the director's representative may, at any reasonable time, inspect the daily fishing records required under subsections (g) through (h) or IC 14-22-14-23. A license holder shall allow the director or the director's representative to obtain catch data on-board or dockside at any reasonable time. A license holder shall also allow on-board and dockside inspections of the gear and catch at any time by the director or the director's representative.

(k) A license holder is exempt from daily fishing records required under subsections (g) through (h) during the time that a license is held in reserve status. (*Natural Resources Commission; 312 IAC 9-8-3; filed May 12, 1997, 10:00 a.m.: 20 IR 2722; filed May 28, 1998, 5:14 p.m.: 21 IR 3724; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-8-4 Commercial fishing on the Wabash River boundary waters**

Authority: IC 14-22-2-6; IC 14-22-13

Affected: IC 14-22

Sec. 4. (a) This section applies to commercial fishing conducted on the Wabash River boundary waters between Indiana and Illinois and is supplemental to section 2 of this rule.

(b) A license holder under this section may use a dip-net, hoop-net, fyke-net, basket-net, basket-trap, or trap-net made of twine or cords, with or without wings or leads. It is unlawful to use wings or leads constructed of any twine or cord smaller than size 9 (forty-two thousandths (0.042) inches) diameter. It is unlawful to use a net more than two hundred (200) feet long, including wings and leads. It is unlawful to use a net having stretch mesh less than two (2) inches. It is unlawful to use a net seine which obstructs more than one-half ( $\frac{1}{2}$ ) of the width of the river.

(c) A license holder may use a seine. It is unlawful to use a seine which exceeds two hundred (200) feet long. It is unlawful to use a seine having stretch mesh less than five (5) inches. It is unlawful to use a seine which obstructs more than one-half ( $\frac{1}{2}$ ) of the width of the river.

(d) Each piece of fishing gear in use must be tended not less frequently than once every forty-eight (48) hours. Fish taken by the gear must be removed. Each item of gear must be removed from the waters fished immediately upon the completion of fishing. (*Natural Resources Commission; 312 IAC 9-8-4; filed May 12, 1997, 10:00 a.m.: 20 IR 2725; filed May 28, 1998, 5:14 p.m.: 21 IR 3727; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-8-5 Commercial fishing on inland rivers**

Authority: IC 14-22-2-6; IC 14-22-13

Affected: IC 14-22

Sec. 5. (a) This section applies to commercial fishing on inland rivers of Indiana and is supplemental to section 2 of this rule.

(b) It is unlawful to conduct commercial fishing on inland waters containing state-owned fish or waters of this state, except for the following rivers:

(1) The Wabash River downstream from the city limits of Lafayette to where the river forms the boundary between Indiana and Illinois.

(2) The White River downstream from the junction of its east and west forks to where the White River joins the Wabash River.

(3) The west fork of the White River downstream from its junction with the Eel River in Greene County to the junction of the east and west forks of the White River.

(4) The east fork of the White River downstream from its junction with the Lost River in Martin County to the junction of the east and west forks of the White River.

(5) The Patoka River three hundred (300) yards downstream of the dam below the State Road 164 bridge in the city of Jasper to where the Patoka River joins the Wabash River.

(c) A license holder under this section may use hoop-nets or trap-nets made of twine or cord. It is unlawful to use more than four (4) hoop-nets or trap-nets. It is unlawful to use a net having a diameter, width, or height of more than six (6) feet. It is unlawful to use a net having stretch mesh less than two (2) inches.

(d) Each piece of fishing gear in use must be tended not less frequently than once every forty-eight (48) hours. Fish taken by the gear must be removed. Each item of gear must be removed from the waters fished immediately upon the completion of fishing. (*Natural Resources Commission; 312 IAC 9-8-5; filed May 12, 1997, 10:00 a.m.: 20 IR 2725; filed May 28, 1998, 5:14 p.m.: 21 IR 3727; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-8-6 Commercial fishing on the Ohio River**

Authority: IC 14-22-2-6; IC 14-22-13

Affected: IC 14-22

Sec. 6. (a) This section applies to commercial fishing on the Ohio River.

(b) No person shall take or sell fish except in accordance with this section and 312 IAC 9-10. A person may take fish with

the aid of illumination of a spotlight, searchlight, or artificial light where lawfully engaged in commercial fishing.

(c) A license holder under this section may take and sell all species of fish from the Ohio River except the following:

- (1) Largemouth bass.
- (2) Smallmouth bass.
- (3) Spotted bass.
- (4) Rock bass.
- (5) White crappie.
- (6) Black crappie.
- (7) Walleye.
- (8) Sauger.
- (9) Saugeye.
- (10) Striped bass.
- (11) White bass.
- (12) Hybrid striped bass.
- (13) Yellow bass.
- (14) Muskellunge.
- (15) Northern pike.
- (16) Tiger muskellunge.
- (17) Chain pickerel.
- (18) Lake sturgeon.
- (19) Trout.
- (20) Salmon.

(d) A license holder under this section must tag each item of gear so that a conservation officer may determine if the gear is properly licensed and the license holder is complying with the law.

(e) No person shall possess a seine, net, or commercial trotline except as authorized for a commercial fishing license for the Ohio River. This subsection does not apply to a manufacturer, retailer, or wholesale dealer who possesses gear exclusively for sale.

(f) Commercial fishing nets authorized under this section cannot be used on a bay or inlet of the Ohio River. A line drawn from point to point of a bay or inlet denotes the limits of the fishing zone. Commercial gear cannot be used within fifty (50) yards of the mouth of a stream. Commercial gear, except slat traps, cannot be used in the following locations:

- (1) Uniontown Dam downstream of the outer lock wall and the portion of the split channel around the southern part of Wabash Island from the fixed weir dam to the first dike.
- (2) Newburgh Dam downstream to the end of the outer lock wall.
- (3) Cannelton Dam downstream to the end of the outer lock wall.
- (4) McAlpine Dam downstream to the K and I railroad bridge.
- (5) Markland Dam downstream to the end of the outer lock wall.

(g) Each item of fishing gear in use must be tended not less frequently than once every twenty-four (24) hours and all fish taken by the gear removed, except that baited hoop nets or slat traps may be left unattended for not more than seventy-two (72) hours. Each item of gear must be removed from the waters in which the item was fished immediately upon usage.

(h) Gear is authorized only as set forth as follows:

- (1) Lines and mesh must be made of linen, cotton, or a flexible synthetic fiber.
- (2) The following restrictions apply to a hoop net, wing net, straight lead net, or heart lead net:
  - (A) Each net described in this subdivision must have a minimum bar mesh size of one (1) inch.
  - (B) Hoops may be any size, shape, or material.
  - (C) The maximum length of the lead or wing is sixty (60) feet.
  - (D) One (1) tag must be attached to the front hoop of each net.
- (3) The following restrictions apply to a gill or trammel net:
  - (A) The minimum bar mesh size is four (4) inches.
  - (B) The nets referenced in this subdivision may be fished weighted or as a flag net.
  - (C) A tag must be attached to the net at intervals not less than one hundred (100) feet apart.
- (4) The following restrictions apply to a commercial trotline:

- (A) Each line must have more than fifty (50) hooks placed no closer than eighteen (18) inches apart.
- (B) One (1) tag must be attached.
- (C) The trotline must be not longer than three thousand (3,000) feet, including staging, and must be fished separately rather than tied in a continuous line.
- (5) The following restrictions apply to a seine:
  - (A) A seine must have a minimum bar mesh size of one (1) inch.
  - (B) A seine must have both float and lead lines.
  - (C) A seine must have wood, fiberglass, metal poles, or brails attached to each end.
  - (D) A seine in the water must be attended by persons pulling the seine through the water for the entrapment of fish.
  - (E) A seine must have a tag attached at intervals not less than one hundred (100) feet apart.
- (6) The following restrictions apply to a slat trap basket:
  - (A) No wire or other mesh may be added to the trap.
  - (B) At least two (2) openings no less than one and one-fourth (1¼) inches wide must be located between the slats. These openings shall not be restricted by cross-bracings shorter than eight (8) inches long.
  - (C) The trap shall be no larger than two (2) feet in diameter or square end measure.
  - (D) A tag must be attached to the open ring or square.
- (i) A license holder must keep accurate daily catch records on a departmental form of the following:
  - (1) The pounds and species of fish caught by gear type.
  - (2) The number of paddlefish and shovelnose sturgeon caught by gear type.
  - (3) The pounds of paddlefish, shovelnose sturgeon, sucker, and eggs sold.
  - (4) The location fished by pool, river mile, and county.
- (j) The license holder must submit to the department the completed form required under subsection (i) by the fifteenth day of each month for the preceding month whether the license holder fished or not.
- (k) The license holder must allow on-board and dockside inspection of the gear and catch at any time by the director or the director's representative. (*Natural Resources Commission; 312 IAC 9-8-6; filed May 12, 1997, 10:00 a.m.: 20 IR 2725; filed May 28, 1998, 5:14 p.m.: 21 IR 3727; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

## **Rule 9. Invertebrates**

### **312 IAC 9-9-1 Applicability**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 1. This rule governs wild animals that are invertebrates. (*Natural Resources Commission; 312 IAC 9-9-1; filed May 12, 1997, 10:00 a.m.: 20 IR 2726; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

### **312 IAC 9-9-2 Crayfish**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 2. (a) The season for taking crayfish is unlimited.

(b) It is unlawful to take crayfish except by:

- (1) a minnow trap;
- (2) a dip net;
- (3) a minnow seine;
- (4) hands;
- (5) a cast net; or
- (6) lawful sport fishing methods provided in 312 IAC 9-7.

(c) It is unlawful to transport beyond the limits of this state more than one hundred (100) crayfish in a twenty-four (24) hour period, provided that this subsection does not apply to a person engaged in commercially raising crayfish in private waters for sale.

- (d) It is unlawful to take crayfish unless a person is issued a sport fishing license under 312 IAC 9-7.
- (e) An individual may use the aid of illumination from a spotlight, search light, or other artificial light to take crayfish.
- (f) It is unlawful to take crawfish from the Ohio River except by:
  - (1) a minnow trap not to exceed three (3) feet long and eighteen (18) inches in diameter nor have a throat opening greater than one (1) inch in diameter;
  - (2) a dip net not to exceed three (3) feet in diameter;
  - (3) a minnow seine not to exceed thirty (30) feet in length and six (6) feet in diameter nor have mesh size larger than one-fourth ( $\frac{1}{4}$ ) inch bar mesh;
  - (4) a cast net not to exceed nine (9) feet in diameter nor have a mesh size larger than three-eighths ( $\frac{3}{8}$ ) inch bar mesh; or
  - (5) lawful sport fishing methods provided in 312 IAC 9-7-17(b).

*(Natural Resources Commission; 312 IAC 9-9-2; filed May 12, 1997, 10:00 a.m.: 20 IR 2726; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 9-9-3    Mussels**

Authority: IC 14-22-2-6; IC 14-22-17

Affected: IC 14-22-17-3

Sec. 3. (a) This section applies to a person who takes, ships, sells, buys, or exports mussels or mussel shells.

(b) Except as otherwise provided under this section, it is unlawful to take mussels and mussel shells from the waters of this state.

(c) It is unlawful to possess mussels or mussel shells except as provided in this section.

(d) It is unlawful to import, possess, or release into public or private waters, a zebra mussel, quagga mussel (*Drissena* sp.), or Asiatic clam (*Corbicula* sp.).

(e) A person who takes a mussel listed in subsection (d) does not violate this section if the mussel taken is killed immediately upon capture.

(f) A person may possess a live mussel listed in subsection (d) if the mussel is held under a permit issued under 312 IAC 9-10-6.

(g) No license under IC 14-22-17-3(1) or IC 14-22-17-3(3) shall be issued to take, ship, sell, buy, or export mussels or mussel shells.

(h) A person may obtain a license under IC 14-22-17-3(2) only if the person establishes that the person:

(1) Held a valid 1991 license issued under IC 14-22-17-3(2).

(2) Held a valid license issued under IC 14-22-17-3(2) for the year immediately before the year for which the new license is sought.

(3) Meets all other requirements of this article and IC 14-22.

(i) A person issued a license under IC 14-22-17-3(2) shall not possess mussels or mussel shells unless the following requirements are satisfied:

(1) The mussels or mussel shells were lawfully taken.

(2) The mussels or mussel shells were received from:

(A) a person who presented a valid buyer's license issued under IC 14-22-17-3(2);

(B) a valid out-of-state license to buy mussels; or

(C) a valid out-of-state license to take mussels.

(j) A person issued a license under IC 14-22-17-3(2) must maintain accurate and current records of each of the following:

(1) The name, address, date of delivery, license number, and the state where the license is held for each person from whom mussels or mussel shells are received.

(2) The species, pounds for each species, and the price paid for each species of mussel or mussel shells received.

(k) The records required under subsection (j) must be retained by the license holder for at least two (2) years after the end of the license year.

(l) A person issued a license under IC 14-22-17-3 must, at any reasonable time, submit to an inspection by the division or by a conservation officer of the following:

(1) Any mussels possessed by the person.

(2) The records required under this section.

(m) The requirements of this section, which apply to a person issued a license, also apply to a person who:

(1) does not obtain a license; and

(2) conducts an activity for which a license is required.

*(Natural Resources Commission; 312 IAC 9-9-3; filed May 12, 1997, 10:00 a.m.: 20 IR 2727; errata filed Jun 2, 1997, 3:20 p.m.: 20 IR 2789; filed May 28, 1998, 5:14 p.m.: 21 IR 3729; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

### **312 IAC 9-9-4 Endangered and threatened species of invertebrates**

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

Affected: IC 14-22-34-12

Sec. 4. The following species of invertebrates are threatened or endangered and are subject to the protections provided under IC 14-22-34-12:

- (1) Rabbitsfoot (*Quadrula cylindrica*).
- (2) Sheepnose (*Plethobasus cyphus*).
- (3) Clubshell (*Pleurobema clava*).
- (4) Pyramid pigtoe (*Pleurobema pyramidatum*).
- (5) Fanshell (*Cyprogenia stegaria*).
- (6) Snuffbox (*Epioblasma triquetra*).
- (7) Orangefoot pimpleback (*Plethobasus cooperianus*).
- (8) Pink mucket (*Lampsilis abrupta*).
- (9) Fat pocketbook (*Potamilus capax*).
- (10) Rough pigtoe (*Pleurobema plenum*).
- (11) Tubercled blossom (*Epioblasma torulosa torulosa*).
- (12) White catspaw (*Epioblasma obliquata perobliqua*).
- (13) Northern riffleshell (*Epioblasma torulosa rangiana*).
- (14) Long solid (*Fusconaia subrotunda*).
- (15) White wartyback (*Plethobasus cicatricosus*).

*(Natural Resources Commission; 312 IAC 9-9-4; filed May 12, 1997, 10:00 a.m.: 20 IR 2727; filed May 16, 2002, 12:25 p.m.: 25 IR 3049; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

### **312 IAC 9-9-5 Exempted invertebrates**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 5. Any invertebrate not identified in this rule is an exempted wild animal. *(Natural Resources Commission; 312 IAC 9-9-5; filed May 12, 1997, 10:00 a.m.: 20 IR 2728; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

## **Rule 10. Special Licenses; Permits and Standards**

### **312 IAC 9-10-1 Applicability**

Authority: IC 14-22-2-3; IC 14-22-2-6

Affected: IC 14-22

Sec. 1. This rule governs special licenses and permits applicable to the management of wild animals. A license or permit issued under this rule may authorize the possession, sale, or disposition of a wild animal which would otherwise be unlawful under this article. *(Natural Resources Commission; 312 IAC 9-10-1; filed May 12, 1997, 10:00 a.m.: 20 IR 2728; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 9-10-2 Commercial shipment or processing of fish**

Authority: IC 14-22-2-6; IC 14-22-11-12

Affected: IC 14-22

Sec. 2. (a) No fish shall be shipped into or within Indiana for commercial purposes unless the shipment is accompanied by a dated bill of lading setting forth the:

- (1) species, number, or poundage;
- (2) origin;
- (3) destination; and
- (4) name and address of the purchaser.

The bill of lading and the shipment shall be made available upon demand for inspection by a conservation officer.

(b) A person who commercially imports or sells trout or salmon must retain for two (2) years following the importation or sale a legible commercial invoice or bill of sale, or if imported from Canada, the customs entry or customs brokers statement, including the following:

- (1) The date of transaction.
- (2) The quantity and purchase price of each species.
- (3) The formal entry number (if applicable).
- (4) The name and address of the seller.

(c) A person who delivers fish for processing under subsection (d) must tag the fish before delivery. The tag shall include the following information:

- (1) The name and address of the person making delivery.
- (2) The species of fish.
- (3) How and when the fish were obtained.

(d) A record of all financial transactions must be maintained for at least two (2) years after the transaction by a person, who, for a fee, smokes, pickles, or otherwise processes trout or salmon for another person. The record shall include the following:

- (1) The number, weight, and species of fish.
- (2) The names and addresses of the persons from whom the fish were received and to whom the fish were delivered.
- (3) The dates of receipt and delivery.

The tag described in subsection (c) must not be removed by the person who performs processing except during actual processing. That person shall make storage areas, work areas, books, and records available upon demand for inspection by a conservation officer. *(Natural Resources Commission; 312 IAC 9-10-2; filed May 12, 1997, 10:00 a.m.: 20 IR 2728; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 9-10-3 Aquatic vegetation control permits**

Authority: IC 14-22-2-6; IC 14-22-9-10

Affected: IC 14-22-9-10

Sec. 3. (a) Except as provided under IC 14-22-9-10(a), a person must obtain a permit under this section before seeking to control aquatic vegetation through chemical, mechanical, physical, or biological means in waters of the state.

(b) Before obtaining a permit under this section, a person must complete an application on a departmental form that includes the following information:

- (1) The common name of the target plants and relative abundance of other dominant plants in each area to be controlled.
- (2) The acreage to be controlled, with affected areas illustrated on a legible map.
- (3) The maximum depth of the water, the maximum perpendicular distance from shoreline, and the linear distance along the shoreline where plants are to be treated.
- (4) The name and amount of the chemical to be used in each treatment, if a chemical control is used.
- (5) The duration and timing of control efforts, if controls will be repeated under a single permit.
- (6) The location of any water supply intake that may be adversely affected by the aquatic vegetation control activities.
- (7) The species, stocking rate, and release location, if a biological control is used.
- (8) The type of equipment and location of disposal area, if a mechanical control is used.

- (9) The name and contact information for the person who will conduct the control effort.
- (c) An applicant for a permit under this section must demonstrate each of the following to the satisfaction of the department:
  - (1) The proposed treatment is likely to provide effective relief.
  - (2) The proposed treatment will not result in any of the following:
    - (A) A hazard to humans, animals, or other nontarget organisms.
    - (B) A significant adverse impact to the treated waterway.
    - (C) A significant adverse impact to endangered or threatened species.
    - (D) A significant adverse impact to beneficial organisms within the treatment area or in adjacent areas, either directly or through habitat destruction.
    - (E) An unreasonable restriction on an existing use of the waterway.
  - (3) The proposed treatment will not occur within one hundred fifty (150) feet perpendicular to the shoreline of a public freshwater lake, along an area classified as a significant wetland under 312 IAC 11-2-24, except where the applicant demonstrates the treatment can be conducted without reducing the ecological value of the area.
  - (4) The following apply if a chemical is to be used for aquatic vegetation control:
    - (A) The chemical is labeled and registered for this purpose by the United States Environmental Protection Agency.
    - (B) Prior written approval is received from the department of environmental management if the waterway to be treated is a public drinking water supply.
  - (5) Any other information reasonably required by the department to effectively review the application.
  - (d) A permit issued under this section is limited to the terms of the application and to conditions imposed on the permit by the department.
  - (e) Except as otherwise provided in this subsection, five (5) days before the application of a substance permitted under this section, the permit holder must post clearly visible signs at the treatment area indicating the substance that will be applied and what precautions should be taken. For a treatment to be performed on a reservoir for drinking water supply that is owned by a municipality, the posting required under this subsection may be provided no later than thirty-six (36) hours before the permitted activity.
  - (f) A permit holder must submit a report on a departmental form not later than the seven (7) days following the control effort, providing the date, location, acreage, and method used in each area where controls were implemented. (*Natural Resources Commission; 312 IAC 9-10-3; filed May 12, 1997, 10:00 a.m.: 20 IR 2728; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; filed Nov 14, 2003, 5:30 p.m.: 27 IR 1165, eff Jan 1, 2004*)

### **312 IAC 9-10-4 Game breeder licenses**

Authority: IC 14-22-2-6; IC 14-22-20

Affected: IC 4-21.5; IC 14-22

Sec. 4. (a) An application for a license as a game breeder of one (1) or more of the following species of wild animals (common names are included for public convenience, but the scientific names control) shall be made on a departmental form:

- (1) Ring-necked pheasant (*Phasianus colchicus*).
- (2) Bobwhite quail (*Colinus virginianus*).
- (3) White-tailed deer (*Odocoileus virginianus*).
- (4) Eastern cottontail rabbit (*Sylvilagus floridanus*).
- (5) Gray squirrel (*Sciurus carolinensis*).
- (6) Fox squirrel (*Sciurus niger*).
- (7) Southern flying squirrel (*Glaucomys volans*).
- (8) Beaver (*Castor canadensis*).
- (9) Coyote (*Canis latrans*).
- (10) Gray fox (*Urocyon cinereoargenteus*).
- (11) Red fox (*Vulpes vulpes*).
- (12) Mink (*Mustela vison*).
- (13) Muskrat (*Ondatra zibethicus*).
- (14) Opossum (*Didelphis marsupialis*).



- (15) Raccoon (*Procyon lotor*).
- (16) Striped skunk (*Mephitis mephitis*).
- (17) Long-tailed weasel (*Mustela frenata*).
- (18) Least weasel (*Mustela nivalis* or *Mustela rixosa*).

(b) An application for a permit under this section must be made within five (5) days after the acquisition of an animal within Indiana or within five (5) days after the importation of an animal into Indiana. Each cage or enclosure will be inspected by a conservation officer before a license may be issued.

(c) A license holder may add a species to a game breeder license other than those identified in the application upon an inspection by a conservation officer and approval by the division of fish and wildlife. A conservation officer must be notified within five (5) days of acquisition of the new species.

(d) Each animal possessed under this section must be lawfully acquired. A receipted invoice, bill of lading, or other satisfactory evidence of lawful acquisition shall be presented for inspection upon the request of a conservation officer. Game or furbearing mammals or game birds, other than wild turkeys, lawfully taken in season may be retained alive after the close of the season. Any person wishing to import any live animal under this license, or the eggs of birds covered under this license, must secure a certificate of veterinary inspection from an accredited veterinarian in the state of origin before the animal is shipped into Indiana. Documentation in the form of a copy of a valid game breeder license or valid dated receipt that establishes lawful acquisition or ownership must accompany any transportation of wild animals.

(e) A wild animal must be confined in a cage or other enclosure that makes escape of the animal unlikely and prevents the entrance of a free-roaming animal of the same species. The cage or enclosure shall be large enough to provide the wild animal with ample space for exercise and to avoid overcrowding. All chainlink or welded wire edges shall be smoothly secured to prevent injury to the animals and be kept properly repaired. Night quarters, holding pens, and nesting boxes may not be used as primary housing. Fresh water, rainproof dens, nest boxes, windbreaks, shelters, shade, and bedding shall be provided as required for the comfort of the particular species of animal. Each animal shall be handled, housed, and transported in a sanitary and humane manner. An enclosure must be provided with sufficient drainage to prevent standing water from accumulating. The cages or other enclosures must be made available upon request for inspection by a conservation officer.

(f) No wild animals may be released except for bobwhite quail and ring-necked pheasants. Known diseased bobwhite quail and ring-necked pheasants may not be released. A license holder must report the escape of any white-tailed deer to a conservation officer within twenty-four (24) hours.

(g) A known diseased wild animal possessed under this section shall not be sold.

(h) A license holder must comply with all applicable state, local, or other federal laws.

(i) A license holder shall do the following:

(1) Record all transactions by which a wild animal is sold, traded, loaned, bartered, or given to another person on a departmental form or computerized record.

(2) Keep a copy of the transaction record on the premises of the game breeder for at least two (2) years after the transaction and a copy must be provided to a conservation officer upon request.

(3) Issue a valid, dated receipt for all animals sold, traded, bartered, or gifted and include the following information:

- (A) Game breeder license number.
- (B) Buyer and seller name and address.
- (C) Number of animals sold.
- (D) Species of animal sold.

(j) The license holder shall provide an annual report to the division by February 15. The annual report shall include for each species possessed under this license the following information:

- (1) Number bought.
- (2) Number sold.
- (3) Number born.
- (4) Number traded.
- (5) Number gifted.
- (6) Number of deaths.

(k) A conservation officer may enter the premises of the license holder at all reasonable hours to inspect those premises and any records relative to the license. The conservation officer shall immediately notify the license holder if the inspection reveals that

the wild animals are being kept under unsanitary or inhumane conditions. The conservation officer may make a second inspection after ten (10) days, and the license may be suspended or revoked under IC 4-21.5 and the wild animals may be confiscated if the license holder fails to comply with a provision of the license.

(1) A license may be suspended, denied, or revoked under IC 4-21.5 if the license holder fails to comply with any of the following:

- (1) A provision of a license issued under this section.
- (2) IC 14-22-20.
- (3) All applicable state, local, or other federal laws.

*(Natural Resources Commission; 312 IAC 9-10-4; filed May 12, 1997, 10:00 a.m.: 20 IR 2728; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; filed Jan 26, 2004, 10:45 a.m.: 27 IR 1789)*

### **312 IAC 9-10-5 Taxidermist licenses**

Authority: IC 14-22-2-6; IC 14-22-21

Affected: IC 14-22

Sec. 5. (a) A license is required under this section for an individual who performs taxidermy services on a wild animal for another person.

(b) An application for a taxidermist license shall be completed on a departmental form.

(c) A license holder must maintain accurate records, on a calendar year basis, showing the names and addresses of persons from or to whom wild animals were received or delivered. The records shall include the species and numbers of wild animals and the dates of receipt and delivery. The records shall be retained at the premises of the license holder for at least two (2) years after the end of the license year.

(d) A person who delivers a wild animal to a taxidermist must tag the carcass with the following information:

- (1) The name and address of the person making delivery to the taxidermist.
- (2) The species of animal.
- (3) The date and manner the animal was obtained.

(e) A taxidermist shall not remove from the carcass, except during active taxidermy operations, the tag described in subsection (d).

(f) A taxidermist may sell a lawfully acquired and mounted specimen of wild animal, where:

- (1) the tag is affixed; and
- (2) the sale is immediately recorded in a log book.

(g) A taxidermist shall not possess a wild animal taken outside the season, except under a permit obtained from the department under this subsection. A permit for a special taxidermy mount of a protected species may be granted under this subsection only to an agency or institution which engages in wildlife education or research as a primary function.

(h) Any record, tag, log book, or other documentation required under this section and any storage or work area of a taxidermist shall be made available upon request for inspection by a conservation officer.

(i) A federal taxidermy permit is required to perform taxidermy work on migratory birds. *(Natural Resources Commission; 312 IAC 9-10-5; filed May 12, 1997, 10:00 a.m.: 20 IR 2729; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

### **312 IAC 9-10-6 Scientific purposes licenses**

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

Affected: IC 4-21.5; IC 14-22-22-2; IC 20-1-1-6; IC 20-1-1-6.2

Sec. 6. (a) An application for a scientific purposes license shall be made on a departmental form and include the following information:

- (1) The purpose for collection.
- (2) The species and number of the species to be collected.
- (3) The location and any method of collection.
- (4) The intended administration of any drug, vaccine, steroid, micro-organism, or other chemical to the wild animal to be collected.

(5) The intended treatment of the wild animal collected, including the use bacterial or other markers and any proposed genetic modification.

(6) The disposition of any wild animal or nest or egg of a wild bird to be collected.

(b) A license issued under this section is subject to the specifications set forth in the application and to terms, conditions, and restrictions on the license. The director may condition the license according to any of the following terms:

(1) The kind and number of specimens that may be taken.

(2) The type of methods used.

(3) The time and seasons for take.

(4) The areas where take may occur.

(5) The use and disposition of the wild animal or nest or egg of a wild bird held, treated, or taken under this rule.

(6) Contingent upon the applicant receiving and possessing a valid license from the United States Fish and Wildlife Service under 50 CFR 17.22, 50 CFR 17.32, 50 CFR 21.22, 50 CFR 21.23, and 50 CFR 21.27 for any of the following:

(A) A migratory bird.

(B) The nest or egg of a migratory bird. or

(C) A federally endangered or threatened species of wild animal.

(c) The license holder must carry the license and any amendments to the license when conducting any activity authorized by the license.

(d) The director may amend the conditions of a license at any time upon written notification to the license holder. A notice under this subsection is subject to IC 4-21.5.

(e) The director may issue a license only to a properly accredited person who will collect the wild animal or nest or egg of a wild bird for a scientific purpose, including scientific education. The applicant must meet at least one (1) of the following requirements:

(1) Hold a bachelor's degree in the biological sciences or related field that the director deems appropriate for the purpose outlined in the application.

(2) Be currently pursuing a bachelor's degree in the biological sciences or related field that the director deems appropriate for the purpose outlined in the application.

(3) Hold a federal permit for the purpose indicated in the application.

(4) Be requested by an accredited educational or scientific institution to perform this activity for the institution. The institution must present a valid and compelling need for the applicant to perform the activity covered by this license for the institution.

(5) Be sponsored by the department to perform the activity for the protection and regulation of wild animal populations.

The original application form submitted for the taxonomic group indicated on the application must be signed by two (2) scientists that have a degree in the biological sciences attesting to the character, academic and scientific accomplishments, and fitness of the applicant. An applicant currently pursuing a bachelor's degree must obtain the signature of a faculty biologist for that taxonomic group.

(f) An applicant must be affiliated with one (1) of the following institutions:

(1) A public school accredited under IC 20-1-1-6, a nonpublic school accredited under IC 20-1-1-6 or IC 20-1-1-6.2, or a college or university.

(2) A federal, state, city, county, or similar government agency associated with a biological or scientific area of study or research.

(3) A nonprofit educational organization with an exemption from federal income tax under 26 U.S.C. 501(c)(3). The educational organization must be associated with a biological or scientific area of study or research. The applicant must provide written documentation to the department certifying that tax exemption status has been achieved under 26 U.S.C. 501(c)(3).

(4) A scientific research organization, accredited museum, or institution of higher learning, consulting firms, individuals working in cooperation with a college, university, or government agency, or private company under a contract for scientific or educational purposes.

(g) The applicant must ensure compliance with monitoring, tagging, and reporting requirements for all extra-label drug use as required in 21 CFR 530, et seq. (1998). Documentation in the form of written approval from a licensed veterinarian or approval from a university animal care and use committee to use the drug or chemical for the purposes intended must be submitted with the application form.

(h) The sale or transport for sale and offer to sell or transport to sell an animal or a part of an animal held under the authority of this license is prohibited. As used in this subsection, "sale" includes barter, purchase, or trade or the offer to sell, barter, purchase, or trade.

(i) A license issued under this section is not transferable. A person may assist the license holder if the license holder is present and oversees the activities of the person.

(j) The license holder must obtain permission from the landowner or public land property manager to conduct an activity authorized by a license issued under this section. For an activity to be conducted on lands owned or operated by a federal, state, or local agency, the license holder must also comply with the conditions imposed by the property manager or the designee of the property manager.

(k) A license expires on December 31 of the year the license is issued. A report of the collection must be supplied within sixty (60) days after the expiration of the license and contain the following information:

- (1) Any species collected.
- (2) The date on which a wild animal or nest or egg of a wild bird was collected.
- (3) A description of the location of the collection site.
- (4) The number of each species collected.
- (5) The treatments and markings, if any, of any wild animal collected.
- (6) The disposition of any wild animal or nest or egg of a wild bird collected.

The department shall not renew a license unless a properly completed report is received in a timely fashion.

(l) A license may be suspended, denied, or revoked under IC 4-21.5 if the license holder:

- (1) fails to comply with a provision of a license issued under this section;
- (2) fails to comply with IC 14-22-22-2;
- (3) provides false information on the license application and report;
- (4) fails to establish that the collection or release of a wild animal would not threaten the welfare of the wild animal population or the people;
- (5) collects or releases a specimen that is likely to threaten the welfare of the wild animal population; or
- (6) collects or releases a specimen that is likely to threaten the welfare of the people.

*(Natural Resources Commission; 312 IAC 9-10-6; filed May 12, 1997, 10:00 a.m.: 20 IR 2729; filed Nov 15, 2002, 3:42 p.m.: 26 IR 1069; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

### **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 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 completed on a departmental form and must be 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 kept at the trial headquarters during the event. The permit and the roster must be presented to a conservation officer upon request.

(d) During a field trial, each participant shall carry a card approved by the responsible official which specifies the number of the field trial permit and 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)

**312 IAC 9-10-8 Fish stocking permits**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 8. (a) It is unlawful to stock fish unless a permit is obtained from the division under this section.

(b) An application for a fish stocking permit shall include the following information:

- (1) Species and number of fish to be stocked.
- (2) Location of waters to be stocked.
- (3) Reasons for stocking.
- (4) Date of proposed stocking.
- (5) The source of the fish to be stocked.

*(Natural Resources Commission; 312 IAC 9-10-8; filed May 12, 1997, 10:00 a.m.: 20 IR 2730; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 9-10-9 Mammal or bird rehabilitation permit**

Authority: IC 14-22-2-6; IC 14-22-11-12

Affected: IC 14-22

Sec. 9. (a) A wild animal, which is a mammal or bird protected by law, may be possessed for rehabilitation purposes only in accordance with a permit as issued under this section.

(b) An application for a permit under this section shall be completed on a departmental form and must establish the following:

(1) The applicant has rehabilitation experience and a knowledge of wildlife rehabilitation techniques. The required experience and knowledge may be met by one (1) of the following:

(A) A bachelor of science degree in a wildlife related field.

(B) At least one (1) year of experience with a:

- (i) veterinarian;
- (ii) zoo;
- (iii) university animal clinic;
- (iv) county animal shelter; or
- (v) licensed rehabilitation clinic.

(C) Possession for at least two (2) years of another permit under this section.

(D) Other knowledge and background, including the completion of rehabilitation workshops and seminars, if found by the division director to qualify the applicant.

(2) The name and address of a veterinarian willing to assist the applicant with the rehabilitation of wild animals. The veterinarian shall sign the application and attest to having experience in the care and rehabilitation of wild mammals and birds.

(3) A listing of the wildlife rehabilitation reference books in possession of the applicant.

(4) The names, addresses, and telephone numbers of any other individuals who will assist the applicant.

(5) The species that will be accepted for rehabilitation.

(6) A description of the rehabilitation facilities, equipment, and supplies. The description shall include the following:

- (A) Cages.
- (B) Intensive care units.
- (C) Aviaries.
- (D) Falconry equipment.
- (E) Medical diagnostic equipment.
- (F) Medical supplies.
- (G) Food sources.
- (H) Other items to be utilized in the rehabilitation process.

A cage description shall provide its internal dimensions and shall specify the materials used for flooring, walls, and perches.

The applicant shall list what species will be housed in the various enclosures and the purpose for each enclosure, for example, convalescing, training, or quarantine.

(c) An amended application shall be filed with the division if there is a material change to the information provided in the original application. If additional persons will assist the permit holder, the amended application shall include their names, addresses, and telephone numbers.

(d) The permit holder must file an application by January 15 of each year in order to renew the permit. The annual report required under subsection (i) must accompany the renewal application. The signature of a veterinarian is not required for a renewal application.

(e) The issuance of a permit under this section does not relieve an individual from any requirement for a federal permit. If the terms of a federal permit and the permit issued under this section differ, the more restrictive terms prevail.

(f) A wild animal possessed pursuant to a permit issued under this section must not be displayed or placed in physical contact with the public, except according to the terms of a permit issued under this subsection. A permit may be issued by the division director if:

(1) the purpose for displaying the animal is primarily educational; and

(2) the animal is not displayed:

(A) as part of or to promote a commercial venture; or

(B) in a manner which might cause a member of the public to confuse display of the animal with a commercial venture because of proximity in time or place between the animal's display and the commercial venture.

(g) A permit holder must maintain facilities for the retention of a wild animal possessed under this section in a sanitary condition and to conform with any other conditions specified by the permit.

(h) A permit holder must maintain current records for each wild animal to include the following:

(1) The species and condition of the animal.

(2) The name, address, and telephone number of the donor or other source of the animal.

(3) The date of receipt by the permit holder.

(4) The treatment provided to the animal while in captivity.

(5) The method and date of disposition of the wild animal.

(i) The permit holder shall provide an annual report to the division by January 15 of each year. The report shall list the following:

(1) The species and condition of each animal.

(2) The date the animal was received.

(3) The name and address of the donor or other source.

(4) The date of disposition of the animal.

(j) As soon as a mammal or bird is capable of fending for itself, the animal shall be released into the wild as directed by a conservation officer. If a mammal or bird is not capable of fending for itself, a conservation officer should be contacted for further instructions as to the disposition of the animal.

(k) A permit holder shall not commercially advertise rehabilitation services or solicit mammals or birds for rehabilitation. (*Natural Resources Commission; 312 IAC 9-10-9; filed May 12, 1997, 10:00 a.m.; 20 IR 2730; readopted filed Jul 28, 2003, 12:00 p.m.; 27 IR 286*)

### **312 IAC 9-10-10 Handicapped hunter permit**

Authority: IC 14-11-2-1; IC 14-22-2-6

Affected: IC 14-22

Sec. 10. (a) The department may issue a permit under this section to a handicapped individual to take wildlife, if the handicap would otherwise make the taking of wildlife by the individual difficult or impossible. The permit applies from August 15 through the last day of the wild turkey hunting season established under 312 IAC 9-4-11.

(b) A permit application under this section shall be made as follows:

(1) The initial application shall be made on a departmental form and delivered to the division by July 1 for the current year hunting season. The application form may be obtained from the division beginning on May 1 of each year.

(2) The initial application must be accompanied by a statement of disability completed by a physician.

(3) Each completed application is reviewed by the division. The director may issue a permit under this section by August 1 of each year. If an application is not recommended for approval, the applicant will be notified by mail.

(4) Except as otherwise provided in this subdivision, no renewal application is required for a handicap permit. An applicant with a temporary handicap may be required by the division to submit, on an annual basis, additional documentation from a physician and a renewal application.

(c) A person issued a permit under this section may hunt wild animals from a stationary motor driven conveyance subject to the following restrictions:

(1) The permit holder must abide by all other hunting laws.

(2) The permit holder must possess a valid hunting license and the permit issued under this section.

(3) The permit holder must obtain in advance the permission of the manager of public property (local, state, or federal) to gain vehicular access to lands or roads that are otherwise closed to vehicular traffic.

(4) The permit holder may display a windshield identification placard supplied by the division of fish and wildlife while hunting from a vehicle. The placard must be displayed in such a way as to be visible from at least fifty (50) feet.

(d) An individual may be designated to assist a person issued a permit under this section in the retrieval of wild game harvested by the permit holder.

(e) The director may waive other provisions of 312 IAC 9-3 for an individual permit holder. The use of a crossbow may be specially authorized during archery season for hunting deer. (*Natural Resources Commission; 312 IAC 9-10-10; filed May 12, 1997, 10:00 a.m.: 20 IR 2731; filed May 28, 1998, 5:14 p.m.: 21 IR 3729; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

### **312 IAC 9-10-11 Nuisance wild animal control permit**

Authority: IC 14-22-2-6; IC 14-22-28

Affected: IC 14-22; IC 35-46-3-12

Sec. 11. (a) The director may without fee issue a temporary permit to control a nuisance wild animal that is causing damage or threatening to cause damage to property or posing a health or safety threat to persons or domestic animals. The method of control and disposition of the animal shall be set forth in the permit.

(b) A wild animal taken under this section shall not be possessed for more than forty-eight (48) hours and shall not be sold, traded, bartered, or gifted.

(c) A property owner or lessee may obtain a permit under this section for the control of a nuisance wild animal.

(d) A person who charges a fee or provides a service to the public for nuisance wild animal control services must obtain a permit under this subsection to assist a property owner or lessee with the control of a nuisance wild animal. The following testing requirements apply:

(1) A permit applicant must correctly answer at least eighty percent (80%) of the questions on a written examination of basic knowledge supervised and administered by the division of fish and wildlife.

(2) A permittee who has satisfied subdivision (1) must, within four (4) years of being issued the permit, either:

(A) satisfy the same requirements as are set forth in subdivision (1) on another examination; or

(B) complete thirty-two (32) hours of continuing education as approved by the division.

(3) A person who fails an examination under this section may retake the examination one (1) additional time within forty-five (45) days, but not again within one hundred eighty (180) days after a second failure.

(e) A person who does not hold a permit under subsection (d) may assist a permittee, but only if the permittee directly supervises the unpermitted person. A copy of the permit must be on the person when conducting any authorized activities.

(f) A captive animal must be handled in an expeditious and humane manner in compliance with IC 35-46-3-12.

(g) Permittees may use the following:

(1) Firearms if possessed and used in compliance with all applicable state, local, and federal firearm laws.

(2) Steel and live traps, except for the following:

(A) A foot-hold trap possessing saw-toothed or spiked jaws.

(B) A foot-hold trap sized #3 or larger without offset jaws unless the trap is completely covered with water.

(C) A Conibear, Dahlgren, Bigelow, or other killer trap that is eight (8) inches or larger in diameter or is larger than eight (8) inches by eight (8) inches unless the trap is completely covered by water.

(3) Snares with a circumference no greater than fifteen (15) inches unless:

(A) at least fifty percent (50%) of the loop of the snare is covered by water; or

(B) the snare employs a relaxing snare lock (a lock that will allow the snare's loop size to increase once pulling tension is no longer exerted along the snare from its anchored end).

(h) All traps must be checked at least once every twenty-four (24) hours.

(i) The following restrictions apply to the treatment of an animal captured live under this permit:

(1) When on-site release is not the best viable option, the animal must be released in the county of capture, euthanized, or treated as otherwise authorized in the permit.

(2) An animal must be euthanized with the safest, quickest, and most painless available method as recommended and approved by the division of fish and wildlife.

(3) Prior consent is required from the landowner or the landowner's agent before an animal is released on any property.

(j) A permit expires on December 31 of the year the permit is issued. The permittee must maintain a current record to include the following:

(1) The name and address of the landowner assisted.

(2) The date assistance was provided.

(3) The number and species of animals affected.

(4) The method of disposition.

A copy of the records shall be kept on the premises of the permittee for at least two (2) years after the transaction and must be presented to a conservation officer upon request.

(k) A permittee must file an application by January 15 of each year in order to renew a permit. The annual report required under subsection (l) must accompany the renewal application.

(l) The permit holder shall provide an annual report to the division by January 15 of each year. The report shall list the following:

(1) The number of animals taken.

(2) The species of animals taken.

(3) The county where the animal was captured.

(4) The method of disposition.

(5) The county where released (if applicable).

(m) A permit issued under this section may be suspended or revoked if the permittee:

(1) Fails to comply with IC 14-22 or this article.

(2) Fails to comply with a term of the permit.

(3) Provides false information to obtain a permit under this section.

(4) Uses or employs any deception, false pretense, or false promise to cause a consumer to enter into an agreement for the removal of a nuisance wild animal.

(n) No permit shall be issued under this section:

(1) for the control of a migratory bird;

(2) for a wild animal that is identified under this article as an endangered species or a threatened species; or

(3) if granting the permit would violate a federal law.

*(Natural Resources Commission; 312 IAC 9-10-11; filed May 12, 1997, 10:00 a.m.: 20 IR 2732; filed Oct 28, 2002, 12:03 p.m.: 26 IR 692; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

### **312 IAC 9-10-12 Fur buyers' licenses**

Authority: IC 14-11-2-1; IC 14-22-2-6; IC 14-22-19

Affected: IC 14-22-19-3

Sec. 12. (a) This section applies to a person who is issued a fur buyer's license under IC 14-22-19-3.

(b) A licensed fur buyer may possess the carcasses and untanned hides of furbearing mammals which are lawfully taken in season for not more than sixty (60) days after the last day of that season.

(c) Notwithstanding subsection (b), a licensed fur buyer may, as authorized by the division director, possess a carcass or untanned hide in excess of sixty (60) days after the close of a season upon the submission of a report identifying the species, number, and location that furs or carcasses are kept. *(Natural Resources Commission; 312 IAC 9-10-12; filed May 12, 1997, 10:00 a.m.:*



20 IR 2732; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)

**312 IAC 9-10-13 Falconry licenses**

Authority: IC 14-11-2-1; IC 14-22-2-6; IC 14-22-23

Affected: IC 14-22

Sec. 13. (a) A person must not take, possess, transport, barter, sell, or purchase a raptor for falconry purposes or to practice falconry except as provided under this section.

(b) A license under this section expires the last day of February of the third year following the year in which the license is issued.

(c) An application to practice falconry must be completed upon a departmental form. Before a license may be issued, the applicant must do each of the following:

(1) Correctly answer at least eighty percent (80%) of the questions on a supervised examination covering basic biology, care, and handling of raptors and laws relating to the practice of falconry.

(2) Establish that the applicant has also completed an application for a federal falconry permit.

(3) Meet any other requirements contained in this article.

(d) A license to practice falconry is subject to the following conditions:

(1) No species of raptor may be taken in Indiana which is classified as threatened or endangered under:

(A) 50 CFR 17.11 (October 1, 1995); or

(B) 312 IAC 9-4-14.

(2) A golden eagle (*Aquila chrysaetos*) may not be used unless prior written authorization is obtained from the U.S. Fish and Wildlife Service.

(3) By July 31 of each year, the license holder must complete on a departmental form and submit to the division a report which includes the following information:

(A) A list of raptors possessed by the falconer on June 30 of the year in which the report is filed by species, marker number, sex (if known), age (if known), and the date and where or from whom acquired.

(B) A list of all raptors possessed or acquired since the previous annual report, but no longer possessed, by:

(i) species;

(ii) marker number;

(iii) sex (if known);

(iv) age (if known); and

(v) the date and where or from whom acquired.

The list shall also indicate to whom the raptor was given or whether the raptor escaped, died, or was released and when the event occurred.

(4) A raptor may not be acquired, released, or disposed of unless federal Form 3-186A (Migratory Bird Acquisition/Disposition Report) is completed and a copy sent to the department within five (5) days of the transaction. Only a legally possessed raptor which was bred in captivity may be purchased, sold, or bartered.

(e) Before a license is issued, the raptor housing facilities and equipment of the applicant shall be inspected by the division or by a conservation officer and found to meet the following standards:

(1) Facilities shall consist of indoor facilities (mews) or outdoor facilities (weathering area) sufficient to protect the raptors from exposure, predators, or other undue disturbance, including the following:

(A) Mews shall be large enough to allow easy access to care for the raptors. If more than one (1) raptor is to be housed, the raptors shall be tethered or separated by partitions. The area for each bird shall be large enough to allow a full extension of its wings. There shall be at least one (1) window, protected on the inside by vertical bars which are spaced more narrowly than the width of the bird's body, and a secure door that can be easily closed. The floor of the mews shall allow easy cleaning and shall be well drained. Adequate perches shall be provided.

(B) The weathering area shall be fenced and covered with netting and wire or roofed to protect the birds from disturbances and attack by predators. The enclosed area shall be large enough to ensure the birds cannot strike the fence if flying from the perch. Protection from excessive sun, wind, and inclement weather shall be provided for each bird. Adequate perches shall be provided.

(2) Equipment shall include the following:

- (A) A pair of Alymeri jesses or a similar pliable, high quality leather or suitable synthetic material to be used when a raptor is flown free. A traditional one (1) piece jesses may be used on a raptor when not being flown.
- (B) A flexible, weather-resistant leash and a strong swivel of acceptable falconry design.
- (C) A suitable container, two (2) to six (6) inches deep and wider than the length of the raptor, for drinking and bathing by each raptor.
- (D) A weathering area perch of an acceptable design for each raptor.
- (E) A reliable scale or balance for weighing a raptor held and graduated to increments of not more than one-half ( $\frac{1}{2}$ ) ounce (fifteen (15) grams).

(3) The department may at any reasonable time inspect the records, facilities, and equipment of a person issued a license under this section.

(f) A person licensed under this section must maintain all facilities and equipment at or above the standards established under subsection (e).

(g) A raptor may be transported or held in a temporary facility for not more than thirty (30) days. The temporary facility must be provided with an adequate perch and shall protect the raptor from extreme temperatures and excessive disturbances.

(h) A numbered, nonreusable marker must be obtained from the department before a person acquires a raptor. The marker must be attached to the raptor immediately upon acquisition. The alteration, counterfeiting, or defacing of a marker is prohibited. A falconer may remove the rear tab on a marker and smooth any imperfect surface, if the integrity of the marker and the numbering are not affected. The loss or removal of a band must be reported to the U.S. Fish and Wildlife Service on federal Form 3-186A and a copy of the form sent to the department within five (5) days of the loss or removal.

(i) There are three (3) classes of falconry licenses:

- (1) apprentice;
- (2) general; and
- (3) master.

Particular requirements are applicable to each of the classes of licenses which are supplemental to the general requirements provided under this section.

(j) The particular requirements applicable to an apprentice class falconry license are as follows:

- (1) The applicant must be at least fourteen (14) years of age.
- (2) An individual who holds a general, master, or equivalent class falconry license must agree to sponsor the apprentice. An individual may not sponsor more than three (3) apprentices at a time.
- (3) The license holder shall not possess more than one (1) raptor and shall not obtain more than one (1) raptor for a replacement during any twelve (12) month period.
- (4) The apprentice shall possess only an American kestrel (*Falco sparverius*) or a red-tailed hawk (*Buteo jamaicensis*).

(k) The particular requirements applicable to a general class falconry license are as follows:

- (1) An applicant must be at least eighteen (18) years of age.
- (2) An applicant must have at least two (2) years of experience in the practice of falconry at the apprentice level or its equivalent. Only those years in which the applicant possessed a raptor and used the bird for falconry purposes constitute experience.
- (3) The license holder shall not possess more than two (2) raptors and shall not obtain more than one (1) raptor for a replacement during any twelve (12) month period.
- (4) The license holder may not take, transport, or possess a golden eagle or any species listed as endangered or threatened by the U.S. Fish and Wildlife Service or under 312 IAC 9-4-14.

(l) The particular requirements applicable to a master class falconry license are as follows:

- (1) An applicant must have at least five (5) years of experience in the practice of falconry at the general class level or its equivalent. Only those years in which an applicant possessed a raptor and used the bird for falconry practices constitute experience.
- (2) A license holder shall not possess more than three (3) raptors and shall not obtain more than two (2) raptors for replacement birds during any twelve (12) month period.
- (3) Notwithstanding subsection (d)(1), a license holder may possess not more than one (1) raptor which is classified as endangered or threatened as part of the three (3) raptor limitations provided in subdivision (2).

(m) The following restrictions apply to taking a raptor from the wild for use in falconry:

(1) A nonresident can lawfully take a raptor in Indiana only if:

(A) the nonresident has a master class falconry license or a general class falconry license issued from the state of residence; or

(B) the state which issued the license described in clause (A) allows a resident of Indiana, who has a master class falconry license or a general class falconry license, to take a raptor in that state.

(2) Young birds not yet capable of flight (eyasses) may only be taken by a general or master falconer Friday through Monday beginning with the first Friday in May and continuing for a total of eleven (11) consecutive taking periods, provided that at least one (1) eyas remains in the nest. No more than one (1) eyas may be taken by a general falconer and no more than two (2) eyasses may be taken by a master falconer.

(3) First year (passage) birds may be taken only from September 18 through January 31 of the following year.

(4) Notwithstanding subdivisions (2) through (3), a marked raptor can be retrapped.

(5) Only an American kestrel or a great horned owl (*Bubo virginianus*) may be taken if more than one (1) year of age.

(6) Notwithstanding the restrictions contained in this subsection, any raptor other than a species classified as endangered or threatened, taken under a depredation or other special purpose permit, may be used for falconry by a general or a master falconer.

(n) A license holder shall obtain prior written approval from the department before a raptor species not indigenous to Indiana is intentionally released to the wild. Before a raptor is released, the marker provided under subsection (h) shall be removed and surrendered to the department. A standard federal bird band shall be obtained from the department or a person licensed as a bird bander by the U.S. Fish and Wildlife Service and attached to the bird before release.

(o) Another person may care for the birds of a falconry license holder for not more than thirty (30) days, if a written authorization from the permit holder accompanies the birds, the person is otherwise authorized to possess a raptor, and the raptor is accompanied by a properly completed federal Form 3-186A. If the transfer exceeds thirty (30) days, prior written approval must also be secured from the department. A temporary transfer under this subsection will not be approved by the department for more than ninety (90) days.

(p) Feathers that are molted or from birds held in captivity which die may be retained or exchanged by a falconer only for imping purposes.

(q) A person, other than a falconer issued a license under this section, must not hunt or possess a wild animal taken with the aid of a raptor.

(r) The bag limits and seasons for taking wild animals by the use of a raptor are as follows:

(1) The season for hunting and possessing:

(A) rabbits, quail, and pheasants is from September 1 through February 28 of the following year; and

(B) squirrels is from August 15 through February 15.

(2) The daily bag limit per raptor is two (2) rabbits, one (1) quail, one (1) squirrel, and one (1) pheasant, except during the seasons for these wild animals established under 312 IAC 9-3 and 312 IAC 9-4, when the daily bag limits established under those provisions apply.

(3) The season and bag limits for taking waterfowl and migratory birds are those set forth in 312 IAC 9-4.

(4) A falconer whose raptor kills an animal that is not in season or is in excess of a bag limit must leave the dead animal where killed, but the raptor may feed upon the dead animal before leaving the site.

(s) A raptor possessed under this section may not be used for display or educational purposes except according to a permit issued under section 9(f) of this rule.

(t) A falconry license holder may not propagate raptors without a permit issued by the U.S. Fish and Wildlife Service with a copy of the permit and federal reports provided to the department. Written permission must be obtained from the department before a raptor bred in captivity is released in Indiana. No interspecific hybrid shall be intentionally released.

(u) A person may possess a raptor which was lawfully acquired before July 23, 1992, even though not in conformance with a requirement of this section, if the raptor is properly identified with a marker supplied by the U.S. Fish and Wildlife Service. (*Natural Resources Commission; 312 IAC 9-10-13; filed May 12, 1997, 10:00 a.m.: 20 IR 2732; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-10-14 Fish hauler's and supplier's permit**

Authority: IC 14-22-2-6

Affected: IC 14-22-16

Sec. 14. (a) A fish hauler's and supplier's permit must be obtained under this section before a person:

- (1) imports live fish from another state or another country for sale; or
- (2) produces live fish for sale.
- (b) An application for a permit must be completed on a departmental form.
- (c) A permit expires on December 31 for the year of its issuance.

(d) Subject to conditions imposed on the permit by the department, a permittee may import, produce, or sell live fish of the species listed under section 15(e) of this rule and the following species:

- (1) Brown trout.
- (2) Hybrid striped bass.
- (3) Rainbow trout.
- (4) Tiger muskellunge.
- (5) Tilapia.

(e) A person is exempted from this section who possesses fish other than those listed in 312 IAC 9-6-7 and who either:

- (1) is engaged in producing, importing, or selling live fish exclusively for use in the aquarium pet trade; or
- (2) holds a bait dealer's license under IC 14-22-16 and is engaged exclusively in the sale of live fish for bait.

*(Natural Resources Commission; 312 IAC 9-10-14; filed May 12, 1997, 10:00 a.m.: 20 IR 2735; errata filed Jun 2, 1997, 3:20 p.m.: 20 IR 2789; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 9-10-15 Fish importation permit**

Authority: IC 14-22-2-6

Affected: IC 14-22

Sec. 15. (a) Except as provided in subsection (e), a person must obtain a fish importation permit under this section before a person imports any live fish for sale or release.

(b) An application for a fish importation permit must be submitted by an applicant at least ten (10) days in advance of the proposed date of importation.

(c) An applicant must establish that a fish to be imported:

- (1) is free of any communicable disease;
- (2) will not become a nuisance; and
- (3) will not damage a native wild species or a domestic species of animal or plant.

(d) A person is exempted from this section who possesses fish other than those listed in 312 IAC 9-6-7 and who is either engaged in:

- (1) importing live fish exclusively for confinement and exhibit in a zoo or another public display; or
- (2) supplying live fish for use in the aquarium pet trade.

(e) Live fish of the following species other than genetically altered fish, may be imported without obtaining a permit under this section:

- (1) Black crappie.
- (2) Blue catfish.
- (3) Bluegill.
- (4) Bluntnose minnow.
- (5) Bowfin.
- (6) Buffalo.
- (7) Bullhead.
- (8) Burbot.
- (9) Carp.
- (10) Channel catfish.

- (11) Fathead minnow.
- (12) Flathead catfish.
- (13) Freshwater drum.
- (14) Golden shiner.
- (15) Goldfish.
- (16) Green sunfish.
- (17) Hybrid sunfish.
- (18) Largemouth bass.
- (19) Mosquitofish.
- (20) Muskellunge.
- (21) Northern pike.
- (22) Paddlefish.
- (23) Redear sunfish.
- (24) Rock bass.
- (25) Smallmouth bass.
- (26) Striped bass.
- (27) Sucker.
- (28) Walleye.
- (29) Warmouth.
- (30) White bass.
- (31) White catfish.
- (32) White crappie.
- (33) Yellow perch.

*(Natural Resources Commission; 312 IAC 9-10-15; filed May 12, 1997, 10:00 a.m.: 20 IR 2735; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

### **312 IAC 9-10-16 Dog training grounds permit**

Authority: IC 14-22-2-6

Affected: IC 14-22-31

Sec. 16. (a) A person may take northern bobwhite quail (*Colinus virginianus*) or ring-necked pheasants (*Phasianus colchicus*), which have been raised in captivity, for the purpose of training dogs only pursuant to a permit issued under this section.

(b) An application for a dog training grounds permit must be completed on a department form and filed with the division. The application must demonstrate the applicant owns or controls a contiguous tract of land containing between five (5) and twenty (20) acres. This land shall not be located within one (1) mile of a state-owned or state-controlled public hunting area.

(c) The boundaries of the land permitted under this section must be marked with signs at least eighteen (18) inches wide and eighteen (18) inches long with a white background and one (1) inch high lettering which states "dog training grounds". The signs must be placed no more than five hundred (500) feet apart and along the entire boundary of the dog training grounds.

(d) A northern bobwhite quail or a ring-necked pheasant must be banded with a standard metal or plastic leg band before being released on the dog training grounds.

(e) A daily record of the training activities on the grounds must be maintained by the permit holder. The information contained on the daily record shall include the following:

- (1) The name and address of each trainer using the grounds.
- (2) The number and species of birds released.
- (3) The number and species of birds taken.
- (f) No training activities shall take place except between sunrise and sunset.

(g) The grounds cannot also be used for game breeding unless a game breeder license is held under section 4 of this rule.

(h) The grounds cannot also be used for a field trial unless a permit is held under section 7 of this rule. *(Natural Resources Commission; 312 IAC 9-10-16; filed May 12, 1997, 10:00 a.m.: 20 IR 2736; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 9-10-17 Aquaculture permit**

Authority: IC 14-22-2-6

Affected: IC 14-22-27

Sec. 17. (a) A person must not import, raise, sell, or transport fish into or within Indiana without an aquaculture permit issued under this section, except as provided in:

- (1) sections 14 through 15 of this rule; or
- (2) subsection (b).

(b) A permit is not required under this section by a person who possesses fish, other than those listed in 312 IAC 9-6-7, and who is engaged in either of the following:

- (1) The production, importation, or sale of live fish exclusively for use in the aquarium pet trade.
- (2) The importation of live fish exclusively for confinement and exhibition in a zoo or another public display.

(c) An application for an aquaculture permit shall be prepared on a department form. The director may attach any appropriate conditions to a permit. The permit expires on December 31 of the year of issuance.

(d) In addition to the requirements of subsection (c), an aquaculture permit to import, produce, raise, sell, or transport triploid grass carp is based on the following conditions:

- (1) No stocking of triploid grass carp may take place in public waters except as provided in IC 14-22-27.
- (2) The permit holder must deliver and stock the fish.
- (3) A copy of each bill of sale and triploidy certification must be conveyed to each buyer and must be retained by the permit holder for two (2) years.
- (4) A purchaser of triploid grass carp must retain the bill of sale and the triploidy certification for at least two (2) years.
- (5) A permit holder must submit a quarterly report on a departmental form not later than the fifteenth day of the month following the end of a quarter, regardless of whether fish have been stocked during the time period.
- (6) Fish holding facilities, stocking reports, stocking trucks, other documents required under this subsection, and live fish may be inspected at any reasonable time by the division or a conservation officer. Not more than six (6) fish from a lot or truck load may be removed by the department for verification of the chromosome number.
- (7) As used in this subsection and subsection (e), "triploid grass carp" means grass carp certified to be triploid by the U.S. Fish and Wildlife Service.

(e) In addition to the requirements of subsection (c), an aquaculture permit to import, produce, raise, sell, or transport diploid grass carp is based on the following conditions:

- (1) No stocking of diploid grass carp may take place in any public or private waters except as provided in this subsection and IC 14-22-27.
- (2) A live diploid grass carp may be possessed only for the purpose of producing triploid grass carp or producing diploid grass carp capable of producing triploid grass carp.
- (3) A diploid grass carp may be sold only to a person who holds a valid aquaculture permit.
- (4) All diploid grass carp must be held in a closed aquaculture system.
- (5) A permit holder who imports, produces, raises, sells, or transports diploid grass carp must submit an annual report to the division on a department form.
- (6) A permit holder who imports, produces, raises, sells, or transports diploid grass carp must be capable of accurately determining the number of sets of chromosomes of the fish in the possession of the permit holder under certification procedures of the U.S. Fish and Wildlife Service.

*(Natural Resources Commission; 312 IAC 9-10-17; filed May 12, 1997, 10:00 a.m.: 20 IR 2736; filed May 28, 1998, 5:14 p.m.: 21 IR 3730; filed Dec 26, 2001, 2:40 p.m.: 25 IR 1541; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 9-10-18 Limited take permits for specific state endangered species**

Authority: IC 14-22-34-17

Affected: IC 14-22

Sec. 18. (a) The department may issue a permit under this section to an individual, organization, corporation, or government agency to take a state endangered species. This permit may only be issued for state endangered species that are either federal

proposed species or federal listed species.

(b) The permit application under this section shall be made as follows:

(1) The applicant must submit a Habitat Conservation Plan.

(2) The division of fish and wildlife will supply an outline of information sections that must be included in the Habitat Conservation Plan. This outline will include, but not necessarily be limited to, the following sections:

(A) Current status of the endangered species.

(B) Description of area of impact.

(C) Specific impacts to the species' habitat.

(D) Conservation actions to be undertaken to ensure no detrimental effect to the endangered species.

(E) Schedule for enacting the conservation actions.

(F) Guarantees to ensure those enactment of conservation actions.

(c) The permit application has to be available for a minimum of thirty (30) days for public review and comment. The director shall determine whether the permit will be issued after review of comments received during the review and comment period.

(d) The permit may be revoked at any time if the provisions of the Habitat Conservation Plan are not enacted according to the schedule in the plan. (*Natural Resources Commission; 312 IAC 9-10-18; filed May 12, 1997, 10:00 a.m.: 20 IR 2737; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

### **312 IAC 9-10-19 Fish tagging or marking permit**

Authority: IC 14-22-2-6

Affected: IC 14-22-27

Sec. 19. (a) It is unlawful to place a mark or tag on a fish and release it into public waters without a permit issued by the department under this section.

(b) An application for a fish tagging and marking permit shall be made on a departmental form.

(c) This form must be received by the department at least twenty-one (21) days before the proposed date of tagging or marking and must include the following information:

(1) The name, address, and telephone number of the person applying for the permit.

(2) The name of the waterway and county where tagging or marking will occur.

(3) The species, size, and number of fish to be tagged or marked.

(4) The tagging or marking dates.

(5) The reason for tagging or marking fish.

(d) The permit holder must carry the permit while tagging or marking fish and present it to a department representative upon request.

(e) An application for a fish tagging or marking permit is subject to specifications set forth in the application and to terms and conditions set by the department.

(f) A permit issued under this section expires no later than December 31 of the year issued.

(g) The permit cannot be transferred or sold for use by another individual.

(h) The department may withdraw use of the permit for resource protection or management purposes.

(i) A report of marking and tagging by species, number, size of fish, and location must be submitted to the department within fifteen (15) days after the expiration of the permit. (*Natural Resources Commission; 312 IAC 9-10-19; filed May 28, 1998, 5:14 p.m.: 21 IR 3731; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

### **312 IAC 9-10-20 Mammal, bird, reptile, amphibian, mollusk, and crustacean importation permit for release**

Authority: IC 14-22-2-6; IC 14-25-1

Affected: IC 14

Sec. 20. (a) A person must obtain a wild animal import permit under this section before the person can import a mammal, bird, reptile, amphibian, mollusk, or crustacean for release or sale for release in Indiana.

(b) An application for a wild animal import permit must be submitted by an applicant not less than ten (10) days in advance of proposed importation and must be accompanied by the appropriate fee for each species or release site.

- (c) A permit may be granted only if the applicant establishes the animal to be imported:
    - (1) is free of any communicable disease;
    - (2) will not become a nuisance; and
    - (3) will not damage a native wild animal, a domesticated species of animal, or species of plant.
  - (d) An application for a permit under this section must be completed on a departmental form and must include the following:
    - (1) Information regarding the health and safe handling of the imported wild animal.
    - (2) The current and historic status of the species in the state.
    - (3) Information regarding the goal of releasing the specimen.
    - (4) The ability of the specimen to survive after release and achieve the release goal.
    - (5) The genetic appropriateness of the released specimen.
    - (6) Public support for a release.
    - (7) Anticipated post release impact and management guidelines.
  - (e) The department may require conditions in the permit that are lawful under IC 14 and this article.
  - (f) A permit issued under this rule expires one (1) year from the date of issuance.
  - (g) A wild animal is exempted from the permitting requirements of this section if the animal is possessed under any of the following conditions:
    - (1) During interstate shipment through Indiana.
    - (2) By a zoo, carnival, menagerie, animal dealer, pet shop, circus, or nature center licensed under 9 CFR, Chapter 1, Subchapter A, Parts I through IV.
    - (3) Following import into Indiana for confinement and exhibit in a zoo or other public display.
- (Natural Resources Commission; 312 IAC 9-10-20; filed May 28, 1998, 5:14 p.m.: 21 IR 3731; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

## **Rule 11. Wild Animal Possession Permits**

### **312 IAC 9-11-1 Applicability**

Authority: IC 14-11-4-5; IC 14-11-4-9; IC 14-22-26

Affected: IC 14-11-4; IC 14-22-26-2

Sec. 1. (a) Except as provided in IC 14-22-26-2 or as exempted under subsections (d) and (e), a person must have a permit issued by the department under this section to possess a wild animal if the wild animal is either of the following:

- (1) Referenced in this rule.
- (2) Listed in this article as an endangered species or a threatened species.
- (b) A separate permit is required for each individual wild animal and applies only to the location stated in the permit.
- (c) A permit issued under this rule expires one (1) year from the date of issuance. If a timely and sufficient application is made for a permit renewal under section 3 of this rule, however, the permit does not expire until the department has entered a final determination with respect to the renewal application.
- (d) A wild animal that is possessed under any of the following licenses is exempted from this rule:
  - (1) A game breeder license issued under 312 IAC 9-10-4.
  - (2) A scientific collector permit issued under 312 IAC 9-10-6.
  - (3) A mammal or bird rehabilitation permit issued under 312 IAC 9-10-9.
- (e) This rule does not apply to the lawful taking or possessing of a wild animal as follows:
  - (1) During a season established under this article.
  - (2) During the first six (6) months from the date of birth, if the animal is the offspring of a wild animal lawfully possessed under this rule.
  - (3) By zoos, carnivals, menageries, animal dealers, pet shops, circuses, or nature centers licensed under 9 CFR, Chapter 1, Subchapter A, Parts I through IV.
  - (4) During the interstate shipment of animals through the state of Indiana.
  - (5) As authorized by a permit issued by the U.S. Department of the Interior.
  - (f) A person who possesses a wild animal is responsible for complying with all applicable requirements of this rule, including



those which govern permit renewals and permit site relocations.

(g) A person who possesses a wild animal for which a permit is required under this rule, but who does not possess a permit, is subject to the standards, requirements, and sanctions of this rule. (*Natural Resources Commission; 312 IAC 9-11-1; filed May 12, 1997, 10:00 a.m.: 20 IR 2737; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

### **312 IAC 9-11-2 First permit to possess a wild animal**

Authority: IC 14-22-26

Affected: IC 14-11-4; IC 14-22

Sec. 2. (a) This section governs the first permit under this rule to possess a particular wild animal.

(b) A person who possesses a wild animal, described as Class I or Class II under section 5 of this rule, must apply to the department for a permit under this rule within five (5) days after acquiring the animal.

(c) A person who wishes to possess a wild animal, described as Class III, must satisfy IC 14-11-4 and receive a permit under this rule before the person takes possession of the animal. In addition to any procedural requirements, a notice under this subsection must also describe the following:

- (1) The species of the wild animal.
- (2) Where the animal will be possessed.
- (3) The type of enclosure which would be used.

(d) A permit application must include a written verification from a licensed veterinarian that the animal appears to be free of disease, appropriately immunized, and in good health.

(e) An application must present a plan for the quick and safe recapture of the wild animal if the animal escapes or, if recapture is impracticable, for the destruction of the animal. After notification by the department of an intention to issue a permit, but before the permit is issued, the applicant must obtain the equipment needed to carry out the recapture and destruction plan. The nature and extent of the recapture plan and the equipment needed are dependent on the danger the escaped animal poses to persons, domestic animals, livestock, and other wildlife in the vicinity of the escape.

(f) A permit to possess a Class III wild animal shall require the permit holder to notify the department immediately after the discovery of any escape of the animal.

(g) A permit application must be completed on a department form and accompanied by a fee in the amount of ten dollars (\$10).

(h) A conservation officer will inspect the cages or enclosures after the application is received.

(i) An application must show the wild animal was lawfully acquired. A receipted invoice, bill of lading, or other evidence approved by the director shall accompany the application to establish compliance with this subsection. (*Natural Resources Commission; 312 IAC 9-11-2; filed May 12, 1997, 10:00 a.m.: 20 IR 2738; filed Feb 7, 2000, 3:31 p.m.: 23 IR 1366; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

### **312 IAC 9-11-3 Renewal permit to possess a wild animal**

Authority: IC 14-22-26

Affected: IC 14-22

Sec. 3. (a) This section governs a renewal permit to possess a wild animal where a permit was previously issued for the same wild animal at the same site under section 2 of this rule.

(b) A person who wishes to continue in possession of a wild animal after the expiration date in the permit must file an application for a renewal permit within thirty (30) days of the expiration date.

(c) An application for a renewal permit must be accompanied by a written verification by a veterinarian which states the following:

- (1) The wild animal was observed at least once during the prior year or more frequently if necessary to provide adequate veterinarian care. Frequency of the visits is determined by the attending veterinarian, not the facility.
- (2) The wild animal was properly immunized.
- (3) The wild animal appears to have been properly cared for in the following other areas of animal husbandry:

(A) Appropriate:

- (i) facilities, personnel, and equipment for pest control, sanitation, quarantine, capture, and restraint; and

(ii) medical observation.

(B) Appropriate handling, tranquilization, and euthanasia was provided under veterinarian guidance.

(C) Nutrition and diets.

(d) A conservation officer may reinspect the cages or enclosures at any time. The conservation officer shall attempt to give a permittee a twenty-four (24) hour notice prior to the reinspection, but, if the officer is unsuccessful in contacting the permittee, the officer may proceed with the scheduled inspection without making any further attempts to notify anyone. No notice is necessary if the officer has reason to believe the health and safety of the animal is in danger if there is a delay. The conditions observed by the conservation officer during a reinspection will be considered in determining whether to renew a permit. (*Natural Resources Commission; 312 IAC 9-11-3; filed May 12, 1997, 10:00 a.m.: 20 IR 2738; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

### **312 IAC 9-11-4 Permit to possess a relocated wild animal**

Authority: IC 14-22-26

Affected: IC 14-11-4; IC 14-22

Sec. 4. (a) This section governs a permit to possess a wild animal if a permittee under section 2 or 3 of this rule wishes to relocate the animal.

(b) For a permit to possess a Class III wild animal, the permittee must satisfy IC 14-11-4 before the department may issue a permit to possess the animal at a new location. In addition to any procedural requirements, a notice under this subsection must also describe the following:

(1) The species of the wild animal.

(2) Where the animal will be possessed.

(3) The type of enclosure which would be used.

(c) A new written verification from a veterinarian is not required under this section. (*Natural Resources Commission; 312 IAC 9-11-4; filed May 12, 1997, 10:00 a.m.: 20 IR 2739; errata filed Jun 2, 1997, 3:20 p.m.: 20 IR 2789; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

### **312 IAC 9-11-5 Classifications of wild animals which require a permit under IC 14-22-26**

Authority: IC 14-22-26

Affected: IC 14-22-26

Sec. 5. The following classifications apply to a wild animal for which a permit for possession is required under IC 14-22-26 and this rule:

(1) Class I includes any wild animal which, because of its nature, habits, or status, is not a threat to personal or public safety.

(2) Class II includes any wild animal which, because of its nature, habits, or status, may pose a threat to human safety.

(3) Class III includes any wild animal which presents a real or potential threat to human safety.

(*Natural Resources Commission; 312 IAC 9-11-5; filed May 12, 1997, 10:00 a.m.: 20 IR 2739; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

### **312 IAC 9-11-6 Class I wild animals for which a permit is required**

Authority: IC 14-22-26

Affected: IC 14-22

Sec. 6. A permit is required under this rule for the following Class I wild animals:

(1) Rabbit (*Sylvilagus floridanus*).

(2) Squirrel (*Sciurus carolinensis*, *Sciurus niger*, and *Glaucomys volans*).

(*Natural Resources Commission; 312 IAC 9-11-6; filed May 12, 1997, 10:00 a.m.: 20 IR 2739; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-11-7 Class II wild animals for which a permit is required**

Authority: IC 14-22-26

Affected: IC 14-22

Sec. 7. A permit is required under this rule for the following Class II wild animals:

- (1) Beaver (*Castor canadensis*).
- (2) Coyote (*Canis latrans*).
- (3) Gray fox (*Urocyon cinereoargenteus*).
- (4) Red fox (*Vulpes fulva*).
- (5) Mink (*Mustela vison*).
- (6) Muskrat (*Ondatra zibethicus*).
- (7) Opossum (*Didelphis marsupialis*).
- (8) Raccoon (*Procyon lotor*).
- (9) Skunk (*Mephitis mephitis*).
- (10) Weasel (*Mustela frenata*, *Mustela nivalis*, and *Mustela rixosa*).

*(Natural Resources Commission; 312 IAC 9-11-7; filed May 12, 1997, 10:00 a.m.: 20 IR 2739; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 9-11-8 Class III wild animals for which a permit is required**

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

Affected: IC 14-22

Sec. 8. A permit is required under this rule for the following Class III wild animals:

- (1) Wolves which are purebred.
- (2) Bears (all species).
- (3) Wild cats (all species), except feral cats.
- (4) Venomous reptiles.
- (5) Crocodilians that are at least five (5) feet long.

*(Natural Resources Commission; 312 IAC 9-11-8; filed May 12, 1997, 10:00 a.m.: 20 IR 2739; filed Jul 9, 1999, 5:55 p.m.: 22 IR 3676; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 9-11-9 Classification of endangered species or threatened species**

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

Affected: IC 14-22

Sec. 9. (a) If an application is submitted under this rule to possess a wild animal that is an endangered species or a threatened species, but the animal is not identified in sections 6 through 8 of this rule, the division shall designate the wild animal as being within Class I, Class II, or Class III before the permit is issued.

(b) The division may require that a wild animal possessed under this section is identified with an individually unique transponder, a unique notch, or another method of permanent marking approved by the director. *(Natural Resources Commission; 312 IAC 9-11-9; filed May 12, 1997, 10:00 a.m.: 20 IR 2740; filed Jul 9, 1999, 5:55 p.m.: 22 IR 3676; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 9-11-10 Confining and enclosing wild animals**

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

Affected: IC 14-22

Sec. 10. (a) This section establishes general requirements for confining or otherwise enclosing a wild animal which must be demonstrated in an application under this rule. A person who holds a license must maintain compliance with this section while in possession of the wild animal.

(b) All wild animals must have a designated primary enclosure.

(c) All wild animals shall be kept in cages or enclosures and shall be housed in buildings. Walls and restraints affixed to windows, doors, and other means of entry or exit must be as strong as what is prescribed in section 13 of this rule for cage construction.

(d) All cages shall be well braced and, when necessary, securely fastened to the floor or ground and shall utilize metal clamps, ties, welds, or braces of equivalent strength as that prescribed for cage construction.

(e) Except as provided in subsection (f), the cage or enclosure required for a Class III wild animal must also be surrounded by a perimeter chain link fence which is at least six (6) feet high. Fencing material that is equal in strength and durability to chain link may be substituted.

(f) A venomous reptile must be kept in a locked container within a locked building, compound, or enclosure. The premises shall have a notice clearly and conspicuously posted to provide the location of the nearest, most readily available source of appropriate anti-venin and the telephone number of the nearest poison control center.

(g) A wild animal must not be chained or tethered, except under the following conditions:

(1) During training sessions. During these sessions, the wild animal must be under the direct supervision of the permittee or an employee of the permittee. Training may take place only within the perimeter fence, not in public view, and while under strict control of the handler.

(2) During an emergency.

(3) While repairs are being made to the cage.

(h) A Class III wild animal must have secondary housing, for example, a den, shift cage, or transport crate, in which the animal can be secured. The secondary housing must be as strong as what is required for cage construction. The animal may be housed in secondary housing for a set period of time upon the written instructions of a licensed veterinarian.

(i) A modification from the general cage requirements may be granted upon a written finding by the director that the overall welfare of the animal and public safety would be maintained if the modification were implemented. (*Natural Resources Commission; 312 IAC 9-11-10; filed May 12, 1997, 10:00 a.m.: 20 IR 2740; filed Jul 9, 1999, 5:55 p.m.: 22 IR 3676; errata filed Oct 26, 1999, 2:40 p.m.: 23 IR 589; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

### **312 IAC 9-11-11 General housing requirements and specifications**

Authority: IC 14-22-26

Affected: IC 14-22

Sec. 11. (a) This section provides general housing requirements and specifications which apply to an animal possessed under this rule.

(b) Unless otherwise specified in the license, a cage or enclosure must be completely enclosed.

(c) Wild animals which are compatible with one another may be held in the same enclosure if the required floor space is provided.

(d) Common walls between animals which are not compatible must be constructed so the animals cannot gain access to each other.

(e) All mammals must have a den or nest box.

(f) Dens shall be large enough to ensure that each animal contained therein has sufficient space to turn about freely and to make normal postural adjustments.

(g) If sunlight is likely to cause overheating or discomfort to an animal, sufficient shade shall be provided to protect any animal kept outdoors from direct sunlight.

(h) If the ambient air temperature falls below that needed for good health of the animal, an artificial heat source must be provided that is sufficient to maintain the required ambient air temperature.

(i) If a pool of water is required or used, the floor space occupied by the pool is in addition to the required minimum floor space, unless otherwise specified in the license.

(j) Night quarters, holding pens, and nesting boxes may not be used as primary housing.

(k) All chain link or welded wire edges shall be smoothly secured to prevent injury to the animals.

(l) If a cage is required to be constructed of mesh, unless otherwise specified, the mesh shall be made from welded or woven steel wire or an equivalent material. The floor of such a cage need not be constructed of mesh. Any equivalent strength material may

be used.

(m) An enclosure must be provided with sufficient drainage to prevent standing water from accumulating.

(n) If a concrete floor is specified in a license, either wood plank flooring or a natural substrate may be used to cover the concrete. (*Natural Resources Commission; 312 IAC 9-11-11; filed May 12, 1997, 10:00 a.m.: 20 IR 2740; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

### **312 IAC 9-11-12 Designated wild animals; minimum pen, cage, or enclosure size requirements**

Authority: IC 14-22-26

Affected: IC 14-22

Sec. 12. (a) Enclosures shall be constructed and maintained so as to provide sufficient space to allow each animal to make normal postural and social adjustments with adequate freedom of movement. Inadequate space may be indicated by evidence of malnutrition, poor condition, debility, stress, or abnormal behavior patterns.

(b) The requirements in subsection (a) are subordinate to any requirements contained elsewhere in this rule or in the license. (*Natural Resources Commission; 312 IAC 9-11-12; filed May 12, 1997, 10:00 a.m.: 20 IR 2741; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

### **312 IAC 9-11-13 Confining, enclosing, and housing for particular wild animals**

Authority: IC 14-22-26

Affected: IC 14-22

Sec. 13. (a) This section sets standards for confining, enclosing, and housing particular kinds of wild animals which must be satisfied by a person licensed under this rule.

(b) Rabbits must be provided with the following:

(1) Bone, wood, or fibrous food to gnaw.

(2) The walls, roof, and floor of the cage shall be constructed with mesh having openings not more than one and one-half (1½) inches.

(c) Squirrels must be provided with the following:

(1) Climbing perches.

(2) Nest boxes with wood shavings or another approved material.

(3) For fox squirrels and gray squirrels, the walls, roof, and floor of the cage shall be constructed with mesh having openings not more than one (1) inch.

(4) For flying squirrels, the walls, roof, and floor of the cage shall be constructed with mesh having openings not more than three-fourths (¾) of an inch or one (1) inch by one-half (½) inch maximum mesh.

(d) Beavers must be provided with the following:

(1) Nest boxes or other sheltered retreats.

(2) Gnawing logs.

(3) A pool of fresh water with easy access. Half of the required floor space shall be a pool of water at least two and one-half (2½) feet deep.

(4) The walls, roof, and floor of the cage shall be constructed of at least eleven and one-half (11½) gauge chain link or the equivalent. A six (6) inch overhang or the equivalent containment may be substituted for a full roof.

(e) Coyotes must be provided with the following:

(1) A sheltered retreat and either a den or an elevated wood platform.

(2) A cage floor shall have a three (3) foot barrier or apron around the inside of the cage. The barrier shall be constructed of one (1) inch by two (2) inch maximum mesh. The mesh shall be made from nonrusting, galvanized welded steel or an equivalent material.

(3) The walls, roof, and floor of the cage shall be constructed of one (1) inch by two (2) inch maximum mesh.

(f) Foxes must be provided with the following:

(1) A sheltered retreat and either a den or an elevated wood platform.

(2) Limbs.

- (3) The cage floor shall have a three (3) foot barrier or apron around the inside of the cage. The barrier shall be constructed of one (1) inch by two (2) inch maximum mesh. The mesh shall be made from nonrusting, galvanized welded steel or an equivalent material.
- (4) The walls, roof, and floor of the cage shall be constructed of one (1) inch by two (2) inch maximum mesh.
- (g) Minks must be provided with the following:
  - (1) A nest box or sheltered retreat with bedding.
  - (2) Limbs.
- (3) The walls, roof, and floor of the cage shall be constructed with mesh not larger than one (1) inch.
- (h) Muskrats must be provided with the following:
  - (1) A nest box or sheltered retreat.
  - (2) Gnawing logs.
  - (3) A pool of fresh water with easy access. Half of the required floor space shall be a pool of water at least two and one-half (2½) feet deep.
  - (4) The walls, roof, and floor of the cage shall be constructed with mesh which is not larger than one and one-half (1½) inches.
- (i) Opossums must be provided with the following:
  - (1) A nest box or sheltered retreat.
  - (2) Limbs.
  - (3) The walls, roof, and floor of the cage shall be constructed with mesh which is not larger than two (2) inches.
- (j) Raccoons must be provided with the following:
  - (1) A nest box or sheltered retreat.
  - (2) Limbs.
  - (3) A wading pool or water container appropriate to the size of the animal.
  - (4) The walls, roof, and floor of the cage shall be constructed with mesh which is not larger than two (2) inches.
- (k) Skunks must be provided with the following:
  - (1) A nest box or sheltered retreat.
  - (2) The walls, roof, and floor of the cage shall be constructed with mesh which is not larger than two (2) inches.
- (l) Weasels must be provided with the following:
  - (1) A nest box or sheltered retreat.
  - (2) Limbs.
  - (3) For long-tailed weasels, the walls, roof, and floor of the cage shall be constructed from mesh which is not larger than one (1) inch.
  - (4) For least weasels, the walls, roof, and floor of the cage shall be constructed from mesh which is not larger than one-half (½) inch.
- (m) Wolves must be provided with the following:
  - (1) A sheltered retreat and either a den or an elevated wood platform.
  - (2) The walls, roof, and floor of the cage shall be constructed of not less than eleven and one-half (11½) gauge steel chain link with a two and one-half (2½) inch maximum mesh or the equivalent.
  - (3) A three (3) foot incline at the top of an eight (8) foot wall may be substituted for a full roof. The height of the fence is measured to the top of the incline. The incline must be forty-five (45) degrees.
- (n) Bears must be provided with the following:
  - (1) For sun bears, Asiatic bears, sloth bears, and spectacled bears, the following:
    - (A) A den with shavings, straw, or a wooden platform or flooring for reclining. The den shall have a floor space of at least four (4) feet by four (4) feet and shall be at least four (4) feet high.
    - (B) A suitable scratching post.
    - (C) An indestructible pool or tub. The pool or tub shall contain at least twelve and one-half (12½) feet of surface area and be at least two (2) feet deep.
    - (D) The walls, roof, and floor of the cage shall be constructed of not less than nine (9) gauge steel chain link.
    - (E) For sun bears, sloth bears, and spectacled bears, an artificial heat source that is sufficient to maintain a minimum ambient air temperature of forty-five degrees Fahrenheit (45°F).
  - (2) For American black bears, European brown bears, and Russian brown bears, the following:

- (A) A den with shavings, straw, or a wooden platform or floor for reclining. The den shall have a floor space of at least four (4) feet by six (6) feet and shall be at least four (4) feet high.
  - (B) A suitable scratching post.
  - (C) An indestructible pool or tub. The pool or tub shall contain at least twenty-eight (28) square feet of surface area and be at least three (3) feet deep.
  - (D) The walls, roof, and floor of the cage shall be constructed of not less than nine (9) gauge steel chain link.
- (3) For polar, grizzly, and Kodiak bears, the following:
- (A) A den with shavings, straw, or a wooden platform or flooring for reclining. The den shall have a floor space of at least six (6) feet by six (6) feet of floor space and shall be at least six (6) feet high.
  - (B) A suitable scratching post.
  - (C) An indestructible pool or tub. The pool or tub shall contain at least seventy-eight (78) square feet of surface area and be at least three (3) feet deep.
  - (D) The walls, roof, and floor of the cage shall be constructed of not less than six (6) gauge steel chain link.
- (o) Cats must be provided with the following:
- (1) For lions, tigers, cheetahs, snow leopards, and their hybrids, the following:
- (A) A den adequate to provide privacy and comfort for all animals in the enclosure.
  - (B) An elevated wooden loafing platform or an elevated dry natural substrate loafing area large enough for all animals in the enclosure.
  - (C) A tree limb or other suitable scratching block.
  - (D) For lions and tigers, the walls, roof, and floor of the cage shall be constructed of not less than nine (9) gauge steel chain link with a two and one-half (2½) inch mesh maximum or the equivalent. A three (3) foot incline at the top of a fourteen (14) foot wall may be substituted for a full roof. The height of the fence is measured to the top of the incline. The incline must be forty-five (45) degrees.
  - (E) For cheetahs and snow leopards, the walls, roof, and floor of the cage shall be constructed of not less than eleven and one-half (11½) gauge steel chain link with a two and one-half (2½) inch mesh maximum or the equivalent. For cheetahs, a three (3) foot incline at the top of the eight (8) foot wall may be substituted for a full roof. The height of the fence is measured to the top of the incline. The incline must be forty-five (45) degrees.
  - (F) For lions and cheetahs, an artificial heat source that is sufficient to maintain a minimum ambient air temperature of forty-five degrees Fahrenheit (45°F).
- (2) For black leopards, spotted leopards, jaguars, clouded leopards, mountain lions (also sometimes called pumas or cougars), European lynxes, and their hybrids, the following:
- (A) Dens large enough to provide privacy and comfort to all animals in the enclosure.
  - (B) An elevated wood loafing platform or an elevated dry natural substrate loafing area within the enclosure.
  - (C) A tree limb or other suitable scratching block.
  - (D) For black leopards, spotted leopards, jaguars, and mountain lions, the walls, roof, and floor of the cage shall be constructed of not less than nine (9) gauge steel chain link with a two and one-half (2½) inch mesh maximum or the equivalent.
  - (E) For black leopards, spotted leopards, jaguars, and mountain lions, a three (3) foot incline at the top of a fourteen (14) foot wall may be substituted for a full roof. The height of the fence is measured to the top of the incline. The incline must be forty-five (45) degrees.
  - (F) For clouded leopards and European lynxes, the walls, roof, and floor of the cage shall be constructed of not less than eleven and one-half (11½) gauge steel chain link with a two and one-half (2½) inch maximum mesh or the equivalent.
- (3) For caracals, Canada lynxes, golden cats, ocelots, servals, jungle cats, fishing cats, and their hybrids, the following:
- (A) Dens large enough to provide privacy and comfort to all animals in the enclosure.
  - (B) An elevated wooden loafing platform or an elevated dry natural substrate loafing area large enough for all animals within the enclosure.
  - (C) A tree limb or other suitable scratching block.
  - (D) The walls, roof, and floor of the cage shall be constructed of one (1) inch by two (2) inch maximum mesh. Any weld must be as strong as the wire.

- (E) For golden cats, an artificial heat source that is sufficient to maintain a minimum ambient air temperature of forty-five degrees Fahrenheit (45°F).
- (F) For jungle cats and serval cats, an artificial heat source that is sufficient to maintain the ambient air temperature of fifty-five degrees Fahrenheit (55°F).
- (4) For margays, leopard cats, pallas cats, marble cats, Geoffrey's cats, African wild cats, European wild cats, jaguarundis, little spotted cats, African black footed cats, sand cats, flatheaded cats, pampas cats, and their hybrids, the following:
  - (A) Dens large enough to provide privacy and comfort to all animals in the enclosure.
  - (B) An elevated wooden loafing platform or an elevated dry natural substrate loafing area large enough for all animals within the enclosure. The top of the den or den box may be designed to meet this requirement.
  - (C) A tree limb or other suitable scratching block.
  - (D) The walls, roof, and floor of the cage shall be constructed of one (1) inch by two (2) inch maximum mesh. Any weld must be as strong as the wire.
  - (E) For pallas cats, an artificial heat source that is sufficient to maintain a minimum ambient air temperature of forty-five degrees Fahrenheit (45°F) shall be provided.
  - (F) For Geoffrey's cats, leopard cats, African wild cats, little spotted cats, African black footed cats, sand cats, flat headed cats, and pampas cats, an artificial heat source that is sufficient to maintain a minimum ambient air temperature of fifty-five degrees Fahrenheit (55°F).

*(Natural Resources Commission; 312 IAC 9-11-13; filed May 12, 1997, 10:00 a.m.: 20 IR 2741; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

### **312 IAC 9-11-13.5      Confinement and enclosure requirements for venomous reptiles and crocodilians**

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

Affected: IC 14-22

Sec. 13.5. (a) This section sets standards for confining and enclosing venomous reptiles and crocodilians that must be satisfied by a person licensed under this rule.

(b) A venomous reptile must be provided with the following:

- (1) The perimeter of the enclosure for a snake less than six (6) feet long shall be at least one and one-half (1½) times the length of the snake. The perimeter of the enclosure for a snake at least six (6) feet long shall be at least two (2) times the length of the snake.
- (2) For each venomous lizard, a cage with rounded corners must be provided that is at least twenty-four (24) inches long, eighteen (18) inches wide, and fifteen (15) inches high. For each additional lizard, the size of the cage shall be increased by four (4) inches in length and width.
- (3) All enclosures must be adequately ventilated. The floor of the enclosure shall be constructed of a nonabrasive material. The substrate shall facilitate the ability to maintain a clean and healthy environment. Hiding areas shall be provided for each animal.
- (4) The containers for venomous reptiles shall be labeled with the common and scientific name (scientific genus and species name) of the species and the number of the animals contained inside. The label shall be legibly marked with the warning: Poisonous or Venomous.
- (5) Indoor cages shall be fronted with Plexiglas, acrylic, or plate glass at least one-fourth (¼) inch thick. Cages are to be tightly closed at the top, and all doors are to be tightly fitted and securely locked. Cages must be constructed of one (1) of the following:
  - (A) Waterproof plywood at least one-fourth (¼) inch thick.
  - (B) Concrete plastered over wire.
  - (C) Sheet metal.
  - (D) Interlocking lumber at least three-fourths (¾) inch thick.
  - (E) Fiberglass.
  - (F) Plastic.
- (6) Outdoor cages or pits shall have floors of concrete or masonry construction at least two (2) inches thick. Sides shall be similar construction at least six (6) inches thick, with a minimum height of four (4) feet from the floor unless completely



roofed over by close-meshed wire. The corners of open pits shall be designed or guarded to prevent the escape of reptiles by climbing. Entrance doors accessible to the public shall be kept key locked.

(c) Crocodilians that are at least five (5) feet long must be provided with the following:

(1) The cage must be at least one and one-half (1½) times as long and wide as each animal in the enclosure.

(2) The cage walls must be constructed of one (1) of the following:

(A) Concrete.

(B) Concrete block.

(C) Nine (9) gauge chain link or welded wire with no more than two (2) inch by four (4) inch size mesh.

(3) One-third (⅓) of the cage space shall be a pool of water that is deep enough for an animal to immerse itself. If more than one (1) animal is present, the pool shall be large enough so all animals can immerse themselves simultaneously. Pool surfaces shall be made of nonabrasive material, and the pool shall have a drain.

(4) The portion of an enclosure not occupied by the pool shall be covered with nonabrasive material, such as earth or grass.

(5) Crocodilians shall be confined in a manner that precludes them from coming into contact with the public.

(6) The walls of an open pen shall be at least six (6) feet high. If a wall is made of climbable material, such as fencing, the top one and one-half (1½) feet shall be constructed of a slippery, nonclimbable material. A wall shall either be buried deeply enough to prevent escape by digging or shall be fitted with a buried apron. Chain link or welded wire edges shall be smoothly secured to prevent injury to the animals.

(7) The walls of a totally enclosed pen shall have the upper one-half (½) constructed of one (1) of the following:

(A) Concrete.

(B) Concrete block.

(C) Nine (9) gauge chain link or welded wire with no more greater than two (2) inch by four (4) inch size mesh.

Concrete or concrete block shall be used for the lower one-half (½) of the enclosure. A wall shall be buried deeply enough to prevent escape by digging or shall be fitted with a buried apron. Chain link or welded wire edges shall be smoothly secured to prevent injury to the animals.

(d) Notwithstanding section 14(c) of this rule, a person who possesses a venomous reptile or crocodilian that was lawfully acquired by the person, and used for a purpose described in section 14(c) of this rule before September 1, 1999, may continue the purpose where the person files with the department a written petition by November 1, 1999, that demonstrates to the satisfaction of the department:

(1) the identity of the reptile and its lawful acquisition;

(2) the purpose to which the reptile has been and would continue to be put;

(3) precautions to make it unlikely the reptile would pose a hazard to another person or the property of another person; and

(4) assurances the reptile has been and would continue to be treated humanely.

*(Natural Resources Commission; 312 IAC 9-11-13.5; filed Jul 9, 1999, 5:55 p.m.: 22 IR 3677; errata filed Oct 26, 1999, 2:40 p.m.: 23 IR 589; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

### **312 IAC 9-11-14 Maintaining a wild animal possessed under this rule**

Authority: IC 14-22-26

Affected: IC 14-22

Sec. 14. (a) A person must not maintain a wild animal in a manner that does any of the following:

(1) Poses a hazard to public safety.

(2) Poses a hazard to property of a person other than the permittee.

(3) Harms the health of the wild animal.

(4) Violates this article or the license under which the animal is possessed.

(b) A person must not possess a wild animal in a condition that is any of the following:

(1) Unsafe.

(2) Unsanitary.

(3) Constitutes maltreatment or neglect of the animal.

(4) Allows the escape of the animal.

(c) A person must not use a wild animal in any of the following manners:

- (1) For a commercial purpose unless the person is issued a commercial license by the United States Department of Agriculture or the wild animal is an alligator snapping turtle (*Macrolemys temmincki*) lawfully acquired by the applicant prior to January 1, 1998.
- (2) For a sporting purpose.
- (3) As a public display.
- (d) If a Class II or Class III wild animal is used for an educational purpose, the animal must be confined in a cage that prevents contact with the public.
- (e) A wild animal must be provided with fresh drinking water in clean containers on a daily basis.
- (f) A swimming pool or wading pool, which is provided for the use of a wild animal, must be cleaned as needed to maintain good water quality.
- (g) Surface water must be adequately drained from a cage or enclosure where a wild animal is possessed.
- (h) A wild animal must be provided with food that is each of the following:
  - (1) Unspoiled.
  - (2) Uncontaminated.
  - (3) Appropriate to the dietary needs of the animal.
- (i) Fecal wastes and food wastes must be removed daily from cages and stored or disposed to prevent noxious odors and insect pests. Hard floors shall be scrubbed and disinfected weekly. Large pens and paddocks with dirt floors shall be raked at least once every three (3) days and the waste removed. (*Natural Resources Commission; 312 IAC 9-11-14; filed May 12, 1997, 10:00 a.m.: 20 IR 2743; filed May 19, 2003, 9:11 a.m.: 26 IR 3324; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-11-15 License revocation, seizure of a wild animal, reimbursement for expenses, and escaped wild animals**

Authority: IC 14-22-26

Affected: IC 4-21.5-3-8; IC 4-21.5-4; IC 14-22-26-5

- Sec. 15. (a) The department may revoke a permit issued under this rule because of a failure of the permittee to comply with IC 14-22, this article, or a term of the permit. A proceeding under this subsection is subject to IC 4-21.5-3-8.
- (b) The department may restrict or suspend a license under IC 4-21.5-4 if:
    - (1) an emergency exists with respect to the safety of the public or the health of the animal; or
    - (2) the director believes an emergency exists under IC 14-22-26-5(a).
  - (c) The department may seize a wild animal where:
    - (1) an emergency exists under subsection (b); or
    - (2) a final order has been made by the commission to:
      - (A) revoke a permit issued under this section;
      - (B) confiscate the wild animal; and
      - (C) provide for its final disposition.
  - (d) The owner of a wild animal seized under this section is liable for the costs incurred by the department in seizing and holding the animal and for the proceedings under this section. A final order by the commission under subsection (c)(2) shall include a determination of those costs.
  - (e) The department may destroy a wild animal where the wild animal has escaped and poses an immediate threat to the safety of the public. (*Natural Resources Commission; 312 IAC 9-11-15; filed May 12, 1997, 10:00 a.m.: 20 IR 2744; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**Rule 12. Hunter Education**

**312 IAC 9-12-1 Applicability**

Authority: IC 14-10-2-4; IC 14-22-2-6

Affected: IC 14-22-11-5

Sec. 1. This rule implements and applies the requirements for hunter education set forth in IC 14-22-11-5. (*Natural Resources Commission; 312 IAC 9-12-1; filed May 27, 1997, 3:50 p.m.: 20 IR 2758; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 9-12-2 Mandatory hunter education for an individual born after December 31, 1986**

Authority: IC 14-10-2-3; IC 14-22-2-6

Affected: IC 14-22-11; IC 14-22-35-1

Sec. 2. (a) In addition to the requirements for obtaining a hunting license under IC 14-22-11, an individual born after December 31, 1986, must have successfully completed a course in hunter education by the department or the department's agent under IC 14-22-35-1 and this rule.

(b) As used in subsection (a), "department's agent" includes a person approved to administer a hunter education program in Indiana, as well as a program found by the director to provide hunter education substantially equivalent to an approved Indiana program in any of the following:

- (1) Another state.
- (2) A province of Canada.
- (3) Another country.

*(Natural Resources Commission; 312 IAC 9-12-2; filed May 27, 1997, 3:50 p.m.: 20 IR 2758; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 9-12-3 Demonstration of compliance with hunter education requirements**

Authority: IC 14-10-2-3; IC 14-22-2-6

Affected: IC 4-21.5; IC 14-22-11-3; IC 14-22-11-5

Sec. 3. (a) An agent duly appointed by the director under IC 14-22-11-3, or a clerk of a county circuit court, must not issue a hunting license to an individual subject to section 2 of this rule unless the individual demonstrates compliance with subsection (b).

(b) An individual subject to section 2 of this rule may demonstrate successful completion of a hunter education program by any one (1) of the following methods:

- (1) The presentation of a certificate of completion that indicates a hunter education program offered by the department or the department's agent was successfully completed by the applicant. A certificate of completion shall be completed on a department form.
- (2) For a person less than twelve (12) years of age upon completion of attendance at a hunter education course, the presentation of a certificate of attendance that indicates a hunter education program offered by the department or the department's agent has been monitored by the applicant. A license issued under this subdivision authorizes an applicant to hunt only if the applicant is accompanied by a parent or guardian. A certificate of attendance shall be prepared on a department form.
- (3) A statement made under oath or affirmation by the applicant, on a department form, stating the applicant successfully completed a hunter education program approved under section 2 of this rule.
- (4) A properly completed hunting license issued previously to the applicant.
- (5) A final order from the commission under IC 4-21.5 and 312 IAC 3 stating the applicant is entitled to receive a hunting license.

*(Natural Resources Commission; 312 IAC 9-12-3; filed May 27, 1997, 3:50 p.m.: 20 IR 2758; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 9-12-4 Notations on license certificate**

Authority: IC 14-10-2-3; IC 14-22-2-6

Affected: IC 14-22-11-3; IC 14-22-11-5

Sec. 4. An agent duly appointed by the director under IC 14-22-11-3, or a clerk of a county circuit court, shall note the following:

- (1) The hunter education course certification number.
- (2) The date the hunter education program was successfully completed by the applicant.
- (3) An indication whether the license is restricted by the terms of section 3(b)(2) of this rule.

*(Natural Resources Commission; 312 IAC 9-12-4; filed May 27, 1997, 3:50 p.m.: 20 IR 2758; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

## **ARTICLE 10. FLOOD PLAIN MANAGEMENT**

### **Rule 1. Application**

#### **312 IAC 10-1-1 Purpose**

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

Sec. 1. This rule is prepared in response to the authorities and directives in IC 14-28-1, P.L.35-1993 (portions of which were subsequently codified at IC 14-28-2), and IC 14-28-3. *(Natural Resources Commission; 312 IAC 10-1-1; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3384, eff Jan 1, 2002)*

#### **312 IAC 10-1-2 Scope**

Authority: IC 14-28-1-5; IC 14-28-3-2  
Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 2. (a) This article establishes minimum standards for the delineation and regulation of flood plains to decrease existing flood damages, mitigate future flood damages, and promote the health, safety, and welfare of the people of Indiana.

(b) The article is written with an understanding of the legislative declaration that the loss of lives and property caused by floods and the damage resulting from floods is a matter of deep concern to Indiana affecting the life, health, and convenience of the people and the protection of property. Floodways should not be inhabited and should be kept free and clear of interference or obstructions that will cause any undue restriction of the capacity of the floodways. The water resources of Indiana that have been diminished should be accumulated, preserved, and protected to prevent any loss or waste beyond reasonable and necessary use.

(c) Except as provided in subsection (b), the flood plains subject to regulation are those along waterways having a drainage area of at least one (1) square mile.

(d) The exemption in subsection (b) does not apply to an activity that is subject to IC 14-27-7.

(e) A local ordinance incorporating flood plain management provisions adopted after July 1, 1974, and before January 1, 2000, must be no less effective than 310 IAC 6-1, before its repeal, and must be approved by the division before its effective date.

(f) A local ordinance incorporating flood plain management provisions adopted after December 31, 2001, must be no less effective than this article and must be approved by the division before its effective date. *(Natural Resources Commission; 312 IAC 10-1-2; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3384, eff Jan 1, 2002)*

#### **312 IAC 10-1-3 Rules supplemental to flood control law; local licenses**

Authority: IC 14-28-1-5; IC 14-28-3-2  
Affected: IC 14-28-1; IC 14-28-3; IC 14-29-1

Sec. 3. This article assists with the implementation of IC 14-28-1, IC 14-28-3, and IC 14-29-1. Except as exempted in this article, a county or municipality must not authorize a structure, obstruction, deposit, or excavation within a floodway without the applicant first receiving a license from the department under IC 14-28-1. *(Natural Resources Commission; 312 IAC 10-1-3; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3384, eff Jan 1, 2002)*

### **Rule 2. Definitions**

#### **312 IAC 10-2-1 Definitions applicable to the regulation of floodways and flood plains**

Authority: IC 14-10-2-4  
Affected: IC 14-8; IC 14-28-1; IC 14-28-3

Sec. 1. The definitions in this rule apply throughout this article and are in addition to those set forth in IC 14-8, IC 14-28-1, and 312 IAC 1. (*Natural Resources Commission; 312 IAC 10-2-1; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3384, eff Jan 1, 2002*)

**312 IAC 10-2-2 “Abode” defined**

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

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

Sec. 2. “Abode” means a structure that is used or may be used primarily as a living quarters or residence and includes any of the following:

- (1) House.
- (2) Manufactured home.
- (3) Hotel or motel.
- (4) Hospital, nursing home, or dormitory.
- (5) Similar structure which provides permanent or temporary overnight lodging.

(*Natural Resources Commission; 312 IAC 10-2-2; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3384, eff Jan 1, 2002*)

**312 IAC 10-2-3 “Adversely affect the efficiency of, or unduly restrict the capacity of, the floodway” defined**

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

Affected: IC 14-27-7; IC 14-28-1-29; IC 14-28-3

Sec. 3. “Adversely affect the efficiency of, or unduly restrict the capacity of, the floodway” means an increase in the elevation of the regulatory flood of at least fifteen-hundredths (0.15) of a foot as determined by comparing the regulatory flood elevation under the project condition to that under the base condition. This definition does not, however, apply to any of the following:

- (1) A dam regulated under IC 14-27-7 and IC 14-28-1.
- (2) A flood control project authorized under IC 14-28-1-29.
- (3) An area for which a flood easement is secured and recorded with the county recorder.

(*Natural Resources Commission; 312 IAC 10-2-3; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3385, eff Jan 1, 2002*)

**312 IAC 10-2-4 “Bank” defined**

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

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

Sec. 4. “Bank” means the ground that borders or slopes upward from the bed of a waterway and that confines water to the channel during the normal course or flow. (*Natural Resources Commission; 312 IAC 10-2-4; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3385, eff Jan 1, 2002*)

**312 IAC 10-2-5 “Base condition” defined**

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

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

Sec. 5. “Base condition” means the condition of the flood plain on January 1, 1973, but without any unauthorized dam or levee. If an activity after December 31, 1972, lowered the regulatory flood profile, the flood plain under the lower profile is the base condition. (*Natural Resources Commission; 312 IAC 10-2-5; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3385, eff Jan 1, 2002*)

**312 IAC 10-2-6 “Bed” defined**

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

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

Sec. 6. “Bed” means the surface rock or soil underlying a waterway. (*Natural Resources Commission; 312 IAC 10-2-6; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3385, eff Jan 1, 2002*)

**312 IAC 10-2-7 “Best management practices” defined**

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

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

Sec. 7. “Best management practices” means those practices best suited to specific site conditions that will control soil erosion and the nonpoint source pollution associated with sediment run-off. The Indiana Handbook for Erosion Control in Developing Areas (October 1992) may be used as a reference in developing an erosion and sediment control plan that is consistent with best management practices. *(Natural Resources Commission; 312 IAC 10-2-7; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3385, eff Jan 1, 2002)*

**312 IAC 10-2-8 “Bridge” defined**

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

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

Sec. 8. “Bridge” means a structure placed over a waterway or other topographically depressed area that is designed to carry pedestrian, vehicular, or other traffic. The term includes a culvert or a ford. *(Natural Resources Commission; 312 IAC 10-2-8; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3385, eff Jan 1, 2002)*

**312 IAC 10-2-9 “Building” defined**

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

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

Sec. 9. “Building” means each of the following:

- (1) A walled and roofed permanent structure.
- (2) A gas or liquid storage tank that is principally aboveground.
- (3) An abode.

*(Natural Resources Commission; 312 IAC 10-2-9; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3385, eff Jan 1, 2002)*

**312 IAC 10-2-10 “Channel” defined**

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

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

Sec. 10. “Channel” means both the natural and the artificial channel of a waterway. *(Natural Resources Commission; 312 IAC 10-2-10; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3385, eff Jan 1, 2002)*

**312 IAC 10-2-11 “Closure mechanism” defined**

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

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

Sec. 11. “Closure mechanism” means a manually or automatically operated device designed and placed to prevent reverse flow through the outfall project during a regulatory flood. *(Natural Resources Commission; 312 IAC 10-2-11; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3385, eff Jan 1, 2002)*

**312 IAC 10-2-12 “Closure system” defined**

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

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 12. “Closure system” means a device installed to prevent flow through a utility line in the event of a failure. *(Natural Resources Commission; 312 IAC 10-2-12; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3385, eff Jan 1, 2002)*

**312 IAC 10-2-13 “Commission floodway” defined**

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

Affected: IC 14-27-7; IC 14-28-1-28; IC 14-28-3

Sec. 13. “Commission floodway” means a floodway designated and established under IC 14-28-1-28 and 312 IAC 10-3-4. *(Natural Resources Commission; 312 IAC 10-2-13; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3385, eff Jan 1, 2002)*

**312 IAC 10-2-14 “Conservancy district act” defined**

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

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3; IC 14-33

Sec. 14. “Conservancy district act” refers to IC 14-33. *(Natural Resources Commission; 312 IAC 10-2-14; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3386, eff Jan 1, 2002)*

**312 IAC 10-2-15 “Consolidated material” defined**

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

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 15. “Consolidated material” means firm and coherent rock. *(Natural Resources Commission; 312 IAC 10-2-15; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3386, eff Jan 1, 2002)*

**312 IAC 10-2-16 “County drainage code” defined**

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

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3; IC 36-9-27

Sec. 16. “County drainage code” refers to IC 36-9-27. *(Natural Resources Commission; 312 IAC 10-2-16; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3386, eff Jan 1, 2002)*

**312 IAC 10-2-17 “Culvert” defined**

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

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 17. “Culvert” means a closed conduit for the passage of run-off through an embankment. *(Natural Resources Commission; 312 IAC 10-2-17; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3386, eff Jan 1, 2002)*

**312 IAC 10-2-18 “Cumulative effects” defined**

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

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 18. “Cumulative effects” means the impact that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what person undertakes the other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time. Each of the following elements is considered when assessing the impact of cumulative effects within a floodway:

- (1) Adverse effects on the efficiency of, or undue restrictions to the capacity of, the floodway.
- (2) Unreasonable hazards to the safety of life or property.
- (3) Unreasonable detrimental effects upon fish, wildlife, or botanical resources.

*(Natural Resources Commission; 312 IAC 10-2-18; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3386, eff Jan 1, 2002)*

**312 IAC 10-2-19 “Division” defined**

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

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 19. “Division” means the division of water of the department. *(Natural Resources Commission; 312 IAC 10-2-19; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3386, eff Jan 1, 2002)*

**312 IAC 10-2-20 “Drainage area” defined**

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

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 20. “Drainage area” means the total land area measured in a horizontal plane and enclosed by a topographic divide from which surface run-off from precipitation normally drains by gravity into a waterway above a specified location. The term includes an area that is ineffective due to karst topography, subsurface drains, or diversions. *(Natural Resources Commission; 312 IAC 10-2-20; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3386, eff Jan 1, 2002)*

**312 IAC 10-2-21 “Effective waterway area” defined**

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

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 21. “Effective waterway area” means the unobstructed flow area (measured perpendicularly to flow) below the regulatory flood elevation. *(Natural Resources Commission; 312 IAC 10-2-21; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3386, eff Jan 1, 2002)*

**312 IAC 10-2-22 “Flood control project” defined**

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

Affected: IC 14-27-7; IC 14-28-1-29; IC 14-28-3

Sec. 22. “Flood control project” means a project approved or required to be approved under IC 14-28-1-29. *(Natural Resources Commission; 312 IAC 10-2-22; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3386, eff Jan 1, 2002)*

**312 IAC 10-2-23 “Flood protection grade” defined**

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

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 23. “Flood protection grade” means the elevation two (2) feet above the regulatory flood measured according to:

(1) the elevation of the lowest floor of the building; or

(2) dry flood-proofing of a building other than an abode.

*(Natural Resources Commission; 312 IAC 10-2-23; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3386, eff Jan 1, 2002)*

**312 IAC 10-2-24 “Fringe” defined**

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

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 24. “Fringe” means the portions of a flood plain lying outside the floodway. *(Natural Resources Commission; 312 IAC 10-2-24; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3386, eff Jan 1, 2002)*

**312 IAC 10-2-25 “Local ordinance” defined**

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

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3



Sec. 25. "Local ordinance" means an ordinance that divides the area within the jurisdiction of a county or municipality into zones or districts to regulate, within the zones or districts, any of the following:

- (1) The location, height, bulk, number of stories, and size of buildings or other structures.
- (2) The percentage of lot occupancy.
- (3) The requirement of open spaces.
- (4) The density and distribution of populations.
- (5) The uses of land and structures.

*(Natural Resources Commission; 312 IAC 10-2-25; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3387, eff Jan 1, 2002)*

**312 IAC 10-2-26 "Logjam" defined**

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

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 26. "Logjam" means an accumulation of lodged trees, root wads, or other debris that impedes the ordinary flow of water through a waterway. The term does not include the development of sandbars, sedimentation, or accumulations of stone or gravel. Logjams are evidenced by a blockage that does any of the following:

- (1) Traverses the waterway.
- (2) Causes upstream ponding.
- (3) Results in significant bank erosion.

*(Natural Resources Commission; 312 IAC 10-2-26; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3387, eff Jan 1, 2002)*

**312 IAC 10-2-27 "Low structure" defined**

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

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 27. "Low structure" means either the lowest point of a bridge superstructure or the apex of an arch or pipe. *(Natural Resources Commission; 312 IAC 10-2-27; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3387, eff Jan 1, 2002)*

**312 IAC 10-2-28 "Lowest floor" defined**

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

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 28. "Lowest floor" means the lowest elevation described among the following:

- (1) The lowest floor of a building.
- (2) The basement floor.
- (3) The garage floor, if the garage is connected to the building.
- (4) The first floor of a building elevated on pilings or constructed on a crawl space.
- (5) The floor level of an enclosure below an elevated building where the walls of the enclosure provide some resistance to the flow of flood water, unless both of the following requirements are satisfied:
  - (A) The walls are designed to automatically equalize hydrostatic flood forces by allowing for the entry and exit of flood water.
  - (B) At least two (2) openings are designed and maintained for the entry and exit of flood water, and these openings provide a total of at least one (1) square inch for every square foot of enclosed floor area subject to flooding. The bottom of an opening can be no more than one (1) foot above grade. Doorways and windows do not qualify as openings under this clause.

*(Natural Resources Commission; 312 IAC 10-2-28; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3387, eff Jan 1, 2002)*

**312 IAC 10-2-29 "Manufactured home" defined**

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

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 29. “Manufactured home” means a structure, transportable in one (1) or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to required utilities. The term is generally synonymous with mobile home but does not include a recreational vehicle. (*Natural Resources Commission; 312 IAC 10-2-29; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3387, eff Jan 1, 2002*)

**312 IAC 10-2-30 “Outfall project” defined**

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

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

Sec. 30. “Outfall project” a project for an outfall structure or an outfall swale. (*Natural Resources Commission; 312 IAC 10-2-30; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3387, eff Jan 1, 2002*)

**312 IAC 10-2-31 “Outfall structure” defined**

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

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

Sec. 31. “Outfall structure” means a closed conduit facility used for the transport and discharge of surface run-off or treated effluent to a waterway or swale. The facility includes all appurtenant channels, supply lines, energy dissipation, and erosion control systems. The term does not include a system where the delivery conduit is placed beneath the bed. (*Natural Resources Commission; 312 IAC 10-2-31; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3387, eff Jan 1, 2002*)

**312 IAC 10-2-32 “Outfall swale” defined**

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

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

Sec. 32. “Outfall swale” means an excavated depression in the surficial topography used for the transport and discharge of surface run-off or treated effluent to a waterway. The depression includes all appurtenant channels, swales, and energy dissipation or erosion control systems. (*Natural Resources Commission; 312 IAC 10-2-32; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3387, eff Jan 1, 2002*)

**312 IAC 10-2-33 “Project condition” defined**

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

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 33. “Project condition” means the condition of a flood plain with existing structures, obstructions, deposits, excavations, and the project anticipated by the requested license. (*Natural Resources Commission; 312 IAC 10-2-33; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3388, eff Jan 1, 2002*)

**312 IAC 10-2-33.5 “Reconstruction” defined**

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

Affected: IC 14-28-1

Sec. 33.5. “Reconstruction”, for the purposes of IC 14-28-1-20, IC 14-28-1-24, and IC 14-28-1-25, means an activity that rehabilitates or restores the structural elements of a building, including replacing floors or working on an element needed to support the structure. The term does not, however, include any of the following:

- (1) Painting.
- (2) Replacing floor coverings.
- (3) Replacing doors.
- (4) Replacing windows.
- (5) Cleaning.

(6) Performing similar activities.

*(Natural Resources Commission; 312 IAC 10-2-33.5; filed May 11, 2004, 9:00 a.m.: 27 IR 3065)*

**312 IAC 10-2-34 “Recreational vehicle” defined**

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

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 34. “Recreational vehicle” means a vehicle that is:

- (1) built on a chassis;
- (2) no more than four hundred (400) square feet measured at the largest horizontal projections;
- (3) designed to be self-propelled or permanently towed by a light duty truck; and
- (4) designed primarily as temporary living quarters for recreational, camping, travel, or seasonal use rather than as a permanent dwelling.

*(Natural Resources Commission; 312 IAC 10-2-34; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3388, eff Jan 1, 2002)*

**312 IAC 10-2-35 “Regulatory flood” defined**

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

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 35. “Regulatory flood” means a flood having a one percent (1%) probability of being equaled or exceeded in a year as calculated by a method and procedure that is approved by the commission. The regulatory flood is equivalent to the base flood or the 100-year frequency flood. *(Natural Resources Commission; 312 IAC 10-2-35; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3388, eff Jan 1, 2002)*

**312 IAC 10-2-36 “Rural area for a construction or reconstruction project on a state or county highway bridge that crosses a stream having an upstream drainage area of fifty (50) square miles or less” defined**

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

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3; IC 36-7-4-205

Sec. 36. “Rural area for a construction or reconstruction project on a state or county highway bridge that crosses a stream having an upstream drainage area of fifty (50) square miles or less” means an area where:

- (1) the flood protection grade of each residential, commercial, or industrial building impacted by the project is higher than the regulatory flood elevation under the project condition; and
- (2) the area lies outside:
  - (A) the corporate boundaries of a consolidated city or an incorporated city or town; and
  - (B) the territorial authority for comprehensive planning established under IC 36-7-4-205(b).

*(Natural Resources Commission; 312 IAC 10-2-36; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3388, eff Jan 1, 2002)*

**312 IAC 10-2-37 “Superstructure” defined**

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

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 37. “Superstructure” means the structural portion of a bridge on which the travelway is constructed, including all elements resting on an abutment or a pier. *(Natural Resources Commission; 312 IAC 10-2-37; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3388, eff Jan 1, 2002)*

**312 IAC 10-2-38 “Unconsolidated material” defined**

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

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 38. "Unconsolidated material" means a sediment that is loosely arranged or stratified or whose particles are not cemented together. (*Natural Resources Commission; 312 IAC 10-2-38; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3388, eff Jan 1, 2002*)

**312 IAC 10-2-39 "Unreasonable detrimental effects upon fish, wildlife, or botanical resources" defined**

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

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 39. "Unreasonable detrimental effects upon fish, wildlife, or botanical resources" means damage to fish, wildlife, or botanical resources that is found likely to occur by the director based upon the opinion of a professional qualified to assess the damage and:

- (1) creates a condition where recovery of the affected resources is not likely to occur within an acceptable period; and
- (2) cannot be mitigated through the implementation of a mitigation plan approved by the director.

(*Natural Resources Commission; 312 IAC 10-2-39; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3388, eff Jan 1, 2002*)

**312 IAC 10-2-40 "Unreasonable hazard to the safety of life or property" defined**

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

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 40. "Unreasonable hazard to the safety of life or property" means a condition that is likely to:

- (1) be caused by the design or construction of a project; and
- (2) result during a regulatory flood in either:
  - (A) the loss of human life; or
  - (B) damage to public or private property to which the license applicant has neither ownership nor a flood easement.

(*Natural Resources Commission; 312 IAC 10-2-40; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3388, eff Jan 1, 2002*)

**312 IAC 10-2-41 "Utility line" defined**

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

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 41. "Utility line" means the following:

- (1) A pipe or pipeline for the transportation of a gaseous, liquid, liquefiable, or slurry substance.
- (2) A cable line, wire, or fiber for the transmission of electricity, telephone, telegraph, radio, television, or similar energy or media.

(*Natural Resources Commission; 312 IAC 10-2-41; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3389, eff Jan 1, 2002*)

**312 IAC 10-2-42 "Utility line crossing" defined**

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

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 42. "Utility line crossing" means the utility crosses the waterway in a straight line at an angle of between forty-five (45) degrees and one hundred thirty-five (135) degrees from the streambank and does not parallel the waterway for more than fifty (50) feet in the floodway before crossing unless the parallel portion of the line is contained within existing road right-of-way. (*Natural Resources Commission; 312 IAC 10-2-42; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3389, eff Jan 1, 2002*)

**312 IAC 10-2-43 "Utility project area" defined**

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

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 43. "Utility project area" means the area within a floodway that is affected by the placement of a utility line. (*Natural Resources Commission; 312 IAC 10-2-43; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3389, eff Jan 1, 2002*)

**312 IAC 10-2-44 “Wetland” defined**

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

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 44. “Wetland” means a transitional area between a terrestrial and deep water habitat (but not necessarily adjacent to a deep water habitat) where at most times the area is either covered by shallow water or the water table is at or near the surface and under normal circumstances any of the following conditions are met:

(1) The area predominantly supports hydrophytes, at least periodically, or the substrate is predominantly undrained hydric soil, for example, peat or muck.

(2) The substrate is not a soil but is instead saturated with water or covered by shallow water some time during the growing season, for example, marl beaches or sand bars.

*(Natural Resources Commission; 312 IAC 10-2-44; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3389, eff Jan 1, 2002)*

**312 IAC 10-2-45 “Wetland restoration measure” defined**

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

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 45. “Wetland restoration measure” means a practice or combination of practices to restore a degraded or filled wetland. The conversion of an unaltered wetland to another aquatic use is not included within the definition. *(Natural Resources Commission; 312 IAC 10-2-45; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3389, eff Jan 1, 2002)*

**Rule 3. Flood Plain Delineations and Management****312 IAC 10-3-1 Flood plains, floodways, and fringes; local ordinances**

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

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

Sec. 1. (a) A county or municipality that administers IC 14-28-3 must adopt an ordinance to implement this rule for areas within:

(1) the floodway and the fringe; or

(2) for an area where the floodway and the fringe are not separately identified, the flood plain.

(b) For an area where only the flood plain is identified in the ordinance, an application for a local permit must be reviewed by the department to determine if a license is required under IC 14-28-1.

(c) The department may, upon its own initiative, or, upon petition from a local unit, determine and delineate on suitable maps, the boundaries of the flood plain, floodway, or fringe within the jurisdiction of the local unit. In cases of determination and delineation by others, those determinations and delineations will be subject to review and approval by the department.

(d) A flood plain, floodway, and fringe exist for each waterway even if an area is not delineated on a map. *(Natural Resources Commission; 312 IAC 10-3-1; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3389, eff Jan 1, 2002; errata filed Jan 9, 2002, 1:24 p.m.: 25 IR 1644)*

**312 IAC 10-3-2 Designation of flood plains, floodways, and fringes by the Federal Emergency Management Agency**

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

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

Sec. 2. Where a flood plain (or a floodway and fringe) is designated by the Federal Emergency Management Agency for a flood insurance study under 44 CFR 60.3, the flood plain (or floodway and fringe) also applies to this article. *(Natural Resources Commission; 312 IAC 10-3-2; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3389, eff Jan 1, 2002)*

**312 IAC 10-3-3 Delineation of flood plains and floodways in the absence of a Federal Emergency Management Agency designation**

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

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

Sec. 3. (a) This section governs the delineation of a flood plain (or a floodway and fringe) by the department where section 2 of this rule does not apply. The delineation referenced in this section may be performed by:

- (1) the department; or
- (2) another person subject to review and approval by the department.

(b) The magnitude of the peak discharge of the regulatory flood of a waterway is established. Using this discharge, the regulatory flood profile is determined. The extent of a flood plain (or a floodway and fringe) is delineated using appropriate elevations from the regulatory flood profile and the best available maps.

(c) The peak discharge of the regulatory flood shall be established using standard engineering and statistical techniques acceptable to the commission.

(d) The profile for a regulatory flood is determined using standard engineering techniques acceptable to the commission. A determination shall start a sufficient distance downstream from the area of interest in order to ensure reasonable accuracy. A bridge is assumed to remain open and free of debris and ice unless local conditions indicate otherwise. Where possible, the profile for a regulatory flood is correlated with known high watermarks.

(e) The extent of a flood hazard area is delineated on the best available maps. Supplemental information from field surveys are used as needed to locate the boundaries of a flood plain.

(f) If there is a need to delineate flood plain and detailed engineering information is not available, a flood plain may be delineated on a temporary basis using other available information or methods acceptable to the commission. (*Natural Resources Commission; 312 IAC 10-3-3; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3390, eff Jan 1, 2002*)

**312 IAC 10-3-4 Delineation of a commission floodway under IC 14-28-1-28**

Authority: IC 14-28-1-5

Affected: IC 4-21.5-3-8; IC 5-3-1-6; IC 14-11-4; IC 14-28-1-28

Sec. 4. (a) This section establishes the criteria and procedures for seeking authorization for a commission floodway under IC 14-28-1-28.

(b) A commission floodway is an alternative to the processes used to designate a floodway under section 2 or 3 of this rule.

(c) A person seeking to use this section shall make an application for approval of a commission floodway on a departmental form delivered to the division. Before being deemed complete, the application shall establish the following:

(1) The boundary of the commission floodway must not exclude an area that would otherwise be designated as a floodway under IC 14-28-1 and this rule unless each of the following is satisfied:

(A) With respect to any fill or structures within the excluded area, one (1) of the following must be demonstrated:

(i) A license under 312 IAC 10-4 or a general license under 312 IAC 10-5 has been issued or will be issued contingent upon establishment of the commission floodway.

(ii) Placement was done prior to the effective date of the statute requiring that a permit be obtained.

(B) Fill raises all portions of the excluded area at least two (2) feet above the elevation of the regulatory flood.

(C) "As built" plans certified by a registered professional engineer demonstrate both of the following:

(i) Compliance with any licensing requirements under this article.

(ii) All portions of the excluded area are raised at least two (2) feet above the regulatory flood.

(2) Specifications to demonstrate areas within the commission floodway will be adequately protected to minimize the possibility of erosion.

(3) A description of the boundaries of the commission floodway certified by a surveyor.

(4) An emergency evacuation plan approved by the state emergency management agency with respect to any abode.

(5) Construction resulting from development of the commission floodway will not do any of the following:

(A) Adversely affect the efficiency of, or unduly restrict the capacity of, the floodway.

(B) Constitute an unreasonable hazard to the safety of life or property.

(C) Result in unreasonably detrimental effects upon fish, wildlife, or botanical resources.

(6) Notice of the proposed commission floodway served upon adjacent property owners as anticipated by IC 14-11-4 and 312 IAC 2-3.

(7) Notice of the proposed commission floodway published at least two (2) times, seven (7) days apart, as follows:

(A) In two (2) daily newspapers in Indianapolis as provided in IC 5-3-1-6.

(B) In newspapers in the counties where all or part of the commission floodway is to be established as provided in IC 5-3-1-6.

(d) After the department has completed its review and analysis of the application, the deputy director for the bureau of water and resource regulation shall issue an order granting, denying, or conditioning the authorization for a commission floodway. The department may require as a condition of the order that an easement or similar encumbrance be placed in the record of title for the area covered by the commission floodway to ensure compliance with its terms, including conditions that must be met before an abode may be placed on the site pursuant to subsection (c)(4). Copies of the order, together with a statement of how administrative review of the order may be sought from the commission, shall be served upon the following:

(1) Each person served by the applicant pursuant to subsection (c)(6).

(2) Any person who has requested to be notified of the application pursuant to IC 4-21.5-3-8.

(3) The board of county commissioners or other county executive in any county where the commission floodway is located.

(4) The Federal Emergency Management Agency.

(e) The authorization of a commission floodway shall be effective upon the latest of the following occurrences:

(1) If no request for administrative review is filed in a timely fashion, the latter of the following:

(A) Eighteen (18) days after the final service made under subsection (d)(1) through (d)(3).

(B) Seven (7) days after the final newspaper publication under subsection (d)(4).

(2) If a request for administrative review is filed in a timely fashion, upon completion of the adjudication.

(3) The recordation of an easement or similar encumbrance as described in subsection (d).

(4) Written approval by the Federal Emergency Management Agency.

*(Natural Resources Commission; 312 IAC 10-3-4; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3390, eff Jan 1, 2002)*

### **312 IAC 10-3-5 Flood plain land uses**

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

Affected: IC 14-28-1-20; IC 14-28-3; IC 25-4-1; IC 25-31-1

Sec. 5. A building with a floor area greater than four hundred (400) square feet must not be constructed in a flood plain unless the building satisfies the following requirements:

(1) The building is protected to the flood protection grade by either of the following methods:

(A) The lowest level of the building is at or higher than the flood protection grade.

(B) For a building other than an abode, the building and its utility and sanitary facilities are watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. The design and construction of the building must be certified by a professional engineer registered under IC 25-31-1, or an architect registered under IC 25-4-1, as being adequate to withstand the flood depths, pressures, velocities, impact, and uplift forces associated with a regulatory flood.

(2) The building does not otherwise violate this article or IC 14-28-1-20(1).

*(Natural Resources Commission; 312 IAC 10-3-5; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3391, eff Jan 1, 2002)*

### **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 a structure, obstruction, deposit, or 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 [*sic.*, 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*)

### **312 IAC 10-3-7 Temporary licenses for recreational vehicles**

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

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

Sec. 7. Notwithstanding section 6(a) of this rule, a local ordinance may authorize a license for the placement of a recreational vehicle in the floodway or the fringe if the recreational vehicle is required to be both of the following:

(1) On the site for fewer than one hundred eighty (180) consecutive days.

(2) Fully licensed and ready for use on a public highway.

(*Natural Resources Commission; 312 IAC 10-3-7; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3391, eff Jan 1, 2002*)

### **312 IAC 10-3-8 Nonconforming uses in the flood plain**

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

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

Sec. 8. (a) A local ordinance incorporating flood plain management provisions adopted after July 1, 1974, shall provide for a use within a flood plain that does not conform with this rule.

(b) A person must not construct an addition to a building in a floodway if the addition, in combination with all other additions to the building that have been constructed since the building was originally built, would increase the market value of the building to an amount more than fifty percent (50%) greater than either of the following:

(1) The market value of the building if no additions have been constructed since the building was originally built.

(2) The approximate value of the building would have (in the form in which it was originally built) if at least one (1) addition has already been constructed.

(c) A building that is damaged by flood, fire, explosion, act of God, or the public enemy may be restored to its original dimensions and condition, if the cost of the repairs is less than fifty percent (50%) of the market value of the building before the damage occurred. A building damaged in excess of fifty percent (50%) of its market value is governed by section 5 of this rule.

(d) For purposes of this section, the market value of an abode does not include the value of the land on which the building is built.

(e) Ordinary maintenance and repairs to a building are exempted from the evaluations and calculations described in this section. (*Natural Resources Commission; 312 IAC 10-3-8; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3391, eff Jan 1, 2002*)

## **Rule 4. Floodway Licensing**

### **312 IAC 10-4-1 License requirement for construction in a floodway**

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

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

Sec. 1. (a) Except as otherwise provided in IC 14-28-1 or this article, a license from the department is required to erect, make, use, maintain, suffer, or permit a structure, obstruction, deposit, or excavation in or on a floodway.

(b) Notwithstanding subsection (a), a person must not erect an abode in a floodway, except as authorized under IC 14-28-1-24, IC 14-28-1-25, and IC 14-28-1-26.5. (*Natural Resources Commission; 312 IAC 10-4-1; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3392, eff Jan 1, 2002*)



**312 IAC 10-4-2 Categorical floodway licensing exemptions**

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

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

Sec. 2. Development and maintenance of the following activities are exempted from IC 14-28-1 and this article unless the activities involve the placement of a structure, obstruction, deposit, or excavation:

- (1) Crops.
- (2) Pastures.
- (3) Forests.
- (4) Park and recreational uses.

*(Natural Resources Commission; 312 IAC 10-4-2; filed Jul 5, 2001, 9:12 a.m.; 24 IR 3392, eff Jan 1, 2002)*

**312 IAC 10-4-3 Additions to lawful abodes in the floodway**

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

Affected: IC 14-28-1; IC 14-28-3; IC 25-4-1; IC 25-31-1

Sec. 3. (a) A person must not erect, use, or maintain in or on any floodway a permanent structure for use as an abode, except for an abode constructed before January 1, 1973. For purposes of this section, "constructed" means completed for use as an abode.

(b) A person may make an addition to an abode constructed before January 1, 1973, if the addition would not increase the market value of the abode, excluding the value of the land, by more than fifty percent (50%) of:

- (1) the market value of the abode if no addition was made since the abode was initially constructed; or
- (2) the approximate market value the abode would have in the form in which it was originally constructed if the abode has at least one (1) prior addition.

(c) Where the application is made under subsection (b), the application must be accompanied by the following documentation:

(1) An appraisal by an appraiser who has an acceptable designation as follows, conforming with the requirements for appraisal reports, which establishes the value of the abode or place of residence before and after the proposed addition, excluding the value of the land:

(A) Acceptable designations of appraisers are any of the following:

- (i) Member of the American Institute of Real Estate Appraisers (MAI).
- (ii) Residential member of the American Institute of Real Estate Appraisers (RM).
- (iii) Senior real estate analyst of the Society of Real Estate Appraisers (SREA).
- (iv) Senior residential appraiser of the Society of Real Estate Appraisers (SRA).
- (v) Senior real property appraiser of the Society of Real Estate Appraiser (SRPA).
- (vi) Senior member of the American Society of Appraisers (ASA).
- (vii) Accredited rural appraiser of the American Society of Farm Managers and Rural Appraisers (ARA).
- (viii) Accredited appraiser of the Manufactured Housing Appraiser Society.

(B) Requirements for appraisal reports are the following:

- (i) Identification of the property to include the location, legal description, and owner or occupant.
- (ii) Neighborhood analysis, including land use, price range, and age of structures in the area, changing conditions, and all relevant information pertaining to value of structures in the area.
- (iii) Description of the site, including the dimensions, site area, zoning classification, and compliance of present structure, highest and best use, real estate taxes, assessments utilities, description of site improvements, and easements.
- (iv) Description of structural improvements, interior and exterior, considering depreciation, general market conditions, and additional features.
- (v) Cost approach to value of present structure and proposed addition, with computative data based on an appraisal guideline in common usage among appraisers.
- (vi) Market or sales comparison analysis, including adequate descriptions of three (3) recent comparable sales having the same highest and best use as the subject, weighted and analyzed in relation to the subject property, with adjustments not exceeding thirty percent (30%).

- (vii) Reconciliation, including a summary:
  - (AA) of pertinent data of particular approaches and the appraiser's final conclusion, which conclusion cannot be based on an average; and
  - (BB) explaining strengths and weaknesses of each approach.
- (viii) Certification by the appraiser that:
  - (AA) the property was personally inspected;
  - (BB) facts and data are true and correct;
  - (CC) the appraised value represents the appraiser's best judgment;
  - (DD) the appraiser has no interest in the property; and
  - (EE) an opinion of the estimated fair market value of the property, excluding the value of the land, established under subsection (b) and at the completion of the proposed addition.
- (ix) Percentage of increase in value that the proposed addition will make in the property, excluding the value of the land.
- (x) Photographs of the property and comparable sales.
- (xi) Verification by appraiser as to when the original structure was built and, if there have been additions made to the original structure, the date of these additions (appraiser must give source of this information and copies of the source material).
- (xii) Designation of appraiser.

(2) Construction plans and specifications must:

- (A) consider the effects of buoyance, dynamic, and erosive factors;
- (B) be constructed with materials resistant to flood damage;
- (C) be constructed by methods and practices that minimize flood damage; and
- (D) be certified by a:
  - (i) professional engineer registered under IC 25-31-1; or
  - (ii) an architect registered under IC 25-4-1.

(3) Additions shall be designated and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads associated with the regulatory flood.

(d) Certification by a professional engineer registered under IC 25-31-1 or an architect registered under IC 25-4-1, that the proposed addition was built to the design criteria in subsection (c)(3), shall be submitted to the department, division of water, prior to the occupancy of the addition.

(e) A structure not used as an abode on January 1, 1973, does not qualify for a license under IC 14-28-1 and this article.  
(*Natural Resources Commission; 312 IAC 10-4-3; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3392, eff Jan 1, 2002*)

### **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 [*sic.*, 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*)

### **Rule 5. General Licenses and Specific Exemptions from Floodway Licensing**

**312 IAC 10-5-0.3 Determining project eligibility for a general license; general criteria**

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

Affected: IC 14-28-1; IC 14-29-1

Sec. 0.3. (a) Except as provided in subsections (b) and (c), a project for a utility line crossing, the removal of logjams and obstructions, or the placement of outfall projects within a floodway is eligible for a general license if the project satisfies the requirements of this rule. For the removal of logjams and obstructions, these requirements include the procedures established by section 0.6 of this rule.

(b) Subsection (a) does not authorize a project in any of the following circumstances:

(1) Within a river or stream listed in the Indiana Register at 16 IR 1677 in the Outstanding Rivers List for Indiana unless prior written approval from the division of water's environmental unit has been obtained.

(2) Within a salmonid stream designated under 327 IAC 2-1.5-5(a)(3).

(3) Within a natural, scenic, or recreational river or stream designated under 312 IAC 7-2.

(4) For a utility line crossing, below the ordinary high watermark of a navigable waterway listed in the Indiana Register at 20 IR 2920 in the Roster of Indiana Waterways Declared Navigable or Nonnavigable unless the utility line is placed beneath the bed of the waterway under section 4(b) of this rule.

(5) Where the project requires an individual permit from the United States Army Corps of Engineers under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act.

(c) Subsection (a) does not authorize the removal of logjams or obstructions within one-half (½) mile of any of the following:

(1) A species listed in the Indiana Register at 15 IR 1312 in the Roster of Indiana Animals and Plants Which Are Extirpated, Endangered, Threatened, or Rare.

(2) A known mussel resource.

(3) An outstanding natural area, as contained on the registry of natural areas maintained in the natural heritage data center of the department.

(d) The limitations contained in subsection (b) and subsection (c) [subsections (b) and (c)] do not apply to section 7 of this rule. (*Natural Resources Commission; 312 IAC 10-5-0.3; filed Aug 2, 2004, 3:18 p.m.: 27 IR 3875*)

**312 IAC 10-5-0.6 Relief from general criteria for determining project eligibility for a general license**

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

Affected: IC 14-28-1; IC 14-29-1

Sec. 0.6. (a) This section establishes procedures by which a person may seek a general license for the removal of logjams and obstructions or for an activity that is governed by section 0.3(b)(1) of this rule.

(b) A person must file a written notice, upon a department form if for a logjam removal, with the division of water's environmental unit, including the following information:

(1) A description of the river or stream where the project would occur, including the terminal points, access routes, and disposal sites of the project referenced to readily discernible landmarks (for example, a bridge or a dam). The project shall be designated with access routes to the site on:

(A) a United States Geological Survey topographic map;

(B) a national wetlands inventory map; or

(C) another map determined by the department to satisfy the purposes of this section.

(2) The name, address, and telephone number of the person who is seeking the general authorization. If all or some of the activities will be performed on behalf of the person by an independent contractor, the name, address, and telephone number of the independent contractor must also be provided.

(3) The person is the owner of the river or stream (or the sole riparian owner along a navigable river or stream), or another basis by which the person demonstrates permission to enter upon the project site and to perform the proposed work. Permission must be demonstrated for an access route and disposal site.

(4) Photographs, videotapes, or other graphic documentation that demonstrate existing site conditions.

(c) Within ten (10) days (excluding Saturdays, Sundays, and legal holidays) after the receipt of a written notice under subsection (b), the department shall provide a written response that does one (1) of the following:

- (1) Approves the terms of the notice.
- (2) Provides additional conditions to the approval.
- (3) Requires additional information.
- (4) Requires the person to obtain a permit for the activity under IC 14-28-1 or IC 14-29-1, or both.
- (5) A statement by the person seeking a general license that their project will be completed subject to the conditions set forth under the applicable sections of sections 4, 6, and 8 of this rule.
- (d) If the department does not respond in a timely fashion under subsection (c), the written notice is deemed approved.
- (e) A copy of the written notice provided under subsection (b), and any additional conditions provided by the department under subsection (c), must be posted by the person in a conspicuous location at the site of the project.
- (f) A person who acts under this general license must comply with each of the following:
  - (1) The terms of the written notice provided under subsection (b).
  - (2) The applicable conditions set forth under sections 4, 6, and 8 of this rule.
  - (3) Any additional conditions provided by the department under subsection (c).

Failure to comply with this subsection may result in the revocation of the general license, a civil penalty, a commission charge, and any other sanction provided by law for the violation of a license issued under IC 14-28-1 or, if the waterway is navigable, the violation of a license issued under IC 14-29-1. (*Natural Resources Commission; 312 IAC 10-5-0.6; filed Aug 2, 2004, 3:18 p.m.: 27 IR 3875*)

### **312 IAC 10-5-1 Wetland restoration measures**

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

Affected: IC 4-21.5; IC 14-28-1; IC 14-29-1-8

Sec. 1. (a) This section governs the placement of a wetland restoration measure in or on a floodway.

(b) Except as provided in this section, a license is required under IC 14-28-1, IC 14-29-1, and 312 IAC 10-3 to place a wetland restoration measure in or on a floodway.

(c) The placement of a wetland restoration measure is exempted from IC 14-28-1, IC 14-29-1, and 312 IAC 10-3 if the person placing the wetland restoration measure does or establishes the following:

(1) Provide written notification sufficient for the department to determine if the proposed activity conforms with this subsection. The department shall, within ten (10) days (excluding Saturdays, Sundays, and legal holidays) of the receipt of the notice, raise any objection to the placement of the restoration measure as proposed. If the department raises no objection, the proposed activity is deemed qualified for the exemption. If an objection is raised, the person shall do one (1) of the following:

(A) Modify the activity to satisfy the concerns raised in the objection and provide the department with another notification under this subdivision.

(B) File a permit application under subsection (b) for the placement of the wetland restoration measure.

(C) Seek administrative review of the objection under IC 4-21.5 and 312 IAC 3-1.

(D) Withdraw the notification and abandon the project.

(2) The design, construction, and maintenance of the measure will not, considering its individual and cumulative effects, do any of the following:

(A) Adversely affect the efficiency of, or unduly restrict the capacity of, the floodway.

(B) Constitute an unreasonable hazard to the safety of life or property.

(C) Result in unreasonable detrimental effects upon fish, wildlife, or botanical resources.

(D) For a navigable waterway, be contrary to IC 14-29-1-8(c) or 312 IAC 6.

(3) The measure will be constructed under the direction of, or coordinated with, the United States Fish and Wildlife Service, the United States Natural Resources Conservation Service, or the department.

(4) The measure does not obstruct more than five percent (5%) of the cross section of the flood plain during a regulatory flood.

(5) The measure will not remove more than one (1) acre of forest.

(6) Following the completion of construction, disturbed areas will be reclaimed and revegetated. Disturbed areas will be mulched with straw, wood fiber, or other suitable material. To prevent erosion until revegetated species are established, mulch

shall be anchored by crimping, tackifiers, or netting or erosion control blankets shall be applied. To the extent practicable, revegetation must restore species native to the site. If revegetation with native species is not practicable, revegetation shall be performed by planting a mixture of:

- (A) red clover;
- (B) orchard grass;
- (C) perennial rye grass;
- (D) brome grass; or
- (E) another species;

approved by the department as being suitable to site and climate conditions.

(7) Any excavation that blocks a drain tile does not permanently alter the natural ground elevation.

(8) The streamward toe of a constructed berm or levee is at least one hundred (100) feet landward from the top of the bank of the waterway.

(9) The construction of a berm or levee is limited to one (1) side of the waterway and where there is no other berm or levee within two thousand (2,000) feet on the same waterway.

(10) The elevation of a berm or levee is no more than two (2) feet higher than the natural ground surface measured at the lowest point along the berm or levee.

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

### **312 IAC 10-5-2 General licensing for utility line crossings**

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

Affected: IC 14-27-7; IC 14-28-1; IC 14-29-1

Sec. 2. Except as provided in sections 3 and 4 of this rule, a license is required under IC 14-28-1, IC 14-29-1, and 312 IAC 10-4 to place a utility line in or on a floodway where:

- (1) the drainage area of a river or stream is at least one (1) square mile at the downstream end of the line's floodway segment; or
- (2) a dam or levee regulated under IC 14-27-7 is affected.

*(Natural Resources Commission; 312 IAC 10-5-2; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3394, eff Jan 1, 2002)*

### **312 IAC 10-5-3 Aerial electric, telephone, or cable television lines; general license**

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

Affected: IC 14-28-1; IC 14-29-1; IC 14-29-6

Sec. 3. The placement of an aerial electric, telephone, or cable television line is authorized without a written license issued by the department under IC 14-28-1, IC 14-29-1, and 312 IAC 10-4 if:

- (1) the activity does not disturb the bed of the waterway beneath the line;
- (2) the activity conforms with the minimum clearance requirements of section 4(b)(9) of this rule;
- (3) the support mechanisms are located at least seventy-five (75) feet from the top of the bank; and
- (4) the utility line crossing is not within the floodway of a natural river, scenic river, or recreational river designated under 312 IAC 7-2.

*(Natural Resources Commission; 312 IAC 10-5-3; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3394, eff Jan 1, 2002; filed Aug 2, 2004, 3:18 p.m.: 27 IR 3876)*

### **312 IAC 10-5-4 Qualified utility line crossings; general license**

Authority: IC 14-10-2-4; IC 14-28-2-24

Affected: IC 13-11-2-260; IC 14-27-7; IC 14-28-1-29; IC 14-33; IC 36-9-27

Sec. 4. (a) This section establishes a general license for the placement of a qualified utility line crossing in a floodway.

(b) A person who wishes to implement a project for the placement of a qualified utility line crossing on a river or stream, other than on a river or stream identified in section 0.3(b) or 0.3(c) of this rule, may do so without notice to the department if the project

conforms to the following conditions:

- (1) Tree removal and brush clearing shall be contained and minimized within the utility line crossing area. No more than one (1) acre of trees shall be removed within the floodway.
- (2) Construction activities within the waterway from April 1 through June 30 shall not exceed a total of two (2) calendar days.
- (3) Best management practices shall be used during and after construction to minimize erosion and sedimentation.
- (4) Following the completion of construction, disturbed areas shall be reclaimed and revegetated. Disturbed areas shall be mulched with straw, wood fiber, biodegradable erosion blanket, or other suitable material. To prevent erosion until revegetated species are established, loose mulch shall be anchored by crimping, tackifiers, or netting. To the extent practicable, revegetation must restore species native to the site. If revegetation with native species is not practicable, revegetation shall be performed by the planting of a mixture of red clover, orchard grass, timothy, perennial rye grass, or another species that is approved by the department as being suitable to site and climate conditions. In no case shall tall fescue be used to revegetate disturbed areas.
- (5) Disturbed areas with slopes of three to one (3:1) or steeper, or areas where run-off is conveyed through a channel or swale, shall be stabilized with erosion control blankets or suitable structural armament.
- (6) No pesticide will be used on the banks.
- (7) If a utility line transports a substance that may cause water pollution as defined in IC 13-11-2-260, the utility line will be equipped with an emergency closure system.
- (8) If a utility line is placed beneath the bed of a river or stream, the following conditions are met:
  - (A) Cover of at least three (3) feet measured perpendicularly to the utility line is provided between the utility line and the banks.
  - (B) If the placement of a utility line is not subject to regulation under IC 14-28-1-29, IC 14-33, or IC 36-9-27, cover is provided as follows:
    - (i) At least three (3) feet, measured perpendicularly to the utility line, between the lowest point of the bed and the top of the utility line or its encasement, whichever is higher, if the bed is composed of unconsolidated materials.
    - (ii) At least one (1) foot, measured perpendicularly to the line, between the lowest point of the bed and the top of the utility line or its encasement, whichever is higher, if the bed is composed of consolidated materials.
  - (C) If the placement of the utility line is subject to regulation under IC 14-28-1-29, IC 14-33, or IC 36-9-27, cover is provided as follows:
    - (i) At least three (3) feet, measured perpendicularly to the utility line, between the design bed and the top of the line or its encasement, whichever is higher, if the bed is composed of unconsolidated materials.
    - (ii) At least one (1) foot, measured perpendicularly to the line, between the design bed and the top of the line or its encasement, whichever is higher, if the bed is composed of consolidated materials.
  - (D) Negative buoyancy compensation is provided where the utility line has a nominal diameter of at least eight (8) inches and transports a substance having a specific gravity of less than one (1).
- (9) If a utility line is placed above the bed of a river or stream, the following conditions are met:
  - (A) Except as provided in clauses (B) and (C), minimum clearance is provided from the lowest point of the utility line (determined at the temperature, load, wind, length of span, and type of supports that produce the greatest sag) calculated as the higher of the following:
    - (i) Twelve and one-half (12½) feet above the ordinary high watermark.
    - (ii) Three (3) feet above the regulatory flood elevation.
  - (B) If the river or stream is a navigable waterway that is subject to IC 14-28-1, the utility line that crosses over the waterway must be placed to provide the greater of the following:
    - (i) The minimum clearance required under clause (A).
    - (ii) The minimum clearance required for the largest watercraft that is capable of using the waterway. The utility must consult in advance with the department to determine the minimum clearance for watercraft at the crossing.
  - (C) If a utility line is attached to or contained in the embankment of an existing bridge or culvert, no portion of the utility line or its support mechanism may project below the low structure elevation or otherwise reduce the effective waterway area.
- (10) A utility line placed in a dam or levee regulated under IC 14-27-7 does not qualify for a general license under this

subsection.

(c) A person who elects to act under this section must comply with the general conditions under subsection (b). Failure to comply with these terms and conditions may result in the revocation of the general license, a civil penalty, a commission charge, and any other sanction provided by law for the violation of a license issued under IC 14-28-1 and, if the waterway is navigable, the violation of a license issued under IC 14-29-1. (*Natural Resources Commission; 312 IAC 10-5-4; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3394, eff Jan 1, 2002; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1545; errata filed Mar 13, 2002, 11:51 a.m.: 25 IR 2521; filed Aug 2, 2004, 3:18 p.m.: 27 IR 3876*)

**312 IAC 10-5-5 Utility line placement that does not qualify for a general license; waivers for burial depth or clearance**

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

Affected: IC 14-28-1-29; IC 14-29-1; IC 14-33; IC 25-31-1; IC 36-9-27

Sec. 5. The placement of a utility line that is not authorized under section 4 of this rule requires a license under IC 14-28-1, IC 14-29-1, and 312 IAC 10-4 and is subject to the following:

(1) Except as provided in subdivisions (2) and (3), a license application must be filed with the department to demonstrate the construction activities within the utility project area conform with section 4(b)(1) through 4(b)(9) of this rule.

(2) The department may waive the minimum clearance requirements set forth in section 4(b)(8) of this rule if this subdivision is satisfied. The following information must be provided by the applicant:

(A) A technical justification that clearly establishes a need for the waiver.

(B) An economic analysis of the cost required to provide the minimum cover and the savings that would be realized if the minimum cover is waived.

(C) An assessment that establishes that there will not be an unreasonable hazard to the safety of life or property or an unreasonably detrimental effect upon fish, wildlife, or botanical resources if the utility line would fail as a result of the waiver.

(D) If the placement of the line is beneath the bed of a waterway and is subject to regulation as a flood control project, under the conservancy district act, or under the drainage code, documentation the county or municipality that has maintenance authority over the waterway has also waived the cover requirements. This documentation must:

(i) be on the letterhead of the county or municipality;

(ii) contain a copy of the statute or ordinance under which the county or municipality has regulatory authority over the waterway;

(iii) contain a statement that clearly waives the minimum cover requirements; and

(iv) contain a statement that the waiver will not impede future maintenance or reconstruction projects on the waterway.

(3) The department may waive the minimum clearance requirements set forth in section 4(b)(9) of this rule if this subdivision is satisfied. The following information must be provided by the applicant:

(A) A technical justification that establishes the need for the waiver.

(B) An economic analysis of the cost required to provide the minimum clearance and the savings realized if waived.

(C) An assessment that establishes that there will not be an unreasonable hazard to the safety of life or property or an unreasonably detrimental effect upon fish, wildlife, or botanical resources if the utility line fails as a result of the waiver.

(D) Documentation of the regulatory flood elevation that includes either of the following:

(i) A photocopy of the latest flood insurance study profile with the site and low point of the line clearly indicated.

(ii) Computations by a certified professional engineer licensed under IC 25-31-1.

(*Natural Resources Commission; 312 IAC 10-5-5; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3396, eff Jan 1, 2002; filed Aug 2, 2004, 3:18 p.m.: 27 IR 3878*)

**312 IAC 10-5-6 Removal of logjams from a waterway; general license**

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

Affected: IC 14-28-1; IC 14-29-1

Sec. 6. (a) This section establishes a general license for the removal of logjams from a waterway for the purpose of providing maintenance to help control flooding.

(b) This section does not authorize the removal of logjams and obstructions from a waterway identified under section 0.3 of this rule.

(c) A person who wishes to implement a project for obstruction removal from a waterway not under section 0.3 of this rule must file a written notice, upon a department form, with the division of water's environmental unit, including the following information:

(1) A description of the river or stream where obstruction removal would occur, including the terminal points, access routes, and disposal sites of the project referenced to readily discernible landmarks, for example, a bridge or a dam. The project shall be designated with access routes to the obstruction on:

(A) a United States Geological Survey topographic map;

(B) a national wetlands inventory map; or

(C) another map determined by the department to satisfy the purposes of this section.

(2) The name, address, and telephone number of the person who is seeking the general authorization. If all or some of the activities will be performed on behalf of the person by an independent contractor, the name, address, and telephone number of the independent contractor shall also be provided.

(3) The person is the owner of the river or stream (or the sole riparian owner along a navigable river or stream), or another basis by which the person demonstrates permission to enter upon the project site and to perform logjam removal. Permission must be demonstrated for an access route and for a site where logs or other debris will be secured following removal from the waterway. The person must also show participation or agreement by other interested persons in the following circumstances:

(A) With respect to a regulated drain, by the drainage board.

(B) With respect to a mutual drain, by all the beneficiaries to the drain.

(C) By the governing body of any county, municipality, or conservancy district in which the project is located.

(4) Photographs, videotapes, or other graphic documentation that demonstrate the following conditions exist on the waterway:

(A) Accumulations of logs, root wads, and other debris that occasionally or frequently span the waterway and may be interlocked.

(B) Large amounts of fine sediments have not covered or become lodged in the obstruction.

(C) Accumulations are extensive enough to cause bank erosion and upstream ponding damages.

(5) A statement by the person, including the following terms and agreements:

(A) Obstructions will be removed through the use of hand-operated equipment, such as axes, chain saws, and portable winches.

(B) Any site will be identified within the project for which the use of hand-operated equipment is determined to be impracticable. If a site is identified under this subdivision, the statement must include what equipment would be used and that the equipment will not be equipped for excavation. Examples of equipment that may be suitable include the following:

(i) A small tractor.

(ii) A backhoe equipped with a hydraulic thumb.

(iii) A bulldozer with its blade up.

(iv) A log skidder.

(C) Free logs or affixed logs that are crossways in the channel will be cut, relocated, and removed from the flood plain unless the logs are piled and secured by cables in an area not threatened by the flow of water. Logs will be removed and secured with a minimum damage to vegetation and placed outside any wetlands.

(D) Isolated or single logs that are embedded, lodged, or rooted in the channel and do not span the channel or cause flow problems will not be removed unless:

(i) associated with or in close proximity to larger obstructions; or

(ii) posing a hazard to navigation.

(E) A severely damaged, leaning, or other damaged tree that is in immediate danger of falling into the waterway may be cut and removed, but only if the tree is associated with or in close proximity to an obstruction. The root system and stump of the tree will be left in place.



(F) No access road will be constructed that will do any of the following:

- (i) Destroy more than one (1) acre of trees within a floodway.
- (ii) Traverse a wetland indicated on the national wetlands inventory map unless pads are used.
- (iii) Raise the elevation of the flood plain.
- (iv) Cross a waterway.

(G) Work shall be conducted exclusively from one (1) side of a river or stream.

(d) The department shall act upon the written notice as set forth under section 0.6 of this rule.

(e) A general license for obstruction removal under this section expires:

(1) Ninety (90) days after the receipt of the department's written approval under section 0.6(c) of this rule.

(2) If there is no response by the department under section 0.6(c) of this rule and the applicant acts under section 0.6(d) of this rule, one hundred five (105) days after the date recorded on the applicant's certificate of mailing.

(f) A person who elects to act under this general license must comply with the terms of the written notice provided under subsection (c) and with any additional conditions provided by the department under section 0.6(c) of this rule. Failure to comply with these terms and conditions may result in the revocation of the general license, a civil penalty, a commission charge, and any other sanction provided by law for the violation of a permit issued under IC 14-28-1 or, if the waterway is navigable, the violation of a license issued under IC 14-29-1. (*Natural Resources Commission; 312 IAC 10-5-6; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3396, eff Jan 1, 2002; filed Aug 2, 2004, 3:18 p.m.: 27 IR 3878*)

### **312 IAC 10-5-7 Qualified logjam and sandbar removals from beneath bridges; general license**

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

Affected: IC 14-28-1; IC 14-29-1

Sec. 7. The removal of logjams and sandbars beneath or adjacent to a bridge is authorized without a written license issued by the department under IC 14-28-1, IC 14-29-1, 312 IAC 10-4, and 312 IAC 6 where:

- (1) equipment is operated from the bridge or the bank within the right-of-way, with no equipment placed in the river or stream;
- (2) an access corridor for the placement of equipment extends no more than fifty (50) feet beyond the right-of-way; and
- (3) the logjam or sandbar to be removed is located partially or exclusively within the right-of-way.

(*Natural Resources Commission; 312 IAC 10-5-7; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3397, eff Jan 1, 2002; filed Aug 2, 2004, 3:18 p.m.: 27 IR 3880*)

### **312 IAC 10-5-8 Qualified outfall projects; general license**

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

Affected: IC 14-28-1; IC 14-29-1

Sec. 8. (a) This section establishes a general license for the placement of a qualified outfall project in a floodway.

(b) A person who wishes to implement a project for the placement of a qualified outfall project on a river or stream, other than on a river or stream identified in section 0.3(b) or 0.3(c) of this rule, may do so without notice to the department if the project conforms to the following conditions:

- (1) Tree removal and brush clearing shall be contained and minimized within the outfall project area. No more than one (1) acre of trees shall be removed within the floodway.
- (2) Construction activities within the waterway from April 1 through June 30 shall not exceed a total of two (2) calendar days.
- (3) Best management practices shall be used during and after construction to minimize erosion and sedimentation.
- (4) Following the completion of construction, disturbed areas shall be reclaimed and revegetated. Disturbed areas shall be mulched with straw, wood fiber, biodegradable erosion blanket, or other suitable material. To prevent erosion until revegetated species are established, loose mulch shall be anchored by crimping, tackifiers, or netting. To the extent practicable, revegetation must restore species native to the site. If revegetation with native species is not practicable, revegetation shall be performed by the planting of a mixture of red clover, orchard grass, timothy, perennial rye grass, or another species that is approved by the department as being suitable to site and climate conditions. In no case shall tall fescue be used to revegetate disturbed areas.
- (5) Disturbed areas with slopes of three to one (3:1) or steeper, or areas where run-off is conveyed through a channel or swale,

shall be stabilized with erosion control blankets or suitable structural armament.

(6) Areas in the vicinity of concentrated discharge points shall be protected with structural armament to the normal water level of the waterway. Any riprap must have an average minimum diameter of six (6) inches and extend below the normal water level.

(7) The size of the outfall project shall not exceed any of the following dimensions:

(A) Ten (10) square feet in cross-sectional flow area as determined by the summation of cross-sectional area of conduits within the outfall project area for an outfall structure.

(B) Five (5) feet deep as determined by the difference in elevation between the lowest bank elevation and the bottom of the swale for an outfall structure.

(C) An area of disturbance thirty (30) feet wide.

(8) Adequate cover shall be provided to ensure the structural integrity of the outfall conduit and to allow suitable vegetative growth.

(9) Within the project area, the postconstruction ground surface elevation shall be less than six (6) inches above the preconstruction elevation.

(10) The outlet structure shall:

(A) be supported by a headwall, slopewall, or anchored end section; and

(B) conform to the bank of the waterway.

(11) If flow passing through the outfall project in a reverse direction would induce flood damages during a regulatory flood, the outfall project shall be equipped with a closure mechanism.

(12) Construction debris and material not used as backfill shall be removed from the floodway.

(c) A person who elects to act under this section must comply with the general conditions under subsection (b). Failure to comply with these terms and conditions may result in the revocation of the general license, a civil penalty, a commission charge, and any other sanction provided by law for the violation of a permit issued under IC 14-28-1 and, if the waterway is navigable, the violation of a license issued under IC 14-29-1. (*Natural Resources Commission; 312 IAC 10-5-8; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3398, eff Jan 1, 2002; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1546; errata filed Jan 16, 2002, 1:14 p.m.: 25 IR 1906; filed Aug 2, 2004, 3:18 p.m.: 27 IR 3880*)

## ARTICLE 11. LAKE CONSTRUCTION ACTIVITIES

### Rule 1. Administration

#### 312 IAC 11-1-1 Purpose

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

Affected: IC 14-26-2

Sec. 1. (a) This article provides standards for the regulation of construction activities along and within lakes.

(b) This rule and 312 IAC 11-2 through 312 IAC 11-5 provide standards, with respect to activities along and within public freshwater lakes, that are subject to IC 14-26-2.

(c) This rule and 312 IAC 11-2 through 312 IAC 11-5 are also coordinated with the responsibilities in IC 14-26-2. (*Natural Resources Commission; 312 IAC 11-1-1; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2219; filed Feb 7, 2000, 3:31 p.m.: 23 IR 1366*)

#### 312 IAC 11-1-2 Authority to grant, condition, or deny a license

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

Affected: IC 4-21.5; IC 14-26

Sec. 2. (a) The authority to grant, condition, or deny a license under IC 14-26 rests with the director or a delegate.

(b) An action taken under subsection (a) is subject to administrative review by the commission under IC 4-21.5 and 312 IAC 3-1.

(c) Before issuing a license under this rule, the department shall consider the following:

(1) The public trust doctrine.

(2) The likely impact upon the applicant and other affected persons, including the accretion or erosion of sand or sediments. (*Natural Resources Commission; 312 IAC 11-1-2; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2219*)

**312 IAC 11-1-3 Mediation of disputes among riparian owners or between riparian owners and the department**

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

Affected: IC 4-21.5; IC 14-26-2

Sec. 3. (a) A riparian owner or the department may initiate a proceeding under IC 4-21.5 and 312 IAC 3-1 to seek resolution by the commission of a dispute among riparian owners, or between a riparian owner and the department, concerning the usage of an area over, along, or within a shoreline or waterline of a public freshwater lake.

(b) A party to a proceeding initiated under subsection (a) may seek mediation of the dispute under IC 4-21.5. The administrative law judge shall approve the use of mediation if the request is made by:

(1) a party within thirty (30) days of the initiation of the proceeding;

(2) a party within thirty (30) days after a party is joined as determined necessary for just adjudication or by agreement of the parties; or

(3) agreement of the parties.

(c) The administrative law judge may at any time approve the use of mediation.

(d) If a good faith effort by the parties to the mediation fails to achieve a settlement, the department shall make an initial determination of the dispute, file the determination with the administrative law judge, and serve it upon the parties. Within twenty (20) days after filing the initial determination, a party may request that the administrative law judge perform administrative review of the initial determination.

(e) If a request for administrative review is received under subsection (d), the administrative law judge shall seek a final disposition of the proceeding as soon as is practicable. (*Natural Resources Commission; 312 IAC 11-1-3; filed Jun 21, 2001, 3:03 p.m.: 24 IR 3374*)

**Rule 2. Definitions**

**312 IAC 11-2-1 Definitions applicable to the regulation of public freshwater lakes**

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

Affected: IC 14-8; IC 14-26

Sec. 1. This rule provides definitions that apply to this article and are in addition to those set forth in IC 14-8, IC 14-26, and 312 IAC 1. (*Natural Resources Commission; 312 IAC 11-2-1; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2220*)

**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 hundred (100) 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*)

**312 IAC 11-2-3 “Bioengineered” defined**

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

Affected: IC 14-26-2

Sec. 3. "Bioengineered" means the use of a combination of biological elements (plant materials) and structural or mechanical reinforcements for stabilization, revetment, or erosion control. Biological and mechanical elements must function together in an integrated and complementary manner. *(Natural Resources Commission; 312 IAC 11-2-3; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2220)*

**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 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)*

**312 IAC 11-2-5 "Bulkhead seawall" defined**

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

Affected: IC 14-26-2

Sec. 5. "Bulkhead seawall" means an impervious, vertical, or near vertical shoreline protection structure. *(Natural Resources Commission; 312 IAC 11-2-5; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2220)*

**312 IAC 11-2-6 "Cumulative effect" defined**

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

Affected: IC 14-26-2

Sec. 6. "Cumulative effect" means the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what person undertakes the other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time. *(Natural Resources Commission; 312 IAC 11-2-6; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2220)*

**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 an area does not contain any of the following characteristics:

(1) An area of special concern.

(2) A significant wetland.

*(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)*

**312 IAC 11-2-8 "Director or a delegate" defined**

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

Affected: IC 14-26

Sec. 8. "Director or a delegate" means the director, the deputy director for the bureau of water and resource regulation, or an employee of the department to whom the director has delegated authority to perform a function under IC 14-26. *(Natural Resources Commission; 312 IAC 11-2-8; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2220)*

**312 IAC 11-2-9 “Dry hydrant” defined**

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

Affected: IC 14-26-2

Sec. 9. “Dry hydrant” means a structure that does both of the following:

- (1) Extends lakeward of the legally established or average normal waterline or shoreline.
- (2) Provides a means of suction water supply without direct drafting for fire protection.

*(Natural Resources Commission; 312 IAC 11-2-9; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2220)*

**312 IAC 11-2-10 “Fish attractor” defined**

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

Affected: IC 14-26-2

Sec. 10. “Fish attractor” means a structure or structures placed within a public freshwater lake that establishes an artificial reef or similar habitat and which is beneficial to fish populations. *(Natural Resources Commission; 312 IAC 11-2-10; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2220)*

**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 of the following:

- (1) Was produced by glacial activity.
- (2) No individual stone weighs more than one hundred twenty (120) pounds.

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

**312 IAC 11-2-12 “Marina” defined**

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

Affected: IC 14-26-2

Sec. 12. “Marina” means a structure that:

- (1) can service simultaneously at least five (5) watercraft; and
- (2) provides, for a fee, one (1) or more of the following:
  - (A) Watercraft engine fuel.
  - (B) Docks.
  - (C) Watercraft repair.
  - (D) Watercraft sales or rental.

*(Natural Resources Commission; 312 IAC 11-2-12; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2221)*

**312 IAC 11-2-13 “Natural resources” defined**

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

Affected: IC 14-26-2

Sec. 13. “Natural resources” means the water, fish, plant life, and minerals in a public freshwater lake. *(Natural Resources Commission; 312 IAC 11-2-13; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2221)*

**312 IAC 11-2-14 “Natural scenic beauty” defined**

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

Affected: IC 14-26-2

Sec. 14. "Natural scenic beauty" means the natural condition as left by nature without manmade additions or alterations. (*Natural Resources Commission; 312 IAC 11-2-14; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2221*)

**312 IAC 11-2-15 "Pea gravel" defined**

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

Affected: IC 14-26-2

Sec. 15. "Pea gravel" means rounded stone that satisfies each of the following conditions:

- (1) Each stone passes through a one-half ( $\frac{1}{2}$ ) inch or a twelve and one-half ( $12\frac{1}{2}$ ) millimeter sieve.
- (2) At least ninety-five percent (95%) of the stones pass through a three-eighths ( $\frac{3}{8}$ ) inch sieve.
- (3) Not more than eighty percent (80%) of the stones pass through a three-sixteenths ( $\frac{3}{16}$ ) inch (or a four and seventy-five hundredths (4.75) millimeter) sieve.
- (4) Not more than thirty-five percent (35%) of the stones pass through a three thirty-seconds ( $\frac{3}{32}$ ) inch (or a two and thirty-six hundredths (2.36) millimeter) sieve.
- (5) Not more than four percent (4%) of the stones pass through a one-fiftieth ( $\frac{1}{50}$ ) inch (or a six hundred (600) micrometer) sieve.

(*Natural Resources Commission; 312 IAC 11-2-15; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2221*)

**312 IAC 11-2-16 "Permanent structure" defined**

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

Affected: IC 14-26-2

Sec. 16. "Permanent structure" means a structure that does not qualify as a temporary structure. (*Natural Resources Commission; 312 IAC 11-2-16; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2221*)

**312 IAC 11-2-17 "Public freshwater lake" defined**

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

Affected: IC 14-26-2

Sec. 17. "Public freshwater lake" means a lake that has been used by the public with the acquiescence of a riparian owner. The term does not include any of the following:

- (1) Lake Michigan.
- (2) A lake lying wholly or in part within the city of East Chicago, Gary, or Hammond.
- (3) A privately owned body of water used for the purpose of, or created as a result of, surface coal mining.

(*Natural Resources Commission; 312 IAC 11-2-17; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2221; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1547*)

**312 IAC 11-2-18 "Recreational purpose" defined**

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

Affected: IC 14-26-2

Sec. 18. "Recreational purpose" means fishing, boating, swimming, the storage of water to maintain water levels, and any other purpose for which lakes are ordinarily used and adapted. (*Natural Resources Commission; 312 IAC 11-2-18; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2221*)

**312 IAC 11-2-19 "Riparian owner" defined**

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

Affected: IC 14-26-2

Sec. 19. "Riparian owner" means the owner of land, or the owner of an interest in land sufficient to establish the same legal

standing as the owner of land, bound by a lake. The term includes a littoral owner. (*Natural Resources Commission; 312 IAC 11-2-19; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2221*)

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

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

**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 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*)

**312 IAC 11-2-22 “Seawall reface” defined**

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

Affected: IC 14-26-2

Sec. 22. “Seawall reface” means the reinforcing of an existing seawall along the lakeward face. (*Natural Resources Commission; 312 IAC 11-2-22; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2222*)

**312 IAC 11-2-23 “Significant environmental harm” defined**

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

Affected: IC 14-26-2

Sec. 23. “Significant environmental harm” means damage to natural or cultural resources, the individual or cumulative effect of which is found by the director or a delegate to be obvious and measurable (based upon the opinion of a professional qualified to assess the damage) and that:

- (1) creates a condition where recovery of affected resources is not likely to occur within an acceptable period; and
- (2) cannot be adequately mitigated through the implementation of a mitigation plan approved by the director.

(*Natural Resources Commission; 312 IAC 11-2-23; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2222*)

**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 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)*

**312 IAC 11-2-25 “Temporary structure” defined**

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

Affected: IC 14-26-2

Sec. 25. (a) “Temporary structure” means a structure that can be installed and removed from the waters of a public freshwater lake without using a crane, bulldozer, backhoe, or similar heavy or large machinery.

(b) Examples of a temporary structure include the following:

(1) A pier that:

(A) is supported by auger poles or other poles that do not exceed three and one-half (3½) inches in diameter and rest on the lake bed; and

(B) is not mounted in or comprised of concrete or cement.

(2) A boat shelter, boat lift, or boat hoist that:

(A) has a canvas top and sides;

(B) is supported by auger poles or other poles that do not exceed three and one-half (3½) inches in diameter;

(C) is not mounted in or comprised of concrete or cement;

(D) is designed to float or to rest upon the bed of the lake under its own weight if any structure to which it is attached complies with this section; and

(E) is not wider than ten (10) feet nor longer than twenty (20) feet.

*(Natural Resources Commission; 312 IAC 11-2-25; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2222)*

**312 IAC 11-2-26 “Unaltered shoreline” defined**

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

Affected: IC 14-26-2

Sec. 26. “Unaltered shoreline” means a shoreline that does not include lawful permanent structures. *(Natural Resources Commission; 312 IAC 11-2-26; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2222)*

**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:

(1) lakeward of the waterline or shoreline of a public freshwater lake; and

(2) used for a recreational purposes, such as wading or swimming.

*(Natural Resources Commission; 312 IAC 11-2-27; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2223)*

**312 IAC 11-2-28 “Waterline or shoreline” defined**

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

Affected: IC 14-26-2

Sec. 28. “Waterline or shoreline” means the line formed on the bank or shore of a lake by the water surface at the legally



established average normal level. However, if the water level has not been legally established, the waterline or shoreline is the line formed by the water surface at its average level as determined by existing water level records or, if such records are not available, by the action of the water that has marked upon soil of the bed of the lake a character distinct from that of the bank in respect to vegetation as well as the nature of the soil. (*Natural Resources Commission; 312 IAC 11-2-28; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2223*)

### Rule 3. Temporary Structures and Permanent Structures

#### 312 IAC 11-3-1 General licenses for qualified temporary structures; dry hydrants; glacial stone refaces

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

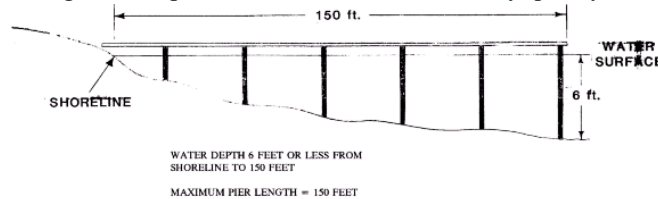
Affected: IC 14-26-2

Sec. 1. (a) The placement and maintenance of a temporary structure, a dry hydrant, or a glacial stone reface is authorized without a written license issued by the department under IC 14-26-2 and this rule if the temporary structure, dry hydrant, or glacial stone reface qualifies under this section.

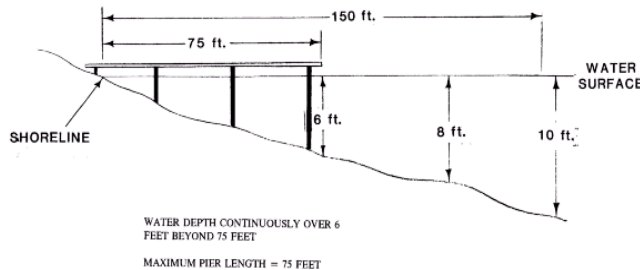
(b) In order for a temporary structure to qualify, the structure must satisfy each of the following:

- (1) Be easily removable.
- (2) Not infringe on the access of an adjacent landowner to the public freshwater lake.
- (3) Not unduly restrict navigation.
- (4) Not be unusually wide or long relative to similar structures within the vicinity on the same public freshwater lake.
- (5) Not extend more than one hundred fifty (150) feet from the legally established or average normal waterline or shoreline.
- (6) If a pier, not extend over water that is continuously more than six (6) feet deep to a distance of one hundred fifty (150) feet from the legally established or average normal waterline or shoreline.
- (7) Not be a marina.
- (8) Be placed by or with the acquiescence of a riparian owner.

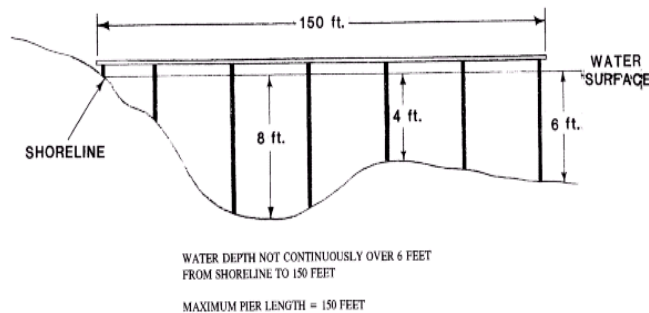
(c) Illustrations of maximum lengths for a pier or similar structure that may qualify under subsection (b) are as follows:



Where the water depth is six (6) feet or less from the shoreline to one hundred fifty (150) feet from the shoreline, the maximum pier length is one hundred fifty (150) feet.



Where the maximum water depth is continuously more than six (6) feet beyond seventy-five (75) feet from the shoreline, the maximum pier length is seventy-five (75) feet.



Where the maximum water depth is not continuously over six (6) feet from the shoreline, the maximum pier length is one hundred fifty (150) feet.

(d) In order for the placement, maintenance, and operation of a dry hydrant to qualify, the hydrant must satisfy each of the following:

- (1) Be sponsored or owned by a volunteer or full-time fire department recognized by the public safety training institute.
- (2) Be readily accessible from an all-weather road, public access site, or similar area.
- (3) Have a diameter of at least six (6) inches.
- (4) Be constructed of PVC pipe or a similar nontoxic material.
- (5) Extend no more than one hundred fifty (150) feet from the waterline or shoreline.
- (6) Have all portions of the hydrant and its in-lake accessories be at least five (5) feet below the legally established or average normal water level.
- (7) Be marked with a danger buoy, which conforms to 312 IAC 5-4-6(a)(1), at the lakeward end of the hydrant.
- (8) Be equipped with a screen or straining device on the lakeward end.
- (9) Glacial stone or riprap only may be placed in or on the lakebed for either of the following:
  - (A) Bedding the intake pipe.
  - (B) Straining the intake water.
- (10) Be approved by the riparian landowner.

(e) In order for the placement of glacial stone on the lakeward side of a seawall that is located within or along the waterline or shoreline of a public freshwater lake to qualify, the glacial stone reface must satisfy each of the following:

- (1) The seawall reface must be comprised exclusively of glacial stone.
- (2) The reface must not extend more than four (4) feet lakeward of the waterline or shoreline at the base of a lawful seawall.
- (3) A walk or structural tie must not be constructed on the existing seawall in combination with the glacial stone reface.
- (4) An impermeable material must not be placed behind or beneath the glacial stone reface.
- (5) Filter cloth placed behind or beneath the glacial stone reface must be properly anchored to prevent displacement or flotation.
- (6) 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 11-3-1; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2223; filed Jan 23, 2001, 10:05 a.m.: 24 IR 1614; filed May 25, 2004, 8:45 a.m.: 27 IR 3062)*

### **312 IAC 11-3-2 Disputes relative to a temporary structure or dry hydrant placed through a general license**

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

Affected: IC 4-21.5; IC 14-26-2

Sec. 2. (a) A person may seek administrative review of the placement or maintenance of a temporary structure or a dry hydrant, or a glacial stone reface, under section 1 of this rule.

(b) Administrative review under this section is subject to IC 4-21.5 and 312 IAC 3-1. If a dispute involves the placement of a pier, another temporary structure, or a glacial stone reface, where the review of another structure authorized by a general license appears appropriate to a full and fair determination of the dispute, the administrative law judge may order additional parties joined.

(c) The administrative law judge shall commit the matter to mediation under 312 IAC 11-1-3 as soon as practicable. Except

as otherwise provided in this subsection, no administrative review brought under this section shall proceed to formal discovery or to a hearing without the completion of at least two (2) mediation sessions. A mediation session is not required to be scheduled where either:

- (1) all parties agree in writing not to participate in mediation; or
- (2) a party is dismissed or defaulted under 312 IAC 3-1-9(a), 312 IAC 3-1-9(b)(1), or 312 IAC 3-1-9(b)(2).

(d) Unless otherwise ordered by the administrative law judge or agreed in writing by all the parties, any structure placed by a party under section 1 of this rule must be removed from within areas along or lakeward of the waterline or shoreline upon the later of the following:

- (1) Ninety (90) days after filing of the request for administrative review.
- (2) January 1 of the year following the filing of the request for administrative review.

(e) In exercising discretion under subsection (d), an administrative law judge shall consider whether the structure poses a substantial intrusion or merely a de minimis intrusion to the interests protected by IC 14-26-2, IC 14-15-7-3, and this rule. (*Natural Resources Commission; 312 IAC 11-3-2; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2224; filed Jan 23, 2001, 10:05 a.m.: 24 IR 1615; filed Jun 21, 2001, 3:03 p.m.: 24 IR 3374*)

### **312 IAC 11-3-3 Written licenses for structures which 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 more than one hundred fifty (150) feet and 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. 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 on a public freshwater lake and 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. Only a navigation aid or water recreation structure can be licensed under 310 IAC 2.1-4.

(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 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 on which the structure would be located or which 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 boatwell excavation, construction, or fill.

(5) A fish attractor.

(6) A pier that is supported by a structure permanently mounted in, or 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*)

#### **Rule 4. Licensing of Particular Types of Structures**

##### **312 IAC 11-4-1 Marinas**

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

Affected: IC 14-26-2

Sec. 1. (a) A written license under IC 14-26-2 and this rule is required to place a marina within a public freshwater lake.

(b) Except as provided in subsection (d), a person must not operate a marina unless the person provides a pumpout that is in good working order and readily accessible to patrons of the marina and secures and maintains one (1) of the following:

(1) A license under 327 IAC 3-2 for the construction and operation of a wastewater treatment facility or a sanitary sewer.

(2) A license under 410 IAC 6-10 for the construction of a commercial on-site wastewater disposal facility.

(3) An alternative written approval for wastewater disposal from an authorized governmental agency.

(c) The requirements of subsection (b) shall be made a condition for a license issued by the department to construct a new marina or to modify an existing marina.

(d) A person may apply to the division of law enforcement for an exemption from subsection (b). The exemption shall be granted, for a period not to exceed five (5) years, where the person demonstrates either of the following:

(1) The marina is designed to serve exclusively watercraft that are neither required nor likely to be equipped with a marine sanitation device.

(2) The operator of the marina has entered a binding agreement with another marina or similar facility along the lake to provide pumpout services where the other marina or similar facility:

(A) maintains a lawful pumpout as described in subsection (b);

(B) is in proximity to the marina seeking the exemption so patrons to be served at a pumpout, which would otherwise be required at the exempted marina, would not be significantly inconvenienced; and

(C) has sufficient pumpout capacity and accessibility to effectively serve the patrons of both parties to the agreement.

(*Natural Resources Commission; 312 IAC 11-4-1; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2225; filed Jul 22, 2004, 10:05 a.m.: 27 IR 3886*)

##### **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 in a significant wetland, 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 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.  
(*Natural Resources Commission; 312 IAC 11-4-2; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2225*)

### **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 the following:

(1) Bioengineered materials.

(2) Glacial stone.

(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 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.  
(*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*)

### **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 filter cloth or 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 in a significant wetland.

(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 more than thirty (30) feet lakeward of the normal waterline or shoreline or to a depth of six (6) feet, whichever occurs earlier;

(3) be placed on no 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; 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;

(3) be placed on no more than one-half ( $\frac{1}{2}$ ) the length of the waterline or shoreline of the riparian owner;

(4) extend no more than fifty (50) feet lakeward from the waterline or shoreline or 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*)

### **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 of a public freshwater lake.

(b) The department may not issue a license for the excavation or construction of a boatwell in a significant wetland or 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; 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 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*)

**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;
- (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 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*)

**312 IAC 11-4-7 Fish attractors**

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

Affected: IC 14-26-2

Sec. 7. (a) A written license is required under IC 14-26-2 and this rule to construct or place a fish attractor within a public freshwater lake.

(b) To qualify for a license, the construction or placement of a fish attractor must:

- (1) be anchored to ensure proper settling;
- (2) not be placed:
  - (A) in a channel;
  - (B) in a beach area;
  - (C) near the lake surface nor in an area that would adversely affect public safety and navigation as determined by the division of law enforcement; and
  - (D) to affect natural resources or natural scenic beauty of the lake in a detrimental manner otherwise prohibited by IC 14-26-2;
- (3) use materials and methods to ensure safe placement; and
- (4) be supervised by the division of fish and wildlife.

(c) The licensee must promptly remove from the waters of the public freshwater lake any portion or portions of the fish attractor that become unattached from the permitted fish attractor. The responsibility is a condition of a license issued under this section. (*Natural Resources Commission; 312 IAC 11-4-7; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2227*)

**Rule 5. Innovative Practices and Nonconforming Uses**

**312 IAC 11-5-1 Alternative licenses**

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

Affected: IC 14-26-2

Sec. 1. (a) The director or a delegate may issue a license that uses materials, techniques, or standards other than those approved in this article, under either of the following circumstances, if the applicant demonstrates to the satisfaction of the department:

- (1) That activities under the permit satisfy both of the following:
  - (A) Include new technology or material not previously or commonly used for the purpose sought.
  - (B) Do not affect the public safety, natural resources, natural scenic beauty, or water level of the lake in a detrimental manner otherwise prohibited by IC 14-26-2.
- (2) That the applicant is a government entity that demonstrates the licensed activity would provide public access to the water

if both of the following apply:

(A) The resulting use would comply with 43 CFR 17.203, 43 CFR 17.217, and 43 CFR 17.218 that are designed to eliminate discrimination on the basis of disability for any program or activity receiving federal financial assistance, including the construction of public access facilities by public entities.

(B) A design that conforms to 312 IAC 11-4 would not provide equivalent accessibility.

(b) A person who wishes to secure a license under this section must confer and consult with the department before filing an application.

(c) Use of the following materials cannot 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) For a license sought under subsection (a)(1), another material not considered by the department to be innovative.

*(Natural Resources Commission; 312 IAC 11-5-1; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2227; filed Sep 9, 2003, 9:32 a.m.: 27 IR 61)*

### **312 IAC 11-5-2 Nonconforming uses; nuisances; modifications**

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

Affected: IC 4-21.5-3-8; IC 4-21.5-4; IC 14-26-2

Sec. 2. (a) A structure or facility that was lawfully placed before the effective date of a section of 312 IAC 11-3, 312 IAC 11-4, or this rule (including a structure or facility lawfully placed under a section of 310 IAC 6-2 before its repeal), which would be unlawful if placed after that date, is a lawful nonconforming use.

(b) The director or the director's designee may order the removal of a lawful nonconforming use under subsection (a) if the structure or facility is either of the following:

(1) A nuisance that adversely affects:

(A) public safety;

(B) natural resources;

(C) natural scenic beauty; or

(D) the water level of a public freshwater lake.

(2) Modified in a manner for which a license is required under IC 14-26-2 or this rule.

(c) An order issued under subsection (b) is controlled by IC 4-21.5-3-8 unless an emergency exists, in which event IC 4-21.5-4 may be applied.

(d) Nothing in this rule affects the department's right to seek injunctive or other relief under IC 14-26 or another applicable law. *(Natural Resources Commission; 312 IAC 11-5-2; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2228; filed May 11, 2004, 9:00 a.m.: 27 IR 3065)*

## **Rule 6. Surface Water Rights; Emergency Regulation**

### **312 IAC 11-6-1 Applicability of definitions**

Authority: IC 14-10-2-4

Affected: IC 14-8; IC 14-25-5

Sec. 1. The definitions in sections 2 through 8 of this rule apply throughout this rule and are in addition to those set forth in IC 14-8 and 312 IAC 1. *(Natural Resources Commission; 312 IAC 11-6-1; filed Jan 5, 2000, 3:49 p.m.: 23 IR 1092)*



**312 IAC 11-6-2 “Cumulative effect” defined**

Authority: IC 14-10-2-4

Affected: IC 14-25-5

Sec. 2. “Cumulative effect” means the impact of multiple significant water withdrawal facilities. (*Natural Resources Commission; 312 IAC 11-6-2; filed Jan 5, 2000, 3:49 p.m.: 23 IR 1092*)

**312 IAC 11-6-3 “Extraordinary or unique natural resource” defined**

Authority: IC 14-10-2-4

Affected: IC 14-25-5; IC 14-29-6; IC 14-31-1

Sec. 3. “Extraordinary or unique natural resource” means a natural resource that is exceptional to a very marked extent within Indiana and includes the following:

(1) A plant or animal that is a rare, threatened, or endangered species.

(2) A waterway located within one-half (½) mile of a freshwater lake and determined by the department to qualify as a natural river or a scenic river under IC 14-29-6 and 312 IAC 7-2.

(3) A nature preserve dedicated under IC 14-31-1.

(*Natural Resources Commission; 312 IAC 11-6-3; filed Jan 5, 2000, 3:49 p.m.: 23 IR 1092*)

**312 IAC 11-6-4 “Financial responsibility bond” defined**

Authority: IC 14-10-2-4

Affected: IC 14-25-5

Sec. 4. “Financial responsibility bond” means a surety bond, a certificate of deposit, a cashier’s check, or a letter of credit. (*Natural Resources Commission; 312 IAC 11-6-4; filed Jan 5, 2000, 3:49 p.m.: 23 IR 1093*)

**312 IAC 11-6-5 “Freshwater lake” defined**

Authority: IC 14-10-2-4

Affected: IC 14-25-5

Sec. 5. (a) “Freshwater lake” means a body of standing surface water that contains at least ten (10) acres at the body of water’s normal level and:

(1) is of natural origin; or

(2) was originally constructed to permanently retain water and was in existence at least five (5) years before the commencement of water withdrawals by a significant water withdrawal facility.

(b) The term does not include Lake Michigan. (*Natural Resources Commission; 312 IAC 11-6-5; filed Jan 5, 2000, 3:49 p.m.: 23 IR 1093*)

**312 IAC 11-6-6 “Lake owner” defined**

Authority: IC 14-10-2-4

Affected: IC 14-25-5

Sec. 6. “Lake owner” means a person in possession of property that includes a physical part of, or a legal interest in, a freshwater lake. (*Natural Resources Commission; 312 IAC 11-6-6; filed Jan 5, 2000, 3:49 p.m.: 23 IR 1093*)

**312 IAC 11-6-7 “Significant environmental harm” defined**

Authority: IC 14-10-2-4

Affected: IC 14-25-5

Sec. 7. “Significant environmental harm” means damage to natural or cultural resources, the individual or cumulative effect

of which is found by the director to be obvious and measurable (based upon the opinion of a professional qualified to assess the damage) and that:

- (1) creates a condition where recovery of affected resources is not likely to occur within an acceptable period; and
- (2) cannot be adequately mitigated through the implementation of a mitigation plan approved by the director.

*(Natural Resources Commission; 312 IAC 11-6-7; filed Jan 5, 2000, 3:49 p.m.: 23 IR 1093)*

**312 IAC 11-6-8 “Significant water withdrawal facility” defined**

Authority: IC 14-10-2-4

Affected: IC 14-25-5

Sec. 8. “Significant water withdrawal facility” means a water pumping installation or other equipment of a person that, in the aggregate from all sources and by all methods, has the capability of withdrawing at least one hundred thousand (100,000) gallons of water in one (1) day. *(Natural Resources Commission; 312 IAC 11-6-8; filed Jan 5, 2000, 3:49 p.m.: 23 IR 1093)*

**312 IAC 11-6-9 Administration; injunctions**

Authority: IC 14-10-2-4

Affected: IC 14-25-5-15

Sec. 9. (a) The division of water of the department shall coordinate the professional and technical functions required of the department under IC 14-25-5 and this rule.

(b) The director is authorized to initiate, on behalf of the commission, an action under IC 14-25-5-15(b) to enjoin a violation of IC 14-25-5 or this rule. *(Natural Resources Commission; 312 IAC 11-6-9; filed Jan 5, 2000, 3:49 p.m.: 23 IR 1093)*

**ARTICLE 12. WATER WELL DRILLING AND GROUND WATER**

**Rule 1. Definitions**

**312 IAC 12-1-1 Applicability**

Authority: IC 14-10-2-4; IC 14-25-4-13; IC 14-25-4-17

Affected: IC 14-25-4; IC 25-39-2

Sec. 1. (a) The definitions in this rule apply throughout this article.

(b) The definitions contained in IC 25-39-2, 312 IAC 1, and 312 IAC 13-1 also apply to this article. *(Natural Resources Commission; 312 IAC 12-1-1; filed Feb 9, 1999, 5:08 p.m.: 22 IR 1951; filed Feb 7, 2000, 3:31 p.m.: 23 IR 1366)*

**312 IAC 12-1-2 “Available drawdown” defined**

Authority: IC 14-10-2-4; IC 14-25-4-13; IC 14-25-4-17

Affected: IC 14-25-4; IC 25-39

Sec. 2. “Available drawdown” means the distance between the static water level and the pump setting. *(Natural Resources Commission; 312 IAC 12-1-2; filed Feb 9, 1999, 5:08 p.m.: 22 IR 1951)*

**312 IAC 12-1-3 “Bedrock aquifer” defined**

Authority: IC 14-10-2-4; IC 14-25-4-13; IC 14-25-4-17

Affected: IC 14-25-4; IC 25-39

Sec. 3. “Bedrock aquifer” means a consolidated water-bearing formation that has the ability to receive, store, and transmit water in amounts sufficient for the satisfaction of a beneficial use. *(Natural Resources Commission; 312 IAC 12-1-3; filed Feb 9, 1999, 5:08 p.m.: 22 IR 1951)*

**312 IAC 12-1-4 “Piezometric surface” defined**

Authority: IC 14-10-2-4; IC 14-25-4-13; IC 14-25-4-17

Affected: IC 14-25-4; IC 25-39

Sec. 4. “Piezometric surface” means the level to which water will rise under its hydrostatic head in a well completed in a confined aquifer. *(Natural Resources Commission; 312 IAC 12-1-4; filed Feb 9, 1999, 5:08 p.m.: 22 IR 1951)*

**312 IAC 12-1-5 “Properly functioning well” defined**

Authority: IC 14-10-2-4; IC 14-25-4-13; IC 14-25-4-17

Affected: IC 14-25-4; IC 25-39

Sec. 5. “Properly functioning well” means a nonsignificant ground water withdrawal facility that is reasonably believed to have furnished a normal supply of water until a failure that was caused by a substantial lowering of the level of ground water in the area. *(Natural Resources Commission; 312 IAC 12-1-5; filed Feb 9, 1999, 5:08 p.m.: 22 IR 1951)*

**312 IAC 12-1-6 “Saturated thickness” defined**

Authority: IC 14-25-4-13; IC 14-25-4-17

Affected: IC 14-25-4; IC 25-39

Sec. 6. “Saturated thickness” means the thickness of the saturated portion of an aquifer. *(Natural Resources Commission; 312 IAC 12-1-6; filed Feb 9, 1999, 5:08 p.m.: 22 IR 1951)*

**312 IAC 12-1-7 “Static water level” defined**

Authority: IC 14-10-2-4; IC 14-25-4-13; IC 14-25-4-17

Affected: IC 14-25-4; IC 25-39

Sec. 7. “Static water level” means the level (including seasonal fluctuations) of water in a water well that is not influenced by pumping. *(Natural Resources Commission; 312 IAC 12-1-7; filed Feb 9, 1999, 5:08 p.m.: 22 IR 1952)*

**312 IAC 12-1-8 “Unconsolidated aquifer” defined**

Authority: IC 14-10-2-4; IC 14-25-4-13; IC 14-25-4-17

Affected: IC 14-25-4; IC 25-39

Sec. 8. “Unconsolidated aquifer” means geologic materials or deposits, other than bedrock, that can receive, store, and transmit water in amounts that will satisfy a beneficial use. Examples of these geologic materials and deposits include sand and gravel. *(Natural Resources Commission; 312 IAC 12-1-8; filed Feb 9, 1999, 5:08 p.m.: 22 IR 1952)*

**Rule 2. Administration and Application****312 IAC 12-2-1 Administration**

Authority: IC 14-10-2-4; IC 14-25-4-13; IC 14-25-4-17

Affected: IC 4-21.5; IC 14-25-4; IC 25-39

Sec. 1. This article is administered for the department by the division. Administrative review of an order under this article is made to the commission under IC 4-21.5 and 312 IAC 3-1. *(Natural Resources Commission; 312 IAC 12-2-1; filed Feb 9, 1999, 5:08 p.m.: 22 IR 1952)*

**312 IAC 12-2-2 Application**

Authority: IC 14-10-2-4; IC 14-25-4-13; IC 14-25-4-17

Affected: IC 14-25-4; IC 25-39

Sec. 2. (a) This article (or 310 IAC 16.5 before its repeal) applies to a water well constructed after December 31, 1991. The owner of a nonsignificant ground water facility constructed after December 31, 1991, which does not conform to the requirements of this article, is not entitled to the relief provided by IC 14-25-4.

(b) The recommended guidelines of the department contained in Information Bulletin No. 3, published at 9 IR 1242, apply to a water well constructed after December 31, 1985, through December 31, 1991. The owner of a nonsignificant ground water facility constructed during the period described in this subsection, which does not conform to the guidelines contained in Information Bulletin No. 3, is not entitled to the relief provided by IC 14-25-4.

(c) No well construction standards adopted by the commission apply to a well constructed before January 1, 1986. (*Natural Resources Commission; 312 IAC 12-2-2; filed Feb 9, 1999, 5:08 p.m.: 22 IR 1952*)

### **312 IAC 12-2-3 Article subject to standards applicable to water well drilling contractors**

Authority: IC 14-25-4-13

Affected: IC 14-25-4; IC 25-39

Sec. 3. (a) The well construction requirements set forth in this article are in addition to the requirements of IC 25-39 and 312 IAC 13.

(b) IC 25-39 and 312 IAC 13 control if a provision of this article conflicts with IC 25-39 or 312 IAC 13. (*Natural Resources Commission; 312 IAC 12-2-3; filed Feb 9, 1999, 5:08 p.m.: 22 IR 1952; filed Feb 7, 2000, 3:31 p.m.: 23 IR 1366*)

### **312 IAC 12-2-4 Duty of water well driller and plumbing contractor to notify; water wells not in conformance with this article**

Authority: IC 14-10-2-4; IC 14-25-4-13; IC 14-25-4-17

Affected: IC 14-25-4; IC 25-39

Sec. 4. (a) A water well driller or a plumbing contractor must advise a person, for whom a ground water withdrawal facility is drilled or equipped, of the provisions of IC 14-25-4 and this article, before the ground water withdrawal facility is drilled or equipped.

(b) A person may authorize a water well driller or a plumbing contractor to drill or equip a water well in a manner that does not conform to this article if the water well is drilled or equipped in a manner which otherwise conforms to IC 25-39 and 312 IAC 13. A water well authorized under this subsection is not unlawful, but the relief provided by IC 14-25-4 is unavailable to the owner of the well. (*Natural Resources Commission; 312 IAC 12-2-4; filed Feb 9, 1999, 5:08 p.m.: 22 IR 1952; filed Feb 7, 2000, 3:31 p.m.: 23 IR 1367*)

### **312 IAC 12-2-5 Duty of owner of ground water withdrawal facility to provide access to division for inspections following a complaint**

Authority: IC 14-10-2-4; IC 14-25-4-13

Affected: IC 14-25-4-8; IC 25-39

Sec. 5. (a) The owner of a nonsignificant ground water withdrawal facility, who files a written complaint under IC 14-25-4-8, must provide access to the facility to any employee of the department so that the employee may perform inspections appropriate under IC 14-25-4 or this article.

(b) The owner of a nonsignificant ground water withdrawal facility must also provide any other information, known to the owner, that is needed to evaluate a loss of normal supply in the water well. (*Natural Resources Commission; 312 IAC 12-2-5; filed Feb 9, 1999, 5:08 p.m.: 22 IR 1952*)

## **Rule 3. Construction Standards**

### **312 IAC 12-3-1 Water well drilling in an unconsolidated aquifer**

Authority: IC 14-10-2-4; IC 14-25-4-13; IC 14-25-4-17

Affected: IC 14-25-4; IC 25-39

Sec. 1. (a) This section governs the drilling of a water well in an unconsolidated aquifer.

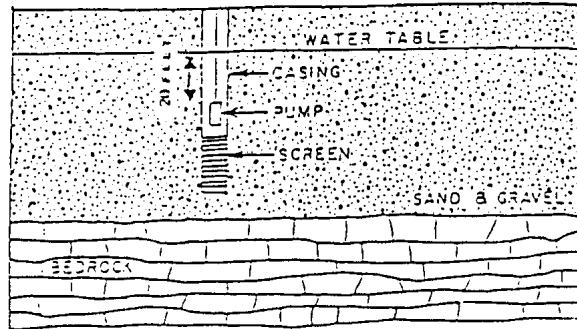
(b) A water well shall be equipped with casing that has an inside diameter of at least two (2) inches. The casing shall not be used as a suction pipe.

(c) The water well shall:

(1) be equipped with a pumping apparatus that provides at least twenty (20) feet of available drawdown; or

(2) penetrate the entire saturated thickness of the source aquifer and be equipped with a pumping apparatus that provides for the maximum available drawdown.

(d) An illustration of a suitable pump setting is as follows:



(Natural Resources Commission; 312 IAC 12-3-1; filed Feb 9, 1999, 5:08 p.m.: 22 IR 1953; errata filed Apr 27, 1999, 4:46 p.m.: 22 IR 2883)

### 312 IAC 12-3-2 Water well drilling in a bedrock aquifer

Authority: IC 14-10-2-4; IC 14-25-4-13; IC 14-25-4-17

Affected: IC 14-25-4; IC 25-39

Sec. 2. (a) This section governs the drilling of a water well in a bedrock aquifer.

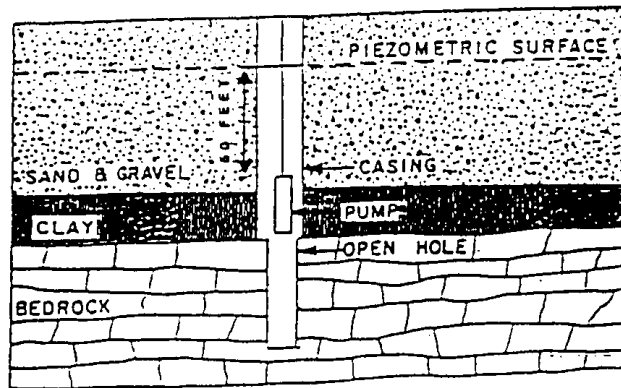
(b) A water well shall be equipped with casing which has an inside diameter of at least two (2) inches. The casing shall not be used as a suction pipe.

(c) The water well shall:

(1) be equipped with a pumping apparatus that provides at least fifty (50) feet of available drawdown; or

(2) penetrate the entire saturated thickness of the source aquifer and equipped with a pumping apparatus that provides for the maximum available drawdown.

(d) An illustration of a suitable pump setting is as follows:



(Natural Resources Commission; 312 IAC 12-3-2; filed Feb 9, 1999, 5:08 p.m.: 22 IR 1953; errata filed Apr 27, 1999, 4:46 p.m.: 22 IR 2883; errata filed Dec 26, 2002, 9:58 a.m.: 26 IR 1565)

## ARTICLE 13. WATER WELL DRILLERS

### Rule 1. Definitions

#### 312 IAC 13-1-1 General application of definitions

Authority: IC 25-39-4-9

Affected: IC 25-39-2

Sec. 1. The definitions in this rule are in addition to those contained in IC 25-39-2 and 312 IAC 1 and apply throughout this article. (Natural Resources Commission; 312 IAC 13-1-1; filed Nov 22, 1999, 3:34 p.m.: 23 IR 763)

#### 312 IAC 13-1-2 "Abandon" defined

Authority: IC 25-39-2-5; IC 25-39-4-9

Affected: IC 25-39

Sec. 2. "Abandon" means to terminate operations of a well for water supply, monitoring, dewatering, or geothermal purposes and to restore the site of the well in a manner that will protect ground water resources from contamination. (Natural Resources Commission; 312 IAC 13-1-2; filed Nov 22, 1999, 3:34 p.m.: 23 IR 763)

#### 312 IAC 13-1-3 "Aquifer characteristics" defined

Authority: IC 25-39-4-9

Affected: IC 25-39

Sec. 3. "Aquifer characteristics" refers to the type, thickness, transmissivity coefficient of storage, and materials of a water bearing unit. (Natural Resources Commission; 312 IAC 13-1-3; filed Nov 22, 1999, 3:34 p.m.: 23 IR 763)

#### 312 IAC 13-1-4 "Bentonite" defined

Authority: IC 25-39-2-5; IC 25-39-4-9

Affected: IC 25-39

Sec. 4. "Bentonite" means clay material composed predominantly of sodium montmorillonite that meets American Petroleum

Institute specifications Standard 13-A (1985). (*Natural Resources Commission; 312 IAC 13-1-4; filed Nov 22, 1999, 3:34 p.m.: 23 IR 763*)

**312 IAC 13-1-5 “Bentonite slurry” defined**

Authority: IC 25-39-4-9

Affected: IC 25-39

Sec. 5. “Bentonite slurry” means a mixture, made according to manufacturer specifications, of water and commercial grouting or plugging bentonite that contains high concentrations of solids. The term does not include sodium bentonite products that contain low solid concentration or are designed for drilling fluid purposes. (*Natural Resources Commission; 312 IAC 13-1-5; filed Nov 22, 1999, 3:34 p.m.: 23 IR 763*)

**312 IAC 13-1-6 “Bridge” defined**

Authority: IC 25-39-4-9

Affected: IC 25-39

Sec. 6. “Bridge” means a barrier created by any unwanted object or material that prevents the introduction of grouting materials in the borehole or well. (*Natural Resources Commission; 312 IAC 13-1-6; filed Nov 22, 1999, 3:34 p.m.: 23 IR 763*)

**312 IAC 13-1-7 “Coarse grade crushed bentonite” defined**

Authority: IC 25-39-4-9

Affected: IC 25-39

Sec. 7. “Coarse grade crushed bentonite” means natural bentonite crushed to an average size range of three-eighths ( $\frac{3}{8}$ ) to three-fourths ( $\frac{3}{4}$ ) inches. (*Natural Resources Commission; 312 IAC 13-1-7; filed Nov 22, 1999, 3:34 p.m.: 23 IR 763*)

**312 IAC 13-1-8 “Competency examination” defined**

Authority: IC 25-39-4-9

Affected: IC 25-39

Sec. 8. “Competency examination” means an examination given by the department that is designed to establish the capability and skill of an individual to operate as a water well driller. (*Natural Resources Commission; 312 IAC 13-1-8; filed Nov 22, 1999, 3:34 p.m.: 23 IR 763*)

**312 IAC 13-1-9 “Confined aquifer” defined**

Authority: IC 25-39-4-9

Affected: IC 25-39

Sec. 9. “Confined aquifer” means an aquifer that contains sufficient hydrostatic head to cause ground water to rise above the upper boundary of the aquifer. (*Natural Resources Commission; 312 IAC 13-1-9; filed Nov 22, 1999, 3:34 p.m.: 23 IR 764*)

**312 IAC 13-1-10 “Contamination” defined**

Authority: IC 25-39-4-9

Affected: IC 25-39

Sec. 10. “Contamination” means the degradation of natural water quality as a result of human activities. (*Natural Resources Commission; 312 IAC 13-1-10; filed Nov 22, 1999, 3:34 p.m.: 23 IR 764*)

**312 IAC 13-1-11 “Dewatering well” defined**

Authority: IC 25-39-2-5; IC 25-39-4-9

Affected: IC 25-39

Sec. 11. “Dewatering well” means a temporary water well that:

(1) is used as part of a construction project to remove water from a surface or subsurface area; and

(2) ceases to be used upon completion of the construction project or shortly after completion of the project.

*(Natural Resources Commission; 312 IAC 13-1-11; filed Nov 22, 1999, 3:34 p.m.: 23 IR 764)*

**312 IAC 13-1-12 “Disinfection” defined**

Authority: IC 25-39-4-9

Affected: IC 25-39

Sec. 12. “Disinfection” means the process of destroying pathogenic micro-organisms, such as coliform bacteria. *(Natural Resources Commission; 312 IAC 13-1-12; filed Nov 22, 1999, 3:34 p.m.: 23 IR 764)*

**312 IAC 13-1-13 “Division” defined**

Authority: IC 25-39-4-9

Affected: IC 25-39

Sec. 13. “Division” means the division of water of the department. *(Natural Resources Commission; 312 IAC 13-1-13; filed Nov 22, 1999, 3:34 p.m.: 23 IR 764)*

**312 IAC 13-1-14 “Drawdown” defined**

Authority: IC 25-39-4-9

Affected: IC 25-39

Sec. 14. “Drawdown” means the amount of lowering of the water level in a well resulting from the discharge of water by pumping from the well. *(Natural Resources Commission; 312 IAC 13-1-14; filed Nov 22, 1999, 3:34 p.m.: 23 IR 764)*

**312 IAC 13-1-15 “Grout pipe” defined**

Authority: IC 25-39-4-9

Affected: IC 25-39

Sec. 15. “Grout pipe” means a length of hose or pipe positioned in the annular space of a well, between the well casing and the borehole, used for the introduction of grouting materials. *(Natural Resources Commission; 312 IAC 13-1-15; filed Nov 22, 1999, 3:34 p.m.: 23 IR 764)*

**312 IAC 13-1-16 “High capacity water well” defined**

Authority: IC 25-39-4-9

Affected: IC 25-39

Sec. 16. “High capacity water well” means a well that has the capability of withdrawing one hundred thousand (100,000) gallons of ground water or more in one (1) day. *(Natural Resources Commission; 312 IAC 13-1-16; filed Nov 22, 1999, 3:34 p.m.: 23 IR 764)*

**312 IAC 13-1-17 “Medium grade crushed bentonite” defined**

Authority: IC 25-39-2-5; IC 25-39-4-9

Affected: IC 25-39



Sec. 17. "Medium grade crushed bentonite" means natural bentonite crushed to an average size range of one-fourth (¼) to three-eighths (⅜) inch. (*Natural Resources Commission; 312 IAC 13-1-17; filed Nov 22, 1999, 3:34 p.m.: 23 IR 764*)

**312 IAC 13-1-18 "Monitoring well" defined**

Authority: IC 25-39-4-9

Affected: IC 25-39

Sec. 18. "Monitoring well" means a well installed to obtain hydrogeological information or to monitor the quality or quantity of ground water. (*Natural Resources Commission; 312 IAC 13-1-18; filed Nov 22, 1999, 3:34 p.m.: 23 IR 764*)

**312 IAC 13-1-19 "Operating well drilling equipment" defined**

Authority: IC 25-39-4-9

Affected: IC 25-39

Sec. 19. "Operating well drilling equipment" means to use equipment to drill a well. (*Natural Resources Commission; 312 IAC 13-1-19; filed Nov 22, 1999, 3:34 p.m.: 23 IR 764*)

**312 IAC 13-1-20 "Public water supply well" defined**

Authority: IC 25-39-4-9

Affected: IC 25-39

Sec. 20. "Public water supply well" means a well that provides a source of water to a community water system that:

(1) serves a residential population; and

(2) is defined as having fifteen (15) or more service connections or serving at least twenty-five (25) year-round residents.

(*Natural Resources Commission; 312 IAC 13-1-20; filed Nov 22, 1999, 3:34 p.m.: 23 IR 764*)

**312 IAC 13-1-21 "Reference" defined**

Authority: IC 25-39-4-9

Affected: IC 25-39

Sec. 21. "Reference" means a person who attests to the character and professional qualifications of an applicant for a license.

(*Natural Resources Commission; 312 IAC 13-1-21; filed Nov 22, 1999, 3:34 p.m.: 23 IR 765*)

**312 IAC 13-1-22 "Regulatory flood" defined**

Authority: IC 25-39-4-9

Affected: IC 25-39

Sec. 22. "Regulatory flood" has the meaning set forth in 310 IAC 6-1-3(32). (*Natural Resources Commission; 312 IAC 13-1-22; filed Nov 22, 1999, 3:34 p.m.: 23 IR 765*)

**312 IAC 13-1-23 "Thermoplastic pipe" defined**

Authority: IC 25-39-4-9

Affected: IC 25-39

Sec. 23. "Thermoplastic pipe" means plastic well pipe made of acrylonitrile butadiene styrene, polyvinyl chloride, or rubber-modified polystyrene with standards listed in American Society of Testing Materials. (*Natural Resources Commission; 312 IAC 13-1-23; filed Nov 22, 1999, 3:34 p.m.: 23 IR 765*)

**312 IAC 13-1-24 “Unconsolidated formation” defined**

Authority: IC 25-39-4-9

Affected: IC 25-39

Sec. 24. “Unconsolidated formation” means geologic material or deposits overlying bedrock, such as sand, gravel, and clay. *(Natural Resources Commission; 312 IAC 13-1-24; filed Nov 22, 1999, 3:34 p.m.: 23 IR 765)*

**312 IAC 13-1-25 “Well pit” defined**

Authority: IC 25-39-4-9

Affected: IC 25-39

Sec. 25. “Well pit” means a subsurface excavation that contains a well. *(Natural Resources Commission; 312 IAC 13-1-25; filed Nov 22, 1999, 3:34 p.m.: 23 IR 765)*

**Rule 2. Drilling License and Well Records**

**312 IAC 13-2-1 Application form**

Authority: IC 25-39-3-2; IC 25-39-4-9

Affected: IC 25-39-3-3

Sec. 1. (a) An initial application for a license as a water well driller must be completed on a departmental form and must include the following:

- (1) The name, current address, telephone number, and birth date of the applicant.
- (2) The type of drilling equipment the applicant uses, and the number of years the applicant has operated that type of equipment.
- (3) The applicable employment experience of the applicant.
- (4) The signature of the applicant attesting to or affirming the accuracy of the information on the application.
- (5) The license fee established under section 2 of this rule.
- (6) Statements by references under IC 25-39-3-3(a)(2).

(b) Subsequent applications must provide what is required in subsection (a)(1), (a)(4), and (a)(5). *(Natural Resources Commission; 312 IAC 13-2-1; filed Nov 22, 1999, 3:34 p.m.: 23 IR 765)*

**312 IAC 13-2-2 License fee; duplicate license**

Authority: IC 25-1-8-2; IC 25-39-3-2; IC 25-39-4-9

Affected: IC 25-39

Sec. 2. (a) The fee to accompany any application for a license as a water well driller is one hundred dollars (\$100) for a calendar year.

(b) A person who is issued a license as a water well driller may apply to the department for a duplicate license (which is effective during the same calendar year) if the original license is lost, stolen, destroyed, or otherwise becomes unavailable to the driller. *(Natural Resources Commission; 312 IAC 13-2-2; filed Nov 22, 1999, 3:34 p.m.: 23 IR 765)*

**312 IAC 13-2-3 License renewals and restorations**

Authority: IC 25-39-4-9

Affected: IC 25-39

Sec. 3. (a) A license may be renewed for the following year, without examination, under section 1(b) of this rule.

(b) A license that has been expired in excess of one (1) year may be reinstated only upon successful completion by the applicant of a competency examination and the completion of an application and submission of the license fee.

(c) A water well driller must deliver a completed renewal application form to the division at least five (5) working days before

the renewal is to become effective. (*Natural Resources Commission; 312 IAC 13-2-3; filed Nov 22, 1999, 3:34 p.m.: 23 IR 765*)

**312 IAC 13-2-4 Competency examination**

Authority: IC 25-39-4-9

Affected: IC 25-39

Sec. 4. (a) A competency examination will be given by the division at least two (2) times annually. The examination will be given on a day specified by the division during the second full week of June and during the second full week of November.

(b) The fee to take the competency examination is twenty-five dollars (\$25).

(c) The competency examination is in writing, but, upon request by an applicant, an oral examination will be given.

(d) An applicant must submit a valid identification card, with a photograph of the applicant, before taking the examination.

(*Natural Resources Commission; 312 IAC 13-2-4; filed Nov 22, 1999, 3:34 p.m.: 23 IR 765*)

**312 IAC 13-2-5 Statement by a reference**

Authority: IC 25-39-4-9

Affected: IC 25-39

Sec. 5. A statement by a reference shall include the following information:

(1) The state of residence of the reference.

(2) The full name, address, telephone number, and occupation of the reference.

(3) The length of time the reference has known the applicant.

(4) How the reference is familiar with the applicant's work.

(5) A general statement regarding their evaluation of the applicant's professional competency.

(6) The signature of the reference attesting to or affirming the accuracy of the information on the reference form.

(*Natural Resources Commission; 312 IAC 13-2-5; filed Nov 22, 1999, 3:34 p.m.: 23 IR 766*)

**312 IAC 13-2-6 Well records**

Authority: IC 25-39-4-1; IC 25-39-4-9

Affected: IC 25-39

Sec. 6. A water well driller must submit, on a departmental form or division-approved form, accurate records for each well drilled to include the following information:

(1) The method of well construction.

(2) The proposed use of the well, for example, residential, industrial, monitoring, or dewatering.

(3) Pumping information, including each of the following:

(A) The type of pump and the depth of the pump setting (if applicable).

(B) Whether the well was bailer, air, or pump tested.

(C) The test rate and length of time of test pumping.

(4) Specifications for the well casing and the well screen.

(5) The inside diameter of the well.

(6) The total depth of the well.

(7) The static water level in the well.

(8) The name, address, and telephone number of the owner (and the builder, if different from the owner).

(9) The name and address of the drilling company.

(10) The name and license number of the equipment operator.

(11) The type and thickness of formations or materials encountered, including color, hardness, and a geological description.

(12) A statement of the accuracy of the information contained on the form that is signed by the water well driller or his authorized representative upon an affirmation or attestation.

(13) The type, depth, and thickness of grouting materials and method of installation.

(14) Specific roadway directions to the well, including a reference to the nearest major highway or street intersection.

*(Natural Resources Commission; 312 IAC 13-2-6; filed Nov 22, 1999, 3:34 p.m.: 23 IR 766)*

**Rule 3. Well Drilling Procedures and Well Locations**

**312 IAC 13-3-1 Operations at drilling site**

Authority: IC 25-39-4-2; IC 25-39-4-9

Affected: IC 25-39

Sec. 1. A water well driller shall operate all equipment according to generally accepted standards in the industry. The driller is responsible for initiating, maintaining, and supervising operations and shall take appropriate precautions to prevent damage, injury, or other loss to persons and property at the drilling site. *(Natural Resources Commission; 312 IAC 13-3-1; filed Nov 22, 1999, 3:34 p.m.: 23 IR 766)*

**312 IAC 13-3-2 Well locations**

Authority: IC 25-39-4-2; IC 25-39-4-9

Affected: IC 25-39

Sec. 2. (a) A well shall be located as follows:

(1) To use every natural protection to promote the maintenance of the well and its surroundings, and to protect the quantity and quality of ground water encountered during the construction of the well.

(2) As far as practicable from any:

(A) high capacity well; and

(B) known contamination source.

(3) To protect the well against surface water ponding, drainage, or flooding. Earthen materials shall be placed around the pitless unit or finished well casing in a manner to drain surface water away from the well. The finished well casing or pitless unit shall extend at least one (1) foot above the ground level and, if located in a designated flood hazard area, must:

(A) be at least two (2) feet above the elevation of the regulatory flood; or

(B) be equipped with a watertight pitless unit cap or well seal and vented to an elevation at least two (2) feet above the elevation of the regulatory flood.

(b) This section does not apply to a monitoring well or a dewatering well. *(Natural Resources Commission; 312 IAC 13-3-2; filed Nov 22, 1999, 3:34 p.m.: 23 IR 766)*

**312 IAC 13-3-3 Standards for wells drilled adjacent to buildings**

Authority: IC 25-39-4-2; IC 25-39-4-9

Affected: IC 25-39

Sec. 3. (a) This section establishes standards for the placement of a well that is near a building.

(b) The center line of a well located outside and adjacent to a building shall, if extended vertically, clear any projection from the building by not less than five (5) feet.

(c) A well shall be reasonably accessible to equipment for proper cleaning, repair, testing, inspection, and other maintenance. *(Natural Resources Commission; 312 IAC 13-3-3; filed Nov 22, 1999, 3:34 p.m.: 23 IR 767)*

**Rule 4. Well Equipment and Installation Specifications**

**312 IAC 13-4-1 Casing**

Authority: IC 25-39-4-2; IC 25-39-4-9

Affected: IC 25-39

Sec. 1. (a) This section establishes minimum casing requirements.

(b) A new well shall be equipped with casing having an inside diameter of at least two (2) inches. The inside diameter of the

well casing shall allow for easy installation and future removal of the permanent pumping equipment.

(c) A well must be cased to a depth of at least twenty-five (25) feet below the ground surface unless otherwise approved by the division.

(d) Casing shall be constructed of a steel or thermoplastic material or a casing specified in subsection (f). Ferrous casing shall be new, first class material that meets the American Society of Testing Materials (ASTM) standards ASTM A-120 (1984) or ASTM A-53 (1987) or American Petroleum Institute (API) standards API-5A or API-5L (1987). Thermoplastic pipe shall comply with ASTM F-480 (1981).

(e) Casing used under this section must be new. Casing that is salvaged within thirty (30) days of the installation of a well is considered new if the casing is still in new condition.

(f) Steel, thermoplastic or NSF certified fiberglass pipe, or concrete tile shall be used in bucket wells. This casing shall be new material.

(g) No finished well casing shall be cut below the ground surface except to install a pitless well adapter or as specified in 312 IAC 13-6-2(b)(1) or 312 IAC 13-6-2(c)(2). A pitless adapter must meet the requirements of section 3 of this rule.

(h) Upon installation, a well casing shall be fitted with a temporary cap that remains in place until pumping equipment or a pitless adapter is installed. The cap shall be a type that prevents vermin or other potential contaminants from entering the well.

(i) This section does not apply to a monitoring well or a dewatering well. (*Natural Resources Commission; 312 IAC 13-4-1; filed Nov 22, 1999, 3:34 p.m.: 23 IR 767; filed Oct 9, 2001, 4:32 p.m.: 25 IR 708*)

### **312 IAC 13-4-2 Well screens**

Authority: IC 25-39-4-2; IC 25-39-4-9

Affected: IC 25-39

Sec. 2. (a) A well drilled in an unconsolidated formation shall be equipped with a well screen having adequate openings to provide for maximum water transmittance with respect to the size of the water bearing formation or gravel pack.

(b) Approved screen materials are stainless steel, brass, bronze, fiberglass, and polyvinyl chloride or acrylonitrile butadiene styrene plastic.

(c) This section does not apply to a monitoring well or a dewatering well. (*Natural Resources Commission; 312 IAC 13-4-2; filed Nov 22, 1999, 3:34 p.m.: 23 IR 767*)

### **312 IAC 13-4-3 Pitless units and pitless adapters**

Authority: IC 25-39-4-2; IC 25-39-4-9

Affected: IC 25-39

Sec. 3. (a) A pitless unit shall do the following:

(1) Extend the upper end of the well casing at least one (1) foot above the ground level.

(2) Be affixed to the well casing in a manner that is watertight by:

(A) threading;

(B) welding (including gluing); or

(C) a mechanical connection.

(b) The cap, cover, or seal of the pitless unit shall:

(1) be self-draining and overlap the top of the casing extension with a downward flange;

(2) fit securely on the well casing; and

(3) be tamper resistant.

(c) A pitless unit shall be installed under 312 IAC 13-3-2(a)(3).

(d) A pitless adapter shall be constructed and installed to prevent the entrance of contaminants in the well through openings in the well casing to which the adapter is attached. (*Natural Resources Commission; 312 IAC 13-4-3; filed Nov 22, 1999, 3:34 p.m.: 23 IR 767*)

**312 IAC 13-4-4 Well pits**

Authority: IC 25-39-4-2; IC 25-39-4-9

Affected: IC 25-39

Sec. 4. (a) The design of a well pit that contains a well must be approved by the division before construction.

(b) This section does not apply to a monitoring well. (*Natural Resources Commission; 312 IAC 13-4-4; filed Nov 22, 1999, 3:34 p.m.: 23 IR 767*)

**312 IAC 13-4-5 Construction water**

Authority: IC 25-39-4-2; IC 25-39-4-9

Affected: IC 25-39

Sec. 5. Water used in the drilling process shall be obtained from a source that will not result in contamination of the well or water bearing zones penetrated by the well. (*Natural Resources Commission; 312 IAC 13-4-5; filed Nov 22, 1999, 3:34 p.m.: 23 IR 768*)

**Rule 5. Grouting of Wells**

**312 IAC 13-5-1 Materials and installation**

Authority: IC 25-39-4-2; IC 25-39-4-9

Affected: IC 25-39

Sec. 1. (a) This section governs grouting materials and the installation of grouting materials for new wells.

(b) Grouting materials shall consist of:

- (1) neat cement with no more than five percent (5%) by weight of bentonite additive;
- (2) bentonite slurry (which can include polymers designed to retard swelling);
- (3) pelletized, granular, medium grade, or coarse grade crushed bentonite; or
- (4) other materials approved by the commission.

(c) This section applies if neat cement or a bentonite slurry is used for grouting. The cement or slurry shall be pumped into place from the bottom of the annular space upward in a continuous operation with a grout pipe or the well casing using the positive displacement method.

(d) Grouting material, other than neat cement or bentonite slurry, shall be introduced in a manner to prevent bridging of the annulus between the outside of the well casing and the borehole.

(e) A borehole annulus shall be grouted upon the earlier of the following:

- (1) Within twenty-four (24) hours after the installation of the well casing.
- (2) Before drilling equipment is removed from the site.

(f) This section does not apply to a public water supply well. The installation of a public water supply well is governed by 327 IAC 8-3.4. (*Natural Resources Commission; 312 IAC 13-5-1; filed Nov 22, 1999, 3:34 p.m.: 23 IR 768*)

**Rule 6. Minimum Well Construction Standards**

**312 IAC 13-6-1 Rotary or augered wells**

Authority: IC 25-39-4-2; IC 25-39-4-9

Affected: IC 25-39

Sec. 1. (a) This section governs the construction of wells by rotary or auger drilling methods.

(b) A well shall be drilled and equipped with a casing having a minimum of two (2) inches inside diameter installed in an open hole having a diameter of at least two (2) inches greater than the outside diameter of the casing.

(c) A well shall be cased to a minimum depth of twenty-five (25) feet below the ground surface unless otherwise approved by the division.

(d) A well shall have a minimum of twenty-five (25) feet of the borehole annulus pressure grouted with neat cement or a bentonite slurry unless otherwise approved by the division.

(e) A well penetrating bedrock shall have the borehole annulus pressure grouted with neat cement or a bentonite slurry from the bottom of the well casing, or the top of the formation packer to the ground surface (or to four (4) feet below the ground surface if a pitless adapter is installed).

(f) A well constructed in an unconsolidated aquifer shall have the borehole annulus pressure grouted with neat cement or a bentonite slurry from the top of the natural or introduced gravel pack to the ground surface (or to four (4) feet below the ground surface if a pitless adapter is installed). The gravel pack shall not extend more than ten (10) feet above the top of the well screen unless otherwise approved by the division.

(g) This section does not apply to any of the following:

(1) A monitoring well.

(2) A dewatering well.

(3) A public water supply well.

The installation of a public water supply well is governed by 327 IAC 8-3.4. (*Natural Resources Commission; 312 IAC 13-6-1; filed Nov 22, 1999, 3:34 p.m.: 23 IR 768*)

### **312 IAC 13-6-2 Bucket wells**

Authority: IC 25-39-4-2; IC 25-39-4-9

Affected: IC 25-39

Sec. 2. (a) This section governs the construction of wells by bucket rig drilling methods.

(b) A bucket well installed as buried slab construction shall conform with the following:

(1) The well casing shall terminate not less than ten (10) feet below the ground surface. The casing shall meet the requirements contained in 312 IAC 13-4-1 and must be firmly embedded in or connected to a pipe, a minimum of two (2) inches inside diameter, cast in a reinforced buried concrete slab, or attached to a NSF certified fiberglass cap with a watertight mechanical or glued connection. Fiberglass well casing may be slotted below the ground surface to allow for the transmittance of water into the well.

(2) The annular opening between the well casing and the well bore shall be filled with washed graded gravel from the bottom of the well to the concrete slab or the fiberglass. The annular space between the pipe and borehole shall be sealed with concrete or granular, pelletized, or coarse grade crushed bentonite at least six (6) inches thick. The remainder of the borehole shall be filled with clean earth and thoroughly tamped to minimize settling.

(c) A bucket well installed not using buried slab construction shall conform with the following:

(1) A well shall have a borehole with an inside diameter at least two (2) inches larger than the outside diameter of the lining or well casing.

(2) The well shall have a continuous watertight lining of steel or fiberglass casing or concrete extending at least five (5) feet below the ground surface. The casing shall meet the requirements contained in 312 IAC 13-4-1. Fiberglass well casing may be slotted below the ground surface to allow for the transmittance of water into the well.

(3) The annulus between the inside diameter of the borehole and the outside diameter of the well casing shall be filled with washed graded gravel from the bottom of the well to a depth at least five (5) feet below the ground surface. The remaining annulus shall be sealed with neat cement, bentonite slurry, or granular, pelletized, medium grade, or coarse grade crushed bentonite from ground level to at least five (5) feet below ground level.

(4) A reinforced cover slab at least four (4) inches thick with a diameter larger than the casing or a NSF certified fiberglass cap shall be provided. Vents or pump piping that exits through the slab shall have the pipe sleeves cast in place. Vents or pump piping that exits through the fiberglass cap or casing shall be attached with a watertight mechanical or glued connection. The top of the slab or fiberglass cap shall be sloped to drain to all sides. A watertight joint shall be made where the slab rests on the well lining using a watertight sealing compound. If a manhole is installed, the manhole shall have a metal curb cast in the concrete slab and extending four (4) inches above the slab. The manhole shall have a watertight cover with the sides to overhang the curb at least two (2) inches. A vent shall be installed in a concrete slab and shall consist of a metal pipe extending above the slab with the open end turned down and at least six (6) inches above the slab. The open end shall be covered with sixteen (16) mesh or finer screen made of durable material. A vent shall be installed in a fiberglass cap or casing

and shall consist of a metal or plastic pipe extending at least six (6) inches above the cap or away from the casing with the open end turned down.

(5) A hole drilled in the concrete casing for a below ground discharge line shall be sealed on the inside and outside of the well casing with concrete or a mastic compound. Fiberglass casing equipped with a below ground discharge line shall have the discharge line attached with a watertight mechanical or glued connection.

(6) In a bucket well where casing is used with an inside diameter of less than twelve (12) inches that extends the entire depth of the borehole, the graded gravel filling the annular space between the inside of the borehole and outside of the casing shall terminate not less than ten (10) feet below ground surface. The borehole annulus shall be filled with granular, pelletized, or coarse grade crushed bentonite a minimum of six (6) inches thick and the remainder of the borehole shall be filled with clean earth and thoroughly tamped to minimize settling.

(d) This section does not apply to any of the following:

(1) A monitoring well.

(2) A dewatering well.

(3) A public water supply well.

The installation of a public water supply well is governed by 327 IAC 8-3.4. (*Natural Resources Commission; 312 IAC 13-6-2; filed Nov 22, 1999, 3:34 p.m.: 23 IR 768; filed Oct 9, 2001, 4:32 p.m.: 25 IR 709*)

### **312 IAC 13-6-3 Cable tool or jetted wells**

Authority: IC 25-39-4-2; IC 25-39-4-9

Affected: IC 25-39

Sec. 3. (a) This section governs the construction of wells by cable tool or jetting methods.

(b) A well installed by cable tool or jetting shall be equipped with casing having a minimum of two (2) inches inside diameter and be cased a minimum of twenty-five (25) feet below ground surface.

(c) If well casing is driven or jetted, a borehole with an inside diameter at least two (2) inches greater than the outside diameter of the casing to be driven shall be dug at least three (3) feet, but not more than five (5) feet, below ground surface. The casing shall be centered in the larger diameter borehole. A bentonite slurry, granular bentonite, or medium grade crushed bentonite shall fill the annulus during the installation of the well casing. Notwithstanding 312 IAC 13-5-1(c), bentonite slurry may be introduced into the borehole annulus by gravity methods during the installation of the well casing.

(d) Unless otherwise approved by the division, a well must be grouted under section 1 of this rule if either of the following conditions exist:

(1) A larger diameter temporary casing is used to install a smaller diameter permanent well casing.

(2) A later diameter borehole is drilled to install a smaller diameter well casing.

(e) This section does not apply to a monitoring well, a dewatering well, or a public water supply well. The installation of a public water supply well is governed by 327 IAC 8-3.4. (*Natural Resources Commission; 312 IAC 13-6-3; filed Nov 22, 1999, 3:34 p.m.: 23 IR 769*)

## **Rule 7. Well Yield**

### **312 IAC 13-7-1 Well yield**

Authority: IC 25-39-4-9

Affected: IC 25-39

Sec. 1. (a) Every well (which is to be equipped with a pump) shall be tested for yield. The well shall be test pumped at a capacity at least equal to the pumping rate desired from the well during normal usage.

(b) A well shall be developed and tested at capacity for a minimum of one (1) hour. The yield and drawdown shall be recorded.

(c) Pumping equipment shall be installed at a depth to allow for drawdown caused by:

(1) the pumping equipment itself; and

(2) seasonal water level fluctuations.

(d) This section does not apply to a monitoring well or a dewatering well. (*Natural Resources Commission; 312 IAC 13-7-1;*



*filed Nov 22, 1999, 3:34 p.m.: 23 IR 769)*

**Rule 8. Other Wells and Structures**

**312 IAC 13-8-1 Geothermal heat pump wells**

Authority: IC 25-39-4-2; IC 25-39-4-9

Affected: IC 25-39

Sec. 1. (a) This section establishes standards for drilling ground water heat pump systems that are in addition to the general requirements for drilling a well under 312 IAC 12.

(b) If a return well is used with an open loop system, its design shall provide a water transmitting capacity that is at least one and one-half (1½) times the required water supply of the heat pump unit.

(c) With respect to a vertical closed loop system, boreholes shall be pressure grouted from the bottom of the borehole to the ground surface. *(Natural Resources Commission; 312 IAC 13-8-1; filed Nov 22, 1999, 3:34 p.m.: 23 IR 770)*

**312 IAC 13-8-2 Radial collector wells**

Authority: IC 25-39-4-2; IC 25-39-4-9

Affected: IC 25-39

Sec. 2. Plans and specifications for a radial collector well must be approved by the division before drilling begins. Factors to be considered by the division include the following:

- (1) The depth of the well.
- (2) Well casing materials.
- (3) Well sealing procedures.
- (4) Types of aquifer materials.
- (5) The location of the proposed well.

*(Natural Resources Commission; 312 IAC 13-8-2; filed Nov 22, 1999, 3:34 p.m.: 23 IR 770)*

**312 IAC 13-8-3 Monitoring wells**

Authority: IC 25-39-4-2; IC 25-39-4-9

Affected: IC 25-39

Sec. 3. (a) This section establishes standards for monitoring wells that are in addition to the general requirements for drilling a well under this article.

(b) A monitoring well shall be equipped with casing having a nominal diameter of at least:

- (1) three-fourths (¾) of an inch if the well is installed for the primary purpose of monitoring ground water levels; or
- (2) two (2) inches if the well is installed for the primary purpose of monitoring the quality of ground water.

(c) Monitoring well casing shall be new first class material that meets the American Society of Testing Materials (ASTM) standards ASTM A-120 (1984) or ASTM A-53 (1987) or the American Petroleum Institute (API) standards API-5A or API-5L (1987). Thermoplastic pipe shall comply with ASTM F-480 (1981). Well casing shall be as follows:

(1) Clean and free of rust, grease, oil, or contaminants and composed of materials that will have minimal impact on the quality of a water sample.

(2) Centered in the borehole and free of obstructions so that monitoring devices can be lowered into the well.

(d) A monitoring well screen shall be composed of materials that will not corrode or react with chemicals found in the ground water at the site. The well screen slots shall not be hand cut and shall be sized to retain at least ninety percent (90%) of the grain size of the introduced filter pack, or natural formation materials if an introduced filter pack is not used. The introduced filter pack shall be properly sized and graded and shall not extend more than two (2) feet above the top of the screen or the uppermost water bearing unit to be monitored in the well annulus unless otherwise approved by the division.

(e) A filter pack seal of pelletized, medium grade, or coarse grade crushed bentonite may be placed in the annulus directly above the filter pack. The filter pack seal shall be installed so bridging is prevented, and the filter pack seal can extend no more than

two (2) feet above the filter pack.

(f) Except as provided in subsection (h), the finished well casing shall extend at least two (2) feet above the ground level and, if located in a flood plain, must be at least two (2) feet above the elevation of the regulatory flood or be equipped with a watertight cap. The monitoring well shall be located to protect against surface water ponding, and earthen materials, neat cement, or concrete shall be placed around the well casing to drain surface water from the well.

(g) A monitoring well, located where the casing is susceptible to damage, shall be equipped with a protective outer pipe consisting of a metal casing having a diameter large enough to allow easy access to the well. The protective cover pipe shall be firmly anchored in the ground. Additional protective devices, for example, brightly colored posts around the well, are required where the well could be damaged by construction equipment or vehicular traffic.

(h) A monitoring well must be equipped with a locking cap or cover to prevent unauthorized access. The locking cap may be placed directly on the well casing, or if required under subsection (g), placed on the protective cover pipe.

(i) A monitoring well installed so that the top of the well casing is finished at an elevation below the ground surface shall be equipped with a watertight cap. The top of the well casing shall terminate at a depth no greater than one (1) foot below the ground surface and shall be located in a flush mounted protective cover pipe. The flush mounted protective cover pipe shall include each of the following:

(1) A watertight one (1) piece or continuous welded metal casing at least one (1) foot long and having a nominal diameter at least four (4) inches greater than the nominal diameter of the monitoring well. The casing shall be flanged for greater stability if installed in a location likely to be subject to vehicular traffic.

(2) A concrete ground surface seal, if an impervious surface, for example, concrete or asphalt, is not present. The ground surface seal shall be installed and extend no more than three (3) feet below the ground surface.

(3) A sealed lid which is not more than one-half (½) inch higher than the elevation of the ground surface. The sealed lid shall be of a quality to withstand vehicular traffic if installed in a location likely to be subject to vehicular traffic. The lid shall be clearly marked with the words "MONITORING WELL" or "MONITOR" and also display the words "DO NOT FILL".

(j) A monitoring well installed by the rotary or auger drilling method shall have a borehole with a diameter at least two (2) inches greater than the nominal diameter of the casing. Except as provided in subsection (e), the well shall be grouted as follows:

(1) Granular bentonite can be used to grout a monitoring well if:

(A) the diameter of the borehole is four (4) inches or larger than the nominal diameter of the well casing; and

(B) the well is not more than twenty-five (25) feet deep.

(2) Except as provided in subdivision (3), the annulus of the monitoring well shall be pressure grouted with neat cement or a bentonite slurry or be grouted with pelletized, medium grade, or coarse grade crushed bentonite from the top of the filter pack or filter pack seal under subsection (e) (for a well installed in unconsolidated materials) or the bottom of the well casing (for a well penetrating bedrock) to the ground surface or to within one (1) foot of the ground surface if a flush mounted protective cover pipe is installed if:

(A) the diameter of the borehole is four (4) inches or larger than the nominal diameter of the well casing; and

(B) the well is not more than one hundred (100) feet deep.

(3) The annulus of the monitoring well shall be pressure grouted with neat cement or a bentonite slurry from the top of the filter pack or filter pack seal under subsection (e) (for a well installed in unconsolidated materials) or the bottom of the well casing (for a well penetrating bedrock) to the ground surface or to within one (1) foot of the ground surface if a flush mounted protected cover pipe is installed where either:

(A) the diameter of the borehole is less than four (4) inches larger in diameter than the nominal diameter of the well casing; or

(B) the well is more than one hundred (100) feet deep.

(k) A monitoring well installed by the cable tool method shall be grouted as follows:

(1) The well casing shall be centered in a borehole with a diameter of at least two (2) inches greater than the nominal diameter of the casing to be driven. The borehole shall be dug at least three (3) feet, but no more than five (5) feet, below the ground surface and shall be filled with granular bentonite or a bentonite slurry during the installation of the casing. Notwithstanding 312 IAC 13-5-1(c), bentonite slurry may be introduced into the borehole annulus by gravity methods during the installation of the well casing.

(2) Grouting shall be performed as provided under subsection (i) if a larger diameter:

(A) temporary casing is used to install a smaller diameter permanent well casing; or

(B) borehole is drilled to install a smaller diameter well casing.

(l) A monitoring well shall be developed following installation and before water samples are collected. This development shall be accomplished to produce water that is as free as practicable from sediment, drill cuttings, and drilling fluids. If a well is installed to monitor ground water quality, the well shall be adequately developed to present a representative sample of the water quality.

(m) Contaminated drill cuttings, fluids, and surge and wash waters produced in the drilling and development of a monitoring well shall be collected and contained to prevent contamination of the area and to protect persons who might otherwise come in contact with these materials.

(n) Monitoring well construction and development equipment that comes in contact with contaminated water or contaminated geologic materials shall be cleaned with high pressure hot water or steam, using inorganic soap or other suitable solvents, and rinsed thoroughly. Contaminated fluids or wash waters shall be collected and contained so that the result is not contamination of the area or a hazard to individuals who may come in contact with these materials. (*Natural Resources Commission; 312 IAC 13-8-3; filed Nov 22, 1999, 3:34 p.m.: 23 IR 770; errata filed Dec 30, 1999, 4:02 p.m.: 23 IR 1109*)

### **312 IAC 13-8-4 Dewatering wells**

Authority: IC 25-39-4-9

Affected: IC 25-39

Sec. 4. (a) This section establishes standards for dewatering wells which are in addition to the general requirements for drilling a well under this article.

(b) A dewatering well shall be equipped with casing having a nominal diameter of at least one and one-fourth (1¼) inches. The casing shall be clean and free of grease, oil, or other contaminants that would impact water quality.

(c) Upon installation, a dewatering well must be fitted with a temporary cap which remains in place until pumping equipment is installed. The cap shall be of a type that prevents vermin or other potential contaminants from entering the well.

(d) Earthen materials shall be placed around the well casing to drain surface water away from the dewatering well. (*Natural Resources Commission; 312 IAC 13-8-4; filed Nov 22, 1999, 3:34 p.m.: 23 IR 772*)

## **Rule 9. Well Disinfection**

### **312 IAC 13-9-1 Disinfection procedures for drilled wells**

Authority: IC 25-39-4-2; IC 25-39-4-9

Affected: IC 25-39

Sec. 1. (a) Except as provided in subsection (d), the following procedures shall be used for the disinfection of drilled wells:

(1) The amount of water in the well shall be determined by multiplying the gallons per foot by the number of feet of water in the well according to the following table:

Diameter of Well in Inches	Gallons Per Foot
2	.16
3	.37
4	.65
5	1.00
6	1.50
8	2.60
10	4.10
12	6.00

(2) At least one hundred (100) parts per million of chlorine concentration in water are required for disinfection. For each one hundred (100) gallons of water in the well, the amount of chlorine liquid or compound shown in the following table shall be used:

Laundry Bleach (5.25% chlorine)	Hypochlorite Granules (70% chlorine)
3 cups	2 ounces

(3) The solution prepared under subdivision (2) shall be poured into the well to ensure the casing walls are wetted before the cover, cap, or seal is installed.

(4) Instead of the applications described in subdivisions (1) through (2), another application of chlorine may be substituted by a water well driller which results in a chlorine concentration of at least one hundred (100) parts per million.

(b) As used in this section, one (1) cup is equivalent to an eight (8) ounce measuring cup.

(c) As used in this section, one (1) ounce is equivalent to one (1) heaping tablespoon of granules.

(d) This section does not apply to a monitoring well or a dewatering well. (*Natural Resources Commission; 312 IAC 13-9-1; filed Nov 22, 1999, 3:34 p.m.: 23 IR 772*)

### **312 IAC 13-9-2 Disinfection procedures for bucket wells**

Authority: IC 25-39-4-2; IC 25-39-4-9

Affected: IC 25-39

Sec. 2. The following procedures shall be used for the disinfection of bucket wells:

(1) The amount of disinfectant required is determined primarily by the amount of water in the well. The following table establishes the amount of chlorine to use for each foot of water in the well:

Diameter of well in feet	3	4	5	6	7	8	10
Amount of 5.25% laundry bleach to use per foot of water (in cups)	1.5	3	4.5	6	9	12	18
Amount of .70% hypochlorite (in cups)	1	2	3	4	6	8	12

(2) To determine the amount of bleach, multiply the amount of disinfectant indicated as determined by the diameter of the well times the number of feet of water in the well.

(3) The amount of bleach determined under subdivision (2) shall be added to approximately ten (10) gallons of water and splashed around the lining or wall of the well. The entire amount of disinfectant must be circulated so that the solution contacts all parts of the well.

(4) The top of the well must be sealed.

(5) Instead of the applications described in this section, another application of chlorine may be substituted which results in a chlorine concentration of one hundred (100) parts per million.

(*Natural Resources Commission; 312 IAC 13-9-2; filed Nov 22, 1999, 3:34 p.m.: 23 IR 772*)

## **Rule 10. Landowner Responsibility for Abandonment and Plugging of Wells**

### **312 IAC 13-10-1 Temporary abandonment of wells**

Authority: IC 25-39-4-2; IC 25-39-4-6; IC 25-39-4-9

Affected: IC 25-39

Sec. 1. A well which has not been used for more than three (3) months without being permanently abandoned must be sealed at or above the ground surface by a welded, threaded, or mechanically attached watertight cap. The well shall be maintained so that the well does not become a source or channel of ground water contamination. (*Natural Resources Commission; 312 IAC 13-10-1; filed Nov 22, 1999, 3:34 p.m.: 23 IR 772*)

### **312 IAC 13-10-2 Permanent abandonment of wells**

Authority: IC 25-39-4-2; IC 25-39-4-6; IC 25-39-4-9

Affected: IC 25-39

Sec. 2. (a) A well abandoned before January 1, 1988, must be sealed at or above the ground surface by a welded, threaded,

or mechanically attached watertight cap. The well shall be maintained so the well does not become a source or channel of ground water contamination. A well that poses a hazard to human health must also be plugged under subsection (c). A cased or uncased bucket well or a hand dug well (other than buried slab construction) that was abandoned before January 1, 1988, shall be closed in conformance with one (1) of the following procedures:

- (1) Covered with a reinforced concrete slab at least four (4) inches thick and having a diameter larger than the nominal diameter of the borehole or the well casing.
- (2) Equipped with a properly reinforced cover constructed of pressure treated lumber, using chromium copper arsenic salt, that has dimensions larger than the nominal diameter of the borehole or well casing. The cover shall be protected against the water with roofing or other water repelling materials that are properly maintained to ensure the integrity of the cover. Closure shall not be performed under this subdivision, however, if the cover is in direct contact with ground water or surface water.
- (3) Closed as otherwise approved by the division.

(b) A well drilled before January 1, 1988, and abandoned before January 1, 1994, shall be sealed at or above the ground surface by a welded, threaded, or mechanically attached watertight cap. The well shall be maintained so the well does not become a source or channel of ground water contamination. A well that poses a hazard to human health must also be plugged under subsection (c).

(c) A well abandoned after December 31, 1987, shall be plugged with an impervious grouting material to prevent the migration of materials or fluids in the well and the loss of pressure in a confined aquifer.

(d) A well drilled after December 31, 1987, and not equipped with casing must be plugged within seventy-two (72) hours after completion.

(e) This subsection applies as follows to a cased or uncased well abandoned after December 31, 1987:

- (1) The plugging material must consist of one (1) or a combination of the following:
  - (A) Neat cement with not more than five percent (5%) by weight of bentonite additive.
  - (B) Bentonite slurry (which can include polymers designed to retard swelling).
  - (C) Pelletized, medium grade, or coarse grade crushed bentonite.
  - (D) Other materials approved by the commission.
- (2) The following methods apply:
  - (A) Cement and bentonite slurries shall be pumped into place in a continuous operation with a grout pipe introducing the plugging material at the bottom of the well and moving the pipe progressively upward as the well is filled.
  - (B) Plugging materials other than neat cement or bentonite slurry shall be installed in a manner to prevent bridging of the well or borehole. The well or borehole shall be measured periodically throughout the plugging process to ensure that bridging does not occur.
- (3) The following procedures apply:
  - (A) An abandoned well shall be disconnected from the water system. Any substance that may interfere with plugging shall be removed, if practicable.
  - (B) A well (other than a monitoring well, a dewatering well, or an uncased borehole) shall be chlorinated before abandonment as provided in 312 IAC 13-9-1.
- (4) A cased well shall be plugged as follows:
  - (A) With neat cement, bentonite slurry, or medium grade or coarse grade crushed or pelletized bentonite from the bottom of the well to within two (2) feet below the ground surface unless otherwise provided by the department.
  - (B) The well casing shall be severed at least two (2) feet below the ground surface, and a cement plug larger in diameter than the borehole shall be constructed over the borehole and covered with natural clay material to the ground surface.
- (5) An uncased well (other than a borehole drilled by a bucket rig or a dewatering well governed by subdivision (8) or (9)), shall be filled with natural clay materials, neat cement, bentonite slurry, or medium grade or coarse grade crushed or pelletized bentonite from the bottom of the borehole to a depth of no less than twenty-five (25) feet below ground surface. The borehole shall be filled with neat cement or medium grade or coarse grade crushed or pelletized bentonite from a depth no less than twenty-five (25) feet below ground surface to within two (2) feet below ground surface. The remaining borehole shall be filled with natural clay material to ground surface.
- (6) A cased or uncased monitoring well shall be plugged from the bottom of the well or borehole to the ground surface with a bentonite slurry or pelletized or coarse grade crushed bentonite.
- (7) A bucket well shall be plugged as follows:

(A) A bucket well installed as buried slab construction shall be filled with gravel from the bottom of the well to within ten (10) feet below the ground surface. Neat cement, bentonite slurry, or pelletized, medium grade, or coarse grade crushed bentonite shall be installed in the casing or well pipe from no less than ten (10) feet below the ground surface to within two (2) feet below the ground surface. The well pipe shall be severed at least two (2) feet below the ground surface and covered with a cement plug larger in diameter than the well pipe. The remaining hole shall be filled with natural clay material to the ground surface.

(B) Bucket well construction using casing with an inside diameter of less than twelve (12) inches extending the entire length of the borehole and equipped with a well screen shall be abandoned under subdivision (4)(A).

(C) An uncased borehole drilled by a bucket rig shall be filled with natural clay material from the bottom of the hole to the ground surface. The clay material shall be thoroughly tamped to minimize settling.

(D) For other than buried slab construction, a bucket well shall be filled with gravel from the bottom of the well to at least five (5) feet below ground surface. The top section of the concrete or tile well casing shall be removed to cause the top of the well to terminate below ground surface. The well shall be filled with at least one (1) foot of neat cement, bentonite slurry, or pelletized, medium grade, or coarse grade crushed bentonite from at least five (5) feet below ground surface to the top of the well casing. The well casing shall be covered with a cement plug larger in diameter than the borehole. The remaining hole shall be filled with natural clay material to ground surface.

(8) If a dewatering well casing is removed following use, the remaining borehole shall initially be filled with granular, pelletized, medium grade, or coarse grade crushed bentonite a minimum of one (1) foot thick. The remainder of the borehole shall be filled with natural earth materials obtained during the drilling process to the ground surface and be thoroughly tamped to minimize settling.

(9) If a dewatering well casing is removed following use and the well site will be excavated as part of the construction project, the remaining borehole shall be filled with natural earth materials obtained during the drilling process to the ground surface and be thoroughly tamped to minimize settling.

(f) The division shall be notified in writing of a well abandonment within thirty (30) days after plugging is completed. (*Natural Resources Commission; 312 IAC 13-10-2; filed Nov 22, 1999, 3:34 p.m.: 23 IR 773*)

## **Rule 11. Inspections**

### **312 IAC 13-11-1 Inspections; compliance**

Authority: IC 25-39-4-2; IC 25-39-4-9

Affected: IC 25-39

Sec. 1. A conservation officer or another representative of the department may observe the installation of a water well or pump and may inspect equipment used to drill a well. Work that does not comply with this article or IC 25-39 must be promptly corrected by the water well driller. Work that is covered contrary to the request of a department representative must, upon request, be uncovered for inspection and replaced by the water well driller. (*Natural Resources Commission; 312 IAC 13-11-1; filed Nov 22, 1999, 3:34 p.m.: 23 IR 774*)

### **312 IAC 13-11-2 Inspections by the department of records of a water well driller**

Authority: IC 25-39-4-2; IC 25-39-4-6; IC 25-39-4-9

Affected: IC 25-39

Sec. 2. A conservation officer or another representative of the department may, at any reasonable time, inspect any record maintained by a water well driller that is needed to comply with IC 25-39 or this article. (*Natural Resources Commission; 312 IAC 13-11-2; filed Nov 22, 1999, 3:34 p.m.: 23 IR 774*)

## **Rule 12. Enforcement**

**312 IAC 13-12-1 Administrative enforcement**

Authority: IC 14-10-2-4; IC 25-39-4-2; IC 25-39-4-9

Affected: IC 4-21.5; IC 25-39

Sec. 1. (a) This rule governs enforcement of IC 25-39 and this article by the department under IC 4-21.5 and 312 IAC 3-1.

(b) This rule does not limit the authority to enforce IC 25-39 and this article through any other lawful method.

(c) This rule does not establish a basis for an action against a water well driller by a person other than the department. (*Natural Resources Commission; 312 IAC 13-12-1; filed Nov 22, 1999, 3:34 p.m.: 23 IR 774*)

**312 IAC 13-12-2 Suspension or revocation of a license as a water well driller**

Authority: IC 14-10-2-4; IC 25-39-4-2; IC 25-39-4-9

Affected: IC 4-21.5-3-6; IC 4-21.5-4; IC 25-39-4

Sec. 2. (a) The division may seek to suspend or revoke the license of a water well driller who has done any of the following:

(1) Acted as a well driller without a license in violation of IC 25-39.

(2) Secured a license through error or fraud.

(3) Failed to comply with the requirements set forth in any of the following:

(A) IC 25-39-4-1, IC 25-39-4-2, IC 25-39-4-4, IC 25-39-4-5, or IC 25-39-4-6.

(B) 312 IAC 13-2 through 312 IAC 13-10.

(b) An action under this section is governed by IC 4-21.5-3-6 and shall be initiated by the division with the issuance of a written notice directed to the person who is the subject of the action. The notice shall include the following:

(1) A brief description of the order for suspension or revocation. An order for a license suspension shall not exceed a period of effectiveness that exceeds ninety (90) days.

(2) A declaration that the recipient of the order may seek:

(A) a stay of effectiveness of the suspension or revocation;

(B) review of the suspension or revocation; or

(C) both a stay of effectiveness and review of the suspension or revocation;

by making a written request within eighteen (18) days of issuance addressed to:

Director, Division of Hearings

Natural Resources Commission

Indiana Government Center-South

402 West Washington Street, Room W272

Indianapolis, Indiana 46204.

(c) An order issued by the division under subsection (b) is effective fifteen (15) days after issuance unless the recipient of the order obtains a stay of effectiveness. This subsection does not preclude the department from issuing, under IC 4-21.5-4, an emergency or other temporary order with respect to the license. (*Natural Resources Commission; 312 IAC 13-12-2; filed Nov 22, 1999, 3:34 p.m.: 23 IR 774*)

**312 IAC 13-12-3 Denial of a new, renewal, or restoration license as a water well driller**

Authority: IC 14-10-2-4; IC 25-39-4-2; IC 25-39-4-9

Affected: IC 4-21.5-3-5; IC 4-21.5-4; IC 25-39-4

Sec. 3. (a) The division may refuse to grant, renew, or restore a license to a person who has done any of the following:

(1) Acted as a well driller without a license in violation of IC 25-39.

(2) Secured a license through error or fraud.

(3) Failed to comply with the requirements set forth in any of the following:

(A) IC 25-39-4-1, IC 25-39-4-2, IC 25-39-4-4, IC 25-39-4-5, or IC 25-39-4-6.

(B) 312 IAC 13-2 through 312 IAC 13-10.

(b) An action under this section is governed by IC 4-21.5-3-5 and shall be initiated by the division with the issuance of a written notice directed to the applicant and to any person who has requested notice under IC 4-21.5-3-5(b)(4). The notice shall

include the following:

- (1) A brief description of the denial order and the basis for the denial.
- (2) A declaration that the recipient of the order may seek administrative review by making a written request within eighteen (18) days of issuance addressed to:  
Director, Division of Hearings  
Natural Resources Commission  
Indiana Government Center-South  
402 West Washington Street, Room W272  
Indianapolis, Indiana 46204.

(c) If the division orders the denial of a license renewal, and a timely and sufficient application was made for renewal of the license, the existing license does not expire until the commission has disposed of a proceeding. This subsection does not preclude the department from issuing, under IC 4-21.5-4, an emergency or other temporary order with respect to the license. (*Natural Resources Commission; 312 IAC 13-12-3; filed Nov 22, 1999, 3:34 p.m.: 23 IR 775*)

### **312 IAC 13-12-4 Administrative review of a sanction against a water well drilling license**

Authority: IC 14-10-2-4; IC 25-39-4-2; IC 25-39-4-9

Affected: IC 25-39

Sec. 4. (a) The commission may consider the factors set forth in this section in conducting administrative review of an order issued by the department under section 2 or 3 of this rule.

(b) Mitigating factors are as follows:

- (1) The person against whom action is taken has not previously been adjudicated by the commission or a court to have violated IC 25-39 or this article.
- (2) The violation appears to have been unintentional.
- (3) The violation was an isolated occurrence.
- (4) Contamination is unlikely to have occurred as a result of the violation.
- (5) Where a violation has occurred, the person has acted diligently to correct the violation.

(c) Aggravating factors are as follows:

- (1) The person against whom action is taken has previously been adjudicated by the commission or a court to have violated IC 25-39 or this article.
- (2) The violation appears to have been intentional.
- (3) A pattern of violations has occurred.
- (4) Significant contamination is likely to have occurred as a result of the violation.
- (5) A hazard to human health is likely to have occurred as a result of the violation.

(*Natural Resources Commission; 312 IAC 13-12-4; filed Nov 22, 1999, 3:34 p.m.: 23 IR 775*)

### **312 IAC 13-12-5 Notice of violation**

Authority: IC 14-10-2-4; IC 25-39-4-2; IC 25-39-4-9

Affected: IC 4-21.5-3-8; IC 14-10-2-6; IC 25-39-5

Sec. 5. (a) The department may issue a complaint for a notice of violation under IC 14-10-2-6 against a person who violates IC 25-39-5. The complaint shall be filed with the division of hearings of the commission and is subject to IC 4-21.5-3-8. The division of hearings shall cause the complaint to be served upon the parties named in the complaint.

(b) The department has the burden of proving any violation alleged in the complaint by a preponderance of the evidence.

(c) A separate notice of violation may be issued or a separate charge imposed for each day a violation occurs.

(d) The person who is the subject of the complaint may establish as an affirmative defense the filing by a prosecuting attorney of a misdemeanor information or infraction complaint based on the same event as that upon which the notice of violation was based. The person has the burden of proving the affirmative defense.

(e) If following a completed proceeding under IC 4-21.5 the commission finds the violation occurred, the commission shall order the person to abate the violation within a reasonable period of time. The abatement period shall not be less than fifteen (15)



days. The order shall also specify that, if the violation is not abated within the specified time, the person shall pay a charge that does not exceed the maximum amount that may be assessed by a court for committing the violation as an infraction or misdemeanor. (*Natural Resources Commission; 312 IAC 13-12-5; filed Nov 22, 1999, 3:34 p.m.: 23 IR 775*)

## **ARTICLE 14. TIMBER BUYERS, THEIR AGENTS, AND TIMBER GROWERS**

### **Rule 1. Application and Administration**

#### **312 IAC 14-1-1 Application of article**

Authority: IC 25-36.5-1-9

Affected: IC 25-36.5-1-3.2

Sec. 1. (a) This article governs each of the following actions under IC 25-36.5-1 and any proceedings resulting from those actions:

- (1) The issuance, suspension, or revocation of a license to act as a timber buyer or as an agent.
- (2) The issuance of a notice of violation.
- (3) The issuance of a civil penalty.
- (4) The issuance or forfeiture of a bond.
- (5) A complaint filed under IC 25-36.5-1-3.2 against a timber buyer or timber cutter.
- (6) Any other action controlled by IC 25-36.5-1.

(b) This article does not govern a dispute involving a timber buyer or an agent, which is not controlled by IC 25-36.5-1, unless the doctrine of primary jurisdiction applies. (*Natural Resources Commission; 312 IAC 14-1-1; filed May 27, 1997, 3:50 p.m.: 20 IR 2744; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

#### **312 IAC 14-1-2 Administration**

Authority: IC 25-36.5-1-9

Affected: IC 4-21.5; IC 25-36.5-1-3.2

Sec. 2. (a) This article is administered by the division of forestry.

(b) Where this article specifically grants to the division of forestry authority to take action, the division director may delegate the authority to any employee of the division of forestry.

(c) Administrative review of a determination by the division of forestry or of a complaint filed under IC 25-36.5-1-3.2 is governed by IC 4-21.5 and 312 IAC 3-1.

(d) The commission is the ultimate authority for an action under this article. (*Natural Resources Commission; 312 IAC 14-1-2; filed May 27, 1997, 3:50 p.m.: 20 IR 2745; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

### **Rule 2. Definitions**

#### **312 IAC 14-2-1 Application of definitions**

Authority: IC 25-36.5-1-9

Affected: IC 25-36.5-1

Sec. 1. The definitions in this rule apply throughout this article. (*Natural Resources Commission; 312 IAC 14-2-1; filed May 27, 1997, 3:50 p.m.: 20 IR 2745; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

#### **312 IAC 14-2-2 "Agent" defined**

Authority: IC 25-36.5-1-9

Affected: IC 25-36.5-1

Sec. 2. "Agent" means an individual who represents a timber buyer in effecting or attempting to effect purchases of timber.

*(Natural Resources Commission; 312 IAC 14-2-2; filed May 27, 1997, 3:50 p.m.: 20 IR 2745; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 14-2-3 “Bond” defined**

Authority: IC 25-36.5-1-9

Affected: IC 25-36.5-1

Sec. 3. “Bond” means a surety bond, cash, or certificate of deposit posted by a timber buyer under IC 25-36.5-1 for the use and benefit of the people of Indiana and for the use and benefit of any timber grower. *(Natural Resources Commission; 312 IAC 14-2-3; filed May 27, 1997, 3:50 p.m.: 20 IR 2745; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 14-2-4 “Buying” defined**

Authority: IC 25-36.5-1-9

Affected: IC 25-36.5-1

Sec. 4. “Buying” means acquiring an interest in property by the payment of a price, value, or other consideration. *(Natural Resources Commission; 312 IAC 14-2-4; filed May 27, 1997, 3:50 p.m.: 20 IR 2745; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 14-2-5 “Division director” defined**

Authority: IC 25-36.5-1-9

Affected: IC 25-36.5-1

Sec. 5. “Division director” refers to the director of the division of forestry. The division director is also sometimes referred to as the state forester. *(Natural Resources Commission; 312 IAC 14-2-5; filed May 27, 1997, 3:50 p.m.: 20 IR 2745; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 14-2-6 “Division of forestry” defined**

Authority: IC 25-36.5-1-9

Affected: IC 25-36.5-1

Sec. 6. “Division of forestry” refers to the division of forestry of the department. The address for the division of forestry is as follows:

Division of Forestry  
Department of Natural Resources  
Indiana Government Center-South  
402 West Washington Street, Room W296  
Indianapolis, Indiana 46204

*(Natural Resources Commission; 312 IAC 14-2-6; filed May 27, 1997, 3:50 p.m.: 20 IR 2745; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 14-2-7 “Division of hearings” defined**

Authority: IC 25-36.5-1-9

Affected: IC 25-36.5-1

Sec. 7. “Division of hearings” refers to the division of hearings of the commission. The address for the division of hearings is as follows:

Division of Hearings  
Natural Resources Commission  
Indiana Government Center-South

402 West Washington Street, Room W272  
Indianapolis, Indiana 46204

*(Natural Resources Commission; 312 IAC 14-2-7; filed May 27, 1997, 3:50 p.m.: 20 IR 2745; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 14-2-8 “Engaged in the business of buying timber” defined**

Authority: IC 25-36.5-1-9

Affected: IC 25-36.5-1

Sec. 8. “Engaged in the business of buying timber” means either of the following:

(1) The exertion of control over the sale of timber as demonstrated by any of the following occurrences:

(A) The purchase of timber directly or through an agent from a timber grower.

(B) The selection of which or how much timber is cut. This clause does not include a person employed by a timber grower to provide technical expertise concerning timber valuation or management.

(C) The selection of a person to act as a feller, skidder, or hauler.

(D) The direction of timber to a particular market.

(2) Negotiation with a timber grower for the right to purchase timber.

*(Natural Resources Commission; 312 IAC 14-2-8; filed May 27, 1997, 3:50 p.m.: 20 IR 2745; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 14-2-9 “Timber” defined**

Authority: IC 25-36.5-1-9

Affected: IC 25-36.5-1

Sec. 9. “Timber” means trees, standing or felled, and logs which can be used for sawing or processing into lumber for building or structural purposes or for the manufacture of any article. The term does not include firewood, Christmas trees, fruit or ornamental trees, or wood products not used or to be used for building, structural, manufacturing, or processing purposes. *(Natural Resources Commission; 312 IAC 14-2-9; filed May 27, 1997, 3:50 p.m.: 20 IR 2746; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 14-2-10 “Timber buyer” defined**

Authority: IC 25-36.5-1-9

Affected: IC 25-36.5-1

Sec. 10. “Timber buyer” means a person engaged in the business of buying timber from timber growers for sawing into lumber, processing, or resale, but does not include a person who occasionally purchases timber for sawing or processing for his own use and not for resale. *(Natural Resources Commission; 312 IAC 14-2-10; filed May 27, 1997, 3:50 p.m.: 20 IR 2746; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 14-2-11 “Timber cutter” defined**

Authority: IC 25-36.5-1-9

Affected: IC 25-36.5-1

Sec. 11. “Timber cutter” means a person who cuts timber but who is not a timber buyer. *(Natural Resources Commission; 312 IAC 14-2-11; filed May 27, 1997, 3:50 p.m.: 20 IR 2746; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 14-2-12 “Timber grower” defined**

Authority: IC 25-36.5-1-9

Affected: IC 25-36.5-1

Sec. 12. “Timber grower” means the owner, tenant, or operator of land in this state who has an interest in, or is entitled to

receive any part of the proceeds from, the sale of timber grown in this state and includes persons exercising lawful authority to sell timber for a timber grower. (*Natural Resources Commission; 312 IAC 14-2-12; filed May 27, 1997, 3:50 p.m.: 20 IR 2746; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**Rule 3. Licensing and Bonding of Timber Buyers and Agents**

**312 IAC 14-3-1 Licensing of timber buyer**

Authority: IC 25-36.5-1-9

Affected: IC 25-36.5-1

Sec. 1. (a) No person shall engage in the business of timber buying in this state without a registration certificate issued by the department.

(b) An application by a timber buyer for a registration certificate shall be prepared on a department form and delivered to the division of forestry. (*Natural Resources Commission; 312 IAC 14-3-1; filed May 27, 1997, 3:50 p.m.: 20 IR 2746; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 14-3-2 Bonding of timber buyers**

Authority: IC 25-36.5-1-3; IC 25-36.5-1-9

Affected: IC 25-36.5-1-3.5; IC 28-1-1-3

Sec. 2. (a) Every person registered as a timber buyer must file and maintain a bond with the department under IC 25-36.5-1-3.

(b) The bond required under subsection (a) may consist of any of the following:

(1) An effective surety bond issued by a corporate surety holding an applicable certificate of authority from the department of insurance, state of Indiana.

(2) Cash deposited with the division of forestry and held in an account dedicated to the purposes set forth in IC 25-36.5-1-3. Cash deposited under this subdivision shall not be returned to a timber buyer except under IC 25-36.5-1-3.5.

(3) A certificate of deposit issued by a financial institution as defined in IC 28-1-1-3. The certificate of deposit shall be held by and assigned to the department and shall not be returned to a timber buyer except under IC 25-36.5-1-3.5.

(*Natural Resources Commission; 312 IAC 14-3-2; filed May 27, 1997, 3:50 p.m.: 20 IR 2746; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 14-3-3 Denial of a timber buyer registration certificate**

Authority: IC 25-36.5-1-4.9; IC 25-36.5-1-9

Affected: IC 25-36.5-1

Sec. 3. The division of forestry may refuse to issue a timber buyer registration certificate to an applicant that has done any of the following within ten (10) years before filing the application:

(1) Been convicted of robbery, burglary, arson, forgery, fraud, or another felony by which the applicant deprived or sought to deprive another person of property by force or deception. In determining whether to refuse issuance of the registration certificate, however, the division of forestry shall consider the criminal acts of the applicant supporting the conviction as they bear upon fitness to serve as a licensed timber buyer.

(2) Violated IC 25-36.5-1.

(3) Violated this article or violated 310 IAC 23 before its repeal.

(*Natural Resources Commission; 312 IAC 14-3-3; filed May 27, 1997, 3:50 p.m.: 20 IR 2746; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 14-3-4 Issuance and renewal of a timber buyer registration certificate**

Authority: IC 25-36.5-1-9

Affected: IC 4-21.5-3-4; IC 25-36.5-1-6

Sec. 4. (a) The division of forestry shall issue a timber registration certificate upon a determination that an applicant has complied with IC 25-36.5-1-6 and this rule.

(b) A registration is valid for a calendar year and may be renewed annually by a timber buyer. A copy of the registration certificate must be posted by the timber buyer in the principal office of the timber buyer in this state.

(c) Upon request for a certificate and payment of the fee, the division of forestry shall issue to the licensed timber buyer a copy of the certificate to evidence that a certificate of registration has been granted and a bond filed as required by IC 25-36.5-1.

(d) The issuance and renewal of a timber buyer registration certificate are governed by IC 4-21.5-3-4. (*Natural Resources Commission; 312 IAC 14-3-4; filed May 27, 1997, 3:50 p.m.: 20 IR 2747; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

#### **Rule 4. Department Sanctions Against Timber Buyers, Agents, and Other Persons Who Violate this Article**

##### **312 IAC 14-4-1 Suspensions and revocations of licenses**

Authority: IC 25-36.5-1-9

Affected: IC 4-21.5-3-8; IC 4-21.5-4; IC 25-36.5-1

Sec. 1. (a) The division director may file a complaint under IC 4-21.5-3-8, with the division of hearings, which seeks to suspend or revoke a timber buyer's registration certificate or an agent's license.

(b) A violation of IC 25-36.5-1 or this article must be established by the department in order to support a suspension or revocation.

(c) The suspension of a timber buyer's registration automatically suspends any agent's license issued for that registration. The revocation of a timber buyer's registration certificate automatically revokes any agent's license issued for that registration.

(d) The director or the division director may, under IC 4-21.5-4, suspend a timber buyer's registration or an agent's license if an emergency exists. (*Natural Resources Commission; 312 IAC 14-4-1; filed May 27, 1997, 3:50 p.m.: 20 IR 2747; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

##### **312 IAC 14-4-2 Notices of violation**

Authority: IC 25-36.5-1-9

Affected: IC 4-21.5-3-6; IC 25-36.5-1

Sec. 2. (a) The division of forestry may, under IC 4-21.5-3-6, issue a notice of violation against a timber buyer who violates IC 25-36.5-1 or this article.

(b) The notice of violation shall be in writing and include the following:

(1) A designation that the document is a "Notice of Violation".

(2) The name of the timber buyer against which the notice is directed and the name of any person who has provided bond for the timber buyer under this article.

(3) The nature of the violation.

(4) What action is appropriate to abate the violation.

(5) A statement that a person aggrieved by the notice of violation shall, within twenty-three (23) days of issuance, either abates the violation or request administrative review from the division of hearings. The department and the timber buyer may, however, enter an agreement by which the period for abatement is extended beyond twenty-three (23) days.

(c) If a notice of violation is issued under this section and the timber buyer neither abates the violation nor requests administrative review in a timely fashion, the department may, under 312 IAC 14-5, forfeit the bond. (*Natural Resources Commission; 312 IAC 14-4-2; filed May 27, 1997, 3:50 p.m.: 20 IR 2747; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

##### **312 IAC 14-4-3 Penalties**

Authority: IC 25-36.5-1-9

Affected: IC 4-21.5-3-8; IC 25-36.5-1

Sec. 3. (a) The division of forestry may file a complaint under IC 4-21.5-3-8, with the division of hearings, which seeks to impose a civil penalty against a person who violates IC 25-36.5-1 or this article.

(b) A civil penalty imposed under this section may not exceed the following limits:

(1) For engaging in business as a timber buyer without securing a timber buyer's registration certificate, ten thousand dollars (\$10,000).

(2) For engaging as an agent of a timber buyer without holding an agent's license, ten thousand dollars (\$10,000).

(3) For any other violation, one thousand dollars (\$1,000).

(c) Subject to the mitigating factors described in subsection (d) and the aggravating factors described in subsection (e), the presumptive civil penalty assessed under this section is one-half ( $\frac{1}{2}$ ) of the amounts for the violations described in subsection (b).

(d) Mitigating factors to be considered in assessing a civil penalty are as follows:

(1) The person assessed a civil penalty has not previously been adjudicated by the commission or a court to have violated IC 25-36.5-1 or this article.

(2) The violation appears to have been unintentional.

(3) The violation was an isolated occurrence.

(4) No timber grower has suffered harm as a result of the violation or, if harm was suffered, full restitution was tendered promptly.

(5) Significant environmental harm was not suffered as a result of the violation.

(e) Aggravating factors to be considered in assessing a civil penalty are as follows:

(1) The person assessed a civil penalty has previously been adjudicated by the commission or a court to have violated IC 25-36.5-1 or this article.

(2) The violation appears to have been intentional.

(3) A pattern of violations has occurred.

(4) A timber grower has suffered harm as a result of the violation, and full restitution for the harm has not been tendered.

(5) Significant environmental harm was suffered as a result of the violation, and the harm has not been mitigated pursuant to a plan approved by the division director.

*(Natural Resources Commission; 312 IAC 14-4-3; filed May 27, 1997, 3:50 p.m.: 20 IR 2747; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

## **Rule 5. Bond Forfeitures**

### **312 IAC 14-5-1 Issuance of bond forfeiture**

Authority: IC 25-36.5-1-9

Affected: IC 4-21.5-3-6; IC 25-36.5-1

Sec. 1. The division director may, under IC 4-21.5-3-6, issue a notice of bond forfeiture for any of the following reasons:

(1) A timber buyer has failed, as determined following a completed proceeding under 312 IAC 14-6, to pay when due any amount owed to a timber grower for timber purchased.

(2) A timber buyer has failed, as determined following a completed proceeding under 312 IAC 14-6, to pay damages for timber wrongfully cut by a timber buyer or an agent.

(3) A notice of violation has been issued against a timber buyer under 312 IAC 14-4-2 and the timber buyer has failed to do either of the following:

(A) Abates the violation.

(B) Request administrative review of the notice of violation in a timely fashion. Provided, however, that the division director may forfeit bond where the opportunity for review is exhausted, and a determination is made with respect to a notice of violation which is adverse to a timber buyer.

*(Natural Resources Commission; 312 IAC 14-5-1; filed May 27, 1997, 3:50 p.m.: 20 IR 2748; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

### **312 IAC 14-5-2 Notice of bond forfeiture**

Authority: IC 25-36.5-1-9

Affected: IC 25-36.5-1

Sec. 2. A notice of bond forfeiture shall be in writing and include the following:

- (1) A designation that the document is a notice of bond forfeiture under the Indiana timber buyer's law.
- (2) The name of the timber buyer secured by the bond.
- (3) The basis for the bond forfeiture.
- (4) A statement that the person providing the bond shall, within eighteen (18) days of issuance of the notice, either forfeit the bond to the department or request administrative review from the division of hearings.

*(Natural Resources Commission; 312 IAC 14-5-2; filed May 27, 1997, 3:50 p.m.: 20 IR 2748; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**Rule 6. Proceedings for Timber Wrongfully Cut or for which Full Compensation is not Received by a Timber Grower**

**312 IAC 14-6-1 Initiation of a proceeding**

Authority: IC 25-36.5-1-9

Affected: IC 4-21.5-3-8; IC 25-36.5-1-3.2; IC 26-1-2

Sec. 1. (a) The division director or a timber grower may, under IC 4-21.5-3-8, file a complaint with the division of hearings against a timber buyer or a timber cutter to seek compensation under IC 25-36.5-1-3.2 and this rule.

(b) The division director or a timber grower may file a complaint only if there is reason to believe that:

(1) the timber buyer or timber cutter has acquired timber from a timber grower under a written contract for the sale of timber without payment having been made to the timber grower as specified in the contract; or

(2) if:

(A) there is no written contract for the sale of timber; or

(B) there is a written contract for the sale of timber but the contract does not set forth the purchase price for the timber; the timber buyer or timber cutter has cut timber or acquired timber from the timber grower without payment having been made to the timber grower equal to the value of the timber as described under IC 26-1-2.

(c) The filing of a complaint under this section initiates a proceeding which is governed by IC 4-21.5 and 312 IAC 3-1.

*(Natural Resources Commission; 312 IAC 14-6-1; filed May 27, 1997, 3:50 p.m.: 20 IR 2748; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 14-6-2 Contents of administrative complaint**

Authority: IC 25-36.5-1-9

Affected: IC 25-36.5-1; IC 26-1-2

Sec. 2. (a) A complaint filed under this rule shall include the following:

(1) The name and address of the timber grower.

(2) The name and address of the timber buyer or timber cutter.

(3) An averment that the timber buyer or timber cutter:

(A) has acquired timber from the timber grower under a written contract for the sale of timber without payment having been made to the timber grower as specified in the contract; or

(B) if:

(i) there is no written contract for the sale of timber; or

(ii) there is a written contract for the sale of timber but the contract does not set forth the purchase price for the timber;

the timber buyer or timber cutter has cut timber or acquired timber from the timber grower without payment having been made to the timber grower equal to the value of the timber as determined under IC 26-1-2.

(4) A description of the location or locations where the timber was alleged to have been cut. This description shall be referenced with reasonable particularity and shall include the county or counties affected.

(5) The date or dates when the subject timber is alleged to have been cut.

(6) A claim for damages, which claim shall be limited to the following:

(A) Damages in compensation for damage actually resulting from the wrongful activities of a timber buyer or timber cutter.

(B) Damages equal to three (3) times the stumpage value of any timber that is wrongfully cut or appropriated without payment.

(b) A party may file with the division of hearings a request for a more definite statement if a complaint does not conform to the requirements of subsection (a). Where a request is made under this subsection within thirty (30) days of filing the complaint and the complaint does not conform with subsection (a), the administrative law judge shall grant the request.

(c) Upon a proper motion of a party, a complaint which does not comply with section 1 of this rule and with subsection (a) shall be dismissed by the administrative law judge. (*Natural Resources Commission; 312 IAC 14-6-2; filed May 27, 1997, 3:50 p.m.: 20 IR 2749; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

### **312 IAC 14-6-3 Prehearing conferences**

Authority: IC 25-36.5-1-9

Affected: IC 4-21.5-3-19; IC 4-21.5-3.5; IC 25-36.5-1

Sec. 3. (a) As soon as practicable after filing a complaint, an administrative law judge shall be appointed under 312 IAC 3-1 to conduct the proceeding.

(b) The administrative law judge shall schedule an initial prehearing conference to be conducted within forty-five (45) days after filing the complaint.

(c) A purpose of the initial prehearing conference is to provide the parties with an opportunity for settlement, including an opportunity for mediation under IC 4-21.5-3.5. In addition, any purpose set forth in IC 4-21.5-3-19 may be pursued.

(d) The administrative law judge may conduct any additional prehearing conference or conferences. (*Natural Resources Commission; 312 IAC 14-6-3; filed May 27, 1997, 3:50 p.m.: 20 IR 2749; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

### **312 IAC 14-6-4 Necessary parties; joinder; intervention**

Authority: IC 25-36.5-1-9

Affected: IC 4-21.5-3-21; IC 25-36.5-1-3.2

Sec. 4. (a) The necessary parties to a proceeding under this rule are:

(1) the timber grower;

(2) the timber buyer or timber cutter; and

(3) if the department under IC 25-36.5-1-3.2(b) initiated the proceeding by filing a complaint, the department.

(b) After the commencement of a proceeding under this rule, a party may move for the joinder of any of the following persons having a relationship to the site or the subject of the complaint:

(1) The person who posted bond for the timber buyer.

(2) A timber buyer.

(3) A timber cutter.

(4) A landowner.

(5) An owner of land adjacent to the land from which the timber was cut.

(6) A consultant receiving a fee for services related to the timber.

(7) A land surveyor performing a minimum standard detail survey in Indiana which conforms with IC 25-36.5-1-3.2(d)(7).

(8) The department, if the department has a relationship to the site or subject of the complaint as a landowner or owner of adjacent land.

(c) The administrative law judge may schedule a date by which a party must move for any joinder to be sought under subsection (b). The administrative law judge shall not, however, schedule a date by which joinder must be sought which is earlier than thirty (30) days after the initial prehearing conference.

(d) A person may seek to intervene in a proceeding as provided in IC 4-21.5-3-21. (*Natural Resources Commission; 312 IAC 14-6-4; filed May 27, 1997, 3:50 p.m.: 20 IR 2749; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)



**312 IAC 14-6-5 Hearings**

Authority: IC 25-36.5-1-9

Affected: IC 4-21.5-3; IC 25-36.5-1

Sec. 5. (a) Notice of a hearing shall conform to the requirements of IC 4-21.5-3-20.

(b) In selecting the site for a hearing, the administrative law judge shall consider the convenience of the parties. Unless otherwise agreed to by the parties, a hearing site shall be located in the region where either:

(1) the majority of the parties reside or are domiciled; or

(2) the subject property is located.

(c) A hearing shall be conducted in conformance with IC 4-21.5-3-25 and IC 4-21.5-3-26. (*Natural Resources Commission; 312 IAC 14-6-5; filed May 27, 1997, 3:50 p.m.: 20 IR 2750; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**ARTICLE 15. TIMBER MANAGEMENT****Rule 1. Administration and Definitions****312 IAC 15-1-1 Purpose**

Authority: IC 6-1.1-6-16

Affected: IC 6-1.1-6

Sec. 1. (a) The purpose of this article is to provide minimum standards of good timber management for property that is classified as forest plantation land or native forest land under IC 6-1.1-6 after June 30, 1990.

(b) This article does not apply to property classified as forest plantation land or native forest land before July 1, 1990. (*Natural Resources Commission; 312 IAC 15-1-1; filed May 19, 1997, 11:30 a.m.: 20 IR 2750; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 15-1-2 Administration by division of forestry**

Authority: IC 6-1.1-6-16

Affected: IC 6-1.1-6

Sec. 2. This article and IC 6-1.1-6 are administered by the division of forestry of the department. (*Natural Resources Commission; 312 IAC 15-1-2; filed May 19, 1997, 11:30 a.m.: 20 IR 2750; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 15-1-3 Administrative review of an order by a district forester**

Authority: IC 6-1.1-6-16

Affected: IC 4-21.5; IC 6-1.1-6

Sec. 3. (a) A person who is aggrieved by an order or directive of a district forester made under this article may request a review of the order or directive by the state forester. A response to the review request shall be provided within fourteen (14) days by the state forester or by another employee of the division of forestry designated by the state forester to consider the request.

(b) A person who is aggrieved by the response of the state forester (or the employee designated by the state forester), made under subsection (a), may obtain administrative review of the order by the commission under IC 4-21.5 and 312 IAC 3-1. If a timely response is not made under subsection (a), an aggrieved person may treat the lack of a response as a denial of relief by the state forester and obtain administrative review by the commission under this subsection. (*Natural Resources Commission; 312 IAC 15-1-3; filed May 19, 1997, 11:30 a.m.: 20 IR 2750; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 15-1-4 Revocation of certification**

Authority: IC 6-1.1-6-16

Affected: IC 4-21.5-3-8; IC 6-1.1-6

Sec. 4. (a) The state forester may initiate a proceeding, under IC 4-21.5-3-8, to revoke a certification issued under IC 6-1.1-6 for forest plantation land or native forest land if the owner violates, or allows the violation by another person of, any of the following:

(1) IC 6-1.1-6.

(2) This article.

(3) The timber management plan established for the real estate and included within the forest plantation or native forest land.

(b) The commission is the ultimate authority for the department under this section. (*Natural Resources Commission; 312 IAC 15-1-4; filed May 19, 1997, 11:30 a.m.: 20 IR 2751; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 15-1-5 “Commercial harvest” defined**

Authority: IC 6-1.1-6-16

Affected: IC 6-1.1-6

Sec. 5. As used in this article, “commercial harvest” means the felling or removal of a tree for sale to, or use of, a person other than the owner. (*Natural Resources Commission; 312 IAC 15-1-5; filed May 19, 1997, 11:30 a.m.: 20 IR 2751; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 15-1-6 “District forester” defined**

Authority: IC 6-1.1-6-16

Affected: IC 6-1.1-6

Sec. 6. As used in this article, “district forester” means an employee of the department who:

(1) holds a bachelor of science degree in forest management or a closely related forestry curriculum from a college or university accredited by the Society of American Foresters; and

(2) is responsible for the administration of IC 6-1.1-6 within designated counties.

(*Natural Resources Commission; 312 IAC 15-1-6; filed May 19, 1997, 11:30 a.m.: 20 IR 2751; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 15-1-7 “Management plan” defined**

Authority: IC 6-1.1-6-16

Affected: IC 6-1.1-6

Sec. 7. As used in this article, “management plan” means a written document prepared by a district forester, or by a professional forester and approved by a district forester, which meets the following requirements:

(1) The plan is prepared in consultation with the owner and signed by the owner or an authorized representative of the owner.

(2) The plan adequately describes the native forest land or forest plantation being entered into classified forest status.

(3) The plan prescribes management practices for the classified forest land that:

(A) meet the objectives of the owner; and

(B) satisfy IC 6-1.1-6 and this article.

(4) The plan supports tree growth that is comparable with timber production and watershed protection.

(*Natural Resources Commission; 312 IAC 15-1-7; filed May 19, 1997, 11:30 a.m.: 20 IR 2751; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 15-1-8 “Owner” defined**

Authority: IC 6-1.1-6-16

Affected: IC 6-1.1-6

Sec. 8. As used in this article, “owner” means a person who owns real estate that is classified as forest plantation land or native forest land under IC 6-1.1-6. (*Natural Resources Commission; 312 IAC 15-1-8; filed May 19, 1997, 11:30 a.m.: 20 IR 2751; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 15-1-9 “Professional forester” defined**

Authority: IC 6-1.1-6-16

Affected: IC 6-1.1-6

Sec. 9. As used in this article, “professional forester” means a person who is not an employee of the department and who holds a bachelor of science degree in forest management or a closely related forestry curriculum from a college or university accredited by the Society of American Foresters. *(Natural Resources Commission; 312 IAC 15-1-9; filed May 19, 1997, 11:30 a.m.: 20 IR 2751; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 15-1-10 “State forester” defined**

Authority: IC 6-1.1-6-16

Affected: IC 6-1.1-6

Sec. 10. As used in this article, “state forester” means the director of the division of forestry of the department. *(Natural Resources Commission; 312 IAC 15-1-10; filed May 19, 1997, 11:30 a.m.: 20 IR 2751; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**Rule 2. Maintenance of Land Classified as a Forest Plantation or a Native Forest**

**312 IAC 15-2-1 Minimum standards of good timber management in maintenance of classified forest lands**

Authority: IC 6-1.1-6-16

Affected: IC 6-1.1-6-2; IC 6-1.1-6-3

Sec. 1. The owner of land classified as a forest plantation under IC 6-1.1-6-2 or a native forest under IC 6-1.1-6-3 shall do each of the following:

- (1) Maintain the land according to its management plan.
- (2) Prevent excessive erosion and control the deposition of sediment off-site.
- (3) Maintain a healthy forest environment.

*(Natural Resources Commission; 312 IAC 15-2-1; filed May 19, 1997, 11:30 a.m.: 20 IR 2751; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 15-2-2 Notification of commercial harvest**

Authority: IC 6-1.1-6-16

Affected: IC 6-1.1-6

Sec. 2. The owner of a forest classified under IC 6-1.1-6 shall provide written notice of a commercial harvest in the first annual report filed with the state forester following the harvest. *(Natural Resources Commission; 312 IAC 15-2-2; filed May 19, 1997, 11:30 a.m.: 20 IR 2752; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 15-2-3 Timber stand improvement**

Authority: IC 6-1.1-6-16

Affected: IC 6-1.1-6

Sec. 3. An owner shall provide for improvement to a timber stand if:

- (1) required in a management plan; or
- (2) directed by a district forester following a commercial harvest of timber.

*(Natural Resources Commission; 312 IAC 15-2-3; filed May 19, 1997, 11:30 a.m.: 20 IR 2752; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 15-2-4 Salvage of timber following natural catastrophes**

Authority: IC 6-1.1-6-16

Affected: IC 6-1.1-6

Sec. 4. If a sudden and unexpected natural catastrophe occurs, which seriously damages the merchantable trees within a classified forest area, the owner may immediately salvage the trees. (*Natural Resources Commission; 312 IAC 15-2-4; filed May 19, 1997, 11:30 a.m.: 20 IR 2752; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**ARTICLE 16. OIL AND GAS**

**Rule 1. Definitions**

**312 IAC 16-1-1 Definitions**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 1. The definitions in this rule apply throughout this article and 312 IAC 17-3. (*Natural Resources Commission; 312 IAC 16-1-1; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2326*)

**312 IAC 16-1-2 “Abandon” defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 2. “Abandon” means to:

(1) terminate operations of a well for oil and gas purposes; and

(2) to reclaim and restore the site of the well in a manner that will protect the waters and lands of the state against pollution.

(*Natural Resources Commission; 312 IAC 16-1-2; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2326*)

**312 IAC 16-1-3 “Administrator” defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 3. “Administrator” means:

(1) the administrator of the United States Environmental Protection Agency; or

(2) an authorized representative.

(*Natural Resources Commission; 312 IAC 16-1-3; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2326*)

**312 IAC 16-1-4 “Annulus” defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 4. “Annulus” means the space between:

(1) the well bore wall and a string of casing;

(2) two (2) strings of casing; or

(3) tubing and the innermost casing.

(*Natural Resources Commission; 312 IAC 16-1-4; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2326*)

**312 IAC 16-1-5 “Aquifer” defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 5. "Aquifer" means a geological formation, group of formations, or a part of a formation that can yield a significant amount of water to a well or spring. *(Natural Resources Commission; 312 IAC 16-1-5; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2326)*

**312 IAC 16-1-6 "Bridge" defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 6. "Bridge" means natural or manmade material placed above the bottom of a bore hole. *(Natural Resources Commission; 312 IAC 16-1-6; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2326)*

**312 IAC 16-1-7 "Class II well" defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 7. "Class II well" means a well that injects fluids:

- (1) that are brought to the surface in connection with conventional oil or gas production and can be commingled with wastewaters (other than wastewaters classified as hazardous waste at the time of injection) from gas plants that are an integral part of production operations;
- (2) for the enhanced recovery of oil or gas; or
- (3) for the storage of hydrocarbons that are liquid at standard temperature and pressure.

*(Natural Resources Commission; 312 IAC 16-1-7; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2327)*

**312 IAC 16-1-8 "Commercially mineable coal resource" defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 8. "Commercially mineable coal resource" means a seam of coal that is:

- (1) at least thirty-six (36) inches thick; and
- (2) located no more than eight hundred (800) feet below the surface.

*(Natural Resources Commission; 312 IAC 16-1-8; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2327)*

**312 IAC 16-1-9 "Commission representative" defined**

Authority: IC 14-37-3

Affected: IC 14-37; IC 14-38

Sec. 9. "Commission representative" means an employee of the division who is authorized by the commission to perform the powers and duties set forth in IC 14-37, IC 14-38, and the rules adopted under those articles. Each inspector is a commission representative. *(Natural Resources Commission; 312 IAC 16-1-9; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2327)*

**312 IAC 16-1-9.5 "Completed zone" defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 9.5. "Completed zone" means a geologic formation in which production, injection, gas storage, gas storage observation, or water supply was established. *(Natural Resources Commission; 312 IAC 16-1-9.5; filed Aug 6, 2004, 12:00 p.m.: 27 IR 3881)*

**312 IAC 16-1-10 "Confining zone" defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 10. "Confining zone" means a stratum or group of strata that prevent the vertical migration of fluid above the injection zone. *(Natural Resources Commission; 312 IAC 16-1-10; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2327)*

**312 IAC 16-1-11 "Deputy director" defined**

Authority: IC 14-37-3

Affected: IC 14-9-3-1; IC 14-37

Sec. 11. "Deputy director" refers to the deputy director for the bureau of mine reclamation established under IC 14-9-3-1. *(Natural Resources Commission; 312 IAC 16-1-11; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2327)*

**312 IAC 16-1-12 "Directional drilling" defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 12. "Directional drilling" means the controlled directional drilling whereby the bottom of the well bore is directed away from the vertical position. *(Natural Resources Commission; 312 IAC 16-1-12; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2327)*

**312 IAC 16-1-13 "Disposal well" defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 13. "Disposal well" means a Class II well that injects fluids that are brought to the surface in connection with conventional oil or natural gas production and may be commingled with wastewaters from gas plants that are an integral part of production operations unless those waters are classified as hazardous waste at the time of injection. *(Natural Resources Commission; 312 IAC 16-1-13; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2327)*

**312 IAC 16-1-14 "Division" defined**

Authority: IC 14-37-3

Affected: IC 14-9-4-1; IC 14-37

Sec. 14. "Division" refers to the division of oil and gas established under IC 14-9-4-1(15). *(Natural Resources Commission; 312 IAC 16-1-14; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2327)*

**312 IAC 16-1-15 "Division director" defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 15. "Division director" refers to the director of the division of oil and gas. *(Natural Resources Commission; 312 IAC 16-1-15; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2327)*

**312 IAC 16-1-16 "Enhanced recovery well" defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 16. "Enhanced recovery well" means a well that is used to inject fluid under pressure into a geological formation for the enhancement of oil or gas production. *(Natural Resources Commission; 312 IAC 16-1-16; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2327)*

**312 IAC 16-1-17 “Established Trenton limestone reservoir” defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 17. “Established Trenton limestone reservoir” means any reservoir of Ordovician age in an area that is within one (1) mile of a well that has produced oil or natural gas in commercial quantities from the Trenton formation. (*Natural Resources Commission; 312 IAC 16-1-17; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2327*)

**312 IAC 16-1-18 “Exempted aquifer” defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 18. “Exempted aquifer” is an aquifer or a portion of an aquifer that is an underground source of drinking water, but has been exempted under 312 IAC 16-5-8. (*Natural Resources Commission; 312 IAC 16-1-18; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2328*)

**312 IAC 16-1-19 “Existing injection well” defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 19. “Existing injection well” means a Class II well in operation as an injection well before January 1, 1990. (*Natural Resources Commission; 312 IAC 16-1-19; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2328*)

**312 IAC 16-1-19.5 “Facility” defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 19.5. “Facility” means an oil and gas exploration or production operation contained within a single lease or group of leases communitized into a single operating unit. (*Natural Resources Commission; 312 IAC 16-1-19.5; filed Sep 11, 2000, 3:31 p.m.: 24 IR 278*)

**312 IAC 16-1-20 “Field” defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 20. “Field” means a group of pools that are related to a single geologic feature, either by structure or stratigraphy. (*Natural Resources Commission; 312 IAC 16-1-20; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2328*)

**312 IAC 16-1-21 “Fluid” defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 21. “Fluid” means a material or substance that flows or moves. (*Natural Resources Commission; 312 IAC 16-1-21; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2328*)

**312 IAC 16-1-21.5 “Fluid contaminated with oil or saltwater” defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 21.5. “Fluid contaminated with oil or saltwater” means a fluid that contains:

- (1) oil, as defined at section 37 of this rule; or
- (2) saltwater, as defined at section 43.5 of this rule.

A fluid is contaminated with saltwater if the total dissolved solids content of a representative sample of the fluid is greater than seven hundred fifty (750) milligrams per liter. (*Natural Resources Commission; 312 IAC 16-1-21.5; filed Sep 11, 2000, 3:31 p.m.: 24 IR 278; errata filed Dec 6, 2000, 10:12 a.m.: 24 IR 1032*)

**312 IAC 16-1-22 “Formation” defined**

Authority: IC 14-37-3  
Affected: IC 14-37

Sec. 22. “Formation” means a body of consolidated or unconsolidated rock characterized by a degree of lithographic homogeneity that is mappable on the earth’s surface or traceable in the subsurface. (*Natural Resources Commission; 312 IAC 16-1-22; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2328*)

**312 IAC 16-1-23 “Fresh water” defined**

Authority: IC 14-37-3  
Affected: IC 14-37

Sec. 23. “Fresh water,” for purposes of identifying an underground source of drinking water, means water that contains no more than ten thousand (10,000) milligrams per liter of total dissolved solids. (*Natural Resources Commission; 312 IAC 16-1-23; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2328*)

**312 IAC 16-1-24 “Gas” defined**

Authority: IC 14-37-3  
Affected: IC 14-37

Sec. 24. “Gas” means natural gas unless otherwise specified. (*Natural Resources Commission; 312 IAC 16-1-24; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2328*)

**312 IAC 16-1-25 “Gas storage observation well” defined**

Authority: IC 14-37-3  
Affected: IC 14-37

Sec. 25. “Gas storage observation well” means a well used in conjunction with an underground gas storage reservoir to observe and measure the presence, movement, pressure, kind, and amount of formation fluids by physical, electrical, or geophysical methods. (*Natural Resources Commission; 312 IAC 16-1-25; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2328*)

**312 IAC 16-1-26 “Gas storage well” defined**

Authority: IC 14-37-3  
Affected: IC 14-37

Sec. 26. “Gas storage well” means a well used for the injection of gas into or the withdrawal of gas from an underground gas storage reservoir. (*Natural Resources Commission; 312 IAC 16-1-26; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2328*)

**312 IAC 16-1-27 “Geological or structure test well” defined**

Authority: IC 14-37-3  
Affected: IC 14-37

Sec. 27. “Geological or structure test well” means a nonproduction well drilled to investigate geologic, structural, or hydrogeologic stratigraphic intervals. (*Natural Resources Commission; 312 IAC 16-1-27; filed Feb 23, 1998, 11:30 a.m.: 21 IR*



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**312 IAC 16-1-28 “Ground water” defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 28. “Ground water” means all water occurring beneath the surface of the ground regardless of location. (*Natural Resources Commission; 312 IAC 16-1-28; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2328*)

**312 IAC 16-1-28.5 “Indiana department of environmental management” or “IDEM” defined**

Authority: IC 14-37-3

Affected: IC 13-13-1; IC 14-37

Sec. 28.5. “Indiana department of environmental management” or “IDEM” means the agency established under IC 13-13-1. (*Natural Resources Commission; 312 IAC 16-1-28.5; filed Sep 11, 2000, 3:31 p.m.: 24 IR 278*)

**312 IAC 16-1-29 “Injection well” defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 29. “Injection well” means a well into which fluids are injected. (*Natural Resources Commission; 312 IAC 16-1-29; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2328*)

**312 IAC 16-1-30 “Injection zone” defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 30. “Injection zone” means a geological formation, group of formations, or part of a formation receiving fluids through a well. (*Natural Resources Commission; 312 IAC 16-1-30; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2329*)

**312 IAC 16-1-31 “Inspector” defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 31. “Inspector” refers to an oil and gas inspector of the department. (*Natural Resources Commission; 312 IAC 16-1-31; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2329*)

**312 IAC 16-1-31.5 “Lease” defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 31.5. “Lease” means the property from which an owner may produce oil or gas. (*Natural Resources Commission; 312 IAC 16-1-31.5; filed Sep 11, 2000, 3:31 p.m.: 24 IR 278*)

**312 IAC 16-1-32 “Log” defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 32. “Log” means a systematic, written record that describes the strata and formations progressively encountered while drilling a well for oil and gas purposes, including water, oil, gas formations, and other underground resources. The term includes

data usually recorded during drilling. (*Natural Resources Commission; 312 IAC 16-1-32; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2329*)

**312 IAC 16-1-33 “Mud-laden fluid” defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 33. “Mud-laden fluid” means a mixture that is predominantly water and clay, but may contain fabricated additives. (*Natural Resources Commission; 312 IAC 16-1-33; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2329*)

**312 IAC 16-1-34 “Natural gas” defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 34. “Natural gas” means hydrocarbons that, when produced in a natural state from an underground reservoir, maintain a gaseous state at atmospheric conditions. (*Natural Resources Commission; 312 IAC 16-1-34; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2329*)

**312 IAC 16-1-35 “New injection well” defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 35. “New injection well” means a Class II well that begins operation as an injection well after December 31, 1989. (*Natural Resources Commission; 312 IAC 16-1-35; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2329*)

**312 IAC 16-1-36 “Noncommercial gas well” defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 36. “Noncommercial gas well” means a gas well permitted under IC 14-37 from which all gas produced must be consumed exclusively by the operator or owner of the property where the well is located. (*Natural Resources Commission; 312 IAC 16-1-36; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2329*)

**312 IAC 16-1-37 “Oil” defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 37. “Oil” means all liquid petroleum produced at a well. (*Natural Resources Commission; 312 IAC 16-1-37; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2329*)

**312 IAC 16-1-38 “Operator” defined**

Authority: IC 14-37-3

Affected: IC 14-8-2; IC 14-37

Sec. 38. “Operator” refers to a person:

(1) issued a permit under this article; or

(2) engaging in an activity for which a permit is required under this article.

(*Natural Resources Commission; 312 IAC 16-1-38; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2329*)

**312 IAC 16-1-39 “Owner” defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 39. “Owner” means a person who has the right to drill into and produce from a pool and to appropriate the oil and gas produced from the pool for:

- (1) the person or others; or
- (2) the person and others.

*(Natural Resources Commission; 312 IAC 16-1-39; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2329)*

**312 IAC 16-1-39.5 “Permanent plugback” defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 39.5. “Permanent plugback” means a mechanical or cement plug placed between the completed zones of an active oil or gas related well. *(Natural Resources Commission; 312 IAC 16-1-39.5; filed Aug 6, 2004, 12:00 p.m.: 27 IR 3881)*

**312 IAC 16-1-40 “Plug” defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 40. “Plug” means to stop the flow of water, oil, or gas into or from a formation through a bore hole or well penetrating that formation. *(Natural Resources Commission; 312 IAC 16-1-40; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2329)*

**312 IAC 16-1-41 “Pollution” defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 41. “Pollution” means an artificial or artificially induced alteration of the chemical, physical, biological, or radiological properties of the water. *(Natural Resources Commission; 312 IAC 16-1-41; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2329)*

**312 IAC 16-1-42 “Pool” defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 42. “Pool” means an accumulation of oil or natural gas that occurs in a separate underground reservoir under a single pressure system. *(Natural Resources Commission; 312 IAC 16-1-42; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2330)*

**312 IAC 16-1-43 “Reservoir” defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 43. “Reservoir” means an underground geological formation that contains oil or natural gas. *(Natural Resources Commission; 312 IAC 16-1-43; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2330)*

**312 IAC 16-1-43.5 “Saltwater” defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 43.5. “Saltwater” means water that is brought to the surface in connection with conventional oil or gas production or

wastewater (other than wastewaters classified as hazardous waste) from gas plants that are an integral part of production operations. The term includes fluids contaminated with saltwater. (*Natural Resources Commission; 312 IAC 16-1-43.5; filed Sep 11, 2000, 3:31 p.m.: 24 IR 278*)

**312 IAC 16-1-43.7 “Secondary containment structure” defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 43.7. “Secondary containment structure” means a structure specifically constructed to contain a spill of crude oil or saltwater for a period of no less than seventy-two (72) hours. (*Natural Resources Commission; 312 IAC 16-1-43.7; filed Sep 11, 2000, 3:31 p.m.: 24 IR 278*)

**312 IAC 16-1-44 “Sonic cement bond-variable density log” defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 44. “Sonic cement bond-variable density log” means a written record produced by an acoustic tool that contains, at a minimum, sonic transit time curve and an amplitude curve and variable density display. (*Natural Resources Commission; 312 IAC 16-1-44; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2330*)

**312 IAC 16-1-44.5 “Spill” defined**

Authority: IC 14-37-3

Affected: IC 14-37; IC 14-38

Sec. 44.5. “Spill” means any unexpected, unintended, abnormal, or unapproved dumping, leakage, drainage, seepage, discharge, or other loss of crude oil or saltwater from any operation governed by IC 14-37 or IC 14-38. (*Natural Resources Commission; 312 IAC 16-1-44.5; filed Sep 11, 2000, 3:31 p.m.: 24 IR 279*)

**312 IAC 16-1-44.6 “Static well” defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 44.6. “Static well”, for purposes of 312 IAC 16-5-19, means a well in which the liquid level in the well bore, after two (2) tests on the well performed in the presence of a division representative and conducted at least eighteen (18) hours apart using comparable acoustic measuring devices, has changed no more than the lesser of:

(1) ten percent (10%) of the distance between the bottom of the hole and the top of the fluid column, taken from the first test;  
or

(2) ninety (90) feet.

(*Natural Resources Commission; 312 IAC 16-1-44.6; filed Aug 6, 2004, 12:00 p.m.: 27 IR 3881*)

**312 IAC 16-1-45 “Stratum” defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 45. “Stratum” means a single sedimentary bed or layer, regardless of thickness, that consists of generally homogeneous rock material. (*Natural Resources Commission; 312 IAC 16-1-45; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2330*)

**312 IAC 16-1-45.5 “Tank bottoms” defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 45.5. "Tank bottoms" means fluids, consisting primarily of emulsified oil, bottom sediments, and water, from stock tanks that are a part of primary field operations. (*Natural Resources Commission; 312 IAC 16-1-45.5; filed Sep 11, 2000, 3:31 p.m.: 24 IR 279*)

**312 IAC 16-1-46 "Total dissolved solids" defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 46. "Total dissolved solids" means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR 136. (*Natural Resources Commission; 312 IAC 16-1-46; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2330*)

**312 IAC 16-1-47 "Tubing" defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 47. "Tubing" means a string of pipe set within a cased well through which fluid is produced or injected. (*Natural Resources Commission; 312 IAC 16-1-47; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2330*)

**312 IAC 16-1-48 "Underground gas storage reservoir" defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 48. "Underground gas storage reservoir" means a subsurface formation that is geologically arranged and situated for the injection, retention, and subsequent withdrawal of gas. (*Natural Resources Commission; 312 IAC 16-1-48; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2330*)

**312 IAC 16-1-49 "Underground source of drinking water" defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 49. "Underground source of drinking water" means an aquifer or a portion of an aquifer, other than an exempted aquifer, that:

- (1) presently supplies fresh water to any user; or
- (2) contains a sufficient quantity of fresh water to supply a future user.

(*Natural Resources Commission; 312 IAC 16-1-49; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2330*)

**312 IAC 16-1-50 "Waste" defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 50. "Waste" includes the following:

(1) Locating, spacing, drilling, equipping, operating, or producing a well for oil and gas purposes drilled after March 13, 1947, in any manner that:

- (A) reduces or tends to reduce the quantity of oil or gas ultimately to be recovered from any well in this state; or
- (B) violates the spacing provisions adopted by the commission under IC 14-37 and this article.

(2) Storing oil in earthen reservoirs except in an emergency to prevent the total loss of that oil.

(3) Producing oil or gas in a manner that will cause water channeling or zoning.

(4) Injecting fluids into a stratum or part of a stratum capable of producing oil or gas, except in accordance with the terms of a permit for a Class II well issued under this article.

(5) Allowing water other than fresh water to flow from any producing horizon located in a producing pool, except in

accordance with the terms of a permit issued under this article.

(6) Allowing gas from a well that produces only gas to escape into the atmosphere, except as is necessary while making or changing connections, completing the well, or reconditioning the well.

*(Natural Resources Commission; 312 IAC 16-1-50; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2330)*

### **312 IAC 16-1-50.5 “Waters of the state” defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 50.5. “Waters of the state” means such accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this state, but the term does not include any private pond, or any off-stream pond, reservoir, or facility built for reduction or control of pollution or cooling of water prior to discharge unless the discharge therefrom causes or threatens to cause water pollution. *(Natural Resources Commission; 312 IAC 16-1-50.5; filed Sep 11, 2000, 3:31 p.m.: 24 IR 279)*

### **312 IAC 16-1-51 “Well for oil and gas purposes” defined**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 51. “Well for oil and gas purposes” means a hole drilled, deepened, or converted for any purposes for which a permit is required under IC 14-37 and the rules adopted under that article, including the following:

- (1) An oil or natural gas well.
- (2) A Class II well under the underground injection control program promulgated under Part C of the Safe Drinking Water Act (Public Law 95-523, as amended by Public Law 96-502, 42 U.S.C. 300f et seq.) and under 40 CFR 124, 40 CFR 144, 40 CFR 145, and 40 CFR 146.
- (3) A structure test well.
- (4) A well used for the sole purpose of supplying water for the secondary recovery of petroleum resources.
- (5) An underground gas storage well or underground gas storage observation well.

*(Natural Resources Commission; 312 IAC 16-1-51; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2331)*

## **Rule 2. General Provisions**

### **312 IAC 16-2-1 Forms**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 1. The division shall prescribe and prepare forms required under this article and shall furnish copies to any interested person upon request. *(Natural Resources Commission; 312 IAC 16-2-1; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2331)*

### **312 IAC 16-2-2 Severability of rules**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 2. If any word, phrase, sentence, or other portion of a rule under this article is declared invalid, that declaration shall not affect the remaining portions and parts of the rule and this article. *(Natural Resources Commission; 312 IAC 16-2-2; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2331)*

### **312 IAC 16-2-3 Informal hearings**

Authority: IC 14-37-3-16

Affected: IC 4-21.5; IC 4-22-2; IC 14-37

Sec. 3. (a) A person may file with the commission a written request for an informal hearing to consider a matter that assists in the administration of the division. The request may seek to do any of the following:

- (1) Amend a rule in this article.
- (2) Modify a commission order.
- (3) Review a pending permit application.
- (4) Revise the location of known commercially mineable coal resources.
- (5) Secure other lawful relief as provided under IC 14-37-3-16.

The written request shall set forth the relief sought and identify in particular or by class the persons who would be affected.

(b) Where a request for an informal hearing is filed under subsection (a), the division director shall conduct appropriate proceedings and make written proposed findings and a recommended order for disposition of the matter. An informal hearing under this section shall be conducted in a manner that will facilitate public participation and is not governed by the rules of evidence or discovery.

(c) Notification of an informal hearing shall be made by the division by first class mail, publication, or both, reasonably calculated to inform affected persons of the time, place, and purpose of the hearing. Where an informal hearing is scheduled to consider a Class II well permit or permit application, notification of that hearing shall be provided to the same persons identified under 312 IAC 16-3-2(j) with respect to an application for a Class II well permit.

(d) An order resulting from an informal hearing under this section is subject to administrative review under IC 4-21.5 and 312 IAC 3-1, except an order with respect to rule adoption, which is subject to review under IC 4-22-2.

(e) Nothing in this section shall prohibit the commission from holding or authorizing an informal hearing on its own initiative. *(Natural Resources Commission; 312 IAC 16-2-3; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2331)*

### **Rule 3. Permits**

#### **312 IAC 16-3-1 Permit required**

Authority: IC 14-37-3

Affected: IC 4-21.5-3-6; IC 14-37

Sec. 1. (a) A person may not drill, deepen, operate, or convert a well for oil and gas purposes without a permit issued by the division under IC 14-37 and this rule.

(b) No person may commence drilling, construction, operation, or conversion of a Class II well except in conformance with this rule.

(c) The original or a copy of the permit must be posted by the operator at the well site before drilling, deepening, or operating a well. *(Natural Resources Commission; 312 IAC 16-3-1; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2331)*

#### **312 IAC 16-3-2 Permit applications**

Authority: IC 14-37-3

Affected: IC 4-21.5; IC 14-34; IC 14-37; IC 25-39-1.5

Sec. 2. (a) This section establishes general application requirements for a permit to drill, deepen, operate, or convert a well for oil and gas purposes.

(b) An application for a permit to drill, deepen, operate, or convert a well for oil and gas purposes shall be made on a division form.

(c) A permit application must be signed by:

- (1) the person designated as the owner or operator on the application; or
- (2) an authorized agent.

Upon a request by the division, a person who signs as an agent for an owner or operator must furnish satisfactory evidence of authority.

(d) An applicant shall remit with the application a permit fee of one hundred dollars (\$100) in cash, by check, or by draft, payable to the department of natural resources.

(e) This subsection describes the surveying requirements for a permit application as follows:

(1) Except as otherwise provided in this subsection, an application must be accompanied by a survey showing the location of the proposed well for oil and gas purposes, giving the:

- (A) quarter, quarter, quarter section, township, range, county, lot number;
- (B) block of the recorded plat if the land is platted;
- (C) three (3) nearest boundary lines of the tract; and
- (D) distance in two (2) directions from a corner of the tract of land upon which the well is to be drilled and from the nearest quarter post or lot corner.

A registered Indiana land surveyor must certify the survey with respect to the information required under this subdivision.

(2) With respect to a Class II well, or a noncommercial gas well, in addition to the requirements set forth in subdivision (1), the survey must include the permit number, location, and state the depth of the following:

- (A) Each well for oil and gas purposes located within one-fourth (¼) mile of the proposed well (including abandoned and nonoperational wells) that intersect the injection or production zone.
- (B) Each water well recorded with the department under IC 25-39-1.5 located within one-fourth (¼) mile of the proposed Class II well location.

(3) Information of public record and information that should have been known to the applicant must be included under this subsection. This subsection does not apply to an existing injection well unless otherwise ordered by the department.

(f) In addition to the general requirements for a permit application provided in this section, an application for a permit for a Class II well must be accompanied by the following:

(1) A schematic diagram of the well showing the following:

- (A) The total depth of the plugback of the well.
- (B) The depth of the injection or disposal interval.
- (C) The geological name of the injection or disposal zone.
- (D) The geological name, thickness, and description of the confining zone.
- (E) The vertical distance separating the uppermost extremity of the injection zone from the base of the lowest underground source of drinking water.
- (F) The depths of the tops and the bottoms of the casing and the cement to be used in a well.
- (G) The size of the casing and tubing, and the depth of the packer.
- (H) The depth to the base of the lowermost underground source of drinking water.

(2) If the well has been drilled, a copy of the completion report and any available geophysical log of the well.

(3) Proposed operating data as follows:

- (A) The geological name, depth, and location of the injection fluid source.
- (B) A standard laboratory analysis of a representative sample of water to be injected under the proposed Class II permit.
- (C) The location and description of each underground source of drinking water through which the well would pass.
- (D) A description of the current or proposed casing program, including the following:
  - (i) Casing size, weight, and type.
  - (ii) Cement volume and type.
  - (iii) Packer type.
  - (iv) Type of completion for the well and the proposed method for testing casing.
- (E) The proposed maximum injection rate and pressure. The owner or operator shall limit injection pressure to either:
  - (i) a value that does not exceed a maximum injection pressure at the wellhead calculated to assure that the pressure during injection does not initiate new fractures or propagate existing fractures in the confining zone adjacent to an underground source of drinking water and will not cause the movement or injection of fluids into an underground source of drinking water; or
  - (ii) a value for wellhead pressure calculated by using the following formula:

$$P_{\max} = (0.8 \text{ psi/ft} - (.433 \text{ psi/ft} (S_g)))d$$

Where:  $P_{\max}$  = Maximum injection pressure (psia).

$S_g$  = Specific gravity of the injected fluid.

$d$  = Depth to the top of the injection zone in feet.

(g) A bond as set forth in 312 IAC 16-4-2 must accompany a permit application.



(h) If a drilling unit, lease, or tract of land is communitized for exploration or development, the original or a certified copy of the communitization agreement or declaration of pooling must accompany the initial permit application made under that agreement or declaration. An application for a subsequent permit must identify the agreement or declaration and the permit number of the initial permit.

(i) With respect to an application for a Class II well, or a noncommercial gas well, an applicant must serve a written notification describing the proposed well personally or by certified mail on each of the following persons, if the described property is located within one-fourth ( $\frac{1}{4}$ ) mile of the proposed well:

- (1) The owner or operator of each well for oil and gas purposes, including a well having temporary abandonment status under 312 IAC 16-5-20 or not yet in production.
- (2) The permittee of an underground mine permitted under IC 14-34.
- (3) The person who files a mine plan under 312 IAC 16-5-4(b) through 312 IAC 16-5-4(g) showing the workable limits for a proposed underground mine.
- (4) Each owner of rights to surface or subsurface property that the well penetrates.

(j) The notification required under subsection (i) shall specify that a person who wishes to object to issuance of the permit may, within fifteen (15) days of receipt of the notification, submit written comments or request an informal hearing before the commission under 312 IAC 16-2-3. The notification shall include the address to which written comments or the hearing request must be forwarded and where additional information may be obtained.

(k) In addition to the notification required under subsection (i), the division shall cause a notice of a permit application to be placed in a newspaper of general circulation in the county where the proposed well is located. The notice must include the following:

- (1) The name and address of the applicant.
- (2) The location of the proposed well.
- (3) The geological name and depth of the injection zone.
- (4) The maximum injection pressure.
- (5) The maximum rate of barrels each day.

The notice shall specify that a person who wishes to object to issuance of the permit may, within fifteen (15) days of publication of the notification, submit written comments or request an informal hearing before the department. The notification shall include the address to which the written comments or hearing requests must be forwarded, how a person may receive written notice of the proceedings, and where additional information concerning the proposed permit can be obtained.

(l) Proof of service of the notification required in subsection (i) must be delivered to the division before a permit for a Class II well can be issued.

(m) A person may file a written request for an informal hearing under 312 IAC 16-2-3 within fifteen (15) days after the notification required under subsections (i) through (k) to consider an objection to a permit.

(n) No permit shall be issued for a Class II well or a noncommercial gas well:

- (1) until eighteen (18) days after service of any notification required under subsections (i) through (k); or
- (2) if a hearing is requested under subsection (m), until the division director makes a determination with respect to the objection.

Upon issuance of the permit, IC 4-21.5 and 312 IAC 3-1 apply.

(o) Upon notification by the division that the requirements of this section are satisfied, an owner or operator may act upon a permit. (*Natural Resources Commission; 312 IAC 16-3-2; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2332; filed Jan 16, 2003, 10:52 a.m.: 26 IR 1896*)

### **312 IAC 16-3-3 Permit issuance and denial**

Authority: IC 14-37-3

Affected: IC 4-21.5-3-6; IC 14-37

Sec. 3. (a) Except as provided in subsection (b), if an applicant for a permit complies with IC 14-37 and this article, the department shall issue a permit.

(b) The division may deny a permit to any person who has:

- (1) had a permit revoked under section 9 of this rule; or
- (2) been issued a notice of violation and failed to abate the violation within sixty (60) days after the deadline for abatement,

unless the person has requested an administrative adjudication of the notice of violation, and a final determination has not been rendered by the commission.

*(Natural Resources Commission; 312 IAC 16-3-3; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2333)*

**312 IAC 16-3-4 Permit modification; amendment**

Authority: IC 14-37-3

Affected: IC 4-21.5; IC 14-37

Sec. 4. (a) The department may, subject to IC 4-21.5, require modification of a permit for a well for oil and gas purposes for any of the following causes:

- (1) The owner or operator requests or agrees to a modification.
- (2) There are material and substantial alterations or additions to the permitted facility or activity that occurred after permit issuance justifying the application of permit conditions that are different or absent in the original permit.
- (3) The department has received information that the cumulative effects on the environment resulting from the permitted well are unacceptable.
- (4) The statutes or rules upon which the permit was based have changed by amendment or by a reported judicial decision.
- (5) The director determines good cause exists for the modification of a compliance schedule as a result of events over which the owner or operator has little or no control and for which no other remedy is practicable.
- (6) The department determines good cause exists for the revocation of a permit under section 9 of this rule, but, upon a recommendation by the division director, finds that a modification is appropriate to effectuation of the purposes of IC 14-37.

(b) An owner or operator may, before drilling is commenced, file an amended permit application, with the original permit attached, seeking to change a well location. The division may issue an amended permit if the modified well placement:

- (1) would be located on the original lease;
- (2) does not affect a person who would have been entitled to notification had the modified location been included in the original permit application, but who was not notified of the original application; and
- (3) does not significantly change how a person entitled to notification would be affected.

*(Natural Resources Commission; 312 IAC 16-3-4; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2334)*

**312 IAC 16-3-5 Permit duration**

Authority: IC 14-37-3

Affected: IC 4-21.5-3-5; IC 14-37

Sec. 5. (a) A permit for a well for oil and gas expires one (1) year from the date of issuance unless the drilling of the well has commenced.

(b) A permit for a Class II well is effective for the life of the well unless the permit is voided, revoked, expired, or otherwise terminated under this rule.

(c) The division shall review each Class II well at least once every five (5) years to determine whether the operation of the well meets the requirements of IC 14-37 and this article. *(Natural Resources Commission; 312 IAC 16-3-5; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2334)*

**312 IAC 16-3-6 Continuation of an existing injection well not subsequently issued a permit as a Class II well**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 6. (a) An existing injection well, that has not been issued a federal permit as a Class II well, but was issued a permit by the department as a well for oil and gas purposes before January 1, 1990, may continue normal operations until the division:

- (1) has conducted a file review of the well; or
- (2) has notified the owner or operator to cease injection.

(b) An owner or operator of an injection well authorized under this section must, upon request by the division, provide the following information:

- (1) Facility name and location.
- (2) Name and address of owner or operator.
- (3) Ownership of facility.
- (4) Nature and type of injection well.
- (5) Operating status of injection well.

This subsection does not require an owner or operator to resubmit well information previously supplied by the owner or operator to the division.

(c) An owner or operator must notify the division, orally or in writing, within twenty-four (24) hours concerning any condition resulting from the operation of a well authorized under this section that may endanger health or the environment. A written notification must also be provided within five (5) days of when the owner or operator becomes aware of the condition. The written notification must describe the condition and its cause. If the condition has not been corrected, the written notification must also state how long the condition is expected to continue and how the owner or operator will correct the condition.

(d) An owner or operator shall not exceed a maximum injection pressure at the wellhead, which shall be calculated to assure that the pressure during injection does not initiate new fractures or propagate existing fractures in the confining zone adjacent to an underground source of drinking water.

(e) An owner or operator shall monitor the nature of the injected fluids with a sufficient frequency to yield data representative of their characteristics. The results of monitoring shall be summarized on a quarterly report to the division and shall include any major changes in characteristics or sources of injected fluids.

(f) For a Class II well, an owner or operator shall demonstrate mechanical integrity under 312 IAC 16-5-15 upon a written schedule provided by the division.

(g) The division may order a well authorized under this section to be repermited as a Class II well where necessary for the protection of an underground source of drinking water.

(h) Nothing in this section shall relieve an owner or operator from compliance with the requirements of the permit issued by the division. (*Natural Resources Commission; 312 IAC 16-3-6; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2334*)

### **312 IAC 16-3-7 Continuation of federal Class II permits**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 7. (a) A person who was issued a federal permit for a Class II well before the adoption of this rule may continue to operate the Class II well after the adoption date. Continued operation of a Class II well after the adoption date subjects the person to the requirements of this rule.

(b) Where an injection well or enhanced recovery well is authorized under Subpart C of the Underground Injection Control Program (40 CFR 144.21 through 144.28), any federal terms or conditions placed on an owner or operator under Subpart C bind the owner or operator and may be enforced as if ordered by the department under this article.

(c) The terms of the federal permit issued under Subpart D of the Underground Injection Control Program (40 CFR 144.31 through 144.41) bind the owner or operator and may be enforced as if issued by the department under this article. (*Natural Resources Commission; 312 IAC 16-3-7; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2335*)

### **312 IAC 16-3-8 Permit transfer**

Authority: IC 14-37-3-1

Affected: IC 4-21.5; IC 14-37

Sec. 8. (a) This section establishes the requirements for the transfer of a permit issued by the department for a well for oil and gas purposes.

(b) An owner or operator must provide notice, in advance, to the division of the intention to transfer a permit to another person. The notification shall be completed on a division form.

(c) The department shall grant approval of a permit transfer except upon a written finding that sets forth at least one (1) of the following factors with respect to the person who seeks to receive transfer of the permit (or an officer, partner, or director of the person, if other than an individual):

(1) A bond has not been submitted by the person as required in 312 IAC 16-4-1.

(2) The person is the owner or operator of a well for oil and gas purposes at which the person has demonstrated a pattern of willful violations of IC 14-37 or this article that has resulted in substantial damage to the environment indicating an intention not to comply with IC 14-37 or this article.

(3) The person is the owner or operator of a well for oil and gas purposes against which there is a pending notice of violation under 312 IAC 16-5-21. If this finding is made, however, the person is not disqualified from receiving the transfer if the person establishes either of the following:

(A) The violation has been or is in the process of being corrected to the satisfaction of the deputy director.

(B) The person has filed and is presently pursuing, in good faith, a direct administrative review or judicial review to contest the validity of the violation. A request for review under this clause must conform with IC 4-21.5 and 312 IAC 3-1.

(d) If an application is filed to transfer a well on which there is a pending notice of violation, the owner or operator against which the violation was issued, and its surety, continue to be liable for performing the abatement and for satisfying any resulting penalty. A person who receives transfer of a permit is also liable for abatement and for any penalty attributable to the period following transfer. However, the division director may, in writing, waive any penalty that would otherwise apply during a period of not more than ninety (90) days following the transfer if the division director determines that the new permit holder is acting in good faith to correct the violation.

(e) No transfer of a permit issued for oil and gas purposes is effective until the transfer is approved in writing by the division director. (*Natural Resources Commission; 312 IAC 16-3-8; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2335*)

### **312 IAC 16-3-9 Permit revocation**

Authority: IC 14-37-3

Affected: IC 4-21.5-3-5; IC 4-21.5-3-6; IC 14-37-12-2

Sec. 9. (a) The department may revoke a permit issued under IC 14-37 upon a finding that:

(1) the permit was issued through fraud or misrepresentation;

(2) the owner or operator has violated IC 14-37 or this article;

(3) the information or conditions upon which a permit was issued have substantially changed since issuance;

(4) the owner or operator of a well for oil and gas purposes is polluting the waters or land in Indiana;

(5) the operation of a Class II well may result in a movement of fluids into an underground source of drinking water; or

(6) the owner or operator has been issued a notice of violation under IC 14-37-12-2 and 312 IAC 16-5-21, and has failed:

(A) to abate the violation within the prescribed period;

(B) to secure in writing from the division an extension of time in which to abate the violation before the expiration of the period established for abatement; or

(C) to request a proceeding under IC 4-21.5-3-6 within thirty (30) days after service of the notification or within the period provided by the division for abatement, whichever is longer.

(b) In addition to the grounds for permit revocation set forth under subsection (a), a permit for a Class II well may be revoked, modified, or reissued under IC 4-21.5-3-5 where there is:

(1) a substantial change of conditions in the operation of the Class II well;

(2) a substantial change in the information upon which the permit was issued; or

(3) reasonable cause to believe that the permitted operation may result in the movement of fluids into an underground source of drinking water other than an exempted aquifer.

(*Natural Resources Commission; 312 IAC 16-3-9; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2336*)

### **Rule 3.5. Annual Well Fee**

#### **312 IAC 16-3.5-1 Annual well fee and reporting requirements**

Authority: IC 14-37-5

Affected: IC 4-21.5; IC 14-37-6-2; IC 14-37-6-4

Sec. 1. (a) Each oil and gas well owner or operator must pay an annual well fee based on the number of wells for oil and gas purposes for which the person has permits as of November 1 of each year. The annual well fee does not apply to a noncommercial gas well.

(b) The division shall, by December 1 of each year, mail a notice to each owner or operator indicating the number of wells that division records show were under a permit on November 1. Each owner or operator must verify the annual fee due under section 2 of this rule and must cause the fee to be actually received by the division no later than February 1 of the following year. Failure of an owner or operator to comply with this subsection is a violation of this article and is cause for revocation of any permit in violation.

(c) A well for oil and gas purposes is included in the number of wells that the division assesses for the annual well fee on November 1 until the earlier of the following:

(1) The well is plugged and the well site is restored under 312 IAC 16-5-19.

(2) The well is transferred to a new permittee under 312 IAC 16-3-8.

(d) Each owner or operator of a well for oil and gas purposes must also report to the division by February 1 of each year, on a form prescribed by the division, any change in:

(1) mailing address; or

(2) organizational status.

*(Natural Resources Commission; 312 IAC 16-3.5-1; filed Jan 16, 2003, 10:52 a.m.: 26 IR 1898)*

### **312 IAC 16-3.5-2 Amount of assessment**

Authority: IC 14-37-5

Affected: IC 4-21.5; IC 14-37-6-2; IC 14-37-6-4

Sec. 2. The division shall assess the annual well fee as follows:

(1) For one (1) permit, one hundred fifty dollars (\$150).

(2) For two (2) through five (5) permits, three hundred dollars (\$300).

(3) For six (6) through twenty-five (25) permits, seven hundred fifty dollars (\$750).

(4) For twenty-six (26) through one hundred (100) permits, one thousand five hundred dollars (\$1,500).

(5) For more than one hundred (100) permits, one thousand five hundred dollars (\$1,500) plus fifteen dollars (\$15) for each permit over one hundred (100).

*(Natural Resources Commission; 312 IAC 16-3.5-2; filed Jan 16, 2003, 10:52 a.m.: 26 IR 1898)*

## **Rule 4. Bonding in Addition to Annual Well Fee**

### **312 IAC 16-4-1 Bond required in addition to the annual well fee**

Authority: IC 14-37-3

Affected: IC 4-21.5; IC 14-37-5; IC 14-37-6-2; IC 14-37-6-4; IC 14-37-13

Sec. 1. (a) In addition to the annual well fee required by 312 IAC 16-3.5, no person shall drill, deepen, operate, or convert a well for oil and gas purposes until the person has filed and the department has accepted a bond as provided in section 2 of this rule, if the person:

(1) is an applicant for a permit under this article who has never been granted a permit for a well for oil and gas purposes under this article;

(2) has demonstrated a pattern of violation under IC 14-37 and this article within the previous two (2) years;

(3) has failed to pay a civil penalty imposed under IC 14-37-13; or

(4) has failed to pay an annual fee required under IC 14-37-5.

(b) The purpose of a bond is to provide for compliance with IC 14-37 and this article.

(c) A bond shall be renewed until there has been compliance with the conditions imposed by IC 14-37 and by the permit for two (2) consecutive years.

(d) Requirements and procedures applicable to bonds also apply to the substitute securities described in IC 14-37-6-2 and IC 14-37-6-4.

(e) Any person in whose name the permit is issued shall execute and be named as principal on the bond. The name of the owner or operator on the permit and the principal on the bond shall be the same. (*Natural Resources Commission; 312 IAC 16-4-1; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2336; filed Jan 16, 2003, 10:52 a.m.: 26 IR 1898*)

### **312 IAC 16-4-2 Bond types**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 2. (a) The bond required in section 1 of this rule shall consist of any one (1) of the following:

- (1) A surety bond in the amount of two thousand five hundred dollars (\$2,500) for each well drilled or produced.
- (2) A cash bond in the amount of two thousand five hundred dollars (\$2,500) for each well drilled or produced.
- (3) A certificate of deposit in the principal amount of two thousand five hundred dollars (\$2,500) for each well drilled or produced, according to terms and specifications provided by the division.
- (4) A surety bond in any amount for wells drilled, deepened, or converted; however, the maximum number of wells under the bond may not exceed that number determined by dividing the principal sum of the bond by two thousand five hundred dollars (\$2,500).
- (5) A blanket bond of forty-five thousand dollars (\$45,000) for any number of wells drilled, deepened, or converted.

(b) No surety bond shall be approved unless issued by a company holding an applicable certificate of authority from the department of insurance, state of Indiana. A surety bond shall be executed by the owner or operator as principal and by the surety or for either of them by an attorney-in-fact with certified power of attorney attached.

(c) With respect to a noncommercial gas well drilled on real estate owned by a bona fide resident of Indiana, the deputy director may waive the bond described in subsection (a), provided the person does the following:

- (1) Submits written proof of financial responsibility.
- (2) Enters on a division form an agreement to maintain and abandon the well in accordance with IC 14-37 and this article. The deputy director may require the agreement provided under this subsection to be recorded.

(d) The division shall obtain possession and custody of all collateral deposited by an applicant until released or replaced under this rule. A certificate of deposit must be assigned in writing to the state and the assignment noted upon the books of the bank issuing the certificate. (*Natural Resources Commission; 312 IAC 16-4-2; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2336; filed Jan 16, 2003, 10:52 a.m.: 26 IR 1898*)

### **312 IAC 16-4-3 Bond cancellation**

Authority: IC 14-37-3

Affected: IC 4-21.5; IC 14-37

Sec. 3. (a) A surety may in writing notify the department and the owner or operator of its intention to terminate liability under a bond. The surety shall deliver the notification to the owner or operator by personal service or by certified mail. Proof of service of the notification shall be provided by the surety to the division.

(b) Within thirty (30) days after receipt of a notice under subsection (a), the owner or operator must file a substitute bond or must:

- (1) with respect to a well for oil and gas purposes, discontinue operations and abandon the well under IC 14-37, and this article; or
- (2) with respect to a geophysical survey operation, cease activities and satisfy outstanding obligations under IC 14-37 and 312 IAC 22-3 [*sic.*, 312 IAC 17-3].

(c) If a substitute bond is filed by the owner or operator and accepted by the department, liability on the original bond ceases.

(d) If a substitute bond is not filed and the owner or operator does not satisfy the requirements of subsection (b), the department shall revoke the permit under IC 4-21.5 and 312 IAC 3-1.

(e) If the owner or operator fails to abandon a well:

- (1) the surety must forfeit to the division director the principal sum of the bond; or
- (2) with respect to a well for oil and gas purposes, the surety may cause the well to be properly abandoned.

(*Natural Resources Commission; 312 IAC 16-4-3; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2337*)

**312 IAC 16-4-4 Bond forfeiture**

Authority: IC 14-37-4

Affected: IC 4-21.5; IC 14-37

Sec. 4. The director may order bond forfeiture if any permit secured by a bond is revoked or if findings of the department otherwise support a forfeiture. Bond forfeitures are governed by IC 4-21.5 and 312 IAC 3-1. (*Natural Resources Commission; 312 IAC 16-4-4; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2337*)

**312 IAC 16-4-5 Bond release**

Authority: IC 14-37-3

Affected: IC 14-37-5; IC 14-37-6-1; IC 14-37-13

Sec. 5. (a) The division shall release a bond submitted pursuant to this rule after:

- (1) each well secured by the bond has been plugged and abandoned and the well site restored under IC 14-37, this article, the terms of the permit, and orders of the department;
- (2) each well secured by the bond has been converted under 312 IAC 16-5-19(e) to a fresh water well;
- (3) a substitute bond is filed by the owner or operator and accepted by the department;
- (4) each well secured by the bond is transferred under 312 IAC 16-3-8; or
- (5) the owner or operator is not required to post a bond under IC 14-37-6-1(a) due to not having:
  - (A) demonstrated a pattern of violation within the previous two (2) years;
  - (B) failed to pay a civil penalty imposed under IC 14-37-13; or
  - (C) failed to pay an annual fee required under IC 14-37-5.

(b) The department may execute a partial release for a bond issued to secure more than one (1) permit where an individual well is abandoned or converted to a fresh water well. A partial release under this subsection shall not relieve a surety from responsibility with respect to a well other than the individual well identified in the partial release. (*Natural Resources Commission; 312 IAC 16-4-5; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2337; filed Jan 16, 2003, 10:52 a.m.: 26 IR 1899*)

**Rule 5. Performance Standards and Enforcement**

**312 IAC 16-5-1 Well spacing**

Authority: IC 14-37-3-4

Affected: IC 14-37

Sec. 1. (a) This section governs the location and spacing of wells.

(b) All wells except those described in subsections (c) through (d) shall be located not less than:

- (1) three hundred thirty (330) feet from a lease line, property line, or subdivision that separates unconsolidated property interests; and
- (2) six hundred sixty (660) feet from a well for oil and gas purposes that is not excepted under section 3 of this rule and is capable of production from the same reservoir.

(c) In an established Trenton limestone reservoir, a well shall be located not less than:

- (1) one hundred sixty-five (165) feet from a lease line, property line, or subdivision that separates unconsolidated property interests; and
- (2) three hundred thirty (330) feet from a well for oil and gas purposes that is not excepted under section 3 of this rule.

(d) All wells drilled deeper than one thousand (1,000) feet for the commercial production of natural gas shall be located on a drilling unit having not less than forty (40) acres of surface lying within a quarter quarter section of land as established by the official public land survey by the rectangular surveying system of the state. These wells shall be located not less than:

- (1) three hundred thirty (330) feet from a lease line, property line, or subdivision that separates unconsolidated property interests; and
- (2) one thousand three hundred twenty (1,320) feet from a well for oil and gas purposes that is not excepted under section 3 of this rule and is capable of the production of natural gas from the same reservoir.

*(Natural Resources Commission; 312 IAC 16-5-1; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2337)*

**312 IAC 16-5-2 Drilling units**

Authority: IC 14-37-3-4

Affected: IC 14-37

Sec. 2. (a) This section establishes drilling units.

(b) For sandstone reservoirs, every quarter, quarter, quarter section containing ten (10) acres, more or less, as established by the official U.S. Public Lands Survey by the rectangular surveying system for the state.

(c) For all other reservoirs, except in established Trenton limestone reservoirs, half a quarter, quarter section containing twenty (20) acres, more or less, as established by the official U.S. Public Lands Survey by the rectangular surveying system for the state. The use of any portion of one (1) quarter, quarter section with any portion of another quarter, quarter section is prohibited unless approved following an informal hearing conducted under 312 IAC 16-2-3.

(d) For established Trenton limestone reservoirs, half of every quarter, quarter, quarter section containing five (5) acres, more or less, as established by the official U.S. Public Lands Survey by the rectangular surveying system for the state.

(e) An exception to drilling unit requirements may be authorized following an informal hearing under 312 IAC 16-2-3, if the exception is supported by unusual regional or geological characteristics and is conducive to the most efficient and economical recovery of oil and gas.

(f) A drilling unit may be established following an informal hearing under 312 IAC 16-2-3 for those areas not covered by the rectangular surveying system of the U.S. Public Lands Survey. The drilling unit shall conform as nearly as practicable to the drilling unit requirements for reservoirs of similar lithology in those areas covered by the rectangular surveying system.

(g) For irregular sections containing more or less than six hundred forty (640) acres, the department may establish drilling units other than those defined in subsections (b) through (c) of approximately twenty (20) acres or ten (10) acres. *(Natural Resources Commission; 312 IAC 16-5-2; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2338)*

**312 IAC 16-5-3 Exceptions to well spacing and drilling unit requirements**

Authority: IC 14-37-3-4; IC 14-37-3-11

Affected: IC 14-37

Sec. 3. (a) Exceptions to the spacing requirements established under this section shall be made only after an informal hearing conducted under 312 IAC 16-2-3.

(b) In order to avoid locating a well in a ditch, stream, or other impracticable location, the division director may modify the location of any well not more than fifty (50) feet from the location shown in the survey or the plat in the permit application.

(c) The division director may grant exceptions for wells varying not more than ten percent (10%) from the acreage or distances otherwise required under this article when the exceptions will not:

(1) create a greater well density than required under sections 1 through 2 of this rule; and

(2) leave isolated tracts not contiguous to another unit.

(d) Twin wells may be drilled on the same drilling unit to different reservoirs, allocating the acreage in the drilling unit for each producing reservoir as provided in section 2 of this rule.

(e) The following are exempt from spacing and drilling unit requirements:

(1) Class II wells.

(2) Gas storage wells.

(3) Gas storage observation wells.

(4) Noncommercial gas wells.

(5) Geological or structure test wells.

However, a noncommercial gas well must not be located to cause an existing well for oil and gas purposes to violate sections 1 through 2 of this rule. *(Natural Resources Commission; 312 IAC 16-5-3; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2338)*



**312 IAC 16-5-4 Protection of coal resources**

Authority: IC 14-37-3-11

Affected: IC 4-21.5; IC 14-34; IC 14-37-7

Sec. 4. (a) If a well for oil and gas purposes is proposed to be drilled on lands underlaid by an inactive underground mine or on lands within the permit boundaries of an active underground mine permitted under IC 14-34, and if the well is completed as a well for oil and gas purposes, an owner or operator shall run an intermediate string of casing from the surface to a point at least fifty (50) feet below the base of the commercially mineable coal resources or the mine floor, whether drilled through a pillar or not.

(b) A person engaged in the production of commercially mineable coal resources may file with the division a dated mine plan showing the workable limits of a proposed underground mine on lands for which the person has title or a legal interest, but for which an intermediate string is not required under subsection (a). The person may file amendments to its proposed underground mine.

(c) If a well is drilled and completed as a well for oil and gas purposes through a commercially mineable coal resource and within an area for which a mine plan is filed under subsection (b), an owner or operator shall set a production string of casing, properly centralized and cemented, as documented by a sonic cement bond-variable density log.

(d) An owner or operator shall provide at least forty-eight (48) hours' notice to the division and to the person who filed the mine plan before commencing logging operations under subsection (c). The person who filed the mine plan is entitled to be present during logging operations and to examine the log.

(e) The division shall determine the adequacy of cement bonding, and, in the event of a bonding failure between fifty (50) feet below and one hundred (100) feet above the commercially mineable coal resource, an owner or operator must perform remedial action, as ordered by the commission, that results in adequate bonding.

(f) Within thirty (30) days of commencing logging operations, an owner or operator must provide the division and the person who filed the mine plan with a copy of the sonic cement bond-variable density log.

(g) Preparation of the log required under subsection (c) and any remedial action required under subsection (e) are at the expense of the owner or operator.

(h) If a well is drilled and completed as a well for oil and gas purposes through a commercially mineable coal resource, except a coal resource identified in subsection (a) or subsections (b) through (g), that resource shall be protected by a properly cemented, centralized production string of casing.

(i) The division shall notify a permit applicant if the application is within the permit boundaries of an underground mine permitted under IC 14-34 or for which a mine plan has been filed as provided in subsections (b) through (g) or which contains commercially mineable coal resources as set forth in section 5 of this rule. No permit may be issued except under IC 4-21.5 and 312 IAC 3.

(j) Nothing in this section shall be construed to relieve an owner or operator from compliance with sections 19 and 20 of this rule. (*Natural Resources Commission; 312 IAC 16-5-4; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2338*)

**312 IAC 16-5-5 Identification of commercially mineable coal resources**

Authority: IC 14-37-3-11

Affected: IC 4-21.5; IC 14-37

Sec. 5. (a) The location of known commercially mineable coal resources is set forth in Cementing Depths for Mineable Coals, 1984 edition, as prepared by the Indiana geological survey. Upon receipt of a permit application under IC 14-37 and this article, the division shall determine whether the application is for an area known to contain a commercially mineable coal resource.

(b) A person may seek to revise Cementing Depths of Mineable Coals by filing a written request for an informal hearing under 310 IAC 16-2-3 [*310 IAC 16 was repealed filed Nov 22, 1999, 3:34 p.m.: 23 IR 776. See 312 IAC 13.*].

(c) The location of commercially mineable coal resources referenced in Cementing Depths for Mineable Coals is presumed to be complete and accurate, but the presumption may be rebutted by an affected person under IC 4-21.5 and 312 IAC 3-1. (*Natural Resources Commission; 312 IAC 16-5-5; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2339*)

**312 IAC 16-5-6 Protection of underground storage reservoirs of petroleum products**

Authority: IC 14-37-3-10

Affected: IC 14-37

Sec. 6. (a) A person engaged in the underground storage of petroleum products shall file with the division a dated and certified plat or map showing the lowest closing contour or the lease or ownership limits of any existing or proposed underground storage reservoir that the person owns or operates. The person shall update the plat or map as follows:

- (1) July 1 of each year.
- (2) Each time an underground storage reservoir is expanded or contracted, excluding seasonal fluctuations.
- (3) Upon a change of the lease or ownership limits as filed with the division.

Where a plat or map is unchanged from the prior year, the requirements of this subsection are met upon filing with the division a notification on July 1 that the underground storage reservoir is unchanged from the prior year.

(b) The division shall notify a permit applicant if the application is within the boundaries of an underground storage reservoir for which a certified map has been filed as provided in subsection (a). The division will include with this notification a waiver that must be sent by the applicant to the underground storage operator by certified mail. The waiver may be signed and returned to the division stating there are no objections to the location of the proposed well.

(c) A person entitled to notification under subsection (b) may file a written request for an informal hearing under 312 IAC 16-2-3 to consider an objection to a permit application.

(d) Any permit application for a well to be drilled within the limits defined in subsection (a) will not be issued until one (1) the following occurs:

- (1) The executed waiver is returned to the division.
- (2) Ten (10) days after the service of notification required in subsection (b), providing that the proof of service is submitted to the division as part of the application.
- (3) If a hearing is requested under subsection (c), a determination has been made by the division director with respect to an objection. This determination shall include protective measures required to prevent waste and as may otherwise be appropriate to accomplishing the purposes of IC 14-37.

(e) Nothing in this section shall be construed to relieve an owner or operator from compliance with sections 19 and 20 of this rule. (*Natural Resources Commission; 312 IAC 16-5-6; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2339*)

### **312 IAC 16-5-7 Identification of underground sources of drinking water and exempted aquifers**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 7. (a) The department may identify (by narrative description, illustrations, maps, or other means) and shall protect, except where exempted under subsections (b) through (c), an aquifer or part of an aquifer that qualifies as an underground source of drinking water. An aquifer or part of an aquifer that is an underground source of drinking water is protected under this rule regardless of whether it has been identified by the department.

(b) The department may identify (by narrative description, illustrations, maps, or other means) and describe in geographic or geometric terms (such as vertical and lateral limits and gradient) that are clear and definite, an aquifer or part of an aquifer proposed for designation as an exempted aquifer under section 8 of this rule.

(c) After notice by publication in a newspaper of general circulation in the county or counties where an affected aquifer is located, and after an opportunity for an informal hearing as provided under 312 IAC 16-2-3, the department may identify an exempted aquifer in addition to a previously exempted aquifer. The exemption of an aquifer under section 8(a)(1) of this rule shall be treated as a revision to the approved program of the state for the regulation of Class II wells. The exemption of an aquifer under section 8(a)(2) of this rule becomes final if the deputy director submits the exemption in writing to the administrator and the administrator has not disapproved the designation within forty-five (45) days. (*Natural Resources Commission; 312 IAC 16-5-7; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2340*)

### **312 IAC 16-5-8 Criteria for exempting an aquifer**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 8. (a) An aquifer or a portion of an aquifer that is an underground source of drinking water may be determined under section 7 of this rule to be an exempted aquifer where the aquifer or portion of the aquifer:

(1) does not currently serve as a source of drinking water and cannot now and will not in the future serve as a source of drinking water because it is:

- (A) mineral, hydrocarbon, or geothermal energy producing, or can be demonstrated by a permit applicant to contain minerals or hydrocarbons, that, considering their quantity and location, are expected to be commercially producible;
- (B) situated at a depth or location that makes recovery of water for drinking water purposes economically or technologically impracticable; or
- (C) so contaminated that to render that water fit for human consumption would be economically or technologically impracticable; or

(2) contains fresh water with more than three thousand (3,000) milligrams per liter of total dissolved solids and is not reasonably expected to supply a future user of fresh water.

(b) For a Class II well, a demonstration of commercial producibility shall be made as follows:

(1) For an enhanced recovery well to be used in a field from which hydrocarbons were previously produced, commercial producibility shall be presumed by the department upon a demonstration by the applicant of historical production in the field.

(2) For a Class II well not located in a field containing an aquifer from which hydrocarbons were previously produced, to the extent available, the department shall consider logs, core data, formation description, formation depth, formation thickness, and formation parameters, such as permeability and porosity.

*(Natural Resources Commission; 312 IAC 16-5-8; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2340)*

### **312 IAC 16-5-9 Well construction**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 9. (a) This subsection governs the following placement of casing, tubing, and drill pipe in a well for oil and gas purposes:

(1) Casing, tubing, and drill pipe shall be run and set in conformance with the standards set forth by the American Petroleum Institute in "API Specifications" 5A, 5AC, and 5AX (May 31, 1985, editions).

(2) Casing centralizers may be required by the division director to effectuate the minimum clearances needed to ensure the proper cementing of casing.

(3) The slurry used in a casing string must contain a mixture of cement and water and may contain API-approved additives. The use of aggregate or sand in cement mixture is prohibited. The slurry must be placed using the pump and plug or displacement method and with a volume of cement sufficient to cause its return to the surface or to the bottom of a cemented intermediate or surface string of casing.

(b) In addition to the requirements set forth in subsection (a), surface casing must be set as follows:

(1) Surface casing shall be run below the lowest underground source of drinking water. Surface casing shall be set in or through an impervious formation and shall be cemented with cement sufficient to circulate to the top of the hole. The owner or operator shall use more than one (1) string of casing where necessary to protect any underground source of drinking water.

(2) Instead of the surface casing requirements set forth in subdivision (1), an owner or operator may cement an intermediate or long string of casing with cement sufficient to circulate to the top of the hole.

(3) In addition to the requirements set forth in subsection (a), if intermediate casing is used, the intermediate casing must be set in an impervious stratum.

(c) In addition to the requirements set forth in subsection (a), production casing must be set as follows:

(1) Except as provided under section 20 of this rule, a well that an owner or operator does not abandon after completion of the drilling operations must be immediately equipped with production casing set at the bottom of the hole or at the top of the last stratum drilled.

(2) If a well is plugged to a point higher than the last stratum drilled, production casing shall be set at the plug to prevent the migration of oil, gas, or water from one (1) stratum to another.

(d) The division director may authorize an alternate well construction method if the owner or operator demonstrates the alternate well construction method:

- (1) will not cause the pollution of, endanger, or threaten any underground source of drinking water;
- (2) will not damage a source of oil or gas; and
- (3) is designed to confine injected fluids to the approved interval or intervals.

*(Natural Resources Commission; 312 IAC 16-5-9; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2341; filed Oct 1, 1999, 1:12 p.m.: 23 IR 294)*

**312 IAC 16-5-10 Lease identification**

Authority: IC 14-37-3-3

Affected: IC 14-37

Sec. 10. (a) To identify producing leases, the owner or operator shall place a permanent sign where the principal lease road enters the lease, or at another location approved by the commission representative, to show the following:

- (1) The name of the lease.
- (2) The owner or operator.
- (3) The manager.
- (4) An emergency telephone number.
- (5) The section, township, and range.

(b) The permanent sign described in subsection (a) shall be a size and shape that is easily read from a distance of twenty (20) feet.

(c) In addition to the permanent sign described in subsection (a), a legible sign shall also be placed near the well to identify the permit number, well number, and well name. *(Natural Resources Commission; 312 IAC 16-5-10; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2341)*

**312 IAC 16-5-11 Fire prevention**

Authority: IC 14-37-3-6

Affected: IC 14-37

Sec. 11. (a) To prevent fire hazards, all waste oil, cut oil, bottom sediments, and tank bottoms shall be collected in burn off pits located a safe distance from any oil well, oil storage tank, building, or other structure and shall be burned as necessary to prevent overflowing. Before any burn off pit is constructed, the owner or operator shall file an application with the division on a division form. Waste oil in tank bottoms shall be conveyed from storage tanks to pits in such a manner as to not create a fire hazard. Pits shall be constructed to prevent the escape of oil and of sufficient height to prevent surface water from entering the pit. No pits shall be constructed where the soil is porous and closely underlaid by either gravel or sand strata. These pits shall not be used to collect production brine. The burn off pits and their walls shall be kept free of vegetation.

(b) All lease and storage tanks shall be surrounded by an impermeable dike that has a capacity of one and one-half (1½) times that of the tank or tanks it surrounds. The dike and the area within the dike shall be maintained free from vegetation, fluids, and inflammable materials. The dike shall not be breached.

(c) All well, tank, oil heating or treating installation, and booster pump locations shall be kept free from vegetation and inflammable material.

(d) All gas produced in the operation of oil wells that is not utilized shall not be burned closer than what is a reasonable safe distance from a well, storage tank, or building. *(Natural Resources Commission; 312 IAC 16-5-11; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2341)*

**312 IAC 16-5-12 Mud pits**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 12. (a) An owner or operator shall construct and maintain necessary mud circulation and reserve pits.

(b) Upon completion of a well, pits shall be filled and leveled. The surface shall be restored as nearly as practicable to conditions existing before drilling commenced. *(Natural Resources Commission; 312 IAC 16-5-12; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2342)*

**312 IAC 16-5-13 Disposal of salt water and other waste liquids**

Authority: IC 14-37-3

Affected: IC 14-28-1; IC 14-28-3; IC 14-37

Sec. 13. (a) To prevent surface or underground pollution, no person shall dispose of a fluid that results from the development or production of a well for oil and gas purposes except as approved by the division.

(b) Evaporation pits are prohibited.

(c) A pit may be authorized under a permit for oil and gas purposes for backwash water, for emergency use, or in connection with a Class II well, if the pit:

(1) is surrounded by walls that prevent the entry of surface drainage from adjacent areas;

(2) is located at least one hundred (100) feet from any stream, river, lake, or drainage way;

(3) conforms with IC 14-28-1, IC 14-28-3, and 310 IAC 6-1 and is constructed to prevent flooding during a regulatory flood;

(4) is constructed according to plans approved by the division, including the placement of an impermeable liner, and is found by a commission representative to conform to the plans before utilization;

(5) is maintained so that the level of contained fluids in the pit are kept at least two (2) feet below the top of the pit wall having the lowest elevation; and

(6) conforms to all other requirements of law, including those pertaining to Class II wells.

(d) Fluids shall be removed from an emergency pit as soon as the emergency can be abated. Construction or maintenance of a pit other than as provided in subsection (c) and this subsection may result in revocation of any permit for oil and gas purposes associated with the pit.

(e) Any pipe that conveys water or a fluid from or to a well for oil and gas purposes shall be kept in good repair and free from leaks. No discharge of water or a fluid shall occur between the place of origin and the authorized place of disposal. (*Natural Resources Commission; 312 IAC 16-5-13; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2342*)

**312 IAC 16-5-14 Operating requirements for a Class II well**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 14. Operating requirements for a Class II well are as follows:

(1) A Class II well must be completed, equipped, operated, and maintained so the Class II well will do the following:

(A) Not cause the pollution of, endanger, or threaten any underground source of drinking water.

(B) Not damage a source of oil or gas.

(C) Confine injected fluids to the approved interval or intervals.

(2) The injection of a permitted fluid must be through tubing separated from the innermost casing with a corrosion inhibiting annular fluid. The tubing shall be installed with a packer. The packer shall be set inside cemented casing within two hundred (200) feet above the permitted injection zone.

(3) Before operating an injection well, mechanical integrity must be demonstrated for the well under section 15 of this rule.

(4) The division must be notified in advance of a permit change that may require the alteration of an approved condition. A permit change cannot be effected by the owner or operator until the change is approved by the division.

(5) Injection piping, valves, and facilities must be used that meet or exceed design standards for the maximum allowable injection pressure and that safely maintain equipment without leakage.

(6) The division director may require additional testing or special equipment if appropriate to the protection of an underground source of drinking water.

(*Natural Resources Commission; 312 IAC 16-5-14; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2342; filed Oct 1, 1999, 1:12 p.m.: 23 IR 294*)

**312 IAC 16-5-15 Mechanical integrity**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 15. (a) A Class II well has mechanical integrity if there is the following:

(1) No significant leak in the casing, tubing, or packer.

(2) No significant fluid movement into an underground source of drinking water through vertical channels adjacent to the injection well bore.

(b) One (1) of the following methods must be used to evaluate mechanical integrity under subsection (a)(1):

(1) After an initial pressure test, monthly monitoring of annulus pressure (at a positive value) by the owner or operator to be reported to the division no less frequently than quarterly.

(2) Pressure testing with liquid.

(c) Where pressure testing is performed under subsection (b)(2), the casing-tubing annulus above the packer must be filled with fluid and tested, with no more than a three percent (3%) pressure differential over a thirty (30) minute period, not less than once every five (5) years under the supervision of a division representative at a pressure of no less than three hundred (300) pounds per square inch.

(d) One (1) of the following methods must be used to evaluate mechanical integrity under subsection (a)(2):

(1) The results of a temperature or noise log.

(2) Records demonstrating the presence of cement adequate to prevent the migration of fluids in the well bore.

(3) A radioactive tracer survey.

(e) The division director may authorize a test to demonstrate mechanical integrity other than those listed in subsections (b) and (d). The division director may authorize an alternative test only where the test reliably demonstrates the mechanical integrity of a well.

(f) In conducting and evaluating a test authorized by this section, the owner or operator and the director shall apply methods and standards generally accepted in the petroleum industry. When reporting the results of a mechanical integrity test to the director, an owner or operator shall include a description of any test and method used. When evaluating a mechanical integrity test, the division director shall review monitoring and other test data submitted since the previous evaluation. (*Natural Resources Commission; 312 IAC 16-5-15; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2342; filed Aug 6, 2004, 12:00 p.m.: 27 IR 3881*)

### **312 IAC 16-5-16 Corrective action to wells affected by a Class II well**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 16. (a) This section applies if the survey required under 312 IAC 16-3-2(f) locates a well that penetrates:

(1) the injection zone to be utilized by the new injection well; or

(2) a formation that will be affected by the increase in pressure resulting from operation of the new injection well, where the well located by the survey is improperly sealed, constructed, or abandoned.

(b) If this section applies, an applicant shall submit a plan consisting of steps or modifications needed to prevent the movement of fluid into an underground source of drinking water. The plan shall be developed by the owner or operator, and evaluated by the director, based upon the following:

(1) The nature and volume of injected fluid.

(2) The nature of native fluids or byproducts of injection.

(3) Potentially affected persons.

(4) Geology.

(5) Hydrology.

(6) History of the injection operation.

(7) Completion and plugging records.

(8) Abandonment procedures in effect when the well was abandoned.

(9) Hydraulic connections with an underground source of drinking water.

(c) The division director will evaluate the corrective action plan based on its adequacy to assure that wells within a one-fourth (¼) mile radius will not serve as a conduit for the migration of fluids into an underground source of drinking water.

(d) Upon approval by the division director of a plan submitted under subsection (b), the plan is incorporated as a condition of the permit for the new injection well. (*Natural Resources Commission; 312 IAC 16-5-16; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2343*)

**312 IAC 16-5-17 Well logs; completion and recompletion reports**

Authority: IC 14-37-3-5; IC 14-37-3-12; IC 14-37-7

Affected: IC 14-37

Sec. 17. (a) Immediately upon completion or recompletion of a well for oil and gas purposes, an owner or operator must file the following with the division:

- (1) Three (3) copies of any geophysical logs that are run.
- (2) A completion or recompletion report.
- (3) A log or record of all strata encountered during drilling or deepening.
- (4) Any other surface or subsurface measurements recorded by the owner or operator.
- (b) The record of strata shall be from the surface to the total depth of the well.
- (c) The driver's log and well completion or recompletion report shall be completed on a division form.
- (d) Upon written request by the owner or operator, the department shall keep the following information confidential for one (1) year from the date of completion, except information that must be disclosed in order for the department to obtain and maintain primary enforcement authority for Class II wells under the Underground Injection Control Program:

- (1) The driver's log and completion report of the well.
- (2) The geophysical or instrumental log.
- (3) Drill cuttings or cores.
- (4) Other information required to be supplied to the commission under this rule.

These records and materials become public records at the end of this period.

- (e) Upon request by the division, the owner or operator shall do the following:

- (1) Provide cuttings and core samples if cores are taken.
- (2) Provide at least forty-eight (48) hours' notice to the Indiana geological survey before commencing the coring of any well drilled for oil and gas purposes.
- (3) Furnish these cuttings and core samples at a place designated by the division.

(f) If a directional hole is drilled, a directional survey shall be made and a copy filed with the division. (*Natural Resources Commission; 312 IAC 16-5-17; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2343*)

**312 IAC 16-5-18 Monitoring and reporting requirements for Class II wells**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 18. The monitoring and reporting requirements for a Class II well are as follows:

- (1) The owner or operator shall file with the division a quarterly report on a division form not later than thirty (30) days following the quarter reported.
- (2) The owner or operator shall monitor maximum and average injection pressure and the injection rate for a Class II well on at least a monthly basis, with the results reported and summarized quarterly on a division form. The owner or operator shall use the same form to indicate casing annulus pressure monitoring used instead of any other casing annulus pressure test performed. No person may operate a Class II well unless the division form identified in this subdivision is completed and filed as required in subdivision (1).
- (3) The owner or operator of a Class II well shall notify the division in writing within thirty (30) days of the date upon which injection or disposal is commenced.
- (4) Within thirty (30) days of the permanent termination of injection or disposal, an owner or operator shall in writing notify the division of the termination date and the reason for termination.
- (5) The division director may order an owner or operator to plug a Class II well where injection fluid is not being directed into the permitted injection zone. If fresh water may be endangered, the owner or operator must orally notify a commission representative within twenty-four (24) hours of when the owner or operator knows or should have known of the failure or irregularity and a written notice of the failure or irregularity must be submitted to the division direction within five (5) days of the occurrence, together with a plan for testing and repairing the well.
- (6) The owner or operator must demonstrate mechanical integrity of the well after testing and repairs under subdivision (5)

and prior to resuming the injection of fluids.

*(Natural Resources Commission; 312 IAC 16-5-18; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2344)*

### **312 IAC 16-5-19 Plugging and abandoning wells**

Authority: IC 14-37-3-6

Affected: IC 14-37-8

Sec. 19. (a) Wells for oil and gas purposes shall be plugged in accordance with IC 14-37-8.

(b) With respect to a well for oil and gas purposes, an owner or operator must place bottom plugs using one (1) of the following procedures:

(1) A cement plug from total depth to three (3) feet below ground elevation.

(2) A cement plug from the shallower of total depth of fifty (50) feet below to no less than one hundred (100) feet above each completed zone unless the placement of the plug would require the removal of a permanent plugback and one (1) of the following:

(A) A mechanical plug set inside cemented casing within two hundred (200) feet above the uppermost completed zone with a ten (10) gallon cement plug placed on top of the mechanical plug.

(B) A cement plug from the top of to no less than two hundred fifty (250) feet above the uppermost completed zone.

(3) A mechanical plug between each completed zone unless the placement of the plug would require the removal of a permanent plugback and one (1) of the following:

(A) A mechanical plug set inside cemented casing within two hundred (200) feet above the uppermost completed zone with a ten (10) gallon cement plug placed on top of the mechanical plug.

(B) A cement plug from the top of to no less than two hundred fifty (250) feet above the uppermost completed zone.

(4) A dry hole that does not enter a commercially mineable coal resource may be filled with mud-laden fluid, well cuttings, pea gravel, or crushed rock from the bottom of the hole to fifty (50) feet below the deepest underground source of drinking water. The owner or operator shall place a cement plug from fifty (50) feet below the deepest underground source of drinking water to three (3) feet below the surface.

(5) If a well is flowing at the surface, however, the operator must place plugs under one (1) of the following:

(A) Subdivision (1).

(B) Subdivision (2) and (2)(A).

(C) Subdivision (3) and (3)(A).

(c) An owner or operator must place any top plug as a cement plug from fifty (50) feet below:

(1) the deeper of the lowest commercially mineable coal seam or underground source of drinking water to three (3) feet below ground elevation; or

(2) to no less than one hundred (100) feet above each commercially mineable coal seam, and a cement plug from fifty (50) feet below the deepest underground source of drinking water to three (3) feet below ground elevation.

Notwithstanding subdivision (1) and subdivision (2) [*subdivisions (1) and (2)*], fallback of a top plug may be topped off by surface placement of cement slurry.

(d) Uncemented casing from fifty (50) feet below the deeper of the lowest commercially mineable coal seam or underground source of drinking water to three (3) feet below ground elevation must be:

(1) removed;

(2) ripped; or

(3) cemented in place using a method approved by the division.

(e) Uncemented intervals must be filled with pea gravel, crushed rock, drilling mud, gel, or fresh water.

(f) An owner or operator must obtain prior approval from the division for the use of cement. Cement must meet American Petroleum Institute (API) specification 10(A) or American Society for Testing and Materials (ASTM) Specification C150 Standards for Portland cement. If a pozzolan cement mixture is used, the pozzolanic content by volume must not exceed fifty percent (50%).

(g) An owner or operator must obtain prior approval from the division for the use of a mechanical plug. The mechanical plug must meet API specification 11D1.

(h) An owner or operator must place any cement plug using one (1) of the following methods:

(1) Dump bailing on top of a mechanical plug.



- (2) Pump and plug or displacement through tubing, coiled tubing, or drill pipe.
- (3) For any well with two (2) or fewer completed zones and circulated casing, surface pumping or bullhead plugging from the uppermost completed zone to three (3) feet below ground elevation.
  - (i) To ensure the proper plugging of wells, the division may require one (1) or more of the following:
    - (1) Use of mechanical plugs in nonstatic wells (as defined in 312 IAC 16-1-44.6).
    - (2) Submission of cement and service company tickets.
    - (3) Removal of any unauthorized material placed in a hole before plugging.
    - (4) Sampling and testing of cement plugs.
  - (j) The division director may authorize the use of alternative plugging materials and methods to achieve any of the following:
    - (1) To protect human health or safety.
    - (2) To protect the environment.
    - (3) To prevent unreasonably detrimental effects upon fish, wildlife, or botanical resources.
    - (4) To avoid unreasonable efforts to remove obstructions below the deepest underground source of drinking water.

An owner or operator must obtain prior approval from the division director before using an alternative material or method.

(k) Except as provided in subsection (l) or (m), an owner or operator must not plug a well unless a division representative is present to witness the plugging. If a well is plugged without a division representative present to witness the plugging, the owner or operator may be required by the division director to drill out and plug the well in the presence of a division representative.

(l) If an owner or operator and a division representative have scheduled the plugging of a well, but a division representative is not present at the scheduled time or place, the owner or operator may plug the well in the absence of a division representative only after making a reasonable attempt to have another division representative present to witness the plugging. If a division representative did not witness the plugging, the owner or operator may seek approval for the plugging from the division director under a Special Plugging Affidavit. To qualify for approval of a Special Plugging Affidavit, the owner or operator must do the following:

- (1) Provide a confirmation number to establish that the plugging was scheduled with the division.
- (2) Demonstrate that a reasonable attempt was made to have another division representative present to witness the plugging.
- (3) Submit a cement ticket that identifies the well and shows the amount of cement delivered.
- (4) Submit the completed Special Plugging Affidavit.

(m) If a well was plugged by a former owner or operator before the effective date of this section and a division representative was not present to witness the plugging, the owner or operator shall request the approval of a Special Plugging Affidavit from the division director. To qualify for a Special Plugging Affidavit under this subsection, the owner or operator must submit the following:

- (1) A cement ticket that identifies the well and shows the amount of cement delivered.
- (2) The completed Special Plugging Affidavit.
- (n) The owner or operator must submit a report of each permanent plugback on a form approved by the division.
- (o) A plugging and abandonment report must be signed by the following persons:
  - (1) The owner or operator or an authorized agent for the owner or operator.
  - (2) The person who supplied or prepared the cement.
  - (3) The division representative who witnessed the plugging.
  - (4) The division employee who reviewed the information contained in the report.

(p) Within six (6) months after plugging a well, the owner or operator must perform the following acts:

- (1) Cut off and remove all casing from three (3) feet below ground elevation to the surface.
- (2) Remove substructures.
- (3) Clear the well site of refuse and equipment.
- (4) Remove and properly dispose of waste fluids from the well site.
- (5) Fill all excavations at the well site.
- (6) Restore the well site as nearly as practicable to its condition before drilling.
- (7) If necessary, initiate a cleanup at the well site under sections 24 through 29 of this rule.

(q) In addition to the requirements of subsection (p), the owner or operator must, within six (6) months after the plugging of the last well on the lease, perform the following acts:

- (1) Remove and properly dispose of waste fluids.
- (2) Remove the tank battery from the lease.
- (3) Clear the lease of refuse and equipment.

- (4) Fill all excavations.
- (5) Restore the tank battery and excavation site as nearly as practicable to its condition before operation.
- (6) If necessary, initiate a cleanup of the tank battery and excavation site under sections 24 through 29 of this rule.

(r) The owner of surface rights may, with the consent of the owner or operator, accept responsibility for either or both of the following, by so indicating on the division's well completion form:

- (1) Equipment, fixtures, or excavations placed with respect to a well drilled for oil and gas purposes.
- (2) A well plugged up to a zone containing fresh water.

If the owner of surface rights accepts responsibility under this subsection, the owner or operator and its agents are released from responsibility for those items for which the owner of surface rights accepts responsibility. (*Natural Resources Commission; 312 IAC 16-5-19; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2344; filed Aug 6, 2004, 12:00 p.m.: 27 IR 3882*)

### **312 IAC 16-5-20 Temporary abandonment of wells**

Authority: IC 14-37-3-6; IC 14-37-8-8

Affected: IC 14-37-8-1; IC 14-37-10

Sec. 20. (a) An owner or operator may defer plugging and abandonment under IC 14-37-8-1 for a well that has been drilled, completed, and cased for production if either of the following is satisfied:

- (1) Abandonment is deferred under subsection (b).
- (2) The requirements of subsection (c) are completed for temporary abandonment status.

(b) An owner or operator may defer plugging and abandonment of a well for one (1) year, or for any lesser time prescribed by the division, if both of the following are satisfied:

- (1) The owner or operator notifies the division, in writing, on a form provided by the division, that plugging and abandonment are being deferred. The notification must be filed with the division within sixty (60) days of the following:

- (A) Well completion for a well not placed in operation.
- (B) The termination of operations for a well placed in operation.

- (2) The owner or operator complies with each of the following technical requirements:

- (A) The well is provided with an intact, leak-free wellhead or is capped with a valve and configured to monitor casing or casing-tubing annulus pressure.
- (B) The well site is kept free of unnecessary equipment, vegetation, and debris.
- (C) The excavations associated with drilling are filled and leveled.
- (D) Signs are posted and maintained under section 10 of this rule.
- (E) A properly executed completion or recompletion report is submitted to the division under section 17 of this rule.
- (F) The well is cased and cemented under this rule.
- (G) Bond is maintained on the well as required under this rule.
- (H) A demonstration is made under subsection (d) that the well does not threaten an underground source of drinking water.

(c) An owner or operator of a well may seek temporary abandonment status for a well that conforms to the requirements of IC 14-37 and this rule. The owner or operator seeking temporary abandonment status must file a completed application on a division form within sixty (60) days of the following:

- (1) For a well not placed in operation, the date on which drilling of the well is completed.
- (2) For a well placed in operation, the date on which operation of the well is terminated.
- (3) If the department has approved a deferral of plugging and abandonment under subsection (b), the date of expiration of the deferral.

(d) The following governs the demonstration required under subsection (b)(2)(H) that a well does not threaten an underground source of drinking water:

- (1) The owner or operator must notify an inspector at least forty-eight (48) hours before a demonstration is to be performed.
- (2) The owner or operator must use one (1) of the following methods in performing the demonstration:
  - (A) Monitor the fluid level using acoustical or wire line measuring methods on an annual basis and report the results of monitoring on a form prescribed by the division. If the fluid level is closer than one hundred (100) feet to the base of the lowest underground source of drinking water, the owner or operator shall notify an inspector within twenty-four

(24) hours and shall do one (1) of the following:

- (i) Plug and abandon the well under section 19 of this rule.
- (ii) Set a mechanical bridge, cement, or calseal plug within two hundred (200) feet above the perforated or open hole interval in the cemented portion of the casing, but no less than one hundred (100) feet below the base of the lowest underground source of drinking water. Remove any fluid to a level at least one hundred (100) feet below the base of the lowest underground source of drinking water.
- (iii) Set a mechanical bridge, cement, or calseal plug within two hundred (200) feet above the perforated or open hole interval in the cemented portion of the casing, but no less than one hundred (100) feet below the base of the lowest underground source of drinking water. Pressure test the casing at least once every five (5) years during any period of temporary abandonment by filling the casing above the mechanical bridge, cement, or calseal plug with water and placing a pressure of at least three hundred (300) pounds per square inch gauge (which may vary no more than three percent (3%)) for a period of thirty (30) minutes. During the thirty (30) minute period of the test, additional pressure may not be applied to the casing.
- (iv) Install tubing and packer within two hundred (200) feet above the perforated or open hole interval in cemented portion of the casing, but no less than one hundred (100) feet below the base of the lowest underground source of drinking water. Pressure test the casing tubing annulus at least once every five (5) years during any period of temporary abandonment by filling the annulus above the packer with water and placing a pressure of at least three hundred (300) pounds per square inch gauge (which may vary no more than three percent (3%)) for a period of thirty (30) minutes. During the thirty (30) minute period of the test, additional pressure may not be applied to the annulus.
- (v) If a bridge, cement, or calseal plug was lawfully set before the effective date of this section, which is one hundred (100) feet below the base of the lowest underground source of drinking water, but no less than one hundred (100) feet below the calculated top of the cement, fluid level monitoring as described in item (iii) or a pressure test as described in item (iv) may be used to demonstrate the well does not threaten an underground source of drinking water.

(B) Perform a mechanical integrity test as described in clause (A)(ii), (A)(iii), or (A)(iv).

(C) For a gas well, with a minimum wellhead pressure of one hundred (100) pounds per square inch, each of the following standards apply:

- (i) At least ten percent (10%) of the initial shut-in pressure shall be bled off, and the well shall be shut back in under the supervision of an inspector.
- (ii) Once the well returns to the maximum shut-in pressure, the pressure must be maintained at a constant level for thirty (30) minutes in the pressure of an inspector.
- (iii) A pressure measuring device displaying a readout of the shut-in pressure shall be attached to the wellhead and shall be accessible at all times for inspection by the inspector.

(e) Temporary abandonment status may be granted for a period not to exceed five (5) consecutive years.

(f) Upon the expiration of temporary abandonment status or its renewal, the owner or operator must do one (1) of the following:

- (1) Operate the well for its permitted purpose.
- (2) Plug and abandon the well under section 19 of this rule.
- (3) Submit a request for temporary abandonment renewal, on a form prescribed by the division, which demonstrates that the engineering, geologic, or economic reasons for retaining a well on temporary abandonment status outweigh the potential benefit from operating, plugging, or abandoning the well. Demonstrate the well does not threaten an underground source of drinking water by using a method, as selected by the division, under subsection (d)(2)(A)(ii), (d)(2)(A)(iii), or (d)(2)(A)(iv).
- (g) If an owner or operator fails to file an annual report, as required under subsection (d)(2)(A), the division may require the owner or operator to do any of the following:

- (1) Demonstrate the well has mechanical integrity using a method selected by the division under subsection (d)(2)(A)(ii), (d)(2)(A)(iii), or (d)(2)(A)(iv).
- (2) Operate the well for the permitted purpose.
- (3) Plug and abandon the well under section 19 of this rule.
- (h) An owner or operator must notify the division in writing within thirty (30) days of any change in the operational status

of a well that has been granted temporary abandonment status under this section.

(i) Operation of a well that is subject to this section removes the well from temporary abandonment status. (*Natural Resources Commission; 312 IAC 16-5-20; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2345; filed Oct 1, 1999, 1:12 p.m.: 23 IR 295*)

### **312 IAC 16-5-21 Notice of violation; penalty**

Authority: IC 14-37-3-1

Affected: IC 4-21.5-3-6; IC 14-37-13-3

Sec. 21. (a) A notice of violation may be issued by an inspector, the division director, or the deputy director against any person who violates IC 14-37 or this article.

(b) A notice of violation is subject to IC 4-21.5-3-6. The notice must be in writing and include the following:

- (1) A designation that the document is a "Notice of Violation".
- (2) The name of the person or persons against whom the notice is directed.
- (3) The nature of the violation.
- (4) What action is appropriate to abate the violation.
- (5) The date by which the violation must be abated.
- (6) A statement that a person who is aggrieved by the notice of violation may request administrative review within thirty (30) days of issuance from the following address:

Division of Hearings  
Natural Resources Commission  
Indiana Government Center-South  
402 West Washington Street, Room W272  
Indianapolis, Indiana 46204

(c) The notice of violation may also set forth a civil penalty under IC 14-37-13-3. An owner or operator is liable for a civil penalty under this subsection in the following situations:

- (1) Abatement of the violation is not performed by the date provided under subsection (b)(5) if no request for administrative review is filed.
- (2) If a request for administrative review is filed:
  - (A) where a stay is issued under subsection (d) and the stay is later terminated, abatement is not performed by the date set forth in the order to terminate the stay; or
  - (B) where a final agency action modifies the abatement required by the notice of violation, abatement is not performed as set forth in the final agency action.

(d) A petition for review of a notice of violation does not automatically delay the effectiveness of the terms of the notice of violation, but the review petition may include a petition for stay of effectiveness of all or a portion of the notice of violation. If a petition for stay is filed, an administrative law judge shall, as soon as practicable, conduct a preliminary hearing to determine whether the notice of violation should be stayed in whole or in part. The burden of proof in the preliminary hearing is upon the person seeking the stay. (*Natural Resources Commission; 312 IAC 16-5-21; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2346*)

### **312 IAC 16-5-22 Spill containment**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 22. (a) An owner or operator shall contain all spills of oil or saltwater as required by this section.

(b) Spills that are not confined within a secondary containment structure shall be contained by the placement of absorbent materials, emergency excavations, or by other collection means designed to prevent the migration of the spill.

(c) Used absorbent materials shall be disposed of:

- (1) in a municipal solid waste landfill permitted under 329 IAC 10; or
- (2) in another manner approved by the division.

(*Natural Resources Commission; 312 IAC 16-5-22; filed Sep 11, 2000, 3:31 p.m.: 24 IR 279; errata filed Dec 6, 2000, 10:12 a.m.: 24 IR 1032*)

**312 IAC 16-5-23 Spill reporting**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 23. (a) An owner or operator shall report all spills of oil or saltwater as required by Table 1 as follows:

Table 1. Spill Reporting Requirements

Size and Location of the Spill	Report the Spill to the:	
	Indiana Department of Natural Resources	Indiana Department of Environmental Management
More than 2,000 gallons of oil or saltwater that is contained in a secondary containment structure approved by the Department of Natural Resources.	Not more than 48 hours after discovery of the spill.	
More than 1,000 gallons of oil or saltwater that is not contained in a secondary containment structure approved by the Department of Natural Resources.		Not more than 2 hours after discovery of the spill.
Less than 1,000 gallons but more than 42 gallons of oil or saltwater that is not contained in a secondary containment structure approved by the Department of Natural Resources but is contained within the boundary of the facility.	Not more than 48 hours after discovery of the spill.	
More than 55 gallons of oil that is not contained within the boundary of a facility.		Not more than 2 hours after discovery of the spill.
Less than 55 gallons of oil or saltwater that is not contained within the boundary of a facility.	Not more than 48 hours after discovery of the spill.	
Any spill of oil or saltwater that enters waters of the state.		Not more than 2 hours after discovery of the spill.
Any spill of oil or saltwater: (1) that has not been cleaned up in accordance with section 24 of this rule; or (2) for which cleanup has not been started in accordance with section 24 of this rule.		Not more than 2 hours after discovery of the spill.
Any spill of less than 42 gallons of oil or saltwater that does not enter waters of the state.	No report required.	

(b) Spills required by Table 1 to be reported to the Indiana department of natural resources must be reported to the Evansville field office by telephone at (812) 477-8773, or by facsimile at (812) 477-8952.

(c) Spills required by Table 1 to be reported to the Indiana department of environmental management must be reported to the office of environmental response at (317) 233-7745 or (888) 233-7745 (toll-free in Indiana).

(d) Each report of a spill must include all of the following information:

- (1) The name, address, and telephone number of the person making the report.
- (2) The name, address, and telephone number of a contact person, if different than the person making the report.
- (3) The location of the spill, including lease name, township, range, and section.
- (4) The time of the spill.
- (5) The identification of the substance spilled.
- (6) The approximate quantity of the substance that has been spilled or may be spilled.
- (7) The duration of the spill.
- (8) The source of the spill.
- (9) The name and location of waters damaged.

- (10) The identity of any response organization responding to the spill.
- (11) What measures have been or will be undertaken to perform a spill response.
- (12) Any other information that may be significant to the response action.

*(Natural Resources Commission; 312 IAC 16-5-23; filed Sep 11, 2000, 3:31 p.m.: 24 IR 279; errata filed Dec 6, 2000, 10:12 a.m.: 24 IR 1032)*

### **312 IAC 16-5-24 Spill cleanup**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 24. (a) An owner or operator shall clean up spills of oil, fluids contaminated with oil, or saltwater as required by this section.

(b) Oil or fluid contaminated with oil that is confined within a secondary containment structure or collected as required by section 22 of this rule must be:

- (1) removed within seventy-two (72) hours;
- (2) placed in a nonleaking storage tank; and
- (3) managed or disposed of in accordance with section 27(a) of this rule.

(c) Saltwater that is confined within a secondary containment structure or collected as required by section 22 of this rule must be:

- (1) removed within seventy-two (72) hours;
- (2) placed in a nonleaking storage tank; and
- (3) disposed of in accordance with section 27(b) of this rule.

(d) Fluid placed in a nonleaking storage tank under subsection (b) or (c) must be disposed of in accordance with section 27 of this rule within thirty (30) days after discovery of the spill unless additional time is approved by the division.

(e) Soils contaminated with more than one (1) gallon of oil must be cleaned up as follows:

- (1) Soils that meet the conditions for remediation in section 25(c) of this rule may be:
  - (A) remediated at the facility as required by section 25 of this rule;
  - (B) applied to lease roads in accordance with section 27(a)(1) of this rule; or
  - (C) excavated and disposed of as required by section 27(d) of this rule.
- (2) Soils that do not meet the conditions for remediation in section 25(c) of this rule must be excavated and disposed of as required by section 27(e) of this rule.

(f) Soils contaminated with saltwater must be cleaned up as required by section 26 of this rule.

(g) Soils contaminated with oil that will be remediated under section 25 of this rule must be managed to prevent discharge of oil to unaffected soil or waters of the state. *(Natural Resources Commission; 312 IAC 16-5-24; filed Sep 11, 2000, 3:31 p.m.: 24 IR 280; errata filed Dec 6, 2000, 10:12 a.m.: 24 IR 1032)*

### **312 IAC 16-5-25 Remediation of soils contaminated with oil**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 25. (a) The owner or operator may clean up soils contaminated with oil using remediation at the facility only as required by this section.

(b) The owner or operator may use a remediation method for soils contaminated with crude oil that is documented with a standard or procedure published by one (1) of the following:

- (1) A department or agency of the federal government.
- (2) A state environmental or natural resources agency.
- (3) American Society for Testing and Materials.
- (4) National Fire Protection Association.
- (5) American Petroleum Institute.

(c) Remediation may be used at a facility only if all of the following conditions are met:

- (1) Remediation is not prohibited by Table 2 in subsection (e).
- (2) The slope of the remediation site is less than six percent (6%).
- (3) The remediation site is not:
  - (A) subject to frequent, common, or occasional flooding as described in the soil survey prepared for the county by the natural resources conservation service;
  - (B) located in a flood plain or a floodway as defined at 310 IAC 6-1-3; or
  - (C) a wetland.
- (4) The surface soil at the remediation site is not classified as a hydric soil in the soil survey prepared for the county by the Natural Resources Conservation Service. Soil surveys are available from the Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013; from the State Conservationist, 6013 Lakeside Boulevard, Indianapolis, Indiana 46278, (317) 290-3200 extension 301; or from the cooperative extension service office in the county.
- (5) The entire remediation site is within the boundary of the facility.
- (6) No part of the remediation site is within one hundred (100) feet of any surface water or field tile.
- (7) No part of the remediation site is within one thousand five hundred (1,500) feet of any public water supply well.
- (8) No part of the remediation site is within five hundred (500) feet of any domestic water well.
- (9) No part of the remediation site is within a wellhead protection area that is delineated and approved in accordance with rules of the water pollution control board at 327 IAC 8-4.1.
- (d) Contaminated soil that is not permitted to be remediated by Table 2 in subsection (e) must be excavated and disposed of as required by section 27 of this rule.
- (e) The remediation method to be used must be determined by the soil characteristics that exist at the remediation site as described in Table 2 as follows:

Table 2. Requirements for Remediation Based on Permeability of Surface Soil and Depth of Ground Water at the Remediation Site

Permeability <sup>1</sup> and Depth of Ground Water <sup>1</sup>	Remediation Requirements
More than 2.0 inches/hour permeability and Less than 6 feet depth to ground water	Remediation is not permitted.
More than 2.0 inches/hour permeability and More than 6 feet depth to ground water	Use a liner that meets the requirements of subsection (f).
Less than 2.0 inches/hour permeability and Less than 6 feet depth to ground water	Use a liner that meets the requirements of subsection (f).
Less than 2.0 inches/hour permeability and More than 6 feet depth to ground water	No restrictions.

<sup>1</sup>Permeability of surface soil and depth of ground water during the remediation as described in the soil survey prepared for the county by the Natural Resources Conservation Service or by on-site inspection and analysis by a qualified soil scientist or licensed professional geologist. Soil surveys are available from the Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013; from the State Conservationist, 6013 Lakeside Boulevard, Indianapolis, Indiana 46278, (317) 290-3200 extension 301; or from the cooperative extension service office in your county.

(f) If a liner is required by Table 2 in subsection (e), remediation may be conducted on any site where one (1) of the following has been constructed:

- (1) A synthetic liner that meets all of the following requirements:
  - (A) Constructed of a minimum of twenty (20) mil polyethylene or its equivalent.
  - (B) Hydraulic conductivity of  $1 \times 10^{-6}$  centimeters per second or less.
  - (C) Installed in accordance with the manufacturer's directions.
  - (D) Equipped with a leachate collection system that collects all leachate from the remediation site for monitoring and proper disposal.
  - (E) Installed at least two (2) feet above the depth of ground water.
- (2) A compacted soil liner that meets all of the following requirements:

- (A) Constructed of soil compacted to a depth of two (2) feet.
- (B) Hydraulic conductivity of  $1 \times 10^{-6}$  centimeters per second or less.
- (C) Installed at least two (2) feet above the depth of ground water.

(g) The owner or operator shall:

- (1) begin remediation as soon as practicable but not more than one hundred twenty (120) days after discovery of the spill;
- (2) notify the division within seven (7) days after beginning remediation;
- (3) follow the remediation method or procedure selected as closely as possible;
- (4) monitor the remediation site as required by section 28 of this rule during remediation; and
- (5) complete remediation as described in subsection (h) within:
  - (A) three hundred sixty-five (365) days after beginning remediation; or
  - (B) another time period approved by the division.

(h) Remediation of soils contaminated with oil is complete when the concentration of polynuclear aromatic hydrocarbons in the soil is reduced to the values shown in Table 3:

Table 3. Criteria for Completion of Remediation of Soils Contaminated with Oil

Contaminant	Maximum Concentration <sup>1</sup>
Acenaphthene	130 ppm
Anthracene	51 ppm
Benzo(a)anthracene <sup>2</sup>	5.0 ppm
Benzo(b)fluoranthene <sup>2</sup>	5.0 ppm
Benzo(k)fluoranthene <sup>2</sup>	39 ppm
Benzo(a)pyrene <sup>2</sup>	0.50 ppm
Chrysene <sup>2</sup>	26 ppm
Dibenz(a,h)anthracene <sup>2</sup>	0.5 ppm
Fluoranthene	880 ppm
Fluorene	170 ppm
Indeno(1,2,3-cd)pyrene <sup>2</sup>	3.0 ppm
Naphthalene	0.70 ppm
Pyrene	570 ppm

<sup>1</sup>The maximum concentration of polynuclear aromatic hydrocarbons in soil contaminated with oil is determined by testing a representative sample of that soil using U.S. EPA Method 8310, "Polynuclear Aromatic Hydrocarbons". Method 8310 is found in the U.S. Environmental Protection Agency Publication SW-846, Third Edition (November 1986), "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996). U.S. Environmental Protection Agency Publication SW-846 is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, (202) 512-1800.

<sup>2</sup>This substance is a carcinogen identified in the RISC Technical Resources Guidance Document, Draft February 18, 1999.

(i) If the contaminated soil does not meet the completion criteria in subsection (h) within:

- (1) three hundred sixty-five (365) days after beginning remediation; or
- (2) another time period approved by the division;

the owner or operator shall excavate all soil that does not meet the completion criteria in subsection (h) and dispose of that soil as required by section 27 of this rule. (*Natural Resources Commission; 312 IAC 16-5-25; filed Sep 11, 2000, 3:31 p.m.: 24 IR 281; errata filed Dec 6, 2000, 10:12 a.m.: 24 IR 1032*)



**312 IAC 16-5-26 Remediation of soils contaminated with saltwater**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 26. (a) The owner or operator shall clean up soils contaminated with saltwater using remediation at the facility only as required by this section.

(b) The owner or operator may use a remediation method for soils contaminated with saltwater that is documented with a standard or procedure published by one (1) of the following:

- (1) A department or agency of the federal government.
- (2) A state environmental or natural resources agency.
- (3) American Society of Testing and Materials.
- (4) American Petroleum Institute.

(c) Instead of using a method described in subsection (b), the owner or operator may submit to the division a written remediation plan that is designed to:

- (1) prevent additional soil damage;
- (2) prevent soil erosion;
- (3) where feasible, remediate the soil to a condition where it can support vegetation;
- (4) establish vegetative cover; and
- (5) where feasible, use a vegetative cover with palatability and seasons of use characteristics similar to the vegetation already present on adjoining uncontaminated sites.

(d) If the division approves a remediation plan submitted under subsection (c), the owner or operator may use that approved remediation plan to clean up soils contaminated with saltwater at the facility. (*Natural Resources Commission; 312 IAC 16-5-26; filed Sep 11, 2000, 3:31 p.m.: 24 IR 282*)

**312 IAC 16-5-27 Disposal**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 27. (a) Oil or fluid contaminated with oil must be managed using one (1) of the following methods:

(1) Oil or fluid contaminated with oil may be applied to lease roads for the purpose of dust suppression in a manner designed to ensure that the materials do not leave the roadbed. Oil or fluid contaminated with oil must be:

- (A) stored in a leak-free tank; and
- (B) applied to lease roads within seventy-two (72) hours of removal from the secondary containment unless a longer period of time is authorized by the division.

(2) Oil or fluid contaminated with oil may be:

- (A) placed in a leak-free tank; and
- (B) returned to crude oil production in accordance with this article.

(3) Oil or fluid contaminated with oil may be disposed of in a solid waste land disposal facility if such disposal is approved by the Indiana department of environmental management.

(b) Saltwater or fluid contaminated with saltwater must be:

- (1) injected into a Class II well authorized under 312 IAC 16-3; or
- (2) discharged under a NPDES permit issued by the Indiana department of environmental management.

(c) Soil contaminated with oil or saltwater may be disposed of as alternate daily cover in a municipal solid waste landfill permitted under 329 IAC 10 in accordance with:

- (1) 329 IAC 10-20-14.1; and
- (2) the permit issued to the landfill under 329 IAC 10.

(d) After three hundred sixty-five (365) days of remediation, or another time period approved by the division, all soil contaminated with oil that has a remaining concentration of polynuclear aromatic hydrocarbons greater than the values listed in Table 3 in section 25(h) of this rule must be:

- (1) excavated;

- (2) removed from the facility;
- (3) disposed of in accordance with 329 IAC 10-8.1-13 in a municipal solid waste landfill permitted by the Indiana department of environmental management under 329 IAC 10; and
- (4) replaced with comparable uncontaminated soil.
- (e) All soil contaminated with oil that is not permitted to be remediated under section 25 of this rule must be:
  - (1) excavated;
  - (2) removed from the facility;
  - (3) disposed of in accordance with 329 IAC 10-8.1-13 in a municipal solid waste landfill permitted by the Indiana department of environmental management under 329 IAC 10; and
  - (4) replaced with comparable uncontaminated soil.

*(Natural Resources Commission; 312 IAC 16-5-27; filed Sep 11, 2000, 3:31 p.m.: 24 IR 283; errata filed Dec 6, 2000, 10:12 a.m.: 24 IR 1032)*

### 312 IAC 16-5-28 Monitoring

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 28. (a) The owner or operator shall monitor a remediation site for releases or discharges of oil or fluid contaminated with oil to surface waters as required by Table 4 as follows:

Table 4. Requirements for Monitoring a Remediation Site for Discharges to Surface Waters

Remediation Site Location	Type of Monitoring
More than 1,500 feet from surface water or field tile.	No requirement.
500 to 1,500 feet from surface water or field tile.	Once every 30 days, conduct a visual inspection during daylight hours of all surface water or field tile within 500 to 1,500 feet of remediation site for visible film, sheen, or discoloration of the surface of the water or sludge or emulsion beneath the surface or upon adjoining shorelines.
100 to 500 feet from surface water or field tile.	(1) Once every 7 days, conduct a visual inspection during daylight hours of all surface water within 100 to 500 feet of remediation site for visible film, sheen, or discoloration of the surface of the water or sludge or emulsion beneath the surface or upon adjoining shorelines. (2) If a visible film, sheen, or discoloration of the surface of the water or sludge or emulsion beneath the surface or upon adjoining shorelines is noted, sample any surface water within 100 to 500 feet from the remediation site and analyze the samples for violation of applicable water standards in 327 IAC 2, using a method described in 327 IAC 2.
Less than 100 feet from surface water or field tile.	Remediation is not permitted less than 100 feet from surface water or field tile.

(b) The owner or operator shall:

- (1) record the date, time, and results of each monitoring event required by Table 4 in subsection (a); and
- (2) make the records available to the division upon request.

*(Natural Resources Commission; 312 IAC 16-5-28; filed Sep 11, 2000, 3:31 p.m.: 24 IR 283; errata filed Dec 6, 2000, 10:12 a.m.: 24 IR 1032)*

### 312 IAC 16-5-29 Reporting

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 29. (a) The owner or operator shall report any discharge of oil from the remediation site that is required to be reported by 329 IAC 2-6.1 to the Indiana department of environmental management at (317) 233-7745 or (888) 233-7745 (toll free in Indiana).

(b) When remediation under section 25 of this rule is determined to be complete, the owner or operator shall send a written report to the division within seven (7) days of completion that includes the following information:

- (1) The name and address of the person responsible for the remediation.
- (2) The identity of the facility where the remediation was done.
- (3) The type and approximate amount of the waste remediated at the facility.
- (4) The method used to remediate the waste.
- (5) The concentrations of polynuclear aromatic hydrocarbons listed in Table 3 in section 25(h) of this rule remaining in the soil at the remediation site.
- (6) How the concentration of polynuclear aromatic hydrocarbons reported under subdivision (5) was determined.
- (7) A copy of the laboratory report showing the concentrations of polynuclear aromatic hydrocarbons reported under subdivision (5).

*(Natural Resources Commission; 312 IAC 16-5-29; filed Sep 11, 2000, 3:31 p.m.: 24 IR 284; errata filed Dec 6, 2000, 10:12 a.m.: 24 IR 1032)*

## **ARTICLE 17. OTHER PETROLEUM REGULATION**

### **Rule 1. Administration of the Exploration for and Production of Oil and Gas from Public Lands**

#### **312 IAC 17-1-1 Definitions**

Authority: IC 14-38-1-19

Affected: IC 14-38

Sec. 1. The following definitions apply throughout this rule:

- (1) "Commence to drill a well" means the institution of work in good faith with drilling equipment adequate for the drilling of a well to a depth that will reasonably test the oil and gas productiveness of the public lands where the well is commenced.
- (2) "Division director" refers to the director of the division of oil and gas.
- (3) "Gross value" means the value of petroleum at the well produced and saved, without deduction for expense of production.
- (4) "Petroleum" means any liquid or gaseous hydrocarbon occurring in nature beneath the surface of the earth.
- (5) "Proven territory" means territory so situated with reference to known producing wells as to establish the general opinion that, because of its relation to them, petroleum is contained in it.
- (6) "Public lands" means lands and areas belonging to, or subsequently acquired by, the state or any of its institutions, including lands of every kind and nature.

*(Natural Resources Commission; 312 IAC 17-1-1; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2346)*

#### **312 IAC 17-1-2 Division director; duties**

Authority: IC 14-38-1-19

Affected: IC 14-38-1

Sec. 2. The division director is designated as the supervisor of leasing of public lands for exploration and production. The division director is charged with the duties of carrying out IC 14-38-1 and this rule. *(Natural Resources Commission; 312 IAC 17-1-2; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2346)*

#### **312 IAC 17-1-3 Classification of public lands for exploration or leasing**

Authority: IC 14-38-1-19

Affected: IC 14-38-1-7; IC 14-38-1-14

Sec. 3. The commission will classify public lands from time to time as proven territory or not proven territory, before offering

the lands for exploration or leasing for production. Classification will be made on the basis of geological information and general information concerning the production of oil and gas. (*Natural Resources Commission; 312 IAC 17-1-3; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2347*)

**312 IAC 17-1-4 Duration of permit; maximum duration**

Authority: IC 14-38-1-19

Affected: IC 14-38-1-9

Sec. 4. The commission shall determine the duration of a permit, not to exceed one (1) year, to prospect and explore public lands. (*Natural Resources Commission; 312 IAC 17-1-4; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2347*)

**312 IAC 17-1-5 Commencement date of operations**

Authority: IC 14-38-1-19

Affected: IC 14-38-1-14

Sec. 5. A permittee shall commence geological, geophysical, or drilling operations within thirty (30) days after a permit is issued. Upon a showing by the permittee of good cause, the commission may extend the commencement date for an additional period of thirty (30) days. (*Natural Resources Commission; 312 IAC 17-1-5; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2347*)

**312 IAC 17-1-6 Application for permit; notice of publication**

Authority: IC 14-38-1-19

Affected: IC 14-38-1-14

Sec. 6. (a) The commission may, through a publication under subsection (c), offer any public lands for exploration or production.

(b) A person who wishes to prospect and explore public lands, or to obtain a lease of public lands for production purposes, must make a written application to the division at its offices in Indianapolis. The application shall set forth the description of the lands and, if the application is for the purpose of exploration, describe the nature of the exploratory work contemplated.

(c) Upon receipt of an application under subsection (b), the commission may do either of the following:

(1) Return the application with the statement that the lands described are not available for exploration or production.

(2) If the lands are considered available, the commission shall publish a notice in at least one (1) newspaper of general circulation in the county in which the land lies, or if no newspaper is published in the county, in a newspaper in an adjoining county. Notice in writing shall also be given to at least ten (10) operators in the state. A notice under this subdivision shall be made at least ten (10) days before the deadline for receiving bids. The notice shall describe the public lands to be offered for exploration or production, any special terms and conditions, and the time and place that bids will be opened. A person desiring to receive notices under this subdivision may do so by filing a request with the division director setting forth the year covered by the request.

(*Natural Resources Commission; 312 IAC 17-1-6; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2347*)

**312 IAC 17-1-7 Protection of private rights; permission of controlling state division required**

Authority: IC 14-38-1-19

Affected: IC 14-38-1-17; IC 14-38-1-18

Sec. 7. (a) No exploratory or prospecting operations shall be commenced until a permit applicant has filed with the department a signed statement by any person claiming private rights affected by the operation. The statement shall set out the nature of the rights and how the rights would be protected or compensated. A permit applicant shall indicate by affidavit if the permit applicant believes there are no affected private rights.

(b) If a permit sought to prospect and explore covers lands under the jurisdiction of the department, the division director shall inform the division director for the division which administers the property and obtain the written approval of the division director before submitting a lease to the commission.

(c) If a permit and lease is sought for public lands controlled by a state agency other than the department, the division director shall inform the other agency of the application and obtain its written consent before approval is given. (*Natural Resources Commission; 312 IAC 17-1-7; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2347*)

**312 IAC 17-1-8 Conformation to spacing and drilling unit rules**

Authority: IC 14-38-1-19

Affected: IC 14-38-1-11

Sec. 8. The area sought to be leased under IC 14-38-1-11 may be in one (1) continuous and unbroken tract or in several tracts. The tract or tracts selected must be of a size and shape that conforms to the spacing rules and established drilling units for the area. (*Natural Resources Commission; 312 IAC 17-1-8; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2347*)

**312 IAC 17-1-9 Permits required**

Authority: IC 14-38-1-19

Affected: IC 14-37; IC 14-38-1

Sec. 9. A person who obtains a lease under this rule must obtain a permit under, and conform to the requirements of, IC 14-37 and 312 IAC 16 before commencing a well for oil and gas purposes. (*Natural Resources Commission; 312 IAC 17-1-9; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2348*)

**312 IAC 17-1-10 Surety bond; when required**

Authority: IC 14-38-1-19

Affected: IC 14-38-1-8; IC 14-38-1-9

Sec. 10. The department may require that a permittee to prospect and explore file a surety bond conditioned upon full payment by the permittee for damages to the leased area. (*Natural Resources Commission; 312 IAC 17-1-10; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2348*)

**312 IAC 17-1-11 Royalties; rental fees**

Authority: IC 14-38-1-19

Affected: IC 14-38-1-11; IC 14-38-1-12

Sec. 11. The royalties to the state for a lease under this rule shall be twelve and one-half percent (12½%) of petroleum produced and saved (or the market value of the petroleum at the option of the commission). The annual rental shall be one dollar (\$1) an acre payable in advance. (*Natural Resources Commission; 312 IAC 17-1-11; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2348*)

**312 IAC 17-1-12 Competitive bids on production leases**

Authority: IC 14-38-1-19

Affected: IC 14-38-1-14

Sec. 12. A lease for production made under IC 14-38-1-14 shall be offered under IC 14-38-1-14(b)(1) on a competitive basis. The details of the offer and acceptance of bids shall be fixed in each notice published as required in section 6 of this rule. The amount of the bid bond shall also be fixed for an offer. (*Natural Resources Commission; 312 IAC 17-1-12; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2348*)

**312 IAC 17-1-13 Unitization of state lands for common development, exploration, and operation**

Authority: IC 14-38-1-19

Affected: IC 14-38-1-17

Sec. 13. Every lease of public lands shall contain a clause authorizing the unitization of the land with other lands for common

development, exploration, and operation. The commission may incorporate in a lease of public lands a unitization requirement. This section does not limit the authority granted to the commission by IC 14-38-1-17. (*Natural Resources Commission; 312 IAC 17-1-13; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2348*)

### **312 IAC 17-1-14 Determination of rapidity and extent of development**

Authority: IC 14-38-1-19

Affected: IC 14-38-1-22

Sec. 14. The commission may determine in the lease the rapidity and extent of development of an oil or gas field. (*Natural Resources Commission; 312 IAC 17-1-14; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2348*)

## **Rule 2. Test Holes for Fluid Disposal Investigation, Engineering Projects, Investigation, and Geologic Investigation**

### **312 IAC 17-2-1 Definitions**

Authority: IC 14-38-2-7

Affected: IC 14-9-4-1; IC 14-38-2

Sec. 1. The following definitions apply throughout this rule:

(1) "Commission representative" means an employee of the division who is authorized by the commission to perform the powers and duties set forth in IC 14-38-2 and this rule.

(2) "Division" refers to the division of oil and gas established under IC 14-9-4-1(15).

(3) "Division director" refers to the director of the division of oil and gas.

(4) "Fresh water" means water that contains not more than ten thousand (10,000) milligrams per liter of total dissolved solids.

(5) "Mud-laden fluid" means a mixture that is predominately water and clay, but may contain fabricated additives.

(6) "Operator" refers to a person issued a permit under IC 14-38-2 or engaging in an activity for which a permit is required under IC 14-38-2.

(7) "Stratum" means a single sedimentary bed or layer that consists of generally homogenous rock material.

(8) "Test hole" means any exploratory hole, except for coal exploration, drilled for the purpose of obtaining information and data on the character, composition, sequence, thickness, age, and correlation of underground strata and formations for one

(1) or more of the following purposes and no other:

(A) The feasibility of an area for fluid disposal.

(B) The existence, extent, and characteristics of an underground mineral deposit or deposits.

(C) The suitability of underground formations for use in, or as a foundation for, engineering projects or works.

(D) Expanding the store of scientific knowledge of the geology of an area.

(9) "Underground source of drinking water" means an aquifer, other than an aquifer exempted under 312 IAC 16-5-8, which presently supplies fresh water to any user or which contains a sufficient quantity of fresh water to supply a future user.

(*Natural Resources Commission; 312 IAC 17-2-1; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2348*)

### **312 IAC 17-2-2 General provisions**

Authority: IC 14-38-2-7

Affected: IC 14-38-2

Sec. 2. (a) This rule governs the drilling, operation, and bonding of test holes under IC 14-38-2.

(b) A hole drilled as a test hole is not a well for oil and gas purposes. (*Natural Resources Commission; 312 IAC 17-2-2; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2349*)

### **312 IAC 17-2-3 Prevention of waste; prohibitions**

Authority: IC 14-38-2-7

Affected: IC 14-38-2

Sec. 3. (a) A person drilling or plugging test holes shall conduct operations so as to prevent:

- (1) waste;
- (2) the escape of oil or gas;
- (3) the intrusion of water into oil, gas, or coal strata;
- (4) the pollution of fresh water;
- (5) damage to an underground gas storage reservoir; or
- (6) obstructing or the placing of unauthorized material in a test hole.

(b) If a test hole penetrates a stratum containing gas, the hole shall be shut in, if escape of the gas can be avoided and would constitute waste. The division may require mud-laden fluid to be applied, the gas stratum cased, or another suitable method adopted to arrest escape of the gas. (*Natural Resources Commission; 312 IAC 17-2-3; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2349*)

**312 IAC 17-2-4 Administration**

Authority: IC 14-38-2-7

Affected: IC 14-38-2

Sec. 4. This article and IC 14-38-2 are administered by the division. (*Natural Resources Commission; 312 IAC 17-2-4; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2349*)

**312 IAC 17-2-5 Inspection powers**

Authority: IC 14-38-2-7

Affected: IC 14-38-2

Sec. 5. A commission representative may at any reasonable time enter upon public or private property where a test hole is being drilled or has been drilled to determine if there is a violation of IC 14-38-2, this rule, or an order of the commission. (*Natural Resources Commission; 312 IAC 17-2-5; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2349*)

**312 IAC 17-2-6 Access to records**

Authority: IC 14-11-2-1; IC 14-38-2-7

Affected: IC 14-38-2-7

Sec. 6. A person with custody or jurisdiction of test hole records shall at all reasonable times permit a commission representative to come upon property operated or controlled by them and inspect records of a test hole. (*Natural Resources Commission; 312 IAC 17-2-6; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2349*)

**312 IAC 17-2-7 Sworn statements**

Authority: IC 14-11-2-1; IC 14-38-2-7

Affected: IC 14-38-2

Sec. 7. The division may require sworn statements if expedient to effectuate IC 14-38-2 or this rule. (*Natural Resources Commission; 312 IAC 17-2-7; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2349*)

**312 IAC 17-2-8 Notice of orders; service by mail**

Authority: IC 14-38-2-7

Affected: IC 14-38-2

Sec. 8. If the commission issues an order under IC 14-38-2 or this rule and mails a copy of the order by first class mail, it shall be deemed notice of the order. (*Natural Resources Commission; 312 IAC 17-2-8; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2349*)

**312 IAC 17-2-9 Forms**

Authority: IC 14-38-2-7

Affected: IC 14-38-2

Sec. 9. The division shall prescribe and prepare forms required under this rule and shall furnish copies to an interested person upon request. (*Natural Resources Commission; 312 IAC 17-2-9; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2349*)

**312 IAC 17-2-10 Bonds**

Authority: IC 14-38-2-7

Affected: IC 14-38-2

Sec. 10. (a) No person, except a federal or state agency, shall commence a test hole until the person has filed and the department has approved a bond of one thousand dollars (\$1,000) for each test hole drilled or a blanket bond of five thousand dollars (\$5,000) for all test holes drilled by the person for the duration of the bond. The bond shall be on a form prescribed by the division, and, as a minimum, shall provide for compliance with IC 14-38-2, this rule, and orders of the commission.

(b) The name of the principal on the bond and of the operator shall be identical.

(c) An operator shall maintain a bond approved under subsection (a) until the operator plugs, abandons, and provides complete drilling information for each test hole included under the bond. Upon compliance by the operator with this subsection, a test hole bond shall be released by the department.

(d) No surety bond shall be approved unless issued by a company holding an applicable certificate of authority from the department of insurance, state of Indiana. A surety bond shall be executed by the operator as principal and by the surety or for either of them by an attorney-in-fact with certified power of attorney attached.

(e) A cash bond shall be made upon a certified check delivered and made payable by the operator to the department.

(f) A certificate of deposit must be assigned in writing to the state and the assignment noted upon the books of the bank issuing the certificate. (*Natural Resources Commission; 312 IAC 17-2-10; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2349*)

**312 IAC 17-2-11 Surety bond canceled; effect**

Authority: IC 14-38-2-7

Affected: IC 4-21.5-3; IC 14-38-2

Sec. 11. (a) The surety may notify the department and principal of its desire to terminate a bond.

(b) Within thirty (30) days after receipt of the notice, the department shall require the principal to file a substitute bond or to discontinue operations and plug and abandon any test hole under this rule.

(c) If a substitute bond is timely filed by the principal, liability on the original bond terminates. If a substitute bond is not filed within the thirty (30) day period, the department shall revoke the permit under IC 4-21.5-3 and require the principal to plug and abandon any test hole under this rule.

(d) If a principal fails to plug and abandon a test hole, the surety must either:

(1) cause the test hole to be properly plugged and abandoned; or

(2) forfeit the amount of the bond to the department.

If the surety causes a hole to be plugged and abandoned, the bond shall be released by the department. (*Natural Resources Commission; 312 IAC 17-2-11; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2350*)

**312 IAC 17-2-12 Application for permit; signature; fee**

Authority: IC 14-38-2-7

Affected: IC 14-38-2

Sec. 12. (a) A permit application to drill a test hole or holes shall be made on a form prescribed by the division.

(b) A permit application shall be signed by the person designated as the operator on the application or by an authorized agent. Upon a request by the division, a person who signs as an agent for the operator must furnish satisfactory evidence of authority.

(c) An applicant shall remit with the application a permit fee of one hundred dollars (\$100) in cash or by check or draft,



payable to the department. (*Natural Resources Commission; 312 IAC 17-2-12; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2350*)

**312 IAC 17-2-13 Permit required; issuance; denial; expiration**

Authority: IC 14-38-2-7

Affected: IC 4-21.5-3-6; IC 14-38-2

Sec. 13. (a) No person shall drill any test hole to a depth below two hundred (200) feet without a permit issued by the division under IC 14-38-2 and this rule.

(b) The original or a copy of the permit must be posted by the operator at the test hole site before drilling commences.

(c) A permit shall be issued in the name of the person for whom the application is made.

(d) The division may deny a permit to any person who:

(1) has had a permit revoked in accordance with subsection (f); or

(2) has been issued a notice of violation and has failed to abate the violation within sixty (60) days after the deadline for abatement, unless the person has requested an administrative adjudication of the notice of violation, and a final determination has not been rendered by the commission.

(e) A permit is issued to cover a period of one (1) year from the date of issuance and shall expire at the end of that time.

(f) The department may revoke a permit issued under IC 14-38-2 upon finding that:

(1) the permit was issued through fraud or misrepresentation;

(2) the operator has violated IC 14-38-2 or this rule;

(3) the information or conditions upon which a permit was issued have substantially changed since issuance; or

(4) the operator has been issued a notice of violation under IC 14-38-2 and has failed:

(A) to abate the violation within the prescribed period;

(B) to secure in writing from the division an extension of time in which to abate the violation before the expiration of the period established for abatement; or

(C) to request a proceeding under IC 4-21.5-3-6 within thirty (30) days after service of the notification or within the period provided by the division for abatement, whichever is longer.

(*Natural Resources Commission; 312 IAC 17-2-13; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2350*)

**312 IAC 17-2-14 Informal hearings**

Authority: IC 14-38-2-7

Affected: IC 4-21.5; IC 4-22-2; IC 14-38-2

Sec. 14. (a) A person may file with the commission a written request for an informal hearing to consider a matter relating to the administration of IC 14-38-2. The request may seek to except or amend this rule to modify a commission order or to secure other lawful relief. The written request must set forth the relief sought and identify in particular or by class the person who would be affected.

(b) Where a request for an informal hearing is filed under subsection (a), the division director shall conduct appropriate proceedings and make written proposed findings and a recommended order for disposition of the matter. An informal hearing under this section shall be conducted in a manner that will facilitate public participation and is not governed by the rules of evidence or discovery.

(c) Notice of an informal hearing shall be made by first class mail, publication, or both, reasonably calculated to inform affected persons of the time, place, and purpose of the hearing.

(d) An order resulting from an informal hearing is subject to administrative review under IC 4-21.5, except an order with respect to rule adoption subject to IC 4-22-2. (*Natural Resources Commission; 312 IAC 17-2-14; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2351*)

**312 IAC 17-2-15 Plugging**

Authority: IC 14-38-2-7

Affected: IC 4-21.5; IC 14-8-2-47; IC 14-8-2-317; IC 14-37; IC 14-38-2

Sec. 15. (a) A test hole shall be plugged under IC 14-38-2 and this rule so as to prevent the pollution of underground sources of drinking water.

(b) Within six (6) months of abandoning a test hole, an operator shall do each of the following:

(1) Clear the area of refuse.

(2) Drain and fill excavations.

(3) Remove equipment.

(4) Restore the surface as nearly as practicable to its condition before drilling.

(c) The owner of surface rights may, with consent of the operator, make application to the division to retain equipment, fixtures, or pits placed for a test hole. The application shall be made on a departmental form releasing the operator and its agents from responsibility for restoration, except as provided in the application.

(d) An operator may apply to the division to convert a test hole otherwise to be abandoned to a fresh water well. The application shall be made on a division form and shall include the following information:

(1) The depth to which the operator proposes to plug the hole.

(2) Written consent by any person who holds a recorded interest at or above the elevation of the plug.

(3) A statement by each owner of surface rights to release the operator from an obligation to abandon the test hole, except as provided in the application.

The division shall authorize the conversion to a fresh water well upon a finding that the application has been properly completed and that the conversion will not violate IC 14-38-2 or this rule.

(e) The use of a bridge to plug a test hole is prohibited. The operator shall drill out and replug the hole if unfilled below a bridge.

(f) If unauthorized material is placed in a test hole, the division may require its removal before plugging.

(g) If a test hole is obstructed by equipment associated with drilling and if the removal of that equipment is impracticable, the division director may authorize a special method to abandon the hole. The operator shall obtain approval of the special method to abandon the hole. The operator shall obtain approval of the special method from a commission representative before implementation.

(h) An operator may apply to the division to convert a test hole to a well for oil and gas purposes as defined in IC 14-8-2-317. No conversion is authorized under this subsection unless the operator complies with IC 4-21.5 and IC 14-37 with respect to the issuance of a new permit for a well for oil and gas purposes.

(i) Upon the abandonment of a test hole, each commercially mineable coal resource shall be protected by a cement plug extending one hundred (100) feet above the coal resource to fifty (50) feet below the coal resource or to the bottom of the hole, whichever is less. A substantial support shall be provided for each cement plug required for coal protection. The supporting plug shall contain suitable materials and shall be tested to determine that settlement or movement of the cement plug will not take place during the period required for the cement to set. A commercially mineable coal resource has the meaning set forth in IC 14-8-2-47 and shall be identified and located as provided in 312 IAC 16-5-5. (*Natural Resources Commission; 312 IAC 17-2-15; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2351*)

### **312 IAC 17-2-16 Test hole logs; cuttings**

Authority: IC 14-38-2-7

Affected: IC 14-38-2

Sec. 16. (a) The operator immediately upon completing the drilling of a test hole shall file with the division a log of strata encountered and a geophysical log, if one has been made. Upon written application certifying that withholding of information is necessary to protect trade secrets, the department shall excuse the operator from furnishing this information, in which case the operator shall furnish the location of each test hole by county, township, range, and quarter-quarter section, including the legal description, size, and depth of the hole on the form provided by the division.

(b) The record of strata encountered shall be from the surface to the total depth of the test hole.

(c) The driller's log or test hole completion report shall be completed on a division form.

(d) The division may require an operator to collect drill cuttings for each run effected with cable tools and at least ten (10) feet intervals in a rotary test hole. A core sample may be required if a core is taken. Cuttings and core samples shall be furnished at a location designated by the division. (*Natural Resources Commission; 312 IAC 17-2-16; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2352*)

**312 IAC 17-2-17 Protection of other commercial minerals**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 17. To prevent waste, the commission shall protect other commercial minerals in the drilling and plugging of test holes. The designation of commercial minerals and method of protection shall be specified by the commission. (*Natural Resources Commission; 312 IAC 17-2-17; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2352*)

**Rule 3. Geophysical Surveying**

**312 IAC 17-3-1 General provisions and application of definitions**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 1. (a) This rule governs the conduct of geophysical survey operations.

(b) A hole drilled during a geophysical survey is not a well for oil and gas purposes.

(c) In addition to the definitions included in section 2 of this rule, and the exception in subsection (b), the definitions included in 312 IAC 17-1 apply throughout this rule. (*Natural Resources Commission; 312 IAC 17-3-1; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2352*)

**312 IAC 17-3-2 Definitions**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 2. The following definitions apply throughout this rule:

(1) "Geophysical survey" means the use of electric, gravity, magnetic, seismic, or thermal techniques in the exploration for oil and gas.

(2) "Seismic shooting" means a geophysical survey method that involves the firing of explosives to produce seismic waves.

(3) "Shothole" means a bore hole into which an explosive charge or other energy source is placed for generating seismic waves.

(4) "Shotpoint" means the location of a shothole.

(*Natural Resources Commission; 312 IAC 17-3-2; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2352*)

**312 IAC 17-3-3 Applications**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 3. (a) This section establishes the general application requirements for geophysical survey operations.

(b) An application to conduct a geophysical survey shall be made on a departmental form.

(c) A bond as set forth in section 6 of this rule must accompany the permit application.

(d) A person who wishes to conduct seismic shooting must provide proof of service of the notification required in subsection (e) and must deliver the proof to the division before a permit can be issued.

(e) An applicant must serve written notification, describing the nature and approximate time period of the seismic shooting activity, personally or by certified mail, to an occupant of each inhabited dwelling located within one (1) mile of each shotpoint.

(f) The notification required under subsection (e) shall specify that a person may, within fifteen (15) days of receipt of the notification, submit written comments or request an informal hearing under 312 IAC 16-2-3. The notification shall include the address to which comments or the hearing request must be forwarded and where additional information may be obtained. (*Natural Resources Commission; 312 IAC 17-3-3; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2352*)

**312 IAC 17-3-4 Permit issuance, expiration, revocation, denial, and transfer**

Authority: IC 14-37-3

Affected: IC 4-21.5; IC 14-37

Sec. 4. (a) A person must not conduct a geophysical survey without a permit issued by the department.

(b) No permit shall be issued for a geophysical survey until eighteen (18) days after the service of the notification required under section 3 of this rule. Upon issuance of the permit, IC 4-21.5 and 312 IAC 3 apply.

(c) The original or a copy of the permit must be available for inspection by a commission representative at each location where geophysical survey activities are conducted.

(d) A permit for a geophysical survey expires one (1) year from the date of issuance.

(e) The commission may revoke, deny, or transfer a geophysical survey permit under 312 IAC 16-3-9. (*Natural Resources Commission; 312 IAC 17-3-4; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2353*)

**312 IAC 17-3-5 Bond**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 5. (a) No person shall conduct a geophysical survey until the person has filed and the department has accepted a bond as provided in section 6 of this rule.

(b) The purposes of the bond are as follows:

(1) To provide compliance with IC 14-37 and this rule.

(2) To indemnify members of the public, the state, or any of its political subdivisions against loss or damage caused by a geophysical survey.

(c) A bond posted under this rule must be renewed until the requirements and conditions of IC 14-37, this rule, and the permit are satisfied. (*Natural Resources Commission; 312 IAC 17-3-5; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2353*)

**312 IAC 17-3-6 Bond type**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 6. (a) A person who applies for a geophysical survey permit must execute and file with the department:

(1) a surety bond in the amount of five thousand dollars (\$5,000);

(2) a certified or cashier's check in the amount of five thousand dollars (\$5,000); or

(3) a certificate of deposit in the principal amount of five thousand dollars (\$5,000).

(b) No surety bond shall be approved unless issued by a company holding an applicable certificate of authority from the department of insurance, state of Indiana. A surety bond shall be executed by the operator as principal and by the surety or for either of them by an attorney-in-fact with certified power of attorney attached.

(c) A certificate of deposit must be assigned in writing to the state and the assignment noted upon the books of the bank issuing the certificate. (*Natural Resources Commission; 312 IAC 17-3-6; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2353*)

**312 IAC 17-3-7 Bond forfeiture, release, and cancellation**

Authority: IC 14-37-3

Affected: IC 4-21.5; IC 14-37

Sec. 7. (a) The director may order bond forfeiture if any permit secured by a bond is revoked or if findings of the department otherwise support a forfeiture. A bond forfeiture is governed by IC 4-21.5 and 312 IAC 3-1.

(b) No bond shall be released until the department determines each permit secured by a bond has either:

(1) expired under IC 14-37 and section 3 of this rule;

(2) been secured by a substitute bond that was filed with and accepted by the commission; or

(3) fully complied with the terms and conditions under which the permit was issued.

(c) A bond may be canceled by a surety under 312 IAC 16-4-3. (*Natural Resources Commission; 312 IAC 17-3-7; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2353*)

**312 IAC 17-3-8 Shothole plugging; surface reclamation**

Authority: IC 14-37-3

Affected: IC 14-37

Sec. 8. (a) An operator must plug any hole drilled during a geophysical survey in a manner that prevents the pollution of any underground source of drinking water.

(b) The method and materials used to plug a shothole must be approved in advance by the division.

(c) Within thirty (30) days after a seismic shooting operation, an operator must satisfy each of the following:

(1) Plug any shothole as required by subsection (b).

(2) Clear the vicinity of the shooting operation of any refuse.

(3) Restore the surface as nearly as practicable to its conditions before the operation.

(*Natural Resources Commission; 312 IAC 17-3-8; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2353*)

**312 IAC 17-3-9 Reports**

Authority: IC 14-37-3

Affected: IC 4-21.5; IC 5-14-3; IC 14-37-7-1

Sec. 9. (a) Immediately, upon the completion of a geophysical survey, an operator must file with the division:

(1) a geophysical survey final report; or

(2) a geophysical operations progress report.

(b) A report filed under subsection (a) is provided pursuant to IC 14-37-7-1(a)(4). The report is confidential for one (1) year from the date of filing.

(c) An operator may request that, beyond the period described in subsection (b), any portion of the report be maintained by the division as a trade secret. A request under this subsection applies for a period of five (5) years from filing and may be extended by the operator for the same period upon a written request filed within sixty (60) days of the expiration of the original five (5) year period.

(d) If a person files a request under IC 5-14-3 for information claimed as a trade secret under subsection (c), the division shall make a reasonable attempt to contact the operator to determine if consent to disclosure can be obtained.

(e) If consent to disclose cannot be obtained under subsection (d), the division shall inform the person making the request. That person may obtain administrative review under IC 4-21.5 and 312 IAC 3 of the claimed status of the document as a trade secret. The operator shall be named as a respondent in a request for administrative review. (*Natural Resources Commission; 312 IAC 17-3-9; filed Feb 23, 1998, 11:30 a.m.: 21 IR 2354*)

**ARTICLE 18. ENTOMOLOGY AND PLANT PATHOLOGY**

**Rule 1. Definitions**

**312 IAC 18-1-1 Application of definitions**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 1. The definitions contained in this rule apply throughout this article. (*Natural Resources Commission; 312 IAC 18-1-1; filed Nov 22, 1996, 3:00 p.m.: 20 IR 940; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

**312 IAC 18-1-2 "Agent" defined**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 2. "Agent" means a person who sells nursery stock under the partial or full control of a nurseryman, a dealer, or another agent. (*Natural Resources Commission; 312 IAC 18-1-2; filed Nov 22, 1996, 3:00 p.m.: 20 IR 940; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

**312 IAC 18-1-3 "Apiary" defined**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 3. "Apiary" means a place where one (1) or more hives or colonies of bees are kept. (*Natural Resources Commission; 312 IAC 18-1-3; filed Nov 22, 1996, 3:00 p.m.: 20 IR 941; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

**312 IAC 18-1-4 "Beneficial organism" defined**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 4. "Beneficial organism" means a parasitoid, a predator, an antagonist, a competitor, a biologically specific pathogen, or a similar living entity which is used for one (1) or more of the following purposes:

- (1) To provide biological control of a pest or pathogen.
- (2) To benefit pollination.
- (3) To benefit agriculture, horticulture, floriculture, or silviculture.

(*Natural Resources Commission; 312 IAC 18-1-4; filed Nov 22, 1996, 3:00 p.m.: 20 IR 941; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

**312 IAC 18-1-5 "Dealer" defined**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 5. "Dealer" means a person who grows or buys nursery stock for the purpose of reselling or reshipping that stock in Indiana. (*Natural Resources Commission; 312 IAC 18-1-5; filed Nov 22, 1996, 3:00 p.m.: 20 IR 941; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

**312 IAC 18-1-6 "Division inspector" defined**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 6. "Division inspector" means an employee of the division who is authorized by the division director to conduct inspections under IC 14-24 and this article. (*Natural Resources Commission; 312 IAC 18-1-6; filed Nov 22, 1996, 3:00 p.m.: 20 IR 941; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

**312 IAC 18-1-7 "Elements of beekeeping" defined**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 7. "Elements of beekeeping" includes the following:

- (1) Bees.
- (2) Hives.
- (3) Combs.
- (4) Combless packages of bees or queens.
- (5) Beekeeping equipment or appurtenances.

(*Natural Resources Commission; 312 IAC 18-1-7; filed Nov 22, 1996, 3:00 p.m.: 20 IR 941; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

26 IR 546)

**312 IAC 18-1-8 “Eradication area” defined**

Authority: IC 14-24-2; IC 14-24-4

Affected: IC 14-24

Sec. 8. “Eradication area” means a property or political subdivision of the state where a pest or pathogen that is not widely distributed or is newly introduced in Indiana is found in one (1) or more life stages. (*Natural Resources Commission; 312 IAC 18-1-8; filed Nov 22, 1996, 3:00 p.m.: 20 IR 941; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

**312 IAC 18-1-9 “Feral bee” defined**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 9. (a) “Feral bee” means a wild bee which is not kept or managed by a person.

(b) The term includes a bee which is located in a swarm or nest, whether or not a comb is present. The term does not include a bee which is maintained in a movable frame hive. (*Natural Resources Commission; 312 IAC 18-1-9; filed Nov 22, 1996, 3:00 p.m.: 20 IR 941; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

**312 IAC 18-1-10 “Nursery” defined**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 10. “Nursery” means the premises where nursery stock is propagated, grown, or cultivated for distribution or sale as a business. (*Natural Resources Commission; 312 IAC 18-1-10; filed Nov 22, 1996, 3:00 p.m.: 20 IR 941; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

**312 IAC 18-1-11 “Nursery stock” defined**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 11. “Nursery stock”, except as provided in 312 IAC 18-4-5, means botanically classified hardy perennial or biennial trees, shrubs, vines, and plants, fruit pits, and other plants or plant parts capable of propagation. The term does not include corms, tubers, field vegetables, or flower seeds. (*Natural Resources Commission; 312 IAC 18-1-11; filed Nov 22, 1996, 3:00 p.m.: 20 IR 941; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

**312 IAC 18-1-12 “Nurseryman” defined**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 12. “Nurseryman” means a person who owns, leases, manages, or controls a nursery. (*Natural Resources Commission; 312 IAC 18-1-12; filed Nov 22, 1996, 3:00 p.m.: 20 IR 941; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

**312 IAC 18-1-13 “Pest or pathogen” defined**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 13. “Pest or pathogen” means an arthropod, nematode, micro-organism, or plant disease that may be injurious to nursery stock, agricultural crops, other vegetation, or bees. (*Natural Resources Commission; 312 IAC 18-1-13; filed Nov 22, 1996, 3:00 p.m.: 20 IR 941; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

**312 IAC 18-1-14 “State entomologist” defined**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 14. “State entomologist” refers to the division director. (*Natural Resources Commission; 312 IAC 18-1-14; filed Nov 22, 1996, 3:00 p.m.: 20 IR 942; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

**312 IAC 18-1-15 “Vital” defined**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 15. “Vital” means a plant is physiologically vibrant and does not suffer unreasonably from mechanical or pathological stress. (*Natural Resources Commission; 312 IAC 18-1-15; filed Nov 22, 1996, 3:00 p.m.: 20 IR 942; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

**Rule 2. Infested Areas and Quarantines**

**312 IAC 18-2-1 Operation and maintenance within an infested area; application**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24-4

Sec. 1. (a) This rule establishes standards for operation and maintenance within an infested area declared under IC 14-24-4.

(b) This rule establishes quarantine standards necessary to carry out IC 14-24 which are in addition to those otherwise provided in this article. (*Natural Resources Commission; 312 IAC 18-2-1; filed Nov 22, 1996, 3:00 p.m.: 20 IR 942; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

**312 IAC 18-2-2 Infested areas; quarantines**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 2. (a) The division may inspect any site in Indiana where agricultural, horticultural, or sylvan products are being grown, shipped, sold, or stored to determine if a pest or pathogen is present. If, as a result of an inspection, a site is determined to be infested with a pest or pathogen that is likely to spread or communicate to adjacent or contiguous territory in an adjoining township, the director may declare all or part of the township where the pest or pathogen is located to be an infested area.

(b) The division director shall formulate a quarantine under section 3 of this rule for an infested area declared under subsection (a). The quarantine may restrict or prohibit the transportation, maintenance, or continued existence of designated plants, plant products, elements of beekeeping, pests or pathogens, animal products, or other articles or materials known or reasonably believed to harbor or carry pests or pathogens. (*Natural Resources Commission; 312 IAC 18-2-2; filed Nov 22, 1996, 3:00 p.m.: 20 IR 942; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

**312 IAC 18-2-3 Quarantine principles**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24-4

Sec. 3. The division director shall formulate a quarantine according to the following principles:

(1) Every restrictive measure of a quarantine is biologically sound.

(2) Language in the quarantine is phrased clearly and stated as simply as practicable to be consistent with legal requirements and the objectives to be attained by the quarantine.

(3) The boundaries of a quarantine reference the boundaries used by the director to describe the infested area but may also reference boundaries delineated by rivers, streams, highways, railways, or natural geographic features.



(4) A pest or pathogen which is the subject of a quarantine presents an actual or reasonably anticipated environmental, health, or economic hazard in Indiana.

(5) The quarantine is a measure for which no substitute action requiring a less obtrusive strategy would be reasonably expected to be as effective.

(6) The objectives of the quarantine can be attained.

(7) The restrictions imposed by a quarantine are reasonably believed to be essential to the attainment of the objectives. These restrictions may be relatively extensive if the eradication of a pest or pathogen is sought. A less extensive restriction may be required for an infested area where the prevention of spread of the pest or pathogen to other areas is the primary intent of the quarantine.

(8) The economic gains anticipated by the quarantine outweigh the cost of administration and the cost of interference with private enterprise caused by the quarantine.

*(Natural Resources Commission; 312 IAC 18-2-3; filed Nov 22, 1996, 3:00 p.m.: 20 IR 942; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546)*

### **312 IAC 18-2-4 Quarantine issuance; termination; review**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 4-21.5-4-5; IC 14-24

Sec. 4. (a) The department shall give notice of the quarantine as is practicable to the persons who are required to comply with the quarantine. The quarantine is effective when issued.

(b) A quarantine is an order which is controlled by IC 4-21.5-4. A quarantine is effective for ninety (90) days unless a shorter period is stated in the quarantine or unless terminated or modified under this section. The quarantine may be extended as provided in IC 4-21.5-4-5(b).

(c) As quickly as practicable, following a request for administrative review by an affected person, a hearing shall be scheduled under IC 4-21.5-4 and 312 IAC 3 to determine whether the quarantine should be voided, terminated, modified, stayed, or continued.

(d) The division director may terminate a quarantine which:

(1) has attained its objectives;

(2) is determined not to be biologically sound; or

(3) is found incapable of attaining its objectives.

*(Natural Resources Commission; 312 IAC 18-2-4; filed Nov 22, 1996, 3:00 p.m.: 20 IR 942; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546)*

## **Rule 3. Control of Pests or Pathogens**

### **312 IAC 18-3-1 Identification and standards for the control of pests or pathogens; isolated occurrences**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 1. (a) This rule serves to identify certain pests or pathogens.

(b) This rule establishes standards for the control of pests or pathogens.

(c) A pest or pathogen which may cause plant destruction or the destruction of elements of beekeeping is subject to this article and IC 14-24 even if the pest or pathogen is isolated or not directly associated with a plant, plant part, or an element of beekeeping.

*(Natural Resources Commission; 312 IAC 18-3-1; filed Nov 22, 1996, 3:00 p.m.: 20 IR 943; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546)*

### **312 IAC 18-3-2 Control of pests or pathogens newly introduced or not widely established in Indiana**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 4-21.5-3-6; IC 4-21.5-4; IC 14-24-4-3

Sec. 2. (a) This section establishes standards for the control of pests or pathogens which are newly introduced or not widely

established in Indiana.

(b) The division director may implement the following procedures if the division discovers a pest or pathogen which is newly introduced or not widely established in Indiana:

(1) The area surrounding the initial discovery of the pest or pathogen shall be surveyed or monitored by the division to confirm that the pest or pathogen is present. Transporting equipment, utensils, elements of beekeeping, and other items which might harbor the pest or pathogen shall be examined.

(2) To eradicate the pest or pathogen, the division director may, under IC 14-24-4-3, order the owner of infested property to destroy, refrain from selling, immobilize, or otherwise treat any plants, plant parts, or elements of beekeeping. A written order issued under this subdivision is effective when served. A person who is aggrieved by the order may request administrative review under IC 4-21.5-3-6. In addition, an aggrieved person may seek temporary relief from the order under IC 4-21.5-4. Unless otherwise agreed by the parties, a hearing on temporary relief must be conducted within five (5) days of receipt of the hearing request in the county where the infested plants are located.

(3) If an action under subdivision (2) is not performed as ordered, the division director may take necessary action and incur the expenses required to satisfy the directive contained in the written order. Expenses incurred by the department under this subdivision shall be certified to the auditor of the county where the site is located. The auditor shall place the assessment on the tax duplicates of the county, and the assessment shall be collected as state and county taxes are collected and paid over to the department.

(4) If nursery stock, plants, plant parts, a pest or pathogen, elements of beekeeping or associated packaging, shipping products, or other personal property has been sold or transported from the site, the owner or proprietor shall provide the division with the names and addresses of the persons who received the property. The persons who received the property are subject to the requirements of this section.

(5) Surveying or monitoring shall continue by the division for two (2) consecutive growing seasons or until the biological threat is eliminated. If a pest or pathogen persists, the director may declare an infested area, and the division director shall implement any quarantine appropriate under 312 IAC 18-2.

*(Natural Resources Commission; 312 IAC 18-3-2; filed Nov 22, 1996, 3:00 p.m.: 20 IR 943; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546)*

### **312 IAC 18-3-3 Permit requirement for the movement of a plant or element of beekeeping that contains a pest or pathogen**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24-9-2

Sec. 3. (a) A person may not cause the movement into or within Indiana of a plant or element of beekeeping that contains a pest or pathogen without a permit issued by the division director under IC 14-24-9-2 and this section.

(b) A permit for the movement of a pest or pathogen may be issued where either of the following conditions are met:

(1) A permit is issued by the United States Department of Agriculture (USDA) for the movement of the pest or pathogen, and the division director approves the permit for use at a designated containment facility or field site. Approval of the USDA permit constitutes a permit under this section and subjects the permit holder to the requirements of IC 14-24 and this article.

(2) A permit application establishes, under section 4 of this rule, either of the following:

(A) A proposed containment facility is adequate to prevent escape of the pest or pathogen.

(B) The pest or pathogen does not represent a threat to the plant production interests of Indiana or a surrounding state.

*(Natural Resources Commission; 312 IAC 18-3-3; filed Nov 22, 1996, 3:00 p.m.: 20 IR 943; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546)*

### **312 IAC 18-3-4 Criteria for a permit for the movement of a plant or element of beekeeping that contains a pest or pathogen**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 4. (a) This section establishes the criteria by which an application for a permit for the movement of a plant or element

of beekeeping that contains a pest or pathogen, issued under section 3(b)(2) of this rule, is evaluated.

(b) The following categories for a pest or pathogen are established:

(1) Category A is one (1) of the following:

- (A) A plant pest from another country which is newly introduced or not widely distributed in the United States.
- (B) A plant pest of limited occurrence in the United States, including pests listed by an agency of the federal government.
- (C) A plant pest regulated by Indiana.
- (D) An exotic strain of a domestic pest.

(2) Category B is a beneficial organism or pollinator. The pest or pathogen is high risk which is a weed antagonist or a shipment accompanied by federally or state prohibited plant material of a Category A pest. The pest or pathogen is a low risk which is constituted by pure cultures of known beneficial organisms.

(3) Category C is a domestic pest which:

- (A) has attained its ecological range; or
- (B) is a nonpest organism.

(c) A facility proposed in an application for the maintenance of a plant or element of beekeeping that contains a pest or pathogen is evaluated according to the factors referenced as follows:

(1) The likelihood of harm by the pest or pathogen is evaluated as follows:

- (A) A pest or pathogen poses a serious likelihood of harm which is contained within:
  - (i) Category A; or
  - (ii) Category B as a high risk.
- (B) A pest or pathogen does not pose a serious likelihood of harm which is contained within:
  - (i) Category B as a low risk; or
  - (ii) Category C.

(2) The difficulty of containment of the pest or pathogen is evaluated as follows:

- (A) Considered is the adequacy of the confinement facility to prevent escape.
- (B) The life stages, quantity, size, and mobility of the pest are evaluated.
- (C) Human traffic patterns are assessed as they bear upon the probability of contamination or dissemination of the pest.
- (D) The cleanliness of the containment area is reviewed.

(3) The nature of the work of the applicant is evaluated as follows:

- (A) The purposes to be served by the permit are considered. Examples of purposes include the following:
  - (i) Taxonomy.
  - (ii) Chemical analysis.
  - (iii) Pesticide screening.
  - (iv) Behavior.
  - (v) Inoculation.
  - (vi) Isolation.
  - (vii) Characterization.

Work which is likely to enhance scientific awareness is favored over work which is not.

- (B) The techniques and processes are considered which are required for rearing or culturing the pest or pathogen.
- (C) The length of time which a pest or pathogen will be contained is determined.
- (D) Determined is the number of shipments which will be required during the effectiveness of the proposed permit.

(4) The chance of establishment of the pest or pathogen if an escape occurs is evaluated as follows:

- (A) The availability of known hosts is determined.
- (B) Climatic conditions are considered, including the time of year when the proposed permit would be effective.
- (C) The ability of the pest or pathogen for survival through a winter or a summer, to become dormant, or to otherwise rest in a viable condition is determined.
- (D) The reproductive potential of the pest or pathogen is considered. Factors include parthenogenesis and vegetative states.

(5) The experience of the permit applicant and employees is evaluated as follows:

- (A) The demonstrated awareness of the applicant for the risk posed by dissemination of the pest or pathogen is

considered.

(B) The appreciation expressed by the applicant for security needs is weighed.

(C) The willingness of the applicant for cooperation is determined relative to the department and other regulatory agencies.

(6) The containment features of the site where the pest or pathogen will be maintained are evaluated as follows:

(A) Containment features must be described in the permit application which will reduce the probability of pest or pathogen escape.

(B) The specific features used for the containment of a pest or pathogen will depend on the category of the pest or pathogen, the conditions prescribed on a permit, and the kind of organism, but the following general standards apply:

(i) Walls ordinarily shall be white and shall be covered with a smooth coating of paint or with plasterboard sealed at panel seams, inside corners, and joints with the floor and ceiling.

(ii) Ceilings shall be painted white.

(iii) Floors shall be covered with smooth painted concrete or covered with asphalt tile.

(iv) Vents, air intakes, and drains shall be covered with sufficient mesh to prevent an escape of the pest or pathogen. Containment screen sizes are commonly fifty (50), sixty (60), or one hundred (100) mesh.

(v) Windows shall be sealed in frames and permanently closed.

(vi) Light fixtures, electrical service outlets, and other equipment which penetrates the walls, ceilings, and floors shall be sealed to prevent the entry or escape of pests or pathogens.

(vii) Air conditioning supply and return ducts shall be fitted with appropriate filters.

(viii) A secure waste trap shall be affixed to the drainage system.

(ix) Entry doors shall be kept closed and shall be locked when the room is unoccupied.

(x) A warning sign shall be posted at the entrance to the containment area to deter the entry of unauthorized personnel.

(xi) Access to the containment area shall be limited to the permittee and employees authorized to participate in the permit.

(xii) An incinerator or autoclave shall be maintained in the containment area to sterilize or devitalize all wastes.

(xiii) Pests or pathogens shall be held in secure cages within the containment area.

(xiv) A blacklight trap shall be activated in the containment area if arthropods are involved.

(xv) A greenhouse shall be air conditioned and its humidity controlled, with wire reinforcement and glass panels, sealed both inside and outside.

(d) General conditions applicable to any permit issued under this section are as follows:

(1) A pest or pathogen shall be shipped in sturdy containers which will prevent escape.

(2) Packing material and shipping containers shall be sterilized or destroyed immediately after removing the pest or pathogen at the confined area.

(3) With respect to parasitic plant seeds, the shipments shall be within a metal container enclosed within another metal container. A person who handles parasitic plant seeds shall wear a plastic or rubber apron, cuffless trousers, plastic gloves, and disposable shoe covers.

(4) Rearing or culturing of pests or pathogens is prohibited.

(5) Plant material is limited to the minimum sections of leaves needed to perform the purposes of the permit. Soil and plant materials capable of propagation are prohibited.

(6) Necessary precautions shall be taken to prevent the escape of a pest or pathogen. A permittee must contact the division as soon as practicable if an escape occurs, but not later than twenty-four (24) hours after the occurrence.

(e) Conditions applicable to a high risk permit, as described in subsection (c)(1)(A), are as follows:

(1) The arrival of every shipment of pests or pathogens at the containment area shall be reported immediately to the division.

(2) With respect to insects, the shipments shall be limited to one (1) sex and be subject to verification.

(3) With respect to parasitic plant seeds, the shipments shall be within a metal container enclosed within another metal container. A person who handles parasitic plant seeds shall wear a plastic or rubber apron, cuffless trousers, plastic gloves, and disposable shoe covers.

(4) Rearing or culturing of pests or pathogens is prohibited.

(5) Plant material is limited to the minimum sections of leaves needed to perform the purposes of the permit. Soil and plant

materials capable of propagation are prohibited.

(6) Plant inoculation tests shall be conducted only within growth chambers or biochemical chambers.

(7) The termination of the research project and the destruction of all pests or pathogens and infected materials shall be reported immediately to the division.

(f) The division director may require the completion of an environmental assessment under 329 IAC 5-1 or an environmental impact statement under 329 IAC 5-2 as a prerequisite to the consideration of a permit application under this section. (*Natural Resources Commission; 312 IAC 18-3-4; filed Nov 22, 1996, 3:00 p.m.: 20 IR 944; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

**312 IAC 18-3-5 Standards governing materials under the federal post entry quarantine; nursery stock imported from a foreign country**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 5. (a) This section establishes standards to govern the handling of nursery stock imported into Indiana from a foreign country under federal post entry quarantine conditions (7 CFR 319.37-7).

(b) A permit granted under 7 CFR 319.37 and approved by the state entomologist in the state screening notice constitutes the Indiana state permit.

(c) Nursery stock and any restricted article defined under 7 CFR 319.37 required to be grown under federal post entry quarantine conditions shall conform to this subsection. The nursery stock and any restricted article must be grown under the supervision and control of a person who has signed a federal post entry quarantine agreement under which the person assures compliance with the following conditions:

(1) The article and any increase from the article will be grown only on the premises approved in the permit.

(2) A division inspector will be given access to the premises for inspection during regular business hours.

(3) The article and any increase from the article will be identified by a label showing the name of the article, the port accession number, and the date of importation.

(4) The article will be kept separated by at least three (3) meters from any:

(A) domestic plant or plant product of the same genus; or

(B) other imported plant or plant product.

(5) Remedial measures (including destruction) will be applied as determined by an inspector to be necessary to prevent the spread of a pest or pathogen.

(6) The state entomologist or a designee will be notified promptly if the article is found to be abnormal or if the article dies.

(7) If an article is a *Rubus* spp. (cloudberry, blackberry, boysenberry, dewberry, loganberry, or raspberry) from Europe, the article will be grown only in a greenhouse with screening which has at least sixteen (16) mesh per inch.

(8) If an article is a *Chrysanthemum* spp. (*Chrysanthemum*) or *Dianthus* spp. (carnation or sweet-william), the article will be grown or an increase made from the article, only in a greenhouse or other enclosed building.

(9) The requirements of this section will be met according to the following schedules:

(A) For six (6) months after the importation of an article of *Chrysanthemum*.

(B) For one (1) year after the importation of an article of carnation or sweet-william.

(C) For two (2) years after the importation of any other article regulated under this section.

(d) A person who violates this section is subject to any administrative, civil, or criminal sanction set forth in IC 14-24 or this article.

(e) A sanction imposed by the state entomologist under this section may be levied independently of any federal action. (*Natural Resources Commission; 312 IAC 18-3-5; filed Nov 22, 1996, 3:00 p.m.: 20 IR 946; errata, 20 IR 1124; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

**312 IAC 18-3-6 Maintenance of honeybees in movable frame hives**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 6. (a) A person who manages honeybees for hobby or commercial purposes must maintain the bees in movable frame hives.

(b) Except as provided in subsection (c), movable frames shall have a size and construction which meet ordinary industry standards.

(c) The division may issue a permit for the maintenance, without movable frame hives, of honeybees in an exhibit or for educational purposes. (*Natural Resources Commission; 312 IAC 18-3-6; filed Nov 22, 1996, 3:00 p.m.: 20 IR 946; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

### **312 IAC 18-3-7 Africanized bees**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 7. (a) *Apis mellifera scutellata* is a species or subspecies of bee which may endanger the honey industry in Indiana.

(b) *Apis mellifera scutellata* is a pest or pathogen. This section governs the control of *Apis mellifera scutellata*.

(c) This subsection provides the criteria to establish what is the minimum action required to control *Apis mellifera* as follows:  
(1) If one (1) swarm, nest, or managed colony without a comb with a less than seven-tenths (0.7) probability of Africanization is detected or confirmed by the division, no additional action is required.

(2) If one (1) swarm or nest without a comb having at least a seven-tenths (0.7) probability of Africanization (or a managed colony with a seven-tenths (0.7) to nine-tenths (0.9) probability of Africanization) is detected or confirmed by the division, the following applies:

(A) The following for feral bees:

(i) Any swarm or nest shall be destroyed.

(ii) If the bees are detected in association with a vehicle of conveyance or transportation, the vehicle shall not leave the site until eradication is completed.

(B) The following for a managed colony of bees:

(i) Requeening and brood disposal of the colony shall be completed.

(ii) Other colonies in the vicinity of the affected colony shall be sampled as determined by the division.

(3) If two (2) or three (3) swarms or one (1) nest with a comb having seven-tenths (0.7) or greater probability of Africanization (or a managed colony with more than a nine-tenths (0.9) probability of Africanization) is detected within an area that is no larger than one (1) square mile, the following applies:

(A) The following for feral bees:

(i) Any swarm or nest of feral bees within the area of one (1) square mile shall be destroyed.

(ii) Any managed colony within the one (1) square mile area shall be inspected.

(B) The following for a managed colony of bees which has more than a nine-tenths (0.9) probability of Africanization:

(i) The bees and broods in the colony shall be destroyed.

(ii) All feral swarms and nests within the one (1) square mile area shall be destroyed.

(iii) Any other managed colony within the one (1) square mile area shall be inspected.

(iv) Queen excluders shall be placed on any managed colony to confine the queen within the colony until inspection and control activities are completed within the one (1) square mile area which is regulated under this subsection.

(4) If an inspection of an adjacent apiary with a previous detection of Africanization also discloses evidence of Africanization, the adjacent apiary is an extension of the original detection and shall be treated as provided in this subsection depending upon the probability of Africanization. Any managed colony subsequently found in a physically separate apiary is a separate detection and treated depending upon the probability of Africanization.

(5) The division director may order eradication activities in addition to those prescribed in subdivisions (1) through (4) where appropriate to the control of *Apis mellifera scutellata*.

(6) An eradication activity required under this subsection shall continue for the longer of the following periods:

(A) Until eradication is declared by the division director.

(B) One (1) year.

(7) Unless otherwise inconsistent with IC 14-24 or this article, the division may apply the recommendations for the control

of *Apis mellifera scutellata* which are contained in USDA-APHIS-PPQ-EP, Action Plan for African Honey Bee (1983).  
(*Natural Resources Commission; 312 IAC 18-3-7; filed Nov 22, 1996, 3:00 p.m.: 20 IR 946; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

**312 IAC 18-3-8 Control of black stem rust**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24-5

Sec. 8. (a) Black stem rust is a pest or pathogen. This section governs standards for the control of black stem rust in Indiana.

(b) The following items are regulated under this section:

(1) Seedlings and plants that exhibit growth for less than two (2) years of the genus *Berberis*.

(2) All plants, seeds, fruits, and other plant parts capable of propagation from the following rust-resistant *Berberis* species:

- B. aggregata* x *B. wilsoniae* "Pirate King"
- B. "Amstelveen"*
- B. aridocalida*
- B. beaniana*
- B. buxifolia*
- B. buxifolia nana*
- B. calliantha*
- B. candidula*
- B. candidula "Amstelveen"*
- B. candidula* x *B. verruculosa* "Amstelveen"
- B. cavallieri*
- B. chenaulti*
- B. chanaulti* "Apricot Queen"
- B. circumserrata*
- B. concinna*
- B. coxii*
- B. darwini*
- B. dasystachya*
- B. dubia*
- B. feddeana*
- B. formosana*
- B. franchetiana*
- B. gagnepainii*
- B. gagnepaini* "Chenault"
- B. gilgiana*
- B. gladwynensis*
- B. gladwynensis* "William Penn"
- B. gyalica*
- B. heterophylla*
- B. horvathi*
- B. hybrido-gagnepaini*
- B. insignis*
- B. integerrima* "Wallichs Purple"
- B. julianae*
- B. julianae* "Nana"
- B. julianae* "Spring Glory"
- B. koreana*
- B. koreana* x *B. thunbergii* hybrid Baisel

*B. koreana* x *B. thunbergii* hybrid Tara  
*B. lempergiana*  
*B. lepidifolia*  
*B. linearifolia*  
*B. linearifolia* var. "Orange King"  
*B. lologensis*  
*B. lologensis* "Mystery Fire"  
*B. manipurana*  
*B. media* "Park Jewel"  
*B. media* "Red Jewel"  
*B. mentorensis*  
*B. pallens*  
*B. poiretii* "BJG 073", "MTA"  
*B. potanini*  
*B. renton*  
*B. replicata*  
*B. sanguinea*  
*B. sargentiana*  
*B. sikkimensis*  
*B. soulieana* "Claret Cascade"  
*B. stenophylla*  
*B. stenophylla diversifolia*  
*B. stenophylla gracilis*  
*B. stenophylla irwini*  
*B. stenophylla nana compacta*  
*B. taliensis*  
*B. telomaica artisepala*  
*B. thunbergii*  
*B. thunbergii* "Antares"  
*B. thunbergii argenteo marginata*  
*B. thunbergii atropurpurea*  
*B. thunbergii atropurpurea erecta*  
*B. thunbergii atropurpurea erecta Marshalli*  
*B. thunbergii atropurpurea "Golden Ring"*  
*B. thunbergii atropurpurea "Intermedia"*  
*B. thunbergii atropurpurea "Knight Burgundy"*  
*B. thunbergii atropurpurea nana*  
*B. thunbergii atropurpurea "Redbird"*  
*B. thunbergii atropurpurea "Rose Glow"*  
*B. thunbergii aurea*  
*B. thunbergii "Aurea Nana"*  
*B. thunbergii "Bagatelle"*  
*B. thunbergii "Bailgreen"* (Jade Carousel™)  
*B. thunbergii "Bailone"*  
*B. thunbergii "Bailone"* (Ruby Carousel®)  
*B. thunbergii "Bailtwo"*  
*B. thunbergii "Bailtwo"* (Burgundy Carousel®)  
*B. thunbergii "Bonanza Gold"*  
*B. thunbergii "Concorde"*  
*B. thunbergii "Crimson Pygmy"*



*B. thunbergii* "Crimuzam" Crimson Ruby™  
*B. thunbergii* "Dwarf Jewell"  
*B. thunbergii* erecta  
*B. thunbergii* "globe"  
*B. thunbergii* "golden"  
*B. thunbergii* "Golden Pygmy"  
*B. thunbergii* "Green Carpet"  
*B. thunbergii* "Harlequin"  
*B. thunbergii* "Helmond Pillar"  
*B. thunbergii* "kobold"  
*B. thunbergii* "Lime Glow"  
*B. thunbergii* "Lustre Green"  
*B. thunbergii* maximowiczii  
*B. thunbergii* "Midruzam" Midnight Ruby™  
*B. thunbergii* minor  
*B. thunbergii* "Monlers"  
*B. thunbergii* "Monomb"  
*B. thunbergii* "Monry"  
*B. thunbergii* "Painter's Palette"  
*B. thunbergii* "Pink Queen"  
*B. thunbergii* pluriflora  
*B. thunbergii* "Royal Burgundy"  
*B. thunbergii* "Royal Cloak"  
*B. thunbergii* "Sparkle"  
*B. thunbergii* "Thornless"  
*B. thunbergii* "Upright Jewell"  
*B. thunbergii* variegata  
*B. thunbergii* xanthocarpa  
*B. thunbergii* x "Bailsel" (Golden Carousel®)  
*B. thunbergii* x "Tara" (Emerald Carousel®)  
*B. triacanthophora*  
*B. triculosa*  
*B. verruculosa*  
*B. virgatorum*  
*B. workingensis*  
*B. xanthoxylon*  
*B. x carminea* "Pirate King"  
*B. x frikartii* "Amstelveen".

(3) All plants, seedlings, seeds, fruits, and other plant parts capable of propagation from the following rust-resistant Mahoberberis and Mahonia species, except Mahonia cuttings for decorative purposes:

(A) The following genera Mahoberberis:

*M. aquicandidula*  
*M. aquifolium* "Smaragd"  
*M. aquisargentiae*  
*M. miethkeana*  
*M. x "Magic"*.

(B) The following genera Mahonia:

*M. amplexans*  
*M. aquifolium*  
*M. aquifolium atropurpurea*

M. aquifolium compacta  
 M. aquifolium compacta "John Muir"  
 M. aquifolium "Donewell"  
 M. aquifolium "Kings Ransom"  
 M. aquifolium "Orangee Flame"  
 M. aquifolium "Undulata"  
 M. aquifolium "Winter Sun"  
 M. "Arthur Menzies"  
 M. bealei  
 M. dictyota  
 M. fortunei  
 M. "Golden Abundance"  
 M. japonica  
 M. japonica x M. lomariifolia "Charity"  
 M. lomariifolia  
 M. nervosa  
 M. pinnata  
 M. pinnata "Ken Hartman"  
 M. piperiana  
 M. pumila  
 M. repens  
 M. x media "Charity"  
 M. x media "Winter Sun".

(4) All plants, seeds, fruits, and other plant parts capable of propagation from rust-susceptible species and varieties of the genera Berberis, Mahoberberis, and Mahonia, and seedlings from rust-susceptible species and varieties of the genera Mahoberberis and Mahonia, except Mahonia cuttings for decorative purposes.

(5) Any other product or article not listed in this subsection which a division inspector determines presents a risk of spread of black stem rust. The division inspector shall notify the person in possession of a product or article that qualifies under this subdivision that it is subject to this section.

(c) During the inspection of a nursery under IC 14-24-5, a division inspector shall examine all nursery stock to determine that the nursery stock consists only of rust-resistant varieties of the genera Berberis, Mahoberberis, and Mahonia, and that the plants are true to type. A plant that does not meet the requirements of this subsection must be destroyed.

(d) If a nursery raises plants of the genera Berberis, Mahoberberis, or Mahonia from seed, the division shall conduct a visual inspection to verify that no wild or domesticated plants are growing within one-half (½) mile of the nursery. The inspection must conform to standards set forth in 7 CFR 301.38-3. A nursery that does not meet the requirements of this subsection must cease raising plants of the described genera.

(e) Except as provided in subsection (g), the following articles regulated under this section are prohibited from moving interstate into or through Indiana:

(1) All Berberis seedlings and plants that exhibit growth for less than two (2) years; rust-susceptible Berberis plants, seeds, and fruits; and other plant parts capable of propagation.

(2) Rust-susceptible Mahoberberis and Mahonia plants, seedlings, seeds, fruits, and other plant parts capable of propagation.

(f) The following articles regulated under this section may be moved interstate into or through Indiana only if accompanied by a certificate issued and attached under 7 CFR 301.38-5 and 7 CFR 301.38-7:

(1) Plants which exhibit growth for at least two (2) years, seeds, fruits, and other plant parts capable of propagation of the genera Mahoberberis and Mahonia that are designated as rust-resistant in subsection (b)(2).

(2) Plants, seedlings, seeds, fruits, and other plant parts capable of propagation of the genera Mahoberberis and Mahonia that are designated as rust-resistant in subsection (b)(3).

(g) A regulated article not eligible for a certificate under 7 CFR 301.38-5 and 7 CFR 301.38-7 may be moved interstate into or through Indiana as authorized by a special permit issued under 7 CFR 301.38-4 by an employee of the Animal and Plant Health Inspection Service of the United States Department of Agriculture. (*Natural Resources Commission; 312 IAC 18-3-8; filed Nov 22,*

1996, 3:00 p.m.: 20 IR 947; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; filed May 19, 2003, 9:10 a.m.: 26 IR 3315)

**312 IAC 18-3-9 Control of pests or pathogens which may infect roses**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 9. (a) A plant virus which may infect roses is a pest or pathogen. This section governs standards for the control of rose viruses, including apple mosaic virus and prunus necrotic ringspot virus.

(b) A shipment of rose plants entering Indiana must be accompanied by an official certificate or statement, issued by an authorized official in the state of origin, certifying that the plants were inspected during the growing season at a time when symptoms would be apparent and found to be visibly free of plant viruses.

(c) No person shall offer rose plants for sale unless the person has on file in an Indiana place of business, and available upon request for public inspection, a copy of a certificate or statement issued by an authorized official from the state of origin for each shipment of rose plants, certifying that the plants were inspected during the growing season at a time when symptoms would be apparent and found visibly free of plant viruses.

(d) A rose plant shipped into Indiana which is infected with a plant virus or which is not accompanied by the documentation required by this section may be returned to the state of origin or destroyed by the division. The remedies set forth in this subsection are in addition to any other remedies prescribed by IC 14-24 or this article.

(e) As used in this section, "shipment of rose plants" includes any conveyance (including mail order) of dormant, packaged, preplanted, or in-leaf rose plants. (*Natural Resources Commission; 312 IAC 18-3-9; filed Nov 22, 1996, 3:00 p.m.: 20 IR 949; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

**312 IAC 18-3-10 Control of black vine weevils**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24-5-4

Sec. 10. (a) Black vine weevil (*Otiorhynchus sulcatus*) is a pest or pathogen. This section governs standards for the control of black vine weevils.

(b) Nursery stock which is shipped into Indiana or shipped, sold, or grown in Indiana must be free from black vine weevils.

(c) The certificate required under IC 14-24-5-4 for nursery stock shipped into Indiana from another state must verify the following:

(1) A visual inspection was made of the nursery stock before the shipment was made, and the inspection located no evidence of damage by black vine weevils.

(2) The nursery stock came from a site that was inspected by an authorized state or federal official, and the official certified the site was free from black vine weevils for two (2) growing seasons before the shipment.

(d) Nursery stock, containers for nursery stock, and any trucks in which nursery stock is shipped shall be returned to the state of origin or treated to the satisfaction of the division if the presence of black vine weevils or damage by black vine weevils is detected.

(e) A nurseryman who grows nursery stock at a site infested with black vine weevils may, upon notice by the division, be required to eradicate the black vine weevils and withhold from sale or movement plants which were grown in the infested site. These requirements apply until modified or terminated by the division director or a division inspector.

(f) A dealer who possesses nursery stock where black vine weevils are found or evidence of black vine weevil damages is found may, upon notice by the division, be required to do any of the following:

(1) Remove the infested nursery stock from sale.

(2) Return the infested nursery stock to the place of origin.

(3) Treat the nursery stock as specified by the division.

(g) A site used to grow or maintain nursery stock where black vine weevils have been found may be released from any restriction imposed under this section and certified free from black vine weevils if the following requirements are met:

(1) Efforts to eradicate the black vine weevils are undertaken as specified by the division.

(2) Two (2) growing seasons have elapsed with no occurrence of the weevils.

*(Natural Resources Commission; 312 IAC 18-3-10; filed Nov 22, 1996, 3:00 p.m.: 20 IR 949; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546)*

**312 IAC 18-3-11 Control of crown gall**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24-5-4

Sec. 11. (a) Crown gall (*Agrobacterium tumefaciens*) is a pest or pathogen. This section governs standards for the control of crown gall in Indiana.

(b) Nursery stock which is shipped into Indiana or shipped, sold, or grown in Indiana must be free from crown gall.

(c) The certificate required under IC 14-24-5-4 for nursery stock shipped into Indiana from another state must verify the following:

(1) A visual inspection was made of the nursery stock before the shipment was made, and the inspection revealed freedom from crown gall.

(2) The nursery stock came from a site that was inspected by an authorized state or federal official, and the official certified:

(A) the site was free from crown gall for two (2) growing seasons before the shipment; or

(B) the nursery stock came from tissue-cultured stock that was certified free from crown gall and grown in sterile soil with no exposure to soil which was or could have been contaminated with crown gall.

(d) A plant, container, or soil contaminated with crown gall must not be moved into or within Indiana unless a permit is issued under section 3 of this rule.

(e) Nursery stock which is contaminated with crown gall must be returned to its site of origin or destroyed.

(f) A nurseryman may, upon notice by the division, be required to remove from sale, and to destroy or return to the site of origin, any nursery stock which is contaminated or may reasonably be anticipated to be contaminated with crown gall.

(g) A dealer may, upon notice by the division, be required to remove from sale, and to destroy or return to the site of origin, any nursery stock which is possessed by the dealer. These requirements apply to soils, containers, and nursery stock from any shipment which contained contaminated nursery stock. *(Natural Resources Commission; 312 IAC 18-3-11; filed Nov 22, 1996, 3:00 p.m.: 20 IR 950; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546)*

**312 IAC 18-3-12 Control of larger pine shoot beetles**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 12. (a) The larger pine shoot beetle (*Tomicus piniperda*) is a pest or pathogen. This section governs standards for the control of the larger pine shoot beetle in Indiana.

(b) Except as provided in subsection (c), the division has determined Indiana is an infested area where the larger pine shoot beetle is present.

(c) Exempted from subsection (b) are the following counties:

(1) Clark.

(2) Clay.

(3) Crawford.

(4) Daviess.

(5) Dearborn.

(6) Decatur.

(7) Dubois.

(8) Floyd.

(9) Gibson.

(10) Greene.

(11) Harrison.

(12) Jackson.

(13) Jefferson.

- (14) Jennings.
- (15) Knox.
- (16) Lawrence.
- (17) Martin.
- (18) Ohio.
- (19) Orange.
- (20) Perry.
- (21) Pike.
- (22) Posey.
- (23) Ripley.
- (24) Scott.
- (25) Spencer.
- (26) Sullivan.
- (27) Switzerland.
- (28) Union.
- (29) Vanderburgh.
- (30) Vigo.
- (31) Warrick.
- (32) Washington.

(d) The following items are regulated articles:

(1) The larger pine shoot beetle in any life stage.

(2) Entire plants or parts of the genus pine (*Pinus* spp.). Exempted from this subdivision are plants that conform to each of the following:

(A) Are less than thirty-six (36) inches high.

(B) Are one (1) inch in basal diameter or less.

(3) Logs and lumber of pine with bark attached. Exempted from this subdivision are logs of pine and pine lumber with bark attached if:

(A) the source tree was felled during the period of July through October; and

(B) the logs and lumber are shipped from the quarantined area during the period of July through October.

(4) Any other article, product, or means of conveyance if determined by the division director to present the risk of spread of the larger pine shoot beetle.

(e) The following actions are ordered within the infested area:

(1) The movement by a person of a regulated article to a destination outside the infested area is prohibited, except under the following conditions:

(A) A thorough examination of all nursery stock takes place on a piece by piece basis.

(B) A statistically based examination of Christmas trees is made according to the following schedules:

TABLE 1. PAINTED (COLOR-ENHANCED) PINE CHRISTMAS TREES<sup>1</sup>

No. of Trees in Shipment	No. of Trees to Sample	No. of Trees in Shipment	No. of Trees to Sample
1 – 72	All	700 – 800	120
73 – 100	73	801 – 900	121
101 – 200	96	901 – 1,000	122
201 – 300	106	1,001 – 2,000	126
301 – 400	111	2,001 – 3,000	127
401 – 500	115	3,001 – 5,000	128
501 – 600	117	5,001 – 10,000	129
601 – 700	119	10,001 or more	130

<sup>1</sup>If a pine shoot beetle is detected in any one (1) of the trees being sampled, the entire shipment must be rejected. If no pine shoot beetle is detected in any of the trees sampled, the shipment will be allowed to move with a limited permit. The limited permit must state, "All trees that remain unsold as of December 25 must be destroyed by burning or chipping, or must be fumigated prior to January 1."

TABLE 2. NATURAL (UNPAINTED) CHRISTMAS TREES<sup>1</sup>

No. of Trees in Shipment	No. of Trees to Sample	No. of Trees in Shipment	No. of Trees to Sample
1 – 57	All	501 – 600	80
58 – 100	58	601 – 700	81
101 – 200	69	701 – 1,000	82
201 – 300	75	1,001 – 3,000	84
301 – 400	77	3,001 – 10,000	85
401 – 500	79	10,001 or more	86

<sup>1</sup>If a pine shoot beetle is detected in any one (1) of the trees being sampled, the entire shipment must be rejected. If no pine shoot beetle is detected in any of the trees sampled, the shipment will be allowed to move with a limited permit. The limited permit must state, "All trees that remain unsold as of December 25 must be destroyed by burning or chipping, or must be fumigated prior to January 1."

(C) Following the examination, a determination is made that no life stages of the larger pine shoot beetle are present. The determination must be accompanied by either of the following:

- (i) A certificate of inspection approved by the division.
- (ii) A certificate or similar authorization issued by the U.S. Department of Agriculture under a parallel federal quarantine.

(D) The certificate for the absence of the larger pine shoot beetle must be attached to and remain on the regulated articles until the articles reach their destinations. This requirement is, however, satisfied if the certificate is attached to the shipping document and the regulated article is adequately described on the shipping document of the certificate.

(2) A regulated article originating outside the infested area may move through the infested area without a certificate of inspection if the point of origin of the regulated article is indicated on the waybill or shipping documents and transportation conforms with this subdivision. Passage through the infested area must be made without stopping, except for refueling or traffic conditions, and shall be conducted within either of the following conditions:

(A) The ambient temperature is below fifty (50) degrees Fahrenheit.

(B) The regulated article is carried in an enclosed vehicle with an adequate covering to prevent access by the larger pine shoot beetle. Examples of an adequate covering include canvas, plastic, or loosely woven cloth.

(3) A regulated article originating outside the infested area which is moved into the infested area and exposed to potential infestation by the larger pine shoot beetle is considered to have originated from the infested area. Any regulated article under this subdivision is controlled by subdivision (1).

(4) The movement of a regulated article from an infested area through any noninfested area to another infested area is prohibited without a certificate for the absence of the larger pine shoot beetle except where both of the following conditions are met:

(A) Passage through a noninfested area is made without stopping, except for refueling or traffic conditions, if the ambient temperature is below fifty (50) degrees Fahrenheit or if in an enclosed vehicle with an adequate covering to prevent access by the larger pine shoot beetle.

(B) The waybill or shipping documents accompanying any shipment of regulated articles within or through Indiana indicate the county and state of origin of the regulated articles.

(5) Any regulated article imported or moved within Indiana in violation of this section shall be immediately removed from any noninfested area or destroyed. The expense of compliance with this subdivision is the joint and several responsibility of any person possessing or owning the regulated article. Compliance with this subsection shall be performed under the direction of the division director.

(6) In addition to the penalty set forth in subdivision (5), a person who violates this section is subject to any administrative,

civil, or criminal sanction set forth in IC 14-24 and this article.

(7) This section does not preclude the division director from issuing any permit under section 3 of this rule.

*(Natural Resources Commission; 312 IAC 18-3-12; filed Nov 22, 1996, 3:00 p.m.: 20 IR 950; filed Dec 3, 1997, 3:30 p.m.: 21 IR 1273; filed Feb 9, 1999, 4:16 p.m.: 22 IR 1945; filed Apr 4, 2001, 3:02 p.m.: 24 IR 2404; filed May 16, 2002, 12:28 p.m.: 25 IR 3049; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; filed May 19, 2003, 8:50 a.m.: 26 IR 3313)*

### **312 IAC 18-3-13 Permit to move, plant, or distribute *Rosa multiflora* or *Lythrum* species**

Authority: IC 14-24-12-9

Affected: IC 14-24-5; IC 14-24-7

Sec. 13. (a) This section governs the anthropogenic movement and distribution of *Rosa multiflora* and *Lythrum* species in Indiana.

(b) Except as provided by this section, a person must not plant *Rosa multiflora* in Indiana.

(c) Except as provided in this section, a person must not sell, offer for sale, give away, or otherwise distribute seeds or plants of any species of *Lythrum* (commonly known as purple loosestrife) in Indiana.

(d) A nurseryman whose nursery has been inspected and certified under IC 14-24-5, and who holds a nursery dealer's license issued under IC 14-24-7, may plant *Rosa multiflora* for use as grafting stock in growing roses in the nursery subject to the following conditions:

(1) The nurseryman informs any division inspector who inspects the nursery of the presence of, and every site where, the grafting stock is located.

(2) Except upon written permission by the division director, *Rosa multiflora* is not sown or grown in the field as nongrafted stock. The written permission shall be noted on the nursery certificate at the time the nursery is certified.

(e) Species of *Lythrum* native to Indiana may be sold or distributed for an approved project or activity according to a prior permit issued as follows:

(1) An application must be completed by the permit applicant on a department form and delivered to the division. This application shall include the following:

(A) The scientific name of the species to be sold or distributed.

(B) The character (examples include marsh, upland, dominant shrub habitat, and mixed forest) of the site where the species is to be taken.

(C) A topographic map of the site clearly marked to indicate the specific site to which the plant material is to be taken.

(D) The source of the plants to be distributed.

(E) Certification that the plants are not hybrids of *Lythrum salicaria* or *Lythrum virgatum*. The certification may be verified by a person identified by the division of nature preserves of the department or by gene testing methodologies through qualified laboratories. The applicant is responsible for the cost of certification.

(2) Permits will be considered on an individual site or site and project basis.

(3) Unless otherwise specified, the duration of a permit is ninety (90) days.

(f) The state entomologist may issue a license to a person to obtain and possess *Lythrum* as follows:

(1) The person may lawfully possess the *Lythrum* solely for one (1) or more of the following purposes:

(A) The production of biological control organisms directed to *Lythrum* growing in the wild.

(B) Research into the biology of these biological control organisms.

(C) Related educational programs.

(2) A person issued a license under this subsection must take reasonable precautions to prevent the release of seeds or other viable parts of the *Lythrum* plants to the wild. Disposal of plants shall, if practicable, be performed by incineration. If facilities to incinerate plants are not available, the plants must be disposed at sites already heavily infested with species of *Lythrum* that are not native to Indiana.

(3) The state entomologist may place any conditions on the placement of a license that are determined necessary or appropriate under IC 14-24 or this section. Included among these conditions are the following:

(A) A requirement the applicant act under the auspices of a regional program sponsored by a biological control laboratory.

(B) A requirement the applicant obtain written permission from a landowner before digging or removing plants to be

possessed under the license.

(C) A requirement the applicant display a copy of the license at the site where the Lythrum plants are being grown.

(4) A license issued under this subsection also authorizes a program coordinator to provide to the license holder Lythrum plants that include biological control organisms.

(g) A person is subject to a civil penalty of five hundred dollars (\$500) for each site where *Rosa multiflora* or Lythrum is maintained or distributed in violation of this section. Each year that the species is maintained or distributed constitutes a separate offense. In addition, a person may be required to destroy any unlawful plants and to restore and reclaim the site with native or other approved species. (*Natural Resources Commission; 312 IAC 18-3-13; filed Nov 22, 1996, 3:00 p.m.: 20 IR 952; filed Mar 23, 2001, 3:00 p.m.: 24 IR 2403; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

### **312 IAC 18-3-14 Control (quarantine) of gypsy moth**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-8-2-202; IC 14-24-4-1; IC 14-24-4-4; IC 14-24-5-7; IC 15-3-3.5-2; IC 15-3-3.6

Sec. 14. (a) The gypsy moth (*Lymantria dispar*) is a pest or pathogen. This section governs standards for the control of gypsy moth in Indiana.

(b) In addition to the definitions contained in 312 IAC 1-1 and 312 IAC 18-1, the following definitions apply throughout this section:

(1) "Associated equipment" means any article associated with mobile homes and recreational vehicles and includes the following:

- (A) Awnings.
- (B) Tents.
- (C) Outdoor furniture.
- (D) Trailer blocks and hitches.
- (E) Trailer skirts.

(2) "Certificate" means a document issued by an inspector, a qualified certified applicator, or any other person operating under a compliance agreement to allow the movement of regulated articles to any destination.

(3) "Compliance agreement" means a written agreement between the department and a person engaged in growing, selling, processing, handling, or moving regulated articles.

(4) "Effectively diminishing" means the results of two (2) successive annual federal or state delimiting trapping surveys of an area conducted under section 2, "Gypsy Moth Survey", of the program manual show that the average number of gypsy moths caught per trap in the second delimiting survey (when comparable geographical areas and trapping densities are used) is:

- (A) less than ten (10); and
- (B) less than the average number of gypsy moths;

caught per trap in the first survey.

(5) "Eradication program" means a program that uses pesticide application, biological controls, or other methods with the goal of eliminating gypsy moth from an infested area.

(6) "General infestation" means either of the following:

- (A) The detection of gypsy moth egg masses through visual inspection by an inspector during a ten (10) minute walk through the area, but it does not include the presence of gypsy moth egg masses that are found as a result of hitchhiking on transitory means of conveyance.
- (B) The detection of gypsy moth through multiple catches of adult gypsy moths at multiple trapping locations in the area for two (2) or more consecutive years if the state entomologist determines the gypsy moth is established in the area.

(7) "Generally infested area" means an area that is listed or designated as set forth under either of the following:

- (A) A state or portion of a state listed in 7 CFR 301.45-3 or temporarily designated as a generally infested area under 7 CFR 301.45-2(c).
- (B) An Indiana county or portion of a county listed as generally infested in this rule.

(8) "Gypsy moth" means any race or strain of the live insect, *Lymantria dispar*, in any life stage (egg, larva, pupa, or adult).

(9) "Infested area" means any of the following:



- (A) An area in Indiana where the gypsy moth has been found and is known to have two (2) or more life stages present.
  - (B) An area for which it is determined by the state entomologist as necessary to regulate because of the proximity of the infested area to a generally infested area or another infested area.
  - (C) An area where a life stage of the Asian strain or another related strain of gypsy moth has been found.
- (10) "Inspector" means a person designated to assist in the implementation of this section and includes each of the following:
- (A) An authorized employee of the division as defined in 312 IAC 18-1-6.
  - (B) A federal employee authorized by the United States Department of Agriculture who is also authorized by the state entomologist.
  - (C) Another person trained and authorized by the state entomologist.
- (11) "Interstate" means from any state into or through any other state.
- (12) "Intrastate" means within Indiana.
- (13) "Limited permit" means a document issued by a federal inspector or an authorized state cooperator under 7 CFR 301.45 to allow the interstate movement of regulated articles to a specified destination.
- (14) "Mobile home" means a vehicle, other than a recreational vehicle, designed to serve, when parked, as a dwelling or place of business.
- (15) "Move" means any of the following:
- (A) Ship.
  - (B) Offer for shipment to a common carrier.
  - (C) Receive for transportation or transported by a common carrier.
  - (D) Carry, transport, move, or allow to be moved by a person by any means.
- "Movement" and "moved" shall be construed under this subdivision.
- (16) "Outdoor household articles" or "OHA" means articles associated with a household that are kept outside the home. The term includes the following:
- (A) Awnings.
  - (B) Benches.
  - (C) Birdhouses.
  - (D) Bird feeders or other feeders.
  - (E) Boats.
  - (F) Chairs.
  - (G) Children's playhouses.
  - (H) Children's playthings.
  - (I) Doghouses.
  - (J) Firewood.
  - (K) Garden equipment.
  - (L) Garden machinery.
  - (M) Grills.
  - (N) Hauling trailers.
  - (O) Outdoor furniture.
  - (P) Planters.
  - (Q) Sandboxes.
  - (R) Tables.
  - (S) Utility sheds.
  - (T) Tents.
  - (U) Similar articles.
- (17) "Person" has the meaning as set forth in IC 14-8-2-202(c).
- (18) "Program manual" means the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Gypsy Moth Program Manual, 1994 edition.
- (19) "Qualified certified applicator" or "QCA" means an individual who is not an inspector but:
- (A) is certified in Indiana under IC 15-3-3.6 under the portions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) found at 7 U.S.C. 136i(a) through 7 U.S.C. 136i(c) as a certified commercial applicator in a category

allowing use of a “restricted use pesticide” as defined at IC 15-3-3.5-2(27);

(B) has attended and completed a workshop approved by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine on the identification and treatment of gypsy moth life stages on outdoor household articles and mobile homes; and

(C) has entered into a compliance agreement under 7 CFR 301.45-6 for the purpose of inspecting, treating, and issuing certificates for the movement of outdoor household articles and mobile homes.

(20) “Recreational vehicle” means any highway vehicle designed to serve as a temporary place of dwelling or business. The term includes pickup truck campers, one-piece motor homes, travel trailers, and similar vehicles.

(21) “Regulated article” includes each of the following:

(A) Trees without roots, for example, Christmas trees, trees with roots, and shrubs with roots and persistent woody stems (unless greenhouse-grown throughout the year).

(B) Logs, pulpwood, and wood chips.

(C) Mobile homes and associated equipment.

(D) Any other products, articles, or means of conveyance if an inspector determines:

(i) a life stage of gypsy moth is in proximity to the articles; and

(ii) the articles present a high risk of artificial spread of gypsy moth infestation;

and the person in possession of the articles is so notified.

(c) The following items are regulated under this section:

(1) Gypsy moths.

(2) Trees and woody shrubs, including cut Christmas trees, and nursery stock, not grown in a greenhouse throughout the year.

(3) Logs, slab wood, wood chips, and pulpwood unless moved to a mill operating under a compliance agreement.

(4) Recreational vehicles, boats, trailers, tents, and associated equipment.

(5) Mobile homes and associated equipment.

(6) Outdoor household articles.

(7) Any other products, articles, or means of conveyance if it is determined by an inspector that a life stage of the gypsy moth is in proximity to such articles, presenting a risk of artificial spread of the gypsy moth, and the person in possession of those articles is so notified.

(d) The designation of a generally infested area becomes effective immediately upon publication of a notice caused to be placed by the state entomologist in a newspaper of general circulation in the affected county. The notice shall include the process by which an affected person may take administrative review under 312 IAC 3-1.

(e) The Indiana counties declared to be generally infested areas and subject to quarantine under this rule are as follows:

(1) Allen County.

(2) Dekalb County.

(3) Elkhart County.

(4) LaGrange County.

(5) Noble County.

(6) Porter County.

(7) Steuben County.

(f) The movement of regulated articles is governed by the following standards:

(1) No common carrier or other person shall move from a generally infested area any regulated article into or out of Indiana except under the conditions set forth in this subsection.

(2) A certificate must accompany the movement of regulated articles from a generally infested area into or through any area that is not a generally infested area. A copy of the certificate must be forwarded to the Indiana Department of Natural Resources, Division of Entomology and Plant Pathology, within seven (7) days of movement. Certificates may be issued by an inspector if the regulated articles:

(A) originated in a not generally infested area and are not exposed to infestation while within the generally infested area;

(B) are found by an inspector to be free of infestation;

(C) are treated under procedures approved by the state entomologist to destroy any infestation;

(D) are grown, produced, manufactured, stored, or handled so no infestation is transmitted; or

(E) are handled, used, processed, or treated at the destination so the movement will not spread the gypsy moth.

(3) There are no restrictions imposed on the movement of regulated articles exclusively within a generally infested area.

(4) A certificate for the movement of regulated articles may be conditioned by an inspector to assure compliance with this rule and may be canceled for failure to comply with this rule or any term of the conditions.

(g) An inspector may, under IC 14-24-4-1, stop and inspect, without a warrant, any person or means of conveyance moving within Indiana upon probable cause to believe the person or means of conveyance is carrying infested articles. The inspector may by order seize, treat, destroy, or otherwise dispose of articles found to be moving in violation of this subsection. Items will be destroyed only if it is determined by the inspector that destruction is the only feasible method to avoid transportation of the life stages of gypsy moth. The order shall specify that an aggrieved person may request administrative review in the same manner as is provided under IC 14-24-5-7(d).

(h) The division may at any time treat campgrounds, roadside rests, and similar sites to eradicate or suppress a gypsy moth infestation.

(i) The following conditions govern the intrastate movement of regulated articles and household articles from generally infested areas:

(1) Except as provided in subdivision (3) or (4), a regulated article must not be moved from an infested area or a generally infested area within Indiana or moved outside Indiana unless a certificate or permit is issued and attached to the regulated article under 7 CFR 301.45-5, 7 CFR 301.45-8, and this section.

(2) An outdoor household article must not be moved within Indiana or moved outside Indiana from a generally infested area into or through an area that is not generally infested unless a certificate of OHA document is issued and attached to the outdoor household article under 7 CFR 301.45-5, 7 CFR 301.45-8, and this section.

(3) A regulated article originating outside a generally infested area may be moved interstate and intrastate directly through a generally infested area without a certificate or permit if the point of origin for the article is clearly indicated by shipping documents, its identity is maintained, and the article is safeguarded against infestation while in a generally infested area during the months of April through June. To be safeguarded, the article must be in an enclosed vehicle, or completely enclosed by a covering adequate to prevent access by gypsy moths. Examples of an appropriate covering include canvas, plastic, or closely woven cloth.

(4) A regulated article originating in a generally infested area may be moved interstate from a generally infested area without a certificate if one (1) of the following is satisfied:

(A) The article is moved by the United States Department of Agriculture or by authorized personnel of the department for experimental or scientific purposes under a permit issued by the United States Department of Agriculture for interstate movement or by the department for intrastate movement. An article or the container must have securely attached a tag or label bearing the permit number.

(B) The article is logs, pulpwood, or wood chips and the person moving the article has attached a signed accurate statement to the waybill, or other shipping documents accompanying the article, indicating the person inspected the article under the program manual no more than five (5) days before movement and found no life stages of gypsy moth on the article.

(j) The following are requirements concerning the issuance and cancellation of certificates, limited permits, and outdoor household article documents:

(1) A certificate may be issued by an inspector for the movement of a regulated article or an outdoor household article if the inspector determines the article is eligible for certification for movement to a destination under any federal domestic plant quarantines applicable to the article and at least one (1) of the following conditions is met:

(A) The article originated in noninfested premises in a generally infested area and has not been exposed to the gypsy moth while within the generally infested area.

(B) An inspector inspects the article no more than five (5) days before movement during the months of April through August (fourteen (14) days before movement from September through March) and finds it to be free of gypsy moth.

(C) The article is treated under the direction of an inspector to destroy the gypsy moth under the program manual.

(D) An inspector determines the article is grown, produced, manufactured, stored, or handled so no infestation would be transmitted.

(2) Limited permits may be issued by an inspector to allow interstate movement of a regulated article to specified destinations for handling, use, processing, or treatment under the program manual, if the inspector determines other federal domestic plant

quarantines are met and either:

(A) the movement will not result in the spread of the gypsy moth because life stages of the moths will be destroyed by the specific handling, use, processing, or treatment; or

(B) the gypsy moth will not survive in areas to which the regulated article is to be shipped.

(3) A certificate and limited permit form may be issued by an inspector to a person for use for subsequent shipments of regulated articles if the person is operating under a compliance agreement. A person operating under a compliance agreement may execute and issue the certificate forms, or reproduction of the forms, for the interstate movement of regulated articles from the person's premises, if:

(A) the person treats the articles as specified in the compliance agreement; and

(B) the regulated articles are eligible for certification for movement under any applicable federal domestic plant quarantines.

A person operating under a compliance agreement may execute and issue the limited permit forms, or reproductions of the forms, for the interstate movement of regulated articles to specified destinations if an inspector complies with subdivision (2).

(4) A certificate may be issued by a qualified certified applicator for the interstate movement of an outdoor household article or mobile home if the qualified certified applicator determines:

(A) the article was inspected by the qualified certified applicator and found to be free of any life stage of the gypsy moth; or

(B) the article has been treated to destroy the gypsy moth under section 3 of the program manual by, or under the direction of, a qualified certified applicator.

(5) An OHA document may be issued by the owner of an outdoor household article for the interstate movement of the article if the person inspects the outdoor household article and finds it to be free of the gypsy moth.

(6) A certificate or permit issued or authorized under this subsection may be suspended by an inspector upon a determination that a condition of the certificate or permit has been violated. The reasons for the suspension shall be set forth in a written notice under IC 14-24-5-7(d) and may include an order to destroy or control any article to prevent the spread of the gypsy moth.

(k) This subsection governs compliance agreements as follows:

(1) A person engaged in the business of growing, handling, or moving regulated articles may enter into a compliance agreement to facilitate the movement of the articles. A compliance agreement shall specify safeguards necessary to prevent spread of the gypsy moth, including disinfestation practices and the appropriate application of chemical materials. Compliance agreement forms may be obtained from an inspector.

(2) A compliance agreement may be suspended in writing by an inspector if the inspector determines the agreement has been violated. The reasons for the suspension shall be set forth in a written notice and may include an order to destroy or control any article so as to prevent the spread of the gypsy moth. The notice shall specify that an aggrieved person may request administrative review in the same manner as is provided under IC 14-24-5-7(d).

(l) The following governs the assembly, inspection, and certification of regulated articles and outdoor household articles where a person does not possess a certificate or limited permit issued under subsection (j):

(1) A person who wishes to apply for a certificate under this subsection must request an examination according to the following schedule:

(A) At least seven (7) days before the intended movement of the regulated article if the examination is to be performed by an inspector.

(B) At least fourteen (14) days before the intended movement of an outdoor household article if a certificate is to be issued under 7 CFR 301.45.

(C) As required by a qualified certified applicator if a certificate is to be issued for an outdoor household article or mobile home under 7 CFR 301.45-5d.

(2) The inspector or qualified certified applicator may specify any reasonable location or manner for the assembly of articles to be examined.

(m) The following governs the attachment of documentation to evidence a certificate or limited permit issued under this section:

(1) A certificate, limited permit, or OHA document required for the intrastate or interstate movement of a regulated article or outdoor household article must, during movement, be securely attached to:

- (A) the outside of the container containing the regulated article or outdoor household article;
- (B) the article itself if not in a container; or
- (C) the consignee's copy of the waybill or other shipping document.

(2) The requirements of subdivision (1) are met by attaching the certificate, limited permit, or OHA document to the consignee's copy of the waybill or other shipping document only if the regulated article or outdoor household article is sufficiently described on the certificate, limited permit, OHA document, or shipping document to identify such article.

(3) The certificate, limited permit, or OHA document, for the movement of a regulated article or outdoor household article, must be furnished by the carrier to the consignee at the destination of the shipment.

(4) A qualified certified applicator who issues a certificate or OHA document shall at the time of issuance send a copy of the certificate or OHA document to the United States Department of Agriculture, Animal and Plant Health Inspection Service for Indiana.

(5) An inspector may, under IC 14-24-4-1, stop and inspect a shipment to determine if the gypsy moth is present. A regulated article may be destroyed, treated, or otherwise disposed as directed by the department under IC 14-24-4-4.

(n) This section does not preclude the state entomologist from issuing a permit under this rule for the movement of live gypsy moths.

(o) A person who violates this section is subject to applicable federal penalties and to applicable state penalties under IC 14-24 and this article. (*Natural Resources Commission; 312 IAC 18-3-14; filed Apr 17, 1998, 2:45 p.m.: 21 IR 3336; filed Feb 9, 1999, 5:05 p.m.: 22 IR 1947; filed Mar 23, 2001, 2:47 p.m.: 24 IR 2399; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

### **312 IAC 18-3-15 Release of a beneficial organism or a pest or pathogen**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 15. (a) A person or a federal agency must not release a beneficial organism or a pest or pathogen in Indiana without a permit issued by the division director under this section.

(b) Before a permit is issued under this section, a person or a federal agency must demonstrate, to a reasonable certainty, that the release of a beneficial organism or a pest or pathogen would do none of the following:

- (1) Harm a nontarget plant or animal.
- (2) Interfere with normal management and production practices in agriculture, horticulture, viticulture, silviculture, nursery production, or greenhouse production.
- (3) Disturb the ecological stability of an Indiana native organism or its environments.

(c) An application for release must be prepared on a commission form and must include each of the following:

(1) The current scientific name of the beneficial organism or pest or pathogen, as well as prior synonyms and taxonomic placements.

(2) The life stages to be considered for release, including any genetic recombinations.

(3) A listing of all known foods or hosts of the beneficial organism or pest or pathogen. The listing must identify the target organism, if applicable. The listing must be documented by published scientific literature with peer review.

(4) The known distribution of the beneficial organism or pest or pathogen, including habitat preferences and tolerances. This information must be documented by:

- (A) scientific literature;
- (B) regulatory survey; or
- (C) expert testimony.

(5) The method of release of the beneficial organism or pest or pathogen.

(6) The life cycle of the beneficial organism or pest or pathogen.

(7) The place of origin of the beneficial organism or pest or pathogen.

(8) The ecological classification of the beneficial organism or pest or pathogen. Examples of an ecological classification include:

- (A) predator;
- (B) pollinator;
- (C) parasite;

- (D) pathogen;
- (E) hyperparasite; and
- (F) herbivore.

(9) Documentation of any known pest or predator of the beneficial organism or pest or pathogen.

(10) The number of beneficial organisms or pests or pathogens to be released.

(11) The location of the proposed release.

(12) Clearly readable copies of scientific literature regarding the beneficial organism or pest or pathogen. Any literature supporting and not supporting the applicant's application must be made available to the division.

(13) Upon request by the division director, additional information reasonably necessary to demonstrate compliance with this article and IC 14-24. As a prerequisite to the consideration of a permit, the division director may require information consistent with an environmental assessment under 329 IAC 5-1 or an environmental impact statement under 329 IAC 5-2.

(14) The division director shall respond to the applicant within thirty (30) days with one (1) of the following notifications:

(A) Deny the permit.

(B) Approve the permit.

(C) Approve the permit with conditions.

(D) Request the applicant to provide additional information within a stated period with an explanation that, if information is not provided as requested, the permit would be denied.

(15) If the division director fails to make a timely response under subdivision (14), the applicant may treat the application as denied and seek administrative review.

(d) The division director may establish a listing of organisms that are exempted or that may be released under a general license.

The division director shall submit the listing to the commission for its approval.

(e) A person must not sell, barter, offer for sale or distribution, or release a beneficial organism or pest or pathogen without first obtaining a permit from the division.

(f) A person must not mislabel a beneficial organism or pest or pathogen.

(g) A person must not misrepresent data or submit incomplete data that could mislead an investigator or the division director in considering the merits of a permit application. (*Natural Resources Commission; 312 IAC 18-3-15; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2470*)

### **312 IAC 18-3-16 Control of kudzu (*Pueraria lobata*)**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 16. (a) Kudzu (*Pueraria lobata*) is a pest or pathogen. This section governs the standards for the control of kudzu in Indiana.

(b) A person must not:

(1) sell;

(2) distribute;

(3) offer for sale or distribution;

(4) give away;

(5) barter or exchange; or

(6) plant;

any life stage or reproductive material or recombined genes of kudzu.

(c) The division may enter a property in which kudzu is thought to exist, or in which kudzu has been detected or reported, for the purpose of verifying its presence and the extent to which it has become established.

(d) Data regarding the location, area infested, habitat, and related data about the site may be recorded in a division database.

(e) A site in which kudzu is found to be established may be monitored.

(f) Any property owner who is known to have kudzu on the owner's property must take efforts to eliminate this species in such a manner as is consistent with federal and state law.

(g) This section shall be construed so as not to conflict with the authority of the Indiana state seed commissioner or with the laws administered by that office in regulating noxious weeds.

(h) The division may regulate a site under section 2 of this rule until it is cleared to prevent further infestations.

(i) This section does not preclude the division director from issuing any permit under this rule for the study of kudzu. (*Natural Resources Commission; 312 IAC 18-3-16; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2471*)

**312 IAC 18-3-17 Technical committees**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 17. The division director may convene and use technical committees in evaluating the release into the environment of a beneficial organism or a pest or pathogen. The committee may include any of the following:

(1) The division director or the division director's designee.

(2) Any technical expert.

(3) A representative of a university, college, or private research institution with expertise in the organism considered.

(4) A representative of an affected industry.

(5) A representative of an affected or participating federal or state agency.

(6) Any other technical representative.

(*Natural Resources Commission; 312 IAC 18-3-17; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2472*)

**Rule 4. Nurseries, Nursery Stock, Nurserymen, Dealers, and Agents**

**312 IAC 18-4-1 Standards for nurseries, nurserymen, dealers, and agents**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 1. This rule provides for the regulation of nurseries, nurserymen, dealers, and agents. (*Natural Resources Commission; 312 IAC 18-4-1; filed Nov 22, 1996, 3:00 p.m.: 20 IR 952; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

**312 IAC 18-4-2 Nursery inspections**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24-5

Sec. 2. (a) A nurseryman must provide for an inspection of each nursery owned, leased, managed, or controlled by the nurseryman at least once each year under IC 14-24-5.

(b) A nurseryman must maintain a nursery in a reasonably well-cultivated condition and free from weeds so that a division inspector may make an adequate inspection of all nursery stock. (*Natural Resources Commission; 312 IAC 18-4-2; filed Nov 22, 1996, 3:00 p.m.: 20 IR 953; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

**312 IAC 18-4-3 Nursery dealers**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24-5; IC 14-24-7-1; IC 14-24-7-2

Sec. 3. (a) A person must obtain a dealer's license from the division under IC 14-24-7-1 before selling or soliciting an order for nursery stock or otherwise conducting the business of a dealer.

(b) In addition to the license application requirements contained in IC 14-24-7-2(a), an applicant with a principal place of business outside Indiana must include with the application a current listing of certified nurseries prepared by the originating state to establish the person is an authorized dealer in that state. (*Natural Resources Commission; 312 IAC 18-4-3; filed Nov 22, 1996, 3:00 p.m.: 20 IR 953; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

**312 IAC 18-4-4 Certification of strawberry plants; special requirements**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24-5

Sec. 4. (a) Every package of strawberry plants shipped into Indiana from another state must be labeled on the outside with the name of the consignor, the name of the consignee, and a certificate from the other state showing that the contents have been examined and found free from any pest or pathogen.

(b) A person who receives strawberry plants from a foreign country must notify the division of the arrival of the strawberry plants and the name of the consignor. The person shall hold the shipment unopened until inspected or released by the division.

(c) A strawberry plant shall not be certified under IC 14-24-5 or offered for resale in Indiana until the following requirements are met:

(1) The planting is inspected on at least two (2) occasions and during the proper periods to detect red stele disease.

(2) The planting is made on soil in which red stele disease is not known to occur and which has not been subjected to drainage from soil infested with red stele disease.

(3) The plantings satisfy the following standards for the identified pest or pathogen:

(A) Red stele disease: zero (0) tolerance.

(B) Crimp (foliar nematode disease): zero (0) tolerance, if the disease is generally distributed. Where the infestation is small and localized, the plantings may be certified if the infested plants are removed and destroyed.

(C) Crown borer, root weevil, root aphid, and strawberry root worm: one percent (1%) tolerance if the visibly affected plants are removed and destroyed.

(4) If a mixture of plants is not observed, any off-variety plants are rogued.

(5) Plantings are well-cultivated and maintained essentially free from weeds and grasses.

(6) If plantings appear generally thrifty, very thin plant stands are disqualified.

*(Natural Resources Commission; 312 IAC 18-4-4; filed Nov 22, 1996, 3:00 p.m.: 20 IR 953; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546)*

**312 IAC 18-4-5 Nursery stock; plant labeling for imported hardy plants**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 5. (a) This section governs the labeling of imported nursery stock.

(b) As used in this section, "imported" means to bring into Indiana from:

(1) a foreign country; or

(2) a territory of the United States, Alaska, or Hawaii.

(c) As used in this section, "nursery stock" means botanically classified hardy perennial or biennial trees, shrubs, vines, and plants, evergreens, fruit pits, and other plants or plant parts capable of propagation. The term does not include corms, tubers, field vegetables, or flower seeds.

(d) Except as provided in subsection (e), imported nursery stock must bear a label that is of standard format, approximately four and seventy-five hundredths (4.75) inches by two and three hundred seventy-five thousandths (2.375) inches, on yellow, heavy duty card stock, and prepunched for attachment. The label shall list the following in order of the appearance from top to bottom:

(1) The common name of the nursery stock.

(2) The botanical name of the nursery stock.

(3) The hardiness zone of the nursery stock.

(e) Bulbs and similar plant parts used for propagation are exempted from subsection (d).

(f) This section does not apply to nursery stock that is imported into Indiana by a nursery grower and transplanted, grown, and held by the grower for a period of at least five (5) years after the date of import. *(Natural Resources Commission; 312 IAC 18-4-5; filed Nov 22, 1996, 3:00 p.m.: 20 IR 953; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546)*

**Rule 5. Special Service Fees**



**312 IAC 18-5-1 Collection of fees for special services; application**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24-10-1; IC 14-24-10-3

Sec. 1. (a) This rule establishes fees for special services by the division which are not described in IC 14-24-10-1.

(b) The fees collected under this rule shall be deposited in the entomology and plant pathology fund established by IC 14-24-10-3. (*Natural Resources Commission; 312 IAC 18-5-1; filed Nov 22, 1996, 3:00 p.m.: 20 IR 954; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

**312 IAC 18-5-2 Florist or greenhouse stock; voluntary certification**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 2. (a) The owner or operator of a florist or greenhouse may seek a certification as required by federal law or by another state for the shipment into another state of:

- (1) plants;
- (2) corms;
- (3) tubers;
- (4) field vegetables; or
- (5) flower seeds.

This certificate is not required by IC 14-24.

(b) The fee for this certification is fifty dollars (\$50) plus three dollars (\$3) per acre or any portion of an acre of inspected plants. (*Natural Resources Commission; 312 IAC 18-5-2; filed Nov 22, 1996, 3:00 p.m.: 20 IR 954; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2472*)

**312 IAC 18-5-3 Laboratory fees and replacement certificates**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 3. (a) The division shall be reimbursed for the actual cost of expenses incurred in performing laboratory services.

(b) The fee for the replacement of a certificate, where changes are made by the person who requests the certificate, is ten dollars (\$10). (*Natural Resources Commission; 312 IAC 18-5-3; filed Nov 22, 1996, 3:00 p.m.: 20 IR 954; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

**312 IAC 18-5-4 Phytosanitary document fees and related fees**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 4. (a) The fee is fifty dollars (\$50) for the issuance of any of the following:

- (1) A federal phytosanitary certificate.
- (2) A federal phytosanitary certificate for reexport.
- (3) A federal processed product certificate.
- (4) Except as provided in subsection (b), a state phytosanitary certificate.

(b) An exemption from the fee for a state phytosanitary certificate is provided for either of the following activities:

- (1) An Indiana resident who is lawfully moving domesticated plants for personal, noncommercial purposes into a state requiring certification.
- (2) A person that has been inspected and certified as a nursery under IC 14-24 or provided a voluntary certification under this rule.

(*Natural Resources Commission; 312 IAC 18-5-4; filed Nov 22, 1996, 3:00 p.m.: 20 IR 954; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546; filed Nov 14, 2003, 5:15 p.m.: 27 IR 1166*)

**312 IAC 18-5-5 Voluntary certification of herbaceous perennials; mandated certification of herbaceous perennials serving as harborage or as hosts of pests or pathogens**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 5. (a) A person may seek from the division a certificate as required by another state for the movement or export of herbaceous perennials. The certificate under this subsection is not required by IC 14-24.

(b) The division director may mandate a certificate for the movement or export of herbaceous perennials which are:

(1) known to provide harborage or to be a host for a pest or pathogen; or

(2) otherwise subject to IC 14-24 or this article.

In determining whether or under what conditions to issue a certificate under this subsection, the division director shall consider the principles set forth in 312 IAC 18-2, 312 IAC 18-3-2, or 312 IAC 18-3-5.

(c) An inspection under this section shall be appropriate to the biological dictates of the pest or pathogen and the host activities. (*Natural Resources Commission; 312 IAC 18-5-5; filed Nov 22, 1996, 3:00 p.m.: 20 IR 954; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

**Rule 6. Trade Secrets**

**312 IAC 18-6-1 Trade secrets within documents filed with the division of entomology and plant pathology**

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 4-21.5; IC 5-14-3; IC 14-24

Sec. 1. (a) Permit applications, records, and other documents filed with the division under IC 14-24 and this article are subject to the requirements for access to public records contained within IC 5-14-3.

(b) A person who wishes to claim the status of any document filed with the division as a trade secret must include with the filing a concise written statement of the part or parts of the document for which that status is claimed.

(c) If a request for information is received from a person for a document described in subsection (b), the division shall make a reasonable attempt to contact the person claiming the protection as a trade secret to determine if consent to disclose can be obtained.

(d) If consent to disclose cannot be obtained under subsection (c), the division shall inform the person making the request. That person may obtain administrative review under IC 4-21.5 and 312 IAC 3-1 of the status of the document as a trade secret. The person who claims the status of a trade secret shall be named as a respondent in a request for administrative review. (*Natural Resources Commission; 312 IAC 18-6-1; filed Nov 22, 1996, 3:00 p.m.: 20 IR 954; readopted filed Oct 2, 2002, 9:10 a.m.: 26 IR 546*)

**ARTICLE 19. RESEARCH, COLLECTION, QUOTAS, AND SALES OF PLANTS**

**Rule 1. Ginseng**

**312 IAC 19-1-1 Definitions**

Authority: IC 14-31-3-14

Affected: IC 14-31-3

Sec. 1. The following definitions are in addition to those contained in 312 IAC 1 and apply throughout this rule:

(1) "Buy" includes offer to buy, trade, or barter.

(2) "Collect" means dig, pick, pull up, cut, uproot, harvest, or otherwise remove a ginseng plant from its habitat.

(3) "Cultivated ginseng" means ginseng that is planted and cultivated according to standard ginseng cultivation practices.

(4) "Division" means the division of nature preserves of the department.

(5) "Export" means transport, ship, carry, haul, take, or otherwise move ginseng collected in Indiana outside the state of

Indiana.

(6) "Ginseng" means American ginseng (*Panax quinquefolius* L.). The term does not include ginseng ready for consumption, sold, or bought at retail. The term includes cultivated ginseng and wild ginseng.

(7) "Ginseng dealer" means a person who buys ginseng roots from a ginseng harvester or another ginseng dealer for resale or exportation. The term does not include a person who sells solely for domestic consumption.

(8) "Ginseng harvester" means a person who collects ginseng.

(9) "Harvest season" means September 1 through December 31 of each year.

(10) "License year" means September 1 of one (1) year through August 31 of the following year.

(11) "Sale" includes trade, barter, and an offer to sell, trade, or barter.

(12) "Selling season" means September 1 of one (1) year through March 31 of the following year.

(13) "Wild ginseng" means ginseng in, or harvested from, its native habitat. The term applies regardless of whether the ginseng occurs naturally in the habitat or was introduced or increased in abundance by sowing ginseng seeds or by transplanting ginseng plants from another area.

*(Natural Resources Commission; 312 IAC 19-1-1; filed Jul 10, 1998, 10:29 a.m.: 21 IR 4193; filed Oct 1, 1999, 1:05 p.m.: 23 IR 297)*

### **312 IAC 19-1-2 Dealer's license; annual issuance**

Authority: IC 14-31-3-14

Affected: IC 14-31-3

Sec. 2. Licenses to purchase ginseng are issued annually to ginseng dealers for the period from September 1 of one (1) year through August 31 of the following year. *(Natural Resources Commission; 312 IAC 19-1-2; filed Jul 10, 1998, 10:29 a.m.: 21 IR 4193)*

### **312 IAC 19-1-3 Application for license; fee**

Authority: IC 14-31-3-14

Affected: IC 14-31-3

Sec. 3. As prerequisites to the issuance of a ginseng dealer's license, a person must file with the division both of the following:

(1) A completed application for ginseng dealer's license.

(2) A fee payable to the department in the amount of one hundred dollars (\$100).

*(Natural Resources Commission; 312 IAC 19-1-3; filed Jul 10, 1998, 10:29 a.m.: 21 IR 4193; filed May 11, 2004, 9:00 a.m.: 27 IR 3065)*

### **312 IAC 19-1-4 Selling season; retention by ginseng dealer**

Authority: IC 14-31-3-14

Affected: IC 14-31-3-10

Sec. 4. (a) A person must not buy or sell ginseng except during the selling season.

(b) Notwithstanding subsection (a), a ginseng dealer may retain for resale ginseng lawfully acquired during the ginseng season if the dealer has certified the ginseng under section 5 of this rule. *(Natural Resources Commission; 312 IAC 19-1-4; filed Jul 10, 1998, 10:29 a.m.: 21 IR 4194)*

### **312 IAC 19-1-5 Certification of shipments**

Authority: IC 14-31-3-14

Affected: IC 14-31-3

Sec. 5. (a) A dealer must receive a certification from the department under this section in order to ship ginseng to any of the following:

(1) Another ginseng dealer.

(2) A ginseng exporter.

(3) Directly for export.

(b) A dealer must complete in triplicate and deliver to the department a certificate of ginseng shipment for ginseng purchased from diggers. The department shall examine the certificate and the shipment and, if approved, sign and date the certificate. The department shall retain one (1) copy of the certificate, one (1) copy shall accompany the ginseng shipment, and one (1) copy shall be returned to the ginseng dealer.

(c) A dealer must obtain a certification the first time ginseng is shipped under subsection (a) and not again. (*Natural Resources Commission; 312 IAC 19-1-5; filed Jul 10, 1998, 10:29 a.m.: 21 IR 4194*)

### **312 IAC 19-1-6 Annual summary reports**

Authority: IC 14-31-3-14

Affected: IC 14-31-3-9

Sec. 6. Within thirty (30) days of the last day of the selling season, a ginseng dealer must file a completed ginseng dealer's annual summary report listing all ginseng bought or sold during the preceding year. The listing shall include ginseng bought outside Indiana and must indicate the state where the ginseng was purchased. (*Natural Resources Commission; 312 IAC 19-1-6; filed Jul 10, 1998, 10:29 a.m.: 21 IR 4194*)

### **312 IAC 19-1-7 Records; maintenance and inspection**

Authority: IC 14-31-3-14

Affected: IC 14-31-3

Sec. 7. (a) A ginseng dealer must do both of the following:

(1) Maintain true and complete records of the dealer's commerce in ginseng.

(2) Provide a report, completed on a departmental form, for each quarter of the calendar year.

(b) The records required in subsection (a) must include a log that includes the following information, written legibly, on a departmental form:

(1) The name and address of each person who bought ginseng from the dealer or sold ginseng to the dealer.

(2) The weight of wild ginseng and cultivated ginseng bought or sold.

(3) The number and date of shipments and the county or counties from which the ginseng was taken.

(c) The department may, at any reasonable time, inspect the following:

(1) Records required under this section.

(2) A dealer's business premises.

(*Natural Resources Commission; 312 IAC 19-1-7; filed Jul 10, 1998, 10:29 a.m.: 21 IR 4194*)

### **312 IAC 19-1-8 Harvesting quota**

Authority: IC 14-31-3-14

Affected: IC 14-31-3

Sec. 8. A person must not harvest or possess harvested wild ginseng unless the ginseng plant is harvested under the conditions of the quota established as follows:

(1) Each individual ginseng plant must demonstrate at least one (1) of the following:

(A) At least three (3) prongs and a flowering or fruiting stalk. Except as provided in subdivision (2), the entire stalk and leaves must be retained with the plant until the plant is taken to the ginseng harvester's residence or place of business. As used in this clause, "prong" means a true compound leaf, including five (5) leaflets (three (3) large leaflets and two (2) small leaflets).

(B) At least four (4) internodes on the rhizome. As used in this clause, "internode" refers to a section containing a stem scar.

(2) Mature fruits and any seeds from a harvested plant must be planted in the vicinity where the plant was taken in a manner that encourages the germination and growth of new plants.

(3) Mature fruits and seeds must not be sold or removed from the vicinity where the plant was taken except under a license issued by the division under this subdivision.

*(Natural Resources Commission; 312 IAC 19-1-8; filed Jul 10, 1998, 10:29 a.m.: 21 IR 4194; filed Oct 1, 1999, 1:05 p.m.: 23 IR 297)*

**312 IAC 19-1-9 False representations**

Authority: IC 14-31-3-14

Affected: IC 14-31-3

Sec. 9. (a) A ginseng dealer must not represent, in a report, log, certificate, or other document required or maintained under this rule, that a substance is ginseng if the dealer knows or should know that all or a portion of the substance is other than ginseng.

(b) A ginseng dealer must not knowingly include a false or incorrect statement in a document, log, or record required under this rule. *(Natural Resources Commission; 312 IAC 19-1-9; filed Jul 10, 1998, 10:29 a.m.: 21 IR 4195)*

**312 IAC 19-1-10 Sanctions**

Authority: IC 14-31-3-14

Affected: IC 4-21.5-3; IC 14-10-2-6; IC 14-31-3

Sec. 10. The department may seek the sanctions described in this section for a violation of IC 14-31-3, this rule, or a license issued under IC 14-31-3 and this rule:

(1) A license suspension or revocation following a completed proceeding with the commission under IC 4-21.5-3 and 312 IAC 3-1. A revocation issued under this subdivision may order that a new license not be issued for a period not longer than five (5) years.

(2) The issuance of a notice of violation under IC 14-10-2-6 against a ginseng dealer or a ginseng harvester.

(3) Any other remedy provided by law.

*(Natural Resources Commission; 312 IAC 19-1-10; filed Jul 10, 1998, 10:29 a.m.: 21 IR 4195)*

**ARTICLE 20. HISTORIC PRESERVATION REVIEW BOARD**

**Rule 1. Application and Administration**

**312 IAC 20-1-1 Applicability of review board article**

Authority: IC 14-21-1-31

Affected: IC 14-9; IC 14-21-1

Sec. 1. This article governs the functions of the review board. *(Natural Resources Commission; 312 IAC 20-1-1; filed Jun 21, 2001, 3:06 p.m.: 24 IR 3399)*

**312 IAC 20-1-2 Agency determinations and administrative review**

Authority: IC 14-21-1-31

Affected: IC 4-21.5; IC 14-9; IC 14-21-1

Sec. 2. (a) Unless otherwise specified in this title, the review board (or a delegate of the review board) makes the initial determination for any license, sanction, or other order that is subject to IC 4-21.5.

(b) The mailing address for the review board is the division of historic preservation and archaeology. The address for the division is as follows:

Division of Historic Preservation and Archaeology

Department of Natural Resources

Indiana Government Center-South

402 West Washington Street, Room W274

Indianapolis, Indiana 46204.

(c) The commission is the ultimate authority under this article. A request to the commission for administrative review of an initial determination under subsection (b) must be addressed as follows:

Division of Hearings

Natural Resources Commission

Indiana Government Center-South

402 West Washington Street, Room W272

Indianapolis, Indiana 46204.

*(Natural Resources Commission; 312 IAC 20-1-2; filed Jun 21, 2001, 3:06 p.m.: 24 IR 3399)*

## **Rule 2. Definitions**

### **312 IAC 20-2-1 Applicability**

Authority: IC 14-21-1-31

Affected: IC 14-9; IC 14-21-1

Sec. 1. The definitions in this rule are in addition to those in IC 14 and 312 IAC 1 and apply throughout this article. *(Natural Resources Commission; 312 IAC 20-2-1; filed Jun 21, 2001, 3:06 p.m.: 24 IR 3399)*

### **312 IAC 20-2-1.7 “Certificate” defined**

Authority: IC 14-21-1-31

Affected: IC 14-9; IC 14-21-1-18

Sec. 1.7. “Certificate” refers to a certificate of approval under IC 14-21-1-18. *(Natural Resources Commission; 312 IAC 20-2-1.7; filed Sep 18, 2003, 5:30 p.m.: 27 IR 454, eff Dec 1, 2003)*

### **312 IAC 20-2-2 “Chair” defined**

Authority: IC 14-21-1-31

Affected: IC 14-9-1-1; IC 14-9-4-1; IC 14-21-1

Sec. 2. “Chair” means the chair of the review board. *(Natural Resources Commission; 312 IAC 20-2-2; filed Jun 21, 2001, 3:06 p.m.: 24 IR 3399)*

### **312 IAC 20-2-3 “Division” defined**

Authority: IC 14-21-1-31

Affected: IC 14-9-1-1; IC 14-9-4-1; IC 14-21-1-6

Sec. 3. “Division” refers to the division of historic preservation and archaeology established by IC 14-21-1-6. *(Natural Resources Commission; 312 IAC 20-2-3; filed Jun 21, 2001, 3:06 p.m.: 24 IR 3399)*

### **312 IAC 20-2-4 “Division director” defined**

Authority: IC 14-21-1-31

Affected: IC 14-9-1-1; IC 14-9-4-1; IC 14-21

Sec. 4. “Division director” means the director of the division. *(Natural Resources Commission; 312 IAC 20-2-4; filed Jun 21, 2001, 3:06 p.m.: 24 IR 3399)*

### **312 IAC 20-2-4.3 “Indiana register” defined**

Authority: IC 14-21-1-31

Affected: IC 14-9; IC 14-21-1-9

Sec. 4.3. "Indiana register" means the Indiana register of historic sites and historic structures established under IC 14-21-1-9. (*Natural Resources Commission; 312 IAC 20-2-4.3; filed Sep 18, 2003, 5:30 p.m.: 27 IR 454, eff Dec 1, 2003*)

**312 IAC 20-2-4.7 "National Register" defined**

Authority: IC 14-21-1-31

Affected: IC 14-9; IC 14-21-1-15

Sec. 4.7. "National Register" means the National Register of Historic Places established under 16 U.S.C. 470 et seq. and identified at IC 14-21-1-15. (*Natural Resources Commission; 312 IAC 20-2-4.7; filed Sep 18, 2003, 5:30 p.m.: 27 IR 454, eff Dec 1, 2003*)

**312 IAC 20-2-5 "Review board" defined**

Authority: IC 14-21-1-31

Affected: IC 14-9-1-1; IC 14-9-4-1; IC 14-21-1

Sec. 5. "Review board" means the historic preservation review board as established by IC 14-21-1. (*Natural Resources Commission; 312 IAC 20-2-5; filed Jun 21, 2001, 3:06 p.m.: 24 IR 3399*)

**312 IAC 20-2-6 "State historic preservation officer" or "SHPO" defined**

Authority: IC 14-21-1-31

Affected: IC 14-9-1-1; IC 14-9-4-1; IC 14-21-1

Sec. 6. "State historic preservation officer" or "SHPO" means the director of the department. (*Natural Resources Commission; 312 IAC 20-2-6; filed Jun 21, 2001, 3:06 p.m.: 24 IR 3400*)

**Rule 3. Membership and Meetings**

**312 IAC 20-3-1 Membership**

Authority: IC 14-21-1-31

Affected: IC 14-21-1-20

Sec. 1. (a) The review board shall be appointed as provided in IC 14-21-1-20.

(b) If a vacancy occurs in the review board, the SHPO shall appoint a successor to serve for the remainder of the vacated term.

(c) At the end of the term of a member, the SHPO may reappoint the person whose term has expired or appoint a new member of a full three (3) year term.

(d) The staggered terms established under 310 IAC 10-1-3, before its repeal, shall continue in the same sequence under this section. (*Natural Resources Commission; 312 IAC 20-3-1; filed Jun 21, 2001, 3:06 p.m.: 24 IR 3400*)

**312 IAC 20-3-2 Officers**

Authority: IC 14-21-1-31

Affected: IC 14-21-1

Sec. 2. (a) The state historic preservation officer is the chair of the review board.

(b) The review board shall elect officers, other than the chair, from the membership of the review board during the first meeting of a calendar year. The descriptions and designations of these officers are as determined by the review board. (*Natural Resources Commission; 312 IAC 20-3-2; filed Jun 21, 2001, 3:06 p.m.: 24 IR 3400*)

**312 IAC 20-3-3 Submission of application before review board meeting**

Authority: IC 14-21-1-31

Affected: IC 14-9; IC 14-21-1

Sec. 3. (a) A person who seeks a certificate must file a completed application, on a division form, at least forty (40) days before the meeting of the review board during which the application is to be considered.

(b) The completed application and any analysis and recommendations by the division shall be mailed to members of the review board at least five (5) working days before the meeting. (*Natural Resources Commission; 312 IAC 20-3-3; filed Sep 18, 2003, 5:30 p.m.: 27 IR 454, eff Dec 1, 2003*)

**Rule 4. (Reserved)**

**Rule 5. Indiana Register**

**312 IAC 20-5-1 Applicability of rule for Indiana register of historic sites and structures**

Authority: IC 14-21-1-31

Affected: IC 14-9; IC 14-21-1-9

Sec. 1. This rule governs matters pertaining to the register of Indiana historic sites and historic structures established under IC 14-21-1-9. (*Natural Resources Commission; 312 IAC 20-5-1; filed Sep 19, 2003, 8:17 a.m.: 27 IR 452*)

**312 IAC 20-5-2 Criteria for eligibility on the register**

Authority: IC 14-21-1-31

Affected: IC 14-9; IC 14-21-1

Sec. 2. A site, district, building, structure, or object is eligible for inclusion in the Indiana register if it does each of the following:

- (1) Possesses local, state, or national significance in Indiana history, architecture, archaeology, engineering, or culture.
- (2) Demonstrates sufficient integrity of location, setting, design, workmanship, and materials. Feeling and association are factors that may be considered.
- (3) Satisfies at least one (1) of the following:
  - (A) Is associated with events who have made a significant contribution to national, state, or local history.
  - (B) Is associated with individuals who have made significant contribution to the nation, state, or local community.
  - (C) Embodies distinctive characteristics of a type, period, or method of construction.
  - (D) Represents the work of a master.
  - (E) Possesses high artistic values.
  - (F) Has yielded, or will likely yield, information important in the archaeological knowledge of the prehistory or history of the state or nation.

(*Natural Resources Commission; 312 IAC 20-5-2; filed Sep 19, 2003, 8:17 a.m.: 27 IR 452*)

**312 IAC 20-5-3 Eligibility exemptions**

Authority: IC 14-21-1-31

Affected: IC 14-9; IC 14-21-1

Sec. 3. (a) Except as provided in subsection (b), a structure or site cannot be included in the Indiana register if the structure is any of the following:

- (1) Moved from its original location.
- (2) A reconstructed historic building.
- (3) Primarily commemorative in nature.
- (4) An archaeological site where the contextual integrity is significantly altered.
- (5) A structure or site where the significance was achieved within the past fifty (50) years.

(b) A structure or site otherwise disqualified under subsection (a) may be included in the Indiana register if it is either of the following:

- (1) An integral part of a district that meets the criteria described in section 2 of this rule.



(2) Falls into at least one (1) of the following categories:

- (A) A building or structure removed from its original location but that is a rare surviving resource associated with an historical person or event.
- (B) A reconstructed building that is accurately executed in a suitable environment and presented in a dignified manner.
- (C) A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own historical significance.
- (D) A property that has achieved significance within the past fifty (50) years if it is of exceptional significance in the historic, architectural, archaeological, or cultural development of the state or nation.
- (E) An archaeological site where the contextual integrity has been altered by natural forces or human activity but which may yield pertinent or quality cultural, biological, fauna, and floral data regarding cultural patterns, processes, or activities significant in our past.

*(Natural Resources Commission; 312 IAC 20-5-3; filed Sep 19, 2003, 8:17 a.m.: 27 IR 453)*

### **312 IAC 20-5-4 Listing and removal of properties from the Indiana register**

Authority: IC 14-21-1-31

Affected: IC 4-21.5; IC 14-9; IC 14-21-1-17

Sec. 4. (a) Additions and removals from the Indiana register are governed by IC 14-21-1-17, 312 IAC 2-3-1, and this section.

(b) The Indiana register includes any site listed by the board:

- (1) on the effective date of this rule; or
- (2) under this section.

(c) A property included on the National Register after the effective date of this rule is also automatically listed on the Indiana register unless:

- (1) the board or division otherwise specifies; or
  - (2) the listing is made unilaterally by the federal government without approval by the board.
- (d) This subsection governs petitions to list a property on the Indiana register, including the following:

(1) A person may, in writing, petition the division to list a site on the Indiana register. The petition must include adequate photographic and written documentation to support listing, including the significance of the property and its current physical condition.

(2) If the division determines the property meets the minimum criteria for listing, the division will issue a letter to indicate the property is being considered for listing and providing at least thirty (30) days for comment or objections to the following persons:

- (A) The property owner.
- (B) The chief elected official.
- (C) The board of county commissioners.
- (D) Any other person who requests notification.

(3) If an objection is not received within the comment period, without intervention of the board, the division shall list the property on the Indiana register and notify the persons described in subdivision (2).

(4) If timely objections are received, a designated member or members of the board will conduct a hearing under 312 IAC 2-3-1 to consider the objections. The board shall consider the recommendations of any hearing officer before determining whether to list the property.

(e) A property may be removed from the Indiana register if it either:

- (1) ceases to demonstrate the characteristics that originally made the property eligible for the Indiana register; or
- (2) was listed as a result of a procedural error during the listing process.

(f) Administrative review of a determination under subsection (b) is governed by IC 4-21.5 and 312 IAC 3-1. *(Natural Resources Commission; 312 IAC 20-5-4; filed Sep 19, 2003, 8:17 a.m.: 27 IR 453)*

## **ARTICLE 21. ARCHAEOLOGICAL REVIEW AND RECOVERY**

### **Rule 1. Definitions**

**312 IAC 21-1-1 Application**

Authority: IC 14-21-1-31; IC 14-34-4-10  
Affected: IC 14

Sec. 1. The definitions in this rule apply throughout this article and are in addition to those set forth in 312 IAC 1. (*Natural Resources Commission; 312 IAC 21-1-1; filed Jun 8, 2001, 12:30 p.m.: 24 IR 3017*)

**312 IAC 21-1-2 "Division" defined**

Authority: IC 14-21-1-31; IC 14-34-4-10  
Affected: IC 14-9-4-1; IC 14-21-1-6

Sec. 2. "Division" refers to the division of historic preservation and archaeology established under IC 14-21-1-6. (*Natural Resources Commission; 312 IAC 21-1-2; filed Jun 8, 2001, 12:30 p.m.: 24 IR 3017*)

**312 IAC 21-1-3 "Guidebook" defined**

Authority: IC 14-21-1-31; IC 14-34-4-10  
Affected: IC 14

Sec. 3. "Guidebook" refers to the Guidebook for Indiana Historic Sites and Structures Inventory and Archaeological Sites (1989 edition) as prepared by the division. (*Natural Resources Commission; 312 IAC 21-1-3; filed Jun 8, 2001, 12:30 p.m.: 24 IR 3017*)

**312 IAC 21-1-4 "Principal investigator" defined**

Authority: IC 14-21-1-31; IC 14-34-4-10  
Affected: IC 14

Sec. 4. "Principal investigator" means the individual who is responsible for coordinating, developing, and completing an archaeological project under this article. (*Natural Resources Commission; 312 IAC 21-1-4; filed Jun 8, 2001, 12:30 p.m.: 24 IR 3017*)

**312 IAC 21-1-5 "Related field" defined**

Authority: IC 14-21-1-31; IC 14-34-4-10  
Affected: IC 14

Sec. 5. "Related field" means history, cultural geography, folklore, historical architecture, paleontology, or another discipline similar to anthropology, where archaeological course work and fieldwork are part of background and research. (*Natural Resources Commission; 312 IAC 21-1-5; filed Jun 8, 2001, 12:30 p.m.: 24 IR 3017*)

**312 IAC 21-1-6 "Review board" defined**

Authority: IC 14-21-1-31; IC 14-34-4-10  
Affected: IC 14-21-1-20

Sec. 6. "Review board" refers to the historic preservation review board established under IC 14-21-1-20. (*Natural Resources Commission; 312 IAC 21-1-6; filed Jun 8, 2001, 12:30 p.m.: 24 IR 3017*)

**Rule 2. Administration**

**312 IAC 21-2-1 Application**

Authority: IC 14-21-1-31; IC 14-34-4-10  
Affected: IC 14

Sec. 1. (a) This article establishes standards applicable to archaeological investigations conducted to meet state and federal historic preservation compliance requirements.

(b) A person must satisfy this article where:

(1) an archaeological investigation is required; and

(2) 36 CFR 800 and 48 FR 44716 through 48 FR 44742 (Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation) are not suitable guidelines for the exercise of authority by the department.

(c) A person must either satisfy this article or federal standards established at 16 U.S.C. 470, et seq. and 48 FR 44716 through 48 FR 44742 if an archaeological investigation is required but the requirement does not specify the standard for compliance.

(d) This article does not apply where 16 U.S.C. 470, et seq. and 36 CFR 800 and 48 FR 44716 must be satisfied. (*Natural Resources Commission; 312 IAC 21-2-1; filed Jun 8, 2001, 12:30 p.m.: 24 IR 3017*)

### **312 IAC 21-2-2 Administration**

Authority: IC 14-21-1-31; IC 14-34-4-10

Affected: IC 14

Sec. 2. (a) The commission is the ultimate authority for the department under this article.

(b) The division shall conduct the technical and professional review functions for the department under this article. (*Natural Resources Commission; 312 IAC 21-2-2; filed Jun 8, 2001, 12:30 p.m.: 24 IR 3018*)

## **Rule 3. Qualification Standards**

### **312 IAC 21-3-1 Application**

Authority: IC 14-21-1-31; IC 14-34-4-10

Affected: IC 14

Sec. 1. This rule establishes the standards applicable to participation, personnel, project facilities, analysis, curation, project documentation, and reporting under this article. (*Natural Resources Commission; 312 IAC 21-3-1; filed Jun 8, 2001, 12:30 p.m.: 24 IR 3018*)

### **312 IAC 21-3-2 Participation**

Authority: IC 14-21-1-31; IC 14-34-4-10

Affected: IC 14

Sec. 2. (a) An archaeological investigation under this article must be carried out under the direction of a principal investigator.

(b) A project plan shall consider the appropriate use of other professionals in the fields of social, physical, medical, biological, and life sciences.

(c) An archaeological plan must consider the appropriate use of avocational or amateur archaeologists.

(d) A participant in a project who has a supervisory or decision making responsibility must satisfy section 4(b) or 4(c) of this rule. (*Natural Resources Commission; 312 IAC 21-3-2; filed Jun 8, 2001, 12:30 p.m.: 24 IR 3018*)

### **312 IAC 21-3-3 Archaeological project plans**

Authority: IC 14-21-1-31; IC 14-34-4-10

Affected: IC 14

Sec. 3. (a) An archaeological plan must be adopted for any project under this article. The plan must represent a coherent approach to the type of project, the environmental and cultural setting, and the type of archaeological resources known to exist or yet unidentified in the project area. A project plan must consider the need to complete the project in a competent and timely fashion.

(b) A project plan must include the following:

(1) Background information that consists of the following:

(A) A physical description of the project area.

- (B) Known archaeological resources in the project area.
- (C) A history of recent impacts to the area.
- (D) A summary of previous archaeological activities in the area.
- (E) A description of the construction or other activity that results in a need for the project.
- (F) Events leading to the planned project.
- (2) Justification for the project supported by previous knowledge and probabilities determined from related studies.
- (3) Objectives of the project that consist of the following:
  - (A) The reasons for undertaking the archaeological investigations.
  - (B) The kinds of information expected to be found.
  - (C) The focus of the project.
  - (D) The questions to be answered.
  - (E) The anticipated results.
- (4) Project methods that consist of the following:
  - (A) Descriptions of field and laboratory activities.
  - (B) The range of alternate methods for different aspects or information sets.
  - (C) Kinds of analyses.
  - (D) Sampling strategies.
  - (E) Statistical strategies.
  - (F) Any other specialized technology planned for the project.
- (5) Project scheduling that consists of the following:
  - (A) Expected preparation time.
  - (B) Field person days.
  - (C) Analysis time.
  - (D) Curation.
  - (E) Report writing.
  - (F) When the final report will be submitted.
- (6) The location of facilities that will be used for the processing, analysis, and curation of recovered archaeological materials.
- (c) Except as provided in subsections (d) through (e), a project plan must be submitted to the division subsequent to an undertaking as part of the project completion report.
- (d) A project plan must be submitted to the division for review in advance of an undertaking only for projects that:
  - (1) are found by the division to require special treatment to satisfy review compliance; or
  - (2) provide for test excavations or data recovery.
- (e) An Indiana college or university that has a standing regional research program covering the project area may, if appropriate to the program, relate the investigation to that program. A reference in the project completion report to the regional research program may be used to satisfy the standards set forth in this section to the extent that the regional research program addresses those standards. (*Natural Resources Commission; 312 IAC 21-3-3; filed Jun 8, 2001, 12:30 p.m.: 24 IR 3018*)

### **312 IAC 21-3-4 Personnel qualifications**

Authority: IC 14-21-1-31; IC 14-34-4-10

Affected: IC 4-21.5-3-8; IC 14

- Sec. 4. (a) An individual who wishes to conduct an investigation under this article must submit a curriculum vitae to the division to satisfy the qualification standards of this section.
- (b) A principal investigator must have the following:
    - (1) A graduate degree in anthropology or a closely related field with a specialization in archaeology at the graduate level.
    - (2) Three (3) years of experience in anthropology or a related field, consisting of at least two (2) years as a supervisor in archaeological survey and excavation and one (1) year of laboratory cataloging and analysis and the preparation of a research-oriented monograph, thesis, or dissertation.
    - (3) Graduate course work, training, and experience in archaeology, including theory, methods, techniques, cultural areas, and field and laboratory techniques, under the direction of a qualified professional archaeologist.

(4) In addition to the requirements contained in subdivisions (1) through (3), the following requirements apply to a project in the areas specified:

(A) For a prehistory project, two (2) years of supervisory experience and research in Midwestern archaeology.

(B) For a history project, two (2) years of supervisory experience in Midwestern historic archaeology and archival research.

(C) For a marine project, two (2) years of supervisory experience in underwater archaeological techniques and research. Diving certification is also required from a recognized certifying organization (examples: NAUI, PADI, Red Cross, YMCA, and United States Navy).

(c) A field or laboratory supervisor, who is eligible to submit draft and final reports for field projects, must have the following:  
(1) A master's degree in anthropology or a related field and one (1) year of supervisory experience in survey, excavation, or laboratory techniques.

(2) Instead of the requirements under subdivision (1), experience and training under a person who would qualify as a principal investigator and satisfaction of the qualifying examinations required toward a doctor of philosophy degree.

(3) Graduate course work, training, and experience in archaeology, including theory, methods, techniques, cultural areas, and field and laboratory techniques, under the direction of a qualified professional archaeologist.

(4) In addition to the requirements contained in subdivisions (1) or (2) and (3), the following requirements apply to a project in the specified areas:

(A) For a prehistory project, one (1) year of experience at the master's degree level in Midwestern prehistoric archaeological research.

(B) For a history project, one (1) year of experience at the master's degree level in Midwestern historic archaeological and archival research.

(C) For a marine project, one (1) year of experience in marine archaeology and underwater archaeological techniques and research. Diving certification is also required from a recognized certification organization (examples: NAUI, PADI, Red Cross, YMCA, and United States Navy).

(D) For a laboratory project, one (1) year of supervisory experience at a master's degree level in collections research, artifact analysis, curation, and artifact cataloging and classification. Depending upon the nature of the project, experience with prehistoric or historic artifacts is required.

(d) A field or laboratory technician is an assistant supervisor or field-crew member with experience in archaeological field techniques and methodologies. A laboratory technician must be experienced in all varieties of laboratory analysis and techniques and must hold a bachelor's degree in anthropology or a closely related field, with a specialization and course work in archaeology, or possess equivalent background, with one (1) year of field survey, excavation, or laboratory techniques experience under the direction of a qualified professional archaeologist. In addition, the following requirements apply to a project in the specified areas:

(1) For a prehistory project, one (1) year of experience in Midwestern prehistoric archaeological fieldwork.

(2) For a history project, one (1) year of experience in historic archaeology fieldwork.

(3) For a marine project, one (1) year of experience in classifying, cataloging, analyzing, data recording, and curation of artifacts.

(e) A fieldworker is a survey or excavation worker who:

(1) has completed one (1) archaeological field school;

(2) has field experience equivalent to one (1) archaeological field school; or

(3) has received or is receiving training in archaeological field, laboratory, or research methods under the direction of a qualified professional archaeologist.

(f) An avocational or amateur archaeologist is an individual who has or is currently receiving field, laboratory, or research experience under the supervision of a qualified professional archaeologist and who adheres to the preservation ethics of this article.

(g) A curriculum vitae with a transcript of any archaeological courses taken at the undergraduate and graduate levels, submitted to the division to satisfy the qualification standards of this section, must include detailed documentation and breakdown by weeks or days for amounts, separately, of the following:

(1) Supervisory and nonsupervisory experience in archaeological survey, excavation, and laboratory cataloging and analysis.

(2) Supervisory and nonsupervisory experience and research in Midwestern prehistoric archaeology, Midwestern historic archaeology, historic archaeology, archival research, and underwater archaeological techniques and research.

(3) Archaeological field schools taken.

(h) A person who participates in an investigation or a scientific investigation under 312 IAC 22 must comply with the applicable codes of ethics and professional standards for participating in archaeology as set forth in the guidebook.

(i) The division shall maintain a roster of persons who have qualified under this section. The roster shall be available for public inspection.

(j) The division director may file a complaint with the commission under IC 4-21.5-3-8 to terminate, suspend, or condition the qualification of a person included in the roster described in subsection (i), where the person fails to substantially comply with the guidebook as described in subsection (h). A final order for a sanction under this subsection may be dissolved or modified by agreement of the parties or for just cause as determined by the commission. (*Natural Resources Commission; 312 IAC 21-3-4; filed Jun 8, 2001, 12:30 p.m.: 24 IR 3019*)

### **312 IAC 21-3-5 Project facilities**

Authority: IC 14-21-1-31; IC 14-34-4-10

Affected: IC 14

Sec. 5. (a) A person who wishes to perform a project under this article must demonstrate adequate facilities and equipment to conduct nonfield portions of the archaeological investigation, including those needed for cleaning, cataloging, analysis, and preservation of archaeological specimens.

(b) In addition to the requirements under subsection (a), there must be arrangements for any special or technical analyses, including palynology, ethnobotany, zooarchaeology, pedology, radiometric analyses, and photography. (*Natural Resources Commission; 312 IAC 21-3-5; filed Jun 8, 2001, 12:30 p.m.: 24 IR 3020*)

### **312 IAC 21-3-6 Analysis**

Authority: IC 14-21-1-31; IC 14-34-4-10

Affected: IC 14

Sec. 6. (a) Before beginning an archaeological investigation, the principal investigator must ensure that personnel are available to properly analyze project information as required in a project plan. The analysis of project information shall be based on logical rigor and adequate data, with an underlying rationale, and shall be replicable.

(b) Special collections or materials that require special analysis (including soil, pollen, plant and animal remains, carbon sources, flotation materials, and skeletal remains) must be prepared or stabilized, processed, and documented immediately upon return from the field. Records of materials requiring special analysis (including field notes, maps, and photographs) must be available for analysis. Photographs must be processed while in the field. (*Natural Resources Commission; 312 IAC 21-3-6; filed Jun 8, 2001, 12:30 p.m.: 24 IR 3020*)

### **312 IAC 21-3-7 Curation**

Authority: IC 14-21-1-31; IC 14-34-4-10

Affected: IC 14

Sec. 7. (a) A principal investigator must place in a facility that is secure, but accessible to other professionals, the materials, records, documentation, and reports produced under this article. A principal investigator must ensure that adequate methods are applied to catalog, clean, preserve, and curate collections and their documentation. Curation must provide proper packaging, cataloging, storage, treatment, preservation, transportation, and protection of archaeological materials in the field, the laboratory, and during the curation process.

(b) A curation facility must be staffed with personnel trained in the long term preservation and protection of archaeological collections. The chief curator of materials recovered under this article must have a master's degree or two (2) years of supervisory experience in collection management, maintenance, classification, cataloging, and conservation. The curator also must be experienced in museology and in educational and public programs. The curation facility must use an accession system to coordinate access to artifacts, specimens, documents, and other curated products. The facility must demonstrate environmentally sound storage areas and adequate security against theft.

(c) This section does not apply unless the owner of an artifact or other material removed during an archaeological investigation

consents, in writing, to the curation of the artifact or other material.

(d) As used in this section, "material" does not include human remains. Ownership to an artifact rests with the landowner unless transferred, in writing, to another person. (*Natural Resources Commission; 312 IAC 21-3-7; filed Jun 8, 2001, 12:30 p.m.: 24 IR 3020*)

### **312 IAC 21-3-8 Project documentation and reporting**

Authority: IC 14-21-1-31; IC 14-34-4-10

Affected: IC 14

Sec. 8. (a) A principal investigator must ensure that project documentation is integrated into a project completion report. This report provides the results of archaeological investigations, including recommendations for further archaeological work. A project completion report must also provide the division with technical findings from which cultural resource management and compliance decisions can be made, which will protect important archaeological sites.

(b) A project completion report is required for an investigation under this article. The principal investigator shall submit a draft of the report through the person who is required to complete a project (or, if the state is the contractor, directly) to the division for review and approval. After a report is approved, the principal investigator shall submit a final copy to the division, to the agency that requires a project to be completed under this article, and to the person who is required to complete the project under this article.

(c) The size and content of a project completion report shall reflect the size and complexity of the project and the project plan. The report shall use standard quality paper on white bond, eight and one-half (8½) inches wide and eleven (11) inches long, and must include the following:

(1) A title page with the following:

- (A) The project title.
- (B) The project sponsor.
- (C) The project number.
- (D) The principal investigator.
- (E) The agency or institutional affiliation.
- (F) Any coauthors.
- (G) The date of issuance.

(2) Tables that include the following:

- (A) Contents.
- (B) Figures.
- (C) Maps.
- (D) Any appendices.

(3) A management summary that provides a project report abstract summarizing who, what, how, when, and where.

(4) Any acknowledgments.

(5) Introduction.

(6) Archaeological and historical background of the project area.

(7) Natural physical description of the project area.

(8) Project plan.

(9) Methods.

(10) Data analyses.

(11) Results of the investigations.

(12) Conclusions and recommendations.

(13) Bibliographic references.

(14) Appendices as needed to account for the proper definition or justification of the report findings. Included shall be any seven and five-tenths (7.5) minute United States Geological Survey quadrangle maps for the project area, with identified and updated sites clearly marked in permanent black ink. A site record report must accompany the project completion report for any site located or investigated.

(d) An abbreviated project completion report may be prepared where the archaeological investigation does not produce evidence for archaeological resources or where alteration or disturbance precludes the survival of any archaeological sites. A report

prepared under this subsection must satisfy subsection (c)(1) and must provide adequate additional documentation under subsection (c) to inform the division of any potential project effect on archaeological sites.

(e) A project that consists of a records check or literature search shall minimally address subsection (c)(1), (c)(3), and (c)(5) through (c)(14). The focus of a project under this subsection is normally on the range of site forms and historical and archaeological documentation addressed by the investigation, where the information is housed or curated, the author's conclusion as to whether potentially important archaeological sites are affected, and recommendations to the applicant for additional investigations. The project shall also contain bibliographic references, maps that adequately portray the location of archaeological sites discovered by the investigation, and copies of completed site forms under subsection (c)(14). (*Natural Resources Commission; 312 IAC 21-3-8; filed Jun 8, 2001, 12:30 p.m.: 24 IR 3021*)

## **ARTICLE 22. HUMAN REMAINS, BURIAL OBJECTS, AND ARTIFACTS**

### **Rule 1. Definitions**

#### **312 IAC 22-1-1 Application of definitions**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 1. The definitions contained in this rule apply throughout this article and are in addition to those set forth in 312 IAC 1. (*Natural Resources Commission; 312 IAC 22-1-1; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3375*)

#### **312 IAC 22-1-2 "Agricultural purpose" defined**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 2. "Agricultural purpose" includes the following:

- (1) Farming.
- (2) Dairying.
- (3) Pasturage.
- (4) Agriculture.
- (5) Horticulture.
- (6) Floriculture.
- (7) Vitaculture.
- (8) Ornamental horticulture.
- (9) Olericulture.
- (10) Pomiculture.
- (11) Animal husbandry.
- (12) Poultry husbandry.

(*Natural Resources Commission; 312 IAC 22-1-2; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3375*)

#### **312 IAC 22-1-3 "Artifact" defined**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 3. "Artifact" means an object made or shaped by human workmanship before December 11, 1816. (*Natural Resources Commission; 312 IAC 22-1-3; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3375*)

#### **312 IAC 22-1-4 "Burial ground" defined**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1



Sec. 4. "Burial ground" means ground in which human remains are buried, including the land associated with or incidental to the burial of human remains. (*Natural Resources Commission; 312 IAC 22-1-4; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3375*)

**312 IAC 22-1-5 "Burial object" defined**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 5. "Burial object" means an item intentionally placed in a burial ground at or near the time of burial. (*Natural Resources Commission; 312 IAC 22-1-5; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3375*)

**312 IAC 22-1-6 "Cultural" defined**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 6. "Cultural" means patterned behavior consisting of beliefs, values, customs, art, morals, or laws practiced in whole or in part by a corporate group of society as a measure of inclusiveness that is verifiable by archaeological, historical, or anthropological study. (*Natural Resources Commission; 312 IAC 22-1-6; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3375*)

**312 IAC 22-1-7 "Division" defined**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-9-4-1; IC 14-21-1

Sec. 7. "Division" means the division of historic preservation and archaeology. (*Natural Resources Commission; 312 IAC 22-1-7; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3375*)

**312 IAC 22-1-8 "Division director" defined**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 8. "Division director" means the director of the division. (*Natural Resources Commission; 312 IAC 22-1-8; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3375*)

**312 IAC 22-1-9 "Historic property" defined**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 9. "Historic property" means any historic site, historic structure, or other personal or real property located on or in a historic site or historic structure. (*Natural Resources Commission; 312 IAC 22-1-9; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3375*)

**312 IAC 22-1-10 "Historic site" defined**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 10. "Historic site" means any site that is important to the general, archaeological, agricultural, economic, social, political, architectural, industrial, or cultural history of Indiana. A historic site includes any adjacent property that is necessary to the preservation or restoration of the site. (*Natural Resources Commission; 312 IAC 22-1-10; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3376*)

**312 IAC 22-1-11 "Historic structure" defined**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 11. "Historic structure" means any structure that is important to the general, archaeological, agricultural, economic, social, political, architectural, industrial, or cultural history of Indiana. A historic structure includes any adjacent property that is necessary to the preservation or restoration of the structure. (*Natural Resources Commission; 312 IAC 22-1-11; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3376*)

**312 IAC 22-1-12 "Human remains" defined**

Authority: IC 14-21-1-25; IC 14-21-1-31  
Affected: IC 14-21-1

Sec. 12. "Human remains" means any part of the body of a human being in any stage of decomposition or state of preservation. However, this article does not apply to the human remains of individuals dying after December 31, 1939. (*Natural Resources Commission; 312 IAC 22-1-12; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3376*)

**312 IAC 22-1-13 "Investigation" defined**

Authority: IC 14-21-1-25; IC 14-21-1-31  
Affected: IC 14-21-1

Sec. 13. "Investigation" means an archaeological or historical investigation that does the following:

- (1) Principally employs amateur archaeologists.
- (2) Is not under the control or supervision of a principal investigator.
- (3) Uses systematic methods and techniques to locate, identify, evaluate, recover, treat, analyze, and conserve artifacts and associated contexts.
- (4) Results in the production of a report detailing its various activities and findings.

(*Natural Resources Commission; 312 IAC 22-1-13; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3376*)

**312 IAC 22-1-14 "Plan" defined**

Authority: IC 14-21-1-25; IC 14-21-1-31  
Affected: IC 14-21-1

Sec. 14. "Plan" means an archaeological plan for the systematic recovery, analysis, and disposition by scientific methods of material evidence and information about the life and culture in past ages. (*Natural Resources; 312 IAC 22-1-14; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3376*)

**312 IAC 22-1-15 "Principal investigator" defined**

Authority: IC 14-21-1-25; IC 14-21-1-31  
Affected: IC 14-21-1

Sec. 15. "Principal investigator" means the individual who is responsible for coordinating, developing, and completing an archaeological project under IC 14-21-1 and 312 IAC 20. (*Natural Resources Commission; 312 IAC 22-1-15; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3376*)

**312 IAC 22-1-16 "Register" defined**

Authority: IC 14-21-1-25; IC 14-21-1-31  
Affected: IC 14-21-1-15

Sec. 16. "Register" means the register of Indiana historic sites and historic structures established under IC 14-21-1-15. (*Natural Resources Commission; 312 IAC 22-1-16; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3376*)

**312 IAC 22-1-17 “Related field” defined**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 17. “Related field” means anthropology, physical anthropology, or another discipline to archaeology where archaeological or bioarchaeological course work and fieldwork are part of the background and research. (*Natural Resources Commission; 312 IAC 22-1-17; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3376*)

**312 IAC 22-1-18 “Religious” defined**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 18. “Religious” means a system of beliefs, symbols, rituals, or ideology practiced in whole or in part by a corporate group of society that:

- (1) serves to define human, sacred, or supernatural relations and the rationale for human existence; and
- (2) is verifiable by archaeological, historical, or anthropological study.

(*Natural Resources Commission; 312 IAC 22-1-18; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3376*)

**312 IAC 22-1-19 “Review board” defined**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1-20

Sec. 19. “Review board” means the historic preservation review board established under IC 14-21-1-20. (*Natural Resources Commission; 312 IAC 22-1-19; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3376*)

**312 IAC 22-1-20 “Scientific investigation” defined**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 20. “Scientific investigation” means an archaeological, anthropological, physical anthropological, or historical investigation that does the following:

- (1) Is conducted under the control or supervision of a principal investigator.
- (2) Employs specialized, systematic methods and techniques to locate, identify, evaluate, recover, treat, analyze, and conserve any artifacts, burial objects, and buried human remains and associated contexts.
- (3) Produces a report detailing its various activities and findings.

(*Natural Resources Commission; 312 IAC 22-1-20; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3377*)

**312 IAC 22-1-21 “Site” defined**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 21. “Site” means any aboriginal mound, fort, earthwork, village location, burial ground, ruin, mine, cave, battleground, shipwreck, or other similar location on land or under water or any location that contains or once contained a structure. (*Natural Resources Commission; 312 IAC 22-1-21; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3377*)

**312 IAC 22-1-22 “Structure” defined**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 22. “Structure” means any manmade construction. (*Natural Resources Commission; 312 IAC 22-1-22; filed Jun 21, 2001,*

2:35 p.m.: 24 IR 3377)

**312 IAC 22-1-23 “Traditional” defined**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 23. “Traditional” means a cultural or religious practice or behavior pattern that is:

- (1) shared by a corporate group;
- (2) passed from generation to generation as part of the socialization process; and
- (3) verifiable by archaeological, historical, or anthropological study.

*(Natural Resources Commission; 312 IAC 22-1-23; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3377)*

**Rule 2. Intentional and Accidental Discoveries of Human Remains and Artifacts; Permits**

**312 IAC 22-2-1 Application**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1-27; IC 14-22-1; IC 14-34; IC 23-14

Sec. 1. (a) This article establishes standards for each of the following:

- (1) Investigations.
- (2) Scientific investigations.
- (3) The accidental discovery or purposeful disturbance of archaeological sites and human remains on any property.
- (4) The issuance of permits.
- (5) Permit conditions required to satisfy IC 14-22-1 and this article.
- (b) A person must satisfy this article where:
  - (1) an investigation or scientific investigation is required;
  - (2) a permit must be issued or conditioned;
  - (3) the director issues an order to locate, identify, evaluate, recover, treat, or protect artifacts, burial objects, or burial grounds;or
  - (4) human remains require treatment or reburial.
- (c) Except as required by IC 14-21-1-27, this article does not apply to the following:
  - (1) Surface coal mining regulated under IC 14-34.
  - (2) Cemeteries and human remains subject to regulation under IC 23-14.
  - (3) Disturbing the earth for an agricultural purpose.
  - (4) Collecting any object, other than human remains that is visible in whole or in part on the surface of the ground, regardless of the time the object was made.
- (d) This article sets forth how the department shall protect human remains discovered as a result of an accidental discovery, the conduct of an investigation, the conduct of a scientific investigation, or a violation of IC 14-21-1. The department may, according to the context, condition, or nature of the discovery of the human remains, do any of the following:
  - (1) Take custody of the human remains.
  - (2) Assign or remand custody or ownership of the human remains to an institution that satisfies 312 IAC 22-3-9(f).
  - (3) Designate or prescribe the conditions or scheduling for the reburial of remains under 312 IAC 22-3-9(b).

*(Natural Resources Commission; 312 IAC 22-2-1; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3377)*

**312 IAC 22-2-2 Administration**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 4-21.5-1-15; IC 14-21-1

Sec. 2. (a) The division is responsible for conduct of the technical and professional functions of the department under this article.

(b) The review board or the division director may make an initial order or determination under this article.

(c) The commission is the ultimate authority for a final order or determination under this article. (*Natural Resources Commission; 312 IAC 22-2-2; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3377*)

### **312 IAC 22-2-3 Permits**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1-26; IC 14-21-1-28

Sec. 3. (a) No person may disturb the ground, or continue the disturbance following an accidental discovery, for the purpose of discovering or removing artifacts, burial objects, grave markers, or human remains without a prior permit issued by the department under IC 14-22-1-26 [*sic.*, IC 14-21-1-26], IC 14-22-1-28 [*sic.*, IC 14-21-1-28], and this article.

(b) Except as provided in section 7 of this rule, an applicant for a permit must comply with the following:

(1) A plan, which includes the information required under 312 IAC 22-3-2 through 312 IAC 22-3-8, shall be submitted with each permit application.

(2) An application to conduct an investigation or a scientific investigation shall be filed at least thirty (30) days before the proposed commencement of the project.

(c) An application for a permit to conduct an investigation or a scientific investigation shall be reviewed by the division to determine whether the permit is issued. A favorable determination must be made with respect to each of the following factors before a permit can be issued:

(1) The application is found to be complete, technically accurate, and feasible.

(2) The applicant has demonstrated that the information derived will contribute to:

(A) Indiana's history or archaeology; or

(B) understanding the physical or cultural nature of past human populations.

(3) The requirements of 312 IAC 22-3-9 are satisfied.

(4) The applicant will provide for the treatment of human remains in conformance with section 1(d) of this rule.

(5) The rights and interests of landowners are considered, including written documents that demonstrate each of the following have been adequately addressed by the applicant:

(A) A determination of the ownership of any human remains, burial object, or artifact which is recovered.

(B) Consent of the landowner for access by the applicant to the site for the purpose of conducting any activities set forth in the permit, including the plan.

(C) Consent of the landowner for access by the department to the site to determine compliance with the conditions of the permit.

(*Natural Resources Commission; 312 IAC 22-2-3; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3378*)

### **312 IAC 22-2-4 Notification and permit conditions**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1; IC 23-14

Sec. 4. (a) Except as provided in subsections (c) through (d), a person who discovers an artifact or a burial object while disturbing the ground for a purpose other than the discovery of artifacts or burial objects must do the following:

(1) Immediately cease disturbing the ground.

(2) Notify the department within two (2) business days after the time of disturbance.

(b) After a notification made under subsection (a) is received, the department may do either of the following:

(1) Authorize the person to continue the ground disturbing activity with or without conditions.

(2) Require that continued ground disturbance activity be conducted only under a plan approved under this article. However, this subdivision does not apply if the department does not respond within thirty (30) days from the date that the department receives the notification.

(c) A person who disturbs any human remains must do the following:

(1) Immediately cease disturbing the ground.

(2) Notify the department within two (2) business days after the time of the disturbance.

(d) After a notification made under subsection (c) is received, the department may do any of the following:

(1) Require the person to submit additional information to enable the department an informed determination whether the disturbed human remains are exempt from IC 14-21-1 and this article. Exempt human remains shall be treated and reburied under IC 23-14.

(2) Authorize the person to continue the ground disturbing activity with or without conditions.

(3) Require that continued ground disturbance activity be conducted only under a permit issued under this article.

*(Natural Resources Commission; 312 IAC 22-2-4; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3378)*

### **312 IAC 22-2-5 Permit determinations and revocations**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 4-21.5-1-4; IC 4-21.5-3-8; IC 4-21.5-4; IC 14-21-1

Sec. 5. (a) Where an application for a permit is received by the department that is not complete, the division may:

(1) provide instructions to the applicant for completion of the application; or

(2) return the application with a notification that a permit will not be issued until sections 2 through 3 of this rule are satisfied.

A determination under this subdivision is an agency order under IC 4-21.5-1-4 and is subject to administrative review.

(b) The department may inspect the site of an investigation or a scientific investigation to determine whether a person is in compliance with IC 14-21-1, this article, and the terms of a permit issued under this article.

(c) The department may, under IC 4-21.5-3-8, revoke a permit, if the division determines the permittee has violated IC 14-21-1, this article, or the terms of a permit issued under this article. The director may, under IC 4-21.5-4, seek appropriate emergency or temporary relief with respect to a permit or an activity for which a permit is required. *(Natural Resources Commission; 312 IAC 22-2-5; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3378)*

### **312 IAC 22-2-6 Disturbing the ground in the absence of or violation of a plan**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1-26; IC 14-21-1-28

Sec. 6. (a) A person who disturbs the ground for the purpose of discovering artifacts or burial objects must do so in accordance with a plan approved by the department in a permit issued under IC 14-21-1 and this article.

(b) Criminal sanctions for violation of IC 14-21-1 and this article are set forth in IC 14-21-1-26 and IC 14-21-1-28. *(Natural Resources Commission; 312 IAC 22-2-6; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3379)*

### **312 IAC 22-2-7 Emergency permits**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 4-21.5-4; IC 14-21-1

Sec. 7. (a) The division director may, under IC 4-21.5-4, issue an emergency permit to conduct a scientific investigation where imminent or irreparable damage to an historic site or a burial ground is likely to occur due to natural or cultural causes before a permit can be processed under section 3(b) of this rule.

(b) An emergency permit must satisfy each of the following:

(1) The performance standards contained in IC 14-21-1.

(2) The requirements of 312 IAC 22-3-2 through 312 IAC 22-3-9.

(3) To the extent feasible, the requirements of section 3(c) of this rule.

(4) Any other conditions set forth by the department in the emergency permit.

(c) An emergency permit issued under this section expires on the elapse of ninety (90) days unless an earlier expiration date is set forth in the emergency permit. *(Natural Resources Commission; 312 IAC 22-2-7; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3379)*

## **Rule 3. Participation; Plans; Personnel; Project Facilities; Analysis; Curation; Treatment and Disposition of Human Remains; Project Documentation; Reporting**

**312 IAC 22-3-1 Application**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 1. (a) This rule establishes the standards applicable to the following:

- (1) Participation.
- (2) Plans.
- (3) Personnel.
- (4) Project facilities.
- (5) Analyses.
- (6) Curation.
- (7) Treatment and disposition of human remains.
- (8) Project documentation.
- (9) Reporting.
- (b) The requirements of this rule shall be applied in a manner that recognizes each of the following:
  - (1) The important and complex nature of historic sites and burial grounds.
  - (2) The need to provide for scientific investigations that contribute to the understanding of the past.
  - (3) An understanding that important site information in the form of materials and features may be present beyond artifacts, burial objects, and human remains.
  - (4) The need to use specialized methods and techniques in:
    - (A) archaeology;
    - (B) anthropology;
    - (C) geology;
    - (D) biology;
    - (E) physical anthropology; and
    - (F) forensic sciences;for the recovery and analysis of site information.
- (5) A realization of the paramount role of:
  - (A) archaeologists;
  - (B) cultural anthropologists;
  - (C) physical anthropologists; and
  - (D) related professionals;with specialized training in data recovery, processing, analysis, and reporting to develop, coordinate, or direct scientific investigations.
- (6) A recognition of the expertise and interest of amateur archaeologists in the participation in site discovery projects and scientific investigations.
- (7) An understanding of the need to protect:
  - (A) a historic site that is listed on or eligible for listing on the state register of historic sites and structures or the National Register of Historic Places; or
  - (B) a burial ground.

*(Natural Resources Commission; 312 IAC 22-3-1; filed Jun 21, 2001, 2:35 p.m.; 24 IR 3379)*

**312 IAC 22-3-2 Participation**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 2. (a) A scientific investigation must be carried out under the direction of a principal investigator where any of the following conditions are present:

- (1) The investigation must be conducted to satisfy a state or federal law other than this article.
- (2) The investigation will be conducted on a property owned or leased by the state or one (1) of its agencies.

- (3) The investigation will be funded in whole or in part by the state.
- (4) The investigation will be conducted on a site that is listed on or eligible for listing on the state register of historic sites and structures or the National Register of Historic Places.
- (5) The investigation is likely to result in the discovery of buried human remains.
- (b) A participant in an investigation or scientific investigation who has a supervisory or decision making responsibility must adhere to a code of conduct that does each of the following:
  - (1) Promotes the scientific investigation and conservation of past cultures so the investigation is conducted in the interests of qualified research, environmental review, or historic preservation review related compliance, or site management or protection.
  - (2) Demonstrates sensitivity for treating other human beings with respect and dignity.
  - (3) Considers the interest and expertise of amateur archaeologists and professional archaeologists.
- (c) A scientific investigation that is approved by the division as part of a federal or state environmental review requirement does not require a separate permit under this article. This subsection does not relieve a person of the responsibility for reporting and responding under IC 14-21-1 and this article to any accidental discovery. (*Natural Resources Commission; 312 IAC 22-3-2; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3379*)

### **312 IAC 22-3-3 Plans**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 3. (a) A plan must be submitted with any application for a permit for an investigation or a scientific investigation. The plan shall provide a coherent approach to the type of project or investigation, the environmental and cultural setting, and the type of archaeological or human remains known to exist or yet unidentified in the project area. A plan shall consider the time constraints upon the applicant, the rights and interests of landowners, personnel needed to accomplish the work, and the season and environmental conditions within which work would be accomplished.

- (b) A plan shall consider the appropriate use of each of the following persons:
  - (1) Professionals in:
    - (A) archaeology;
    - (B) anthropology;
    - (C) physical anthropology;
    - (D) medicine;
    - (E) forensic science;
    - (F) biology;
    - (G) cultural geography;
    - (H) geology; and
    - (I) paleontology.
  - (2) Amateur archaeologists.
- (c) A plan for a scientific investigation that will address an archaeological site, result in the recovery of artifacts, or result in the recovery of burial objects or buried human remains shall satisfy the requirements under subsections (b) and (d) and section 4 of this rule.
- (d) A plan for a scientific investigation where buried human remains are likely to be recovered or disturbed shall additionally provide a scientific justification for the recovery or disturbance of those human remains that does each of the following:
  - (1) Demonstrates the need to recover or disturb the buried human remains to protect, treat, or conserve the remains or important scientific information that might otherwise be lost through unavoidable natural or human activities.
  - (2) Defines a methodology governed by systematic scientific methods that incorporates recording, recovery, and conservation methods and techniques used by professional archaeologists and related professionals who routinely locate, identify, record, recover, analyze, treat, conserve, and curate human remains.
  - (3) Demonstrates the disturbed or recovered human remains are and will be treated in a dignified and respectful fashion that recognizes their cultural, religious, or traditional importance to living human groups.
- (e) A plan submitted to conduct an investigation, other than a scientific investigation, shall include each of the following:



- (1) The location of the project area, including the county, township, range, and section and, if available, the street address.
- (2) A description of the project area, including the natural environment and cultural environment.
- (3) The portion of the United States Geological Survey Quadrangle Section map (1:24000) that locates the area and an accurate map of the area of investigation.
- (4) A clearly and concisely written plan supported by appropriate references and other written material that justifies the need to undertake the recovery of buried artifacts.
- (5) A demonstration that the recovery, if undertaken, will contribute to the understanding, interpretation, or conservation of Indiana's historic and archaeological resources.
- (6) An identification of the methods to be employed that will enable the recording and recovery of artifacts and associated contexts in a systematic and controlled fashion.
- (7) A process that will result in minimal damage to organic and fragile materials during recording and recovery.
- (8) Provision for notes, drawings, photographs, collections of artifacts, descriptive lists of recovered artifacts and samples, and documents that will enable the permittee to produce a report of the findings.
- (9) Standards for plan and profile maps of all excavation units and exposed or excavated features or cultural strata.
- (10) The names of persons or organizations who may work during the investigation and recovery of artifacts.
- (11) The name and address of the person who will have supervisory or decision making responsibility for the investigation.
- (12) The beginning date and ending date of the investigation.
- (13) The place where any recovered artifacts and curated or associated contexts will be cleaned, processed, and housed.
- (14) A proposal for the conservation of artifacts and associated context through:
  - (A) the documentation of an agreement with an established institution; or
  - (B) if the permittee will provide for conservation, a conservation plan that describes how the recovered artifacts and associated context will be conserved to prevent degradation and the loss of integrity.
- (15) A proposal for access to the completed project for continued or future research.
- (16) A strategy for the timely termination of the project and the protection of the site if the project:
  - (A) discovers human remains or burial objects; or
  - (B) identifies buried deposits that have been defined by the department as nonrecoverable without the assistance or direction of a principal investigator under section 2(a) of this rule.
- (f) A final report of findings must be submitted under this section in accordance with the following specifications:
  - (1) The use of standard quality paper on white bond, eight and one-half (8½) inches wide and eleven (11) inches long.
  - (2) Inclusion of a title page with the:
    - (A) project title;
    - (B) project supervisor;
    - (C) name of the organization; and
    - (D) if applicable, name of the agency or institutional affiliation, any coauthors, and date of issuance of the report.
  - (3) Inclusion of a table of contents, as well as any appropriate figures and appendices.
  - (4) Acknowledgements to persons and organizations assisting in the project.
  - (5) Appropriate reference to the plan approved as part of the permit, including a statement of investigation goals and methods.
  - (6) Data analysis.
  - (7) Results of the investigations.
  - (8) Conclusions and recommendations.
  - (9) Bibliographic references.
  - (10) Completed Historic Sites and Structures Inventory-Archaeology Site Forms.
  - (11) Copies of completed notes, drawings, a descriptive list of all recovered artifacts and samples and photographs generated by the project.
  - (12) Location where the recovered artifacts and associated contexts will be housed, and the name of the person responsible for curation, if the plan provides for curation.

*(Natural Resources Commission; 312 IAC 22-3-3; filed Jun 21, 2001, 2:35 p.m.; 24 IR 3380)*

**312 IAC 22-3-4 Personnel qualifications**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 4. (a) A person who conducts an investigation or a scientific investigation under this article must satisfy the qualification standards established by 312 IAC 21-3-4.

(b) In addition to the requirements of subsection (a), the department may require the use of professionals with specialized expertise as appropriate to serve in a capacity equivalent to that of a principal investigator in the exercise of a particular permit involving the removal of human remains or as appropriate to the removal of particular human remains. Persons who may possess the required expertise include those in the areas of archaeology, anthropology, physical anthropology, paleopathology, or another closely related field. Qualifications for these professionals include the following requirements:

(1) A graduate degree in anthropology or another closely related field as anticipated in this subsection.

(2) Satisfaction of either of the following:

(A) Three (3) years of supervisory experience in archaeology, anthropology, physical anthropology, paleopathology, or a closely related field where the principal focus of professional study has been the recovery, evaluation, analysis, and curation of artifacts, materials and information, burial objects, and human remains discovered in historic, archaeological, or historic burial ground sites, and whose professional work has resulted in the study of paleopathology and human osteology. This work:

(i) shall include cranial, postcranial, and dental analysis, and destructive and nondestructive scientific testing of human remains; and

(ii) must have resulted in the preparation of a research-oriented monograph, thesis, or dissertation.

(B) Accreditation by the Forensic Anthropology Section of the American Academy of Forensic Sciences.

(c) A field or laboratory supervisor may submit draft and final reports that address the recovery, evaluation, analysis, or curation of human remains. To qualify as a field or laboratory supervisor, a person must satisfy either of the following requirements:

(1) A master's degree in archaeology, anthropology, physical anthropology, or paleopathology or a related field and one (1) year of supervisory experience in the excavation or laboratory techniques pertinent to the recovery, evaluation, analyses, and curation of human remains from an historic, archaeological, or a burial ground located within an historic site.

(2) Accreditation by the Forensic Anthropology Section of the American Academy of Forensic Sciences.

(d) A field or laboratory technician is an assistant supervisor or field or laboratory field or laboratory crew member with experience in archaeological or physical anthropological techniques related to the recovery and preparation for analysis of human remains recovered from historic, archaeological, or historic burial ground sites. A laboratory technician must:

(1) be experienced in laboratory analyses and techniques; and

(2) hold a bachelor's degree in anthropology, or a closely related field, or possess equivalent background, with one (1) year of field recovery, preparation, or analyses.

(e) Qualification for specialists in the fields of medicine, forensic medicine, pathology, or related sciences who are employed during the course of scientific investigations to provide biological, genetic, or chemical information will be based on verifiable professional accreditation or qualifying graduate degrees. (*Natural Resources Commission; 312 IAC 22-3-4; filed Jun 21, 2001, 2:35 p.m.; 24 IR 3381*)

**312 IAC 22-3-5 Project facilities**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 5. A person who performs an investigation or a scientific investigation under this article must demonstrate both of the following with respect to project facilities:

(1) Adequate facilities and equipment will be provided to conduct any nonfield portions of the plan in a manner which is no less effective than the requirements of 312 IAC 21-3-5.

(2) If the recovery of human remains is part of the plan, sufficient arrangements will be made for any special or technical analyses. These arrangements must include reference to paleopathology, osteology, radiometry, radiology, biochemistry, and any other discipline needed to properly evaluate the human remains relative to their cultural and chronological context and

condition when recovered.

*(Natural Resources Commission; 312 IAC 22-3-5; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3382)*

**312 IAC 22-3-6 Analyses**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 6. (a) A person who performs an investigation or a scientific investigation under this article must demonstrate both of the following:

(1) The analysis requirements will be met in a manner which is no less effective than the analysis requirements contained in 312 IAC 21-3-6.

(2) If the recovery of human remains is part of the plan, the analysis requirements will be met in a manner which is no less effective than those contained in section 9(a) through 9(c) of this rule.

(b) The director may require analyses in addition to those required in section 9(b) through 9(c) of this rule for a scientific investigation that requires the application of specialized technology or methods to resolve issues of genetic affinity or scientific research in the study of past human populations. *(Natural Resources Commission; 312 IAC 22-3-6; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3382)*

**312 IAC 22-3-7 Curation; scientific investigations**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 7. (a) The curation of artifacts, materials, and specimens recovered during a scientific investigation is controlled by 312 IAC 21-3-8(a) through 312 IAC 21-3-8(b).

(b) In addition to the requirements contained in subsection (a), section 9(g) through 9(h) of this rule applies to the recovery of buried human remains. *(Natural Resources Commission; 312 IAC 22-3-7; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3382)*

**312 IAC 22-3-8 Documentation and reporting**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1

Sec. 8. (a) Project documentation and reporting for a scientific investigation is controlled by 312 IAC 21-3-8(a) through 312 IAC 21-3-8(d).

(b) In addition to the requirements of subsection (a), this subsection applies if human remains are recovered, evaluated, or analyzed. Documentation shall be provided that details or integrates the results of the study of the human remains to satisfy section 9(b) through 9(c) of this rule with evaluations (based upon the context and condition of those remains) as to their value for ascertaining genetic affinity or scientific value and recommendations for their long term curation.

(c) Project documentation and reporting for investigations is controlled by section 3 of this rule. *(Natural Resources Commission; 312 IAC 22-3-8; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3382)*

**312 IAC 22-3-9 Treatment and disposition of human remains**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-21-1; IC 23-14

Sec. 9. (a) In determining whether human remains, which are subject to IC 14-21-1 and this article, should be reburied or should be curated and retained for further analysis and study, the following factors shall be considered by the director:

(1) Whether there was a scientific investigation of the burial content and context, including the physical remains and associated artifacts, burial objects, and grave markers.

(2) Whether physical anthropological analysis of the remains consistent with prevailing technology will minimally address cultural or genetic affinity through the analysis of biological data.

(3) Whether ethnic, ethnohistorical, historical, anthropological, or archaeological documents or records establish the validity or verification of interests.

(4) Whether another factor that may be considered under IC 14-21-1 bears upon the propriety of retention or reburial.

(b) Subject to verification under subsection (a), the director may require the reburial of human remains. Before reburial occurs, the director shall determine whether scientific value exists that warrants further examination, and, if further examination is needed, the schedule within which the examination must be completed. Factors that may be required during the examination are as follows:

(1) An analysis of dentition, including measurements, casting, attrition, pathologies, premortem modifications, and postmortem modifications.

(2) An analysis of cranial and postcranial remains for an overall biological assessment of growth, pathologies, trauma, postmortem modifications, nonmetric genetic markings, and measurements.

(3) The removal of samples for destructive analyses to ascertain the age of an interment (through Carbon 14 or similar analyses), bone histology, isotope, or trace element analysis, including radiological analyses as applicable to the context and condition of the remains.

(4) Other specialized testing determined by the director to be appropriate because of unique or unusual conditions, circumstances, or contexts.

(c) Conditional analyses of human remains that are accidentally disturbed or deliberately disturbed in violation of IC 14-21-1 shall be conducted in a timely fashion based upon the availability of qualified professional persons and of facilities suitable for the scientific investigation of human remains.

(d) In addition to the requirements of IC 14-21-1 and this article, the reburial of human remains must conform to IC 23-14, except where either of the following is determined:

(1) Conditions encountered at a burial ground have integrity so that:

(A) in-place scientific investigation may occur; and

(B) removal of the human remains is not in the best interests of the protection or preservation of those remains.

(2) Where reinterment conditions should replicate those prescribed by cultural, religious, or traditional values and where the reinterment context is the same as disinterment. For example, reinterment may take place on Native American reservation land in Indiana dedicated as a burial ground.

(e) A person may petition the director for the reburial of human remains. Any approval of a petition is conditioned upon compliance with IC 14-21-1, this article, and terms contained in the approval. The director may require that the petitioner satisfy the costs of reburial. A person who removes human remains in violation of IC 14-21-1, this article, or a petition approved under this subsection, must satisfy reburial costs. A plan approved in association with a scientific investigation may be required by the director to identify who will satisfy costs associated with the discovery, recovery, analysis, and curation of any human remains. To the extent allowed by law, however, the director may modify the allocation of reburial costs under this subsection if required to prevent manifest injustice.

(f) Human remains that are retained for a future scientific investigation may be held only by a public institution, private institution, university, or college that has a faculty or research staff, laboratories, analytical facilities, and curatorial facilities dedicated to the study of the physical and cultural nature of past human populations. Any future scientific investigation of the human remains must be conducted under the direction of a principal investigator or similar professional from a related field in a manner consistent with the scientific investigation of human remains as required in this article. (*Natural Resources Commission; 312 IAC 22-3-9; filed Jun 21, 2001, 2:35 p.m.: 24 IR 3383*)

## ARTICLE 22.5. CEMETERIES AND BURIAL GROUNDS; REGISTRATION AND MANAGEMENT

### Rule 1. Definitions

#### 312 IAC 22.5-1-1 Application of definitions

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-9-4-1; IC 14-21-1

Sec. 1. The definitions contained in this rule apply throughout this article and are in addition to those set forth in 312 IAC 1. (*Natural Resources Commission; 312 IAC 22.5-1-1; filed Jul 17, 2002, 3:40 p.m.: 25 IR 4074*)

**312 IAC 22.5-1-2 “Cemetery” defined**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-9-4-1; IC 14-21-1

Sec. 2. “Cemetery” means ground in which human remains are buried, including the land associated with or incidental to the burial of human remains. The term includes a cemetery, Native American cemetery, graveyard, burial ground, or similarly described real property. (*Natural Resources Commission; 312 IAC 22.5-1-2; filed Jul 17, 2002, 3:40 p.m.: 25 IR 4074*)

**312 IAC 22.5-1-3 “Development plan” defined**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-9-4-1; IC 14-21-1

Sec. 3. “Development plan” means a plan for the erection, alteration, or repair of any structure. (*Natural Resources Commission; 312 IAC 22.5-1-3; filed Jul 17, 2002, 3:40 p.m.: 25 IR 4075*)

**312 IAC 22.5-1-4 “Division” defined**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-9-4-1; IC 14-21-1

Sec. 4. “Division” means the division of historic preservation and archaeology of the department. (*Natural Resources Commission; 312 IAC 22.5-1-4; filed Jul 17, 2002, 3:40 p.m.: 25 IR 4075*)

**312 IAC 22.5-1-5 “Human remains” defined**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-9-4-1; IC 14-21-1

Sec. 5. “Human remains” means any part of the body of a human being in any stage of decomposition or state of preservation. This article does not, however, apply to the human remains of individuals dying after December 31, 1939. (*Natural Resources Commission; 312 IAC 22.5-1-5; filed Jul 17, 2002, 3:40 p.m.: 25 IR 4075*)

**312 IAC 22.5-1-6 “State” defined**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-8-2-265

Sec. 6. “State” means the following:

(1) The Indiana state government.

(2) An agency, a subdivision, an officer, a board, a bureau, a commission, a department, a division, or an instrumentality of the state.

(*Natural Resources Commission; 312 IAC 22.5-1-6; filed Jul 17, 2002, 3:40 p.m.: 25 IR 4075; errata filed Sep 11, 2002, 2:00 p.m.: 26 IR 383*)

**Rule 2. Disturbance of Ground within 100 Feet of a Cemetery****312 IAC 22.5-2-1 Application of rule for development plan at burial grounds**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-9-4; IC 14-21-1

Sec. 1. This rule provides standards for the submission, review, and implementation of a development plan within one hundred (100) feet of a cemetery. (*Natural Resources Commission; 312 IAC 22.5-2-1; filed Jul 17, 2002, 3:40 p.m.: 25 IR 4075*)

**312 IAC 22.5-2-2 Requirement of a prior development plan**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 8-1-2-1; IC 8-1-13; IC 14-9-4; IC 14-21-1; IC 14-34

Sec. 2. (a) Except as provided in subsection (b), a person must receive and comply with a development plan approved under this rule before disturbing the ground within one hundred (100) feet of a cemetery to erect, alter, or repair a structure.

(b) This rule does not apply to the following:

- (1) A public utility (as defined by IC 8-1-2-1(a)).
- (2) A corporation organized under IC 8-1-13.
- (3) A municipally owned utility (as defined in IC 8-1-2-1(h)).
- (4) A surface coal mining and reclamation operation permitted under IC 14-34.
- (5) A government entity other than the state.

*(Natural Resources Commission; 312 IAC 22.5-2-2; filed Jul 17, 2002, 3:40 p.m.: 25 IR 4075; errata filed Sep 11, 2002, 2:00 p.m.: 26 IR 383)*

**312 IAC 22.5-2-3 Application for approval of a development plan**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-9-4; IC 14-21-1

Sec. 3. An application for approval of a development plan under this rule must be filed with the division and include the following:

- (1) A signed cover letter from the applicant on letterhead with the following information:
  - (A) The identity of the person or persons who would conduct the project.
  - (B) The overall nature and timeframe for the project.
  - (C) The location of the project by section, township, range, county, and address.
  - (D) Any prior disturbance of the area.
  - (E) A statement of whether federal or state funds or licenses are involved in the project.
- (2) Mapping to show the location of the cemetery in relation to the project that includes the following:
  - (A) Construction details for activities within one hundred (100) feet of the cemetery.
  - (B) References to nearby landmarks.
  - (C) Location of the cemetery and the project area on the appropriate U.S. Geological Survey 7.5' quadrangle map.
- (3) A description of the cemetery sufficient to evaluate the likely impact of the project, including the following:
  - (A) Any name of the cemetery.
  - (B) The dates of use.
  - (C) Historical information and documentation.
  - (D) Precise boundaries that reference nearby landmarks. If documentation is not currently available to identify the cemetery boundaries, the applicant may be required to determine those boundaries through the following:
    - (i) Remote sensing.
    - (ii) Investigations by archaeologists.
    - (iii) Another scientific method approved by the division.
  - (E) The current physical condition of the cemetery.
- (4) A description of the grounds adjacent to and within one hundred (100) feet of the cemetery, including the following:
  - (A) The nature, depth, and degree of previous disturbances, including those caused by construction, excavation, grading, or filling.
  - (B) A description of soils, by types, that are present at the site, including an explanation of how they would be disturbed, graded, modified, removed, or otherwise treated.
  - (C) A description of every structure.
  - (D) A description of the activities anticipated to erect, alter, or repair a structure.
  - (E) Areas that would contain new construction of the footprints of the proposed construction areas.
- (5) Clear recent photographs of the cemetery and the grounds adjacent to and within one hundred (100) feet of the cemetery.

(6) If the application is not from the landowner, written permission from the owner of the cemetery and the owner of any area to be entered or disturbed during the project.

*(Natural Resources Commission; 312 IAC 22.5-2-3; filed Jul 17, 2002, 3:40 p.m.: 25 IR 4075; errata filed Sep 11, 2002, 2:00 p.m.: 26 IR 383)*

**312 IAC 22.5-2-4 Incomplete or inadequate applications and expiration**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-9-4; IC 14-21-1

Sec. 4. (a) The division shall inform the applicant of any aspect of an application believed by the division to be incomplete or inadequate under IC 14-21 or this article. An opportunity shall be provided to the applicant to correct deficiencies or inadequacies.

(b) Unless otherwise specified in the authorization, an authorization under this rule expires two (2) years after issuance by the division. *(Natural Resources Commission; 312 IAC 22.5-2-4; filed Jul 17, 2002, 3:40 p.m.: 25 IR 4076)*

**312 IAC 22.5-2-5 Completion of review and effective date of authorization**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 4-21.5; IC 14-9-4; IC 14-21-1

Sec. 5. (a) The division shall conclude its review of the development plan within sixty (60) days of the receipt of a completed application. Upon the conclusion of review, the division may approve, condition, or deny the application.

(b) The effective date and administrative review of an authorization under this rule are governed by IC 4-21.5 and 312 IAC 3-1. *(Natural Resources Commission; 312 IAC 22.5-2-5; filed Jul 17, 2002, 3:40 p.m.: 25 IR 4076)*

**312 IAC 22.5-2-6 Conduct of activities and modifications**

Authority: IC 14-21-1-25; IC 14-21-1-31

Affected: IC 14-9-4; IC 14-21-1

Sec. 6. (a) The applicant must conduct approved activities according to the terms and conditions of the authorization and this rule.

(b) The applicant must comply with other valid federal, state, or local laws and ordinances. Compliance with 312 IAC 21 and 312 IAC 22 is specifically made a condition of the authorization.

(c) The activities contemplated in an authorization may be modified only upon advance approval by the division. If written permission was required as a condition for approval of the authorization, the same person (or the successor in interest to the person) must also give written approval for the modification. *(Natural Resources Commission; 312 IAC 22.5-2-6; filed Jul 17, 2002, 3:40 p.m.: 25 IR 4076)*

**ARTICLE 23. STATE HISTORIC REHABILITATION TAX CREDIT**

**Rule 1. Administration**

**312 IAC 23-1-1 Administration by division of historic preservation and archeology**

Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31

Affected: IC 6-3.1-16; IC 14-21-1

Sec. 1. (a) This article governs the administration of the state historic rehabilitation tax credit established by IC 6-3.1-16.

(b) This article is administered by the division.

(c) In administering this article, the division shall consult with the revenue department whenever appropriate. *(Natural Resources Commission; 312 IAC 23-1-1; filed Nov 4, 1999, 10:04 a.m.: 23 IR 548)*

**312 IAC 23-1-2 Delegation and responsibility for establishing requirements of this article**

Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31

Affected: IC 6-3.1-16; IC 14-21-1

Sec. 2. (a) Where this article grants authority to the division to take action, the division director may delegate the authority to any employee of the division.

(b) The responsibility for establishing any requirement contained in this article rests with the person seeking the state historic rehabilitation tax credit. Except as otherwise provided in this section, the division shall determine whether the responsibility has been met. (*Natural Resources Commission; 312 IAC 23-1-2; filed Nov 4, 1999, 10:04 a.m.: 23 IR 548*)

**312 IAC 23-1-3 Review of initial determinations by the division of historic preservation and archeology**

Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31

Affected: IC 4-21.5-1-5; IC 6-3.1-16; IC 14-21-1

Sec. 3. (a) An affected person who is dissatisfied with a determination by the division made under this article may, within thirty (30) days of the determination, appeal to the review board. The appeal shall be considered and determined by the review board as soon as is practicable.

(b) An affected person may, under IC 4-21.5 and 312 IAC 3-1, take administrative review of a determination made by the review board under subsection (a).

(c) The commission is the ultimate authority, as defined by IC 4-21.5-1-5, for an action taken under this article. (*Natural Resources Commission; 312 IAC 23-1-3; filed Nov 4, 1999, 10:04 a.m.: 23 IR 549*)

**Rule 2. Definitions**

**312 IAC 23-2-1 Application of definitions**

Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31

Affected: IC 6-3.1-16; IC 14-21-1

Sec. 1. The definitions in this rule apply throughout this article. (*Natural Resources Commission; 312 IAC 23-2-1; filed Nov 4, 1999, 10:04 a.m.: 23 IR 549*)

**312 IAC 23-2-2 "Division" defined**

Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31

Affected: IC 6-3.1-16; IC 14-21-1

Sec. 2. "Division" means the division of historic preservation and archeology of the department. (*Natural Resources Commission; 312 IAC 23-2-2; filed Nov 4, 1999, 10:04 a.m.: 23 IR 549*)

**312 IAC 23-2-3 "Division director" defined**

Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31

Affected: IC 6-3.1-16; IC 14-21-1

Sec. 3. "Division director" means the director of the division. (*Natural Resources Commission; 312 IAC 23-2-3; filed Nov 4, 1999, 10:04 a.m.: 23 IR 549*)

**312 IAC 23-2-4 "Historic property" defined**

Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31

Affected: IC 6-3.1-16; IC 14-21-1

Sec. 4. "Historic property" means any historic site, historic structure, or other personal or real property located on or in a



historic site or historic structure. (*Natural Resources Commission; 312 IAC 23-2-4; filed Nov 4, 1999, 10:04 a.m.: 23 IR 549*)

**312 IAC 23-2-5 “Historic site” defined**

Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31

Affected: IC 6-3.1-16; IC 14-21-1

Sec. 5. “Historic site” means any site that is important to the general, archeological, agricultural, economic, social, political, architectural, industrial, or cultural history of Indiana. A historic site includes any adjacent property that is necessary to the preservation or restoration of the site. (*Natural Resources Commission; 312 IAC 23-2-5; filed Nov 4, 1999, 10:04 a.m.: 23 IR 549*)

**312 IAC 23-2-6 “Historic structure” defined**

Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31

Affected: IC 6-3.1-16; IC 14-21-1

Sec. 6. “Historic structure” means any structure that is important to the general, archeological, agricultural, economic, social, political, architectural, industrial, or cultural history of Indiana. A historic structure includes any adjacent property that is necessary to the preservation or restoration of the structure. (*Natural Resources Commission; 312 IAC 23-2-6; filed Nov 4, 1999, 10:04 a.m.: 23 IR 549*)

**312 IAC 23-2-7 “Paving and landscaping costs” defined**

Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31

Affected: IC 6-3.1-16; IC 14-21-1

Sec. 7. “Paving and landscaping costs” means costs incurred in paving and landscaping that are unrelated to sustaining vegetative cover that contributes to the significance of the historic property. (*Natural Resources Commission; 312 IAC 23-2-7; filed Nov 4, 1999, 10:04 a.m.: 23 IR 549*)

**312 IAC 23-2-8 “Preservation” defined**

Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31

Affected: IC 6-3.1-16; IC 14-21-1

Sec. 8. “Preservation” means the application of measures to sustain the form, integrity, and material of:

- (1) a building or structure; or
- (2) vegetative cover that contributes to the significance of the property.

(*Natural Resources Commission; 312 IAC 23-2-8; filed Nov 4, 1999, 10:04 a.m.: 23 IR 549*)

**312 IAC 23-2-9 “Qualified expenditures” defined**

Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31

Affected: IC 6-3.1-16; IC 14-21-1

Sec. 9. “Qualified expenditures” means the expenditures for preservation or rehabilitation that are chargeable to a capital account. The term does not include costs that are incurred to do the following:

- (1) Acquire a property or an interest in a property.
- (2) Pay taxes due on a property.
- (3) Enlarge an existing structure.
- (4) Pay realtor’s fees associated with a structure or property.
- (5) Pay paving and landscaping costs.
- (6) Pay sales and marketing costs.

(*Natural Resources Commission; 312 IAC 23-2-9; filed Nov 4, 1999, 10:04 a.m.: 23 IR 549*)

**312 IAC 23-2-10 “Receipt” defined**

Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31

Affected: IC 6-3.1-16; IC 14-21-1

Sec. 10. “Receipt” means the date when a document is actually received by the division at the address set forth in 312 IAC 23-3-1. (*Natural Resources Commission; 312 IAC 23-2-10; filed Nov 4, 1999, 10:04 a.m.: 23 IR 550*)

**312 IAC 23-2-11 “Register” defined**

Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31

Affected: IC 6-3.1-16; IC 14-21-1-9; IC 14-21-1-15

Sec. 11. “Register” means the register of Indiana historic sites and historic structures established under IC 14-21-1-9. (*Natural Resources Commission; 312 IAC 23-2-11; filed Nov 4, 1999, 10:04 a.m.: 23 IR 550*)

**312 IAC 23-2-12 “Rehabilitation” defined**

Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31

Affected: IC 6-3.1-16; IC 14-21-1

Sec. 12. “Rehabilitation” means the process of returning a property to a state of utility through repair or alteration that makes possible an efficient contemporary use while preserving the parts or features of the property that are significant to the historical, architectural, or archeological values of the property. (*Natural Resources Commission; 312 IAC 23-2-12; filed Nov 4, 1999, 10:04 a.m.: 23 IR 550*)

**312 IAC 23-2-13 “Revenue department” defined**

Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31

Affected: IC 6-3.1-16; IC 6-8.1-2-1; IC 14-21-1

Sec. 13. “Revenue department” means the Indiana department of state revenue established under IC 6-8.1-2-1. (*Natural Resources Commission; 312 IAC 23-2-13; filed Nov 4, 1999, 10:04 a.m.: 23 IR 550*)

**312 IAC 23-2-14 “Review board” defined**

Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31

Affected: IC 6-3.1-16; IC 14-21-1-10; IC 14-21-1-20

Sec. 14. “Review board” means the historic preservation review board established under IC 14-21-1-10. (*Natural Resources Commission; 312 IAC 23-2-14; filed Nov 4, 1999, 10:04 a.m.: 23 IR 550*)

**312 IAC 23-2-15 “State fiscal year” defined**

Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31

Affected: IC 6-3.1-16; IC 14-21-1

Sec. 15. “State fiscal year” means the period beginning on July 1 of a year and ending on June 30 of the following year. (*Natural Resources Commission; 312 IAC 23-2-15; filed Nov 4, 1999, 10:04 a.m.: 23 IR 550*)

**312 IAC 23-2-16 “State historic rehabilitation tax credit” defined**

Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31

Affected: IC 6-3.1-16; IC 14-21-1

Sec. 16. “State historic rehabilitation tax credit” means the credit to state tax liability provided by IC 6-3.1-16. (*Natural Resources Commission; 312 IAC 23-2-16; filed Nov 4, 1999, 10:04 a.m.: 23 IR 550*)

**312 IAC 23-2-17 “State tax liability” defined**

Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31

Affected: IC 6-2.1; IC 6-3; IC 6-3.1-1-2; IC 6-3.1-16; IC 14-21-1

Sec. 17. “State tax liability” means a taxpayer’s total tax liability incurred under:

- (1) IC 6-2.1 (the gross income tax);
- (2) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax); and
- (3) IC 6-3-8 (the supplemental net income tax);

as computed after the application of all credits that under IC 6-3.1-1-2 are to be applied before the credit provided by IC 6-3.1-16 and this article. (*Natural Resources Commission; 312 IAC 23-2-17; filed Nov 4, 1999, 10:04 a.m.: 23 IR 550*)

**Rule 3. Certification by Division of Historic Preservation and Archeology**

**312 IAC 23-3-1 Certifications to qualify for the historic rehabilitation tax credit**

Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31

Affected: IC 6-3.1-16-8; IC 14-21-1

Sec. 1. (a) This rule establishes standards for certifications by the division that are required in order for a person to qualify for the state historic rehabilitation tax credit.

(b) To receive the certifications required by IC 6-3.1-16-8, a person must file a written application with the division that satisfies the requirements of IC 6-3.1-16 and this article.

(c) The application must be made on a division form that is filed after February 14, 1994. The division form may require an applicant to provide information at different stages of the process.

(d) The address for filing is as follows:

Division of Historic Preservation and Archeology  
Department of Natural Resources  
Indiana Government Center-South  
402 West Washington Street, Room W274  
Indianapolis, Indiana 46204.

(*Natural Resources Commission; 312 IAC 23-3-1; filed Nov 4, 1999, 10:04 a.m.: 23 IR 550*)

**312 IAC 23-3-2 General eligibility requirements for an historic property to receive the historic rehabilitation tax credit**

Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31

Affected: IC 6-3.1-16; IC 14-21-1

Sec. 2. In order to qualify for the certifications required for the state historic rehabilitation tax credit, an applicant must demonstrate to the division each of the following:

- (1) The historic property is listed on the register.
- (2) The historic structure that is the subject of rehabilitation contains at least two thousand (2,000) gross square feet on the ground floor. This information shall be submitted with a drawing of the floor plan that includes its dimensions.
- (3) The historic structure is at least fifty (50) years old. Originals or photocopies of the following documentation may be used to establish age:
  - (A) Historic property surveys or inventories that indicate the age of the historic structure.
  - (B) Articles from newspapers or periodicals that are dated to confirm the age of the historic structure.
  - (C) Construction records.
  - (D) Original architectural drawings.
  - (E) Other documents or records approved by the division.
- (4) With respect to any measure to sustain the significant vegetative cover of the property, the measure sustains the cover in a way that preserves its significance to the property. Preservation of a vegetative cover that does not contribute to the significance of the property cannot be included in the qualified expenditure calculation.

(5) Preservation or rehabilitation is performed under a plan approved by the division under section 3 of this rule.  
(*Natural Resources Commission; 312 IAC 23-3-2; filed Nov 4, 1999, 10:04 a.m.: 23 IR 551*)

**312 IAC 23-3-3 Preservation or rehabilitation plan**

Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31

Affected: IC 6-3.1-16; IC 14-21-1

Sec. 3. (a) To qualify for the state historic rehabilitation tax credit, an applicant must submit to the division a preservation or rehabilitation plan before beginning preservation or rehabilitation work on the historic property.

(b) Before approving a plan submitted under subsection (a), the division must determine the plan complies with each of the following:

(1) This article.

(2) The Secretary of the Interior's Standards for the Treatment of Historic Properties (36 CFR 68).

(3) The Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings (1995).

(c) Application for the state credit must be made on a federal tax credit certification application form under the Tax Reform Act of 1986 (P.L.99-514) and must be accompanied by a supplemental state form approved by the division.

(d) Following a review of the preservation or rehabilitation plan, the division shall make a determination to approve the plan, approve the plan with conditions, or reject the plan. A determination under this subsection is subject to review under 312 IAC 23-1-2.

(e) After the completion of a preservation or rehabilitation project approved under subsection (d), the applicant must seek certification by the division that the project was performed according to the plan and this article. The applicant must include documentation to establish that the project was completed within the following periods:

(1) Except as provided in subdivision (2), two (2) years after beginning the physical work of construction or destruction in preparation for construction.

(2) Five (5) years after beginning the physical work of construction, or destruction in preparation for construction if the approved plan authorized that the preservation or rehabilitation be completed in phases.

(3) Not more than three (3) years before receipt of the documentation by the division.

(f) The division shall grant a certification sought under subsection (e) if the project complies with the terms and conditions of the plan. Subject to section 4 of this rule, the grant of a certification under this subsection qualifies the applicant to seek the state historic rehabilitation tax credit from the revenue department. A determination under this subsection to grant or deny certification is subject to review under 312 IAC 23-1-2. (*Natural Resources Commission; 312 IAC 23-3-3; filed Nov 4, 1999, 10:04 a.m.: 23 IR 551*)

**312 IAC 23-3-4 Annual limitation on total state tax credits; maximum credit for each application; queue for qualified taxpayers**

Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31

Affected: IC 6-3.1-16-14; IC 14-21-1

Sec. 4. (a) The total amount of historic rehabilitation tax credits that may be allowed under this article, for each state fiscal year, cannot exceed the amount stated in IC 6-3.1-16-14.

(b) No person shall receive a tax credit in excess of one hundred thousand dollars (\$100,000) for an application approved under this article.

(c) Applications for a tax credit shall be accepted beginning on February 15, 1994, by the division. No application shall qualify for a tax credit until the project work has been certified by the division as provided in section 3(e) and 3(f) of this rule. The division shall place each application certified under section 3(e) and 3(f) of this rule in a queue.

(d) Subject to subsections (a) and (b), an application placed in a queue qualifies for a twenty percent (20%) historic rehabilitation tax credit. The division shall notify those applicants in the queue who have qualified for credits, and the revenue department, of both of the following:

(1) The amount of credit to which each applicant is entitled.

(2) The state fiscal year in which the applicant may claim the credit.

(e) Subject to subsections (a) and (b), certified applications in the queue that follow those qualified for credits in the current year shall receive credits in the following state fiscal year, up to the annual limitation described in IC 6-3.1-16-14. The same pattern shall be repeated in each subsequent state fiscal year.

(f) If the result of an applicant receiving a credit under subsection (d) or (e) would be to exceed the annual cap, the excess is allowed as part of the amount eligible for credits in the following state fiscal year.

(g) A person placed in the queue under 310 IAC 24-3, before its repeal, shall maintain entitlement to the same order in the queue and the same amount of credit as if 310 IAC 24-3 had not been repealed. (*Natural Resources Commission; 312 IAC 23-3-4; filed Nov 4, 1999, 10:04 a.m.: 23 IR 551*)

### **312 IAC 23-3-5 Modification of tax credits**

Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31

Affected: IC 4-21.5; IC 6-3.1-16-14

Sec. 5. (a) The division may, for misrepresentation, fraud, or similar good cause, file a complaint with the commission under IC 4-21.5 to modify or terminate a tax credit previously approved under this rule.

(b) The division shall, by administrative letter, modify a tax credit certification to conform the credit to a subsequent statutory change to IC 6-3.1 (or the amount of the annual credit authorized by IC 6-3.1). A modification under this subsection may accelerate or defer when a credit can be taken but shall not modify the sequence of the queue referenced in section 4(g) of this rule. (*Natural Resources Commission; 312 IAC 23-3-5; filed Oct 9, 2001, 4:34 p.m.: 25 IR 708*)

## **ARTICLE 24. STATE MUSEUMS AND HISTORIC SITES**

### **Rule 1. Definitions**

#### **312 IAC 24-1-1 General application of definitions**

Authority: IC 14-20-1-15; IC 14-20-1-23

Affected: IC 14-20-1

Sec. 1. The definitions in this rule apply throughout this article and are supplement to those set forth in 312 IAC 1. (*Natural Resources Commission; 312 IAC 24-1-1; filed Jun 6, 1997, 2:40 p.m.: 20 IR 2752; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

#### **312 IAC 24-1-2 "Accession" defined**

Authority: IC 14-20-1-15; IC 14-20-1-23

Affected: IC 14-20-1

Sec. 2. "Accession" means the acquisition of an artifact for inclusion in the curatorial collection of the division. (*Natural Resources Commission; 312 IAC 24-1-2; filed Jun 6, 1997, 2:40 p.m.: 20 IR 2752; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

#### **312 IAC 24-1-3 "Artifact" defined**

Authority: IC 14-20-1-15; IC 14-20-1-23

Affected: IC 14-20-1

Sec. 3. "Artifact" means a natural or manmade object or material constituting historic property. (*Natural Resources Commission; 312 IAC 24-1-3; filed Jun 6, 1997, 2:40 p.m.: 20 IR 2752; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

#### **312 IAC 24-1-4 "Council" defined**

Authority: IC 14-20-1-15; IC 14-20-1-23

Affected: IC 14-20-1

Sec. 4. "Council" means the advisory council for the bureau of lands and cultural resources. (*Natural Resources Commission; 312 IAC 24-1-4; filed Jun 6, 1997, 2:40 p.m.: 20 IR 2752; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 24-1-5 "Curatorial collection" defined**

Authority: IC 14-20-1-15; IC 14-20-1-23

Affected: IC 14-20-1

Sec. 5. "Curatorial collection" means artifacts acquired and preserved by the division for their potential value as examples, reference materials, or objects of aesthetic or educational importance. (*Natural Resources Commission; 312 IAC 24-1-5; filed Jun 6, 1997, 2:40 p.m.: 20 IR 2753; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 24-1-6 "Deaccession" defined**

Authority: IC 14-20-1-15; IC 14-20-1-23

Affected: IC 14-20-1

Sec. 6. "Deaccession" means an acknowledgment that an artifact is no longer in the curatorial collection of the division and may include transfer of the artifact to another person if the transfer is noted on the museum register. (*Natural Resources Commission; 312 IAC 24-1-6; filed Jun 6, 1997, 2:40 p.m.: 20 IR 2753; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 24-1-7 "Division" defined**

Authority: IC 14-20-1-15; IC 14-20-1-23

Affected: IC 14-9-4-1; IC 14-20-1-2

Sec. 7. "Division" means the division of state museums and historic sites. (*Natural Resources Commission; 312 IAC 24-1-7; filed Jun 6, 1997, 2:40 p.m.: 20 IR 2753; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 24-1-8 "Division director" defined**

Authority: IC 14-20-1-15; IC 14-20-1-23

Affected: IC 14-20-1

Sec. 8. "Division director" means the director of the division. (*Natural Resources Commission; 312 IAC 24-1-8; filed Jun 6, 1997, 2:40 p.m.: 20 IR 2753; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 24-1-9 "Historic property" defined**

Authority: IC 14-20-1-15; IC 14-20-1-23

Affected: IC 14-20-1

Sec. 9. "Historic property" means any:

- (1) historic site;
- (2) historic structure; or
- (3) other personal or real property;

located on or in a historic site or historic structure. (*Natural Resources Commission; 312 IAC 24-1-9; filed Jun 6, 1997, 2:40 p.m.: 20 IR 2753; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 24-1-10 "Historic site" defined**

Authority: IC 14-20-1-15; IC 14-20-1-23

Affected: IC 14-20-1

Sec. 10. "Historic site" means any site that is important to the:

- (1) general;

- (2) archeological;
- (3) agricultural;
- (4) economic;
- (5) social;
- (6) political;
- (7) architectural;
- (8) industrial;
- (9) geological;
- (10) paleontological; or
- (11) cultural;

history of Indiana. A historic site includes any adjacent property that is necessary to the preservation or restoration of the site. *(Natural Resources Commission; 312 IAC 24-1-10; filed Jun 6, 1997, 2:40 p.m.: 20 IR 2753; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 24-1-11 “Historic structure” defined**

Authority: IC 14-20-1-15; IC 14-20-1-23  
Affected: IC 14-20-1

Sec. 11. “Historic structure” means any structure that is important to the:

- (1) general;
- (2) archeological;
- (3) agricultural;
- (4) economic;
- (5) social;
- (6) political;
- (7) architectural;
- (8) industrial;
- (9) geological;
- (10) paleontological; or
- (11) cultural;

history of Indiana. A historic structure includes any adjacent property that is necessary to the preservation or restoration of the structure. *(Natural Resources Commission; 312 IAC 24-1-11; filed Jun 6, 1997, 2:40 p.m.: 20 IR 2753; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 24-1-12 “Museum register” defined**

Authority: IC 14-20-1-15; IC 14-20-1-23  
Affected: IC 14-20-1

Sec. 12. “Museum register” means a log where each acquisition by the division is assigned a number and where information is recorded with respect to the acquisition. That information may include the date and source of the acquisition and a brief description of the acquisition. *(Natural Resources Commission; 312 IAC 24-1-12; filed Jun 6, 1997, 2:40 p.m.: 20 IR 2753; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 24-1-13 “Site” defined**

Authority: IC 14-20-1-15; IC 14-20-1-23  
Affected: IC 14-20-1

Sec. 13. “Site” includes:

- (1) any:
  - (A) aboriginal mound;

- (B) fort;
- (C) earthwork;
- (D) village location;
- (E) burial ground;
- (F) ruin;
- (G) mine;
- (H) cave;
- (I) battleground;
- (J) shipwreck; or
- (K) other similar location on land or under water; or

(2) any location that contains or once contained a structure.

*(Natural Resources Commission; 312 IAC 24-1-13; filed Jun 6, 1997, 2:40 p.m.: 20 IR 2753; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 24-1-14 “Structure” defined**

Authority: IC 14-20-1-15; IC 14-20-1-23

Affected: IC 14-20-1

Sec. 14. “Structure” means any manmade construction. *(Natural Resources Commission; 312 IAC 24-1-14; filed Jun 6, 1997, 2:40 p.m.: 20 IR 2754; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 24-1-15 “Trustees” defined**

Authority: IC 14-20-1-15; IC 14-20-1-23

Affected: IC 14-20-1-16

Sec. 15. “Trustees” means the board of trustees of the division established by IC 14-20-1-16. *(Natural Resources Commission; 312 IAC 24-1-15; filed Jun 6, 1997, 2:40 p.m.: 20 IR 2754; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**Rule 2. Artifacts; Evaluation of Proposals to Sell, Exchange, or Accept Gifts or Otherwise Acquire**

**312 IAC 24-2-1 Purpose and objective**

Authority: IC 14-20-1-15; IC 14-20-1-23

Affected: IC 14-20-1-23

Sec. 1. (a) This rule establishes procedures for evaluating the merits of proposals to sell, exchange, or accept gifts of artifacts under IC 14-20-1-23.

(b) The division seeks, by implementation of these procedures, to collect, preserve, and interpret artifacts and materials reflecting the cultural and natural history of Indiana. *(Natural Resources Commission; 312 IAC 24-2-1; filed Jun 6, 1997, 2:40 p.m.: 20 IR 2754; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 24-2-2 General priorities for artifact accession**

Authority: IC 14-20-1-15; IC 14-20-1-23

Affected: IC 14-20-1

Sec. 2. Artifacts are accessioned by the division with consideration for collecting priorities as follows:

(1) The highest priority is accorded to documented artifacts that provide information from which to reconstruct:

- (A) Indiana history;
- (B) regional history; or
- (C) natural history.

Geographic coverage must consider significance on a national or international level for interpretation of particular areas (for



example, popular culture). The artifact becomes a permanent voucher for that information.

(2) A second priority is accorded to undocumented artifacts that have comparative value for identification as those described in subdivision (1), or that serve as reference specimens, where documented artifacts are not included in the permanent collection.

(3) A third priority is accorded to artifacts that do not meet the standards set forth in subdivision (1) or (2), but may be integrated by the division into educational programming.

*(Natural Resources Commission; 312 IAC 24-2-2; filed Jun 6, 1997, 2:40 p.m.: 20 IR 2754; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 24-2-3 Considerations affecting priorities**

Authority: IC 14-20-1-15; IC 14-20-1-23

Affected: IC 14-20-1

Sec. 3. Considerations that affect the collecting priorities described in section 2 of this rule include the following:

(1) Whether the artifacts are relevant to the powers and duties of the section of museums as set forth in IC 14-20-1-9 through IC 14-20-1-11.

(2) Whether the division can interpret and disseminate information provided by a study of the artifacts or can make those artifacts available for scholarly study.

(3) Whether the division is able to provide for the storage, protection, and preservation of the artifacts.

*(Natural Resources Commission; 312 IAC 24-2-3; filed Jun 6, 1997, 2:40 p.m.: 20 IR 2754; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 24-2-4 Action by the division director for the accession of artifacts; exception; administrative review by commission**

Authority: IC 14-20-1-15; IC 14-20-1-23

Affected: IC 14-20-1

Sec. 4. (a) Except as provided under subsection (b), the division director shall determine whether to accept or reject an artifact for accession.

(b) No artifact may be rejected based upon the consideration set forth under section 3(3) of this rule unless the trustees determine that the division is unable to provide for the storage, protection, and preservation of the artifact.

(c) The board of trustees may accept restricted title to an artifact.

(d) A determination under this section is subject to administrative review by the commission if the review is requested within thirty (30) days of notice of the determination. *(Natural Resources Commission; 312 IAC 24-2-4; filed Jun 6, 1997, 2:40 p.m.: 20 IR 2754; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 24-2-5 Accession of artifacts; authority of grantor or donor to act**

Authority: IC 14-20-1-15; IC 14-20-1-23

Affected: IC 14-20-1

Sec. 5. The following standards shall be satisfied for the accession of artifacts, whether the resulting accession is by purchase, exchange, or gift:

(1) The person providing the artifact must establish to the satisfaction of the division that the person is the owner of that artifact.

(2) The state must receive unrestricted title to the artifact, except as otherwise provided by section 2 of this rule.

(3) To the extent practicable, an artifact should be delivered to the department with full literary rights, copyrights, patents, and trademarks.

(4) To the extent practicable, an artifact should be free from physically hazardous attributes.

(5) An artifact may be appraised only at the initiative and expense of the person seeking the appraisal. No employee of the department may provide an appraisal of any kind except for use exclusively by the department.

*(Natural Resources Commission; 312 IAC 24-2-5; filed Jun 6, 1997, 2:40 p.m.: 20 IR 2755; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 24-2-6 Deaccession of artifacts; general criteria**

Authority: IC 14-20-1-15; IC 14-20-1-23

Affected: IC 14-20-1-10; IC 14-20-1-11

Sec. 6. Deaccession shall be performed by the department in a manner that is cautious, deliberate, and scrupulous and is in keeping with section 1 of this rule. An artifact to be considered for deaccession must meet at least one (1) of the following criteria:

- (1) The artifact is not included within the duties of the division under IC 14-20-1-10 and IC 14-20-1-11 and its accession priorities under section 2 of this rule.
- (2) The artifact lacks physical integrity.
- (3) The artifact fails to retain its identity or authenticity.
- (4) The artifact is misplaced for at least two (2) years or is stolen.
- (5) The artifact is duplicated by another artifact in the permanent collection of the division.
- (6) Preservation of the artifact by the division is impracticable.
- (7) The artifact is deteriorated beyond usefulness.
- (8) The artifact has a doubtful potential for utilization in the foreseeable future.
- (9) An absence of documentation, or inadequate documentation, critically reduces the value of the artifact.

*(Natural Resources Commission; 312 IAC 24-2-6; filed Jun 6, 1997, 2:40 p.m.: 20 IR 2755; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 24-2-7 Procedure for deaccessioning artifacts**

Authority: IC 14-20-1-15; IC 14-20-1-23

Affected: IC 14-20-1-23

Sec. 7. (a) The division director may, individually or on the initiative of the curatorial office, propose an artifact for deaccession. The proposal shall be delivered in writing to the trustees and must include the following information:

- (1) The source of the artifact, if known.
- (2) A criterion for deaccession as provided under section 6 of this rule.
- (3) The estimated market value of the artifact.
- (4) The means of transfer or disposal of the artifact, including whether the artifact should be sold to, donated to, or exchanged with another public or nonprofit museum or historical society.

(b) The trustees shall consider a proposal by the division director under subsection (a) and may recommend deaccession of an artifact under terms and conditions found appropriate by the trustees. The trustees shall not act upon the proposal except during a public meeting of the trustees. An opportunity shall be provided to any interested person to comment in writing or during the public meeting on the proposal. No employee of the department may be disciplined or otherwise sanctioned by the department because the employee exercises the opportunity to comment provided under this subsection.

(c) The commission shall consider the recommendation of the trustees under subsection (b) and may order any of the following:

- (1) The destruction of an artifact that is deteriorated beyond usefulness.
- (2) The removal from itemization with the permanent collection of the division of an artifact that is misplaced for at least two (2) years or is stolen.
- (3) The sale, donation, or exchange of an artifact with another public or nonprofit museum or historical society under IC 14-20-1-23(c). However, the commission may donate an artifact to a public or nonprofit museum or historical society under this subsection only if the museum or historical society is located in Indiana.
- (4) The sale or exchange of any other artifact under IC 14-20-1-23(d).

*(Natural Resources Commission; 312 IAC 24-2-7; filed Jun 6, 1997, 2:40 p.m.: 20 IR 2755; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286)*

**312 IAC 24-2-8 Compliance with precatory restrictions**

Authority: IC 14-20-1-15; IC 14-20-1-23

Affected: IC 14-20-1

Sec. 8. An artifact that is subject to a precatory restriction shall not be considered by the commission under section 7(c) of this rule until the division makes a good faith effort to:

- (1) comply with the restriction; and
- (2) notify the individual, if living, from whom the artifact was accessioned.

If the individual is not living and the artifact was accessioned within the last twenty (20) years, the division shall make a good faith effort to notify the heirs or assigns of the decedent. If the heirs or assigns cannot be identified or located, the division shall give notice by publication in the newspaper having the greatest circulation in the county where the individual last resided, and in Marion County if the place of last known residence is outside Indiana. (*Natural Resources Commission; 312 IAC 24-2-8; filed Jun 6, 1997, 2:40 p.m.: 20 IR 2756; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 24-2-9 Prohibition on transfer of artifacts to departmental staff, boards, and families**

Authority: IC 14-20-1-15; IC 14-20-1-23

Affected: IC 14-20-1

Sec. 9. No artifact from the permanent collection of the division shall be given, sold, or otherwise transferred to:

- (1) an employee of the department;
- (2) a trustee;
- (3) a member of the council; or
- (4) a member of the commission or to their immediate families or representatives.

(*Natural Resources Commission; 312 IAC 24-2-9; filed Jun 6, 1997, 2:40 p.m.: 20 IR 2756; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 24-2-10 Curatorial offices**

Authority: IC 14-20-1-15; IC 14-20-1-23

Affected: IC 14-20-1

Sec. 10. (a) This rule is implemented through the curatorial offices within the section of museums.

(b) Collecting strategies are established for each curatorial office, providing for areas of coverage and standards of documentation, in the publication of the trustees entitled "Collection Management Policy" (March 20, 1991). (*Natural Resources Commission; 312 IAC 24-2-10; filed Jun 6, 1997, 2:40 p.m.: 20 IR 2756; filed Mar 25, 1999, 4:23 p.m.: 22 IR 2491; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**Rule 3. Historic Properties; Evaluation of Proposals to Sell, Exchange, Accept Gifts, or Otherwise Acquire****312 IAC 24-3-1 Purpose and objective; exception for artifacts**

Authority: IC 14-20-1-15; IC 14-20-1-23

Affected: IC 14-20-1-23

Sec. 1. (a) This rule establishes a procedure for evaluating the merits of proposals to sell, exchange, or accept gifts of historic properties under IC 14-20-1-23(d).

(b) The division seeks, by implementation of this procedure, to also establish standards and criteria for the acquisition of historic properties under IC 14-20-1-23(a).

(c) Where historic property is an artifact, this rule is controlled by 312 IAC 24-2. (*Natural Resources Commission; 312 IAC 24-3-1; filed Jun 6, 1997, 2:40 p.m.: 20 IR 2756; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 24-3-2 Petition for acquisition of an historic site or an historic structure**

Authority: IC 14-20-1-15; IC 14-20-1-23

Affected: IC 14-20-1

Sec. 2. (a) A person seeking to have Indiana acquire a historic site or a historic structure that would be administered by the department shall file a petition with the division director signed by at least ten (10) residents of Indiana.

(b) The petition must be accompanied by an application completed on a division form. (*Natural Resources Commission; 312 IAC 24-3-2; filed Jun 6, 1997, 2:40 p.m.: 20 IR 2756; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 24-3-3 Procedure for evaluating a petition; recommendation by trustees; final action by commission**

Authority: IC 14-20-1-15; IC 14-20-1-23

Affected: IC 14-20-1

Sec. 3. (a) Upon the receipt of a petition and completed application as provided under section 2 of this rule, the division will perform historical or archeological research and will gather data on structural needs, costs, and other information pertinent to a complete evaluation.

(b) The division will present to the trustees the results of the research and data collection described in subsection (a). Based upon that presentation, and upon other documentation that may be submitted to the trustees by an interested person, the trustees shall determine whether to recommend that the property should be acquired.

(c) If the trustees determine to recommend that the property should be acquired, that recommendation shall be submitted to the commission for final action.

(d) The recommendation of the trustees or the final action of the commission, under this section, may contain restrictions, terms or conditions not included in the petition and application filed under section 2 of this rule. (*Natural Resources Commission; 312 IAC 24-3-3; filed Jun 6, 1997, 2:40 p.m.: 20 IR 2756; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 24-3-4 Factors for evaluating a petition**

Authority: IC 14-20-1-15; IC 14-20-1-23

Affected: IC 14-20-1

Sec. 4. In evaluating a petition and application filed under section 2 of this rule, the department shall consider the following factors:

(1) Whether the property illustrates, interprets, or is identified with an important aspect of Indiana history or prehistory.

(2) Whether the property duplicates a state historic site already administered by the department.

(3) Whether the property retains its original appearance, setting, and materials.

(4) Whether the property has sufficient historical significance to justify the costs of acquisition, continued rehabilitation, and maintenance.

(5) Whether the property is readily accessible to the public.

(6) Whether the property has ready access to utilities.

(7) Whether the property could generate future revenues.

(8) Other factors that promote the purposes of IC 14-20-1 and this article.

(*Natural Resources Commission; 312 IAC 24-3-4; filed Jun 6, 1997, 2:40 p.m.: 20 IR 2757; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

**312 IAC 24-3-5 Procedure for authorization by the department for deaccession of historic property**

Authority: IC 14-20-1-15; IC 14-20-1-23

Affected: IC 14-20-1

Sec. 5. (a) Before historic property is deaccessioned, the trustees shall consider and evaluate the property according to the factors contained in section 6 of this rule. The trustees shall not recommend that a property be deaccessioned except during a public meeting of the trustees. An opportunity shall be provided to any interested person to comment in writing or during the public meeting

concerning whether the property should be deaccessioned. No employee of the department may be disciplined or otherwise sanctioned by the department because the employee exercises the opportunity to comment provided under this subsection.

(b) If the trustees determine to recommend that the historic property be deaccessioned, the recommendation shall be submitted to the commission for final action of the department.

(c) The commission may direct that a public hearing be conducted for final action that is taken under subsection (b).

(d) If the final action of the commission is to deaccession the historic property, that determination shall be referred by the secretary of the commission to the Indiana department of administration for disposition of the property. (*Natural Resources Commission; 312 IAC 24-3-5; filed Jun 6, 1997, 2:40 p.m.: 20 IR 2757; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

### **312 IAC 24-3-6 Factors for evaluating historic property**

Authority: IC 14-20-1-15; IC 14-20-1-23

Affected: IC 14-20-1

Sec. 6. In evaluating whether historic property administered by the division should be deaccessioned, the department shall consider the following factors:

- (1) Whether the property illustrates, interprets, or is identified with an important aspect of Indiana history or prehistory.
- (2) Whether the property duplicates another state historic site administered by the department.
- (3) Whether the property retains its original appearance, setting, and materials.
- (4) Whether the property has sufficient historical significance to justify the costs of continued rehabilitation and maintenance.
- (5) Whether the property is readily accessible to the public.
- (6) Whether the property has ready access to utilities.
- (7) Whether the property currently generates or could generate future revenues.
- (8) Other factors which promote the purposes of IC 14-20-1 and this article.

(*Natural Resources Commission; 312 IAC 24-3-6; filed Jun 6, 1997, 2:40 p.m.: 20 IR 2757; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

## **Rule 4. Ethics**

### **312 IAC 24-4-1 Supplemental museum ethics requirements**

Authority: IC 14-20-1-15

Affected: IC 14-10-2-6; IC 14-20-1

Sec. 1. The trustees shall adopt a museum code of ethics applicable to the trustees and the employees of the division. This code is supplemental to 40 IAC 2. (*Natural Resources Commission; 312 IAC 24-4-1; filed Jun 6, 1997, 2:40 p.m.: 20 IR 2757; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

### **312 IAC 24-4-2 Appraisal prohibition**

Authority: IC 14-20-1-15

Affected: IC 14-20-1

Sec. 2. No employee of the division may provide any financial appraisal of an artifact unless the appraisal is for use exclusively by the department. (*Natural Resources Commission; 312 IAC 24-4-2; filed Jun 6, 1997, 2:40 p.m.: 20 IR 2757; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286*)

## **ARTICLE 25. COAL MINING AND RECLAMATION OPERATIONS**

### **Rule 1. Definitions**

**312 IAC 25-1-1 Applicability**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 1. Unless otherwise specified, the definitions contained in this rule apply throughout this article. (*Natural Resources Commission; 312 IAC 25-1-1; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3402, eff Dec 1, 2001*)

**312 IAC 25-1-2 “A horizon” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 2. “A horizon” means the uppermost mineral layer and is the part of the soil in which the organic matter is most abundant and where the leaching of soluble or suspended particles is typically the greatest. (*Natural Resources Commission; 312 IAC 25-1-2; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3402, eff Dec 1, 2001*)

**312 IAC 25-1-3 “Acid-drainage” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 3. “Acid-drainage” means water with a pH of less than six (6.0) and in which total acidity exceeds total alkalinity discharged from an active, inactive, or abandoned surface coal mine and reclamation operation. (*Natural Resources Commission; 312 IAC 25-1-3; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3402, eff Dec 1, 2001*)

**312 IAC 25-1-4 “Acid-forming materials” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 4. “Acid-forming materials” means earth materials that contain sulfide minerals or other materials that, if exposed to air, water, or weathering processes, form acids that may create acid drainage. (*Natural Resources Commission; 312 IAC 25-1-4; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3402, eff Dec 1, 2001*)

**312 IAC 25-1-5 “Act” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 5. “Act” means IC 14-34. (*Natural Resources Commission; 312 IAC 25-1-5; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3402, eff Dec 1, 2001*)

**312 IAC 25-1-6 “Adjacent area” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 6. “Adjacent area” means land located outside the affected area, or permit area, depending on the context in which adjacent area is used, where air, surface or ground water, fish, wildlife, vegetation, or other resources protected by IC 14-34 may be adversely impacted by surface coal mining and reclamation operations. (*Natural Resources Commission; 312 IAC 25-1-6; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3402, eff Dec 1, 2001*)

**312 IAC 25-1-7 “Administratively complete application” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 7. "Administratively complete application" means an application for permit approval, or approval for coal exploration where required, or approval for an exemption for coal extraction incidental to the extraction of other minerals, which the director determines to contain information addressing each application requirement of this article and to contain all information necessary to initiate processing and public review. (*Natural Resources Commission; 312 IAC 25-1-7; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3402, eff Dec 1, 2001*)

**312 IAC 25-1-8 "Affected area" defined Version a**

Authority: IC 14-34-2-1

Affected: IC 14-34

*NOTE: This version of section effective until superseded by the following version of this section, which is effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register.*

Sec. 8. "Affected area" means a land or water surface area that is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The term includes any of the following:

- (1) The disturbed area.
- (2) An area upon which surface coal mining and reclamation operations are conducted.
- (3) Adjacent land the use of which is incidental to surface coal mining and reclamation operations.
- (4) An area covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations.
- (5) A site covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, or shipping areas.
- (6) An area upon which are sited structures, facilities, or other material on the surface resulting from, or incidental to, surface coal mining reclamation operations.
- (7) The area located above underground workings of a mine.

(*Natural Resources Commission; 312 IAC 25-1-8; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3403, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182*)

**312 IAC 25-1-8 "Affected area" defined Version b**

Authority: IC 14-34-2-1

Affected: IC 14-34

*NOTE: This version of section effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register. See also preceding version of this section, effective until superseded by this version of section.*

Sec. 8. (a) "Affected area" means any land or water surface area that is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The term includes any of the following:

- (1) The disturbed area.
- (2) Any area upon which surface coal mining and reclamation operations are conducted.
- (3) Any adjacent land the use of which is incidental to surface coal mining and reclamation operations.
- (4) Any area covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this section.
- (5) Any area covered by:
  - (A) surface excavations;
  - (B) workings;
  - (C) impoundments;
  - (D) dams;
  - (E) ventilation shafts;
  - (F) entryways;

- (G) refuse banks;
- (H) dumps;
- (I) stockpiles;
- (J) overburden piles;
- (K) spoil banks;
- (L) culm banks;
- (M) tailings;
- (N) holes or depressions;
- (O) repair areas;
- (P) storage areas; or
- (Q) shipping areas.

(6) Any area upon which are sited structures, facilities, or other property material on the surface resulting from, or incident to, surface coal mining and reclamation operations.

(7) The area located above underground workings.

(b) The term includes every road used for purposes of access to, or for hauling coal to or from, any surface coal mining and reclamation operation unless:

(1) the road is designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(2) the road is maintained with public funds and constructed in a manner similar to other public roads of the same classification within the jurisdiction;

(3) there is substantial (more than incidental) public use; and

(4) the extent and the effect of mining-related uses of the road by the permittee do not warrant regulation as part of the surface coal mining and reclamation operations.

(c) The director shall determine, on a case-by-case basis, whether a particular road satisfies the requirements of subsection

(b)(4) based upon the mining-related use of the road and consistent with the definition of surface coal mining operation found in section 145 of this rule. (*Natural Resources Commission; 312 IAC 25-1-8; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3403, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2444, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register*)

### **312 IAC 25-1-9 “Agricultural use” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 9. “Agricultural use” means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock and the cropping, cultivation, and harvesting of plants. (*Natural Resources Commission; 312 IAC 25-1-9; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3403, eff Dec 1, 2001*)

### **312 IAC 25-1-10 “Applicant” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 10. “Applicant” means any person seeking a permit or exploration approval from the director to conduct surface coal mining and reclamation operations pursuant to IC 14-34, this article, and this regulatory program. (*Natural Resources Commission; 312 IAC 25-1-10; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3403, eff Dec 1, 2001*)

### **312 IAC 25-1-11 “Application” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 11. “Application” means the documents and other information filed with the director for issuance of a permit or



exploration approval. (*Natural Resources Commission; 312 IAC 25-1-11; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3403, eff Dec 1, 2001*)

**312 IAC 25-1-12 “Approximate original contour” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 12. “Approximate original contour” means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles, and coal refuse piles eliminated. Permanent water impoundments may be permitted where the director has determined that they comply with the performance standards of this article. (*Natural Resources Commission; 312 IAC 25-1-12; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3403, eff Dec 1, 2001*)

**312 IAC 25-1-13 “Aquifer” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 13. “Aquifer” means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specified use. (*Natural Resources Commission; 312 IAC 25-1-13; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3403, eff Dec 1, 2001*)

**312 IAC 25-1-14 “Auger mining” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 14. “Auger mining” means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface. (*Natural Resources Commission; 312 IAC 25-1-14; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3404, eff Dec 1, 2001*)

**312 IAC 25-1-15 “Augmented seeding, fertilization, or irrigation” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 15. “Augmented seeding, fertilization, or irrigation” means seeding, fertilizing, or irrigating in excess of normal agronomic practices within the region. (*Natural Resources Commission; 312 IAC 25-1-15; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3404, eff Dec 1, 2001*)

**312 IAC 25-1-16 “B horizon” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 16. “B horizon” means the mineral layer that is typically immediately beneath the A horizon. The B horizon commonly contains more clay, iron, or aluminum than the A horizon or the C horizon. (*Natural Resources Commission; 312 IAC 25-1-16; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3404, eff Dec 1, 2001*)

**312 IAC 25-1-17 “Best technology currently available” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 17. (a) “Best technology currently available” means equipment, devices, systems, methods, or techniques that will: (1) prevent, to the extent possible, additional contributions of suspended solids to stream flow or run-off outside the permit

area, but in no event result in contributions of suspended solids in excess of requirements set by applicable Indiana or federal laws; and

(2) minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife, and their habitats and achieve enhancement of those resources where practicable.

(b) Included within best technology currently available are equipment, devices, systems, methods, or techniques that are currently available anywhere as determined by the director even if not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, scheduling of activities, and design of siltation structures. The director shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by IC 14-34 and this article. (*Natural Resources Commission; 312 IAC 25-1-17; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3404, eff Dec 1, 2001*)

### **312 IAC 25-1-18 “Box cut spoil” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 18. “Box cut spoil” means the spoil created from the initial excavation of a pit or pits that is placed upon the surface of adjacent lands. The term does not include spoil from subsequent excavations that is placed in previously excavated pits. (*Natural Resources Commission; 312 IAC 25-1-18; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3404, eff Dec 1, 2001*)

### **312 IAC 25-1-19 “C horizon” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 19. “C horizon” means the deepest layer of the soil profile and consists of loose material or weathered rock that is relatively unaffected by biologic activity. (*Natural Resources Commission; 312 IAC 25-1-19; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3404, eff Dec 1, 2001*)

### **312 IAC 25-1-20 “Cemetery” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 20. “Cemetery” means any area of land where human remains are interred. (*Natural Resources Commission; 312 IAC 25-1-20; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3404, eff Dec 1, 2001*)

### **312 IAC 25-1-21 “Certified blaster” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 21. “Certified blaster” means a person who has the following qualifications:

(1) Has twelve (12) months or more experience in blasting operations under the immediate supervision of an experienced blaster.

(2) Has completed an approved training course in blasting technology.

(3) Has successfully passed the blaster certification examination.

(4) Holds a valid certificate issued by the director.

(*Natural Resources Commission; 312 IAC 25-1-21; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3405, eff Dec 1, 2001*)

### **312 IAC 25-1-22 “Coal” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 22. "Coal" means combustible carbonaceous rock classified as bituminous or subbituminous by ASTM Standard D 388-77. (*Natural Resources Commission; 312 IAC 25-1-22; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3405, eff Dec 1, 2001*)

**312 IAC 25-1-23 "Coal exploration" defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 23. "Coal exploration" means the field gathering of:

- (1) surface or subsurface geologic, physical, or chemical data by trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or
- (2) environmental data to establish the condition of an area before beginning surface coal mining and reclamation operations under the requirements of this article.

(*Natural Resources Commission; 312 IAC 25-1-23; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3405, eff Dec 1, 2001*)

**312 IAC 25-1-24 "Coal mine waste" defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 24. "Coal mine waste" means coal processing waste and underground development waste. (*Natural Resources Commission; 312 IAC 25-1-24; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3405, eff Dec 1, 2001*)

**312 IAC 25-1-25 "Coal preparation" defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 25. "Coal preparation" means leaching, chemical processing, physical processing, cleaning, concentrating, or any other method for processing or preparing coal. (*Natural Resources Commission; 312 IAC 25-1-25; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3405, eff Dec 1, 2001*)

**312 IAC 25-1-26 "Coal preparation plant" defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 26. (a) "Coal preparation plant" means a facility or collection of facilities that perform coal preparation.

(b) A coal preparation plant includes each of the following:

- (1) Loading facilities.
- (2) Storage and stockpile facilities.
- (3) Sheds.
- (4) Shops and other buildings.
- (5) Water treatment and water storage facilities.
- (6) Settling basins and impoundments.
- (7) Coal processing and other waste disposal areas.
- (8) Roads, railroads, and other transport facilities.
- (9) Other associated support facilities.

(c) Exempted from the meaning of coal preparation plant is an operation that:

- (1) loads coal;
- (2) does not crush, size, or screen coal; and
- (3) is not located at or near the minesite.

(*Natural Resources Commission; 312 IAC 25-1-26; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3405, eff Dec 1, 2001*)

**312 IAC 25-1-27 “Coal processing waste” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 27. “Coal processing waste” means earth materials that are separated from the product coal during cleaning, concentrating, or other processing or preparation of coal. (*Natural Resources Commission; 312 IAC 25-1-27; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3406, eff Dec 1, 2001*)

**312 IAC 25-1-28 “Combustible material” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 28. “Combustible material” means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise. (*Natural Resources Commission; 312 IAC 25-1-28; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3406, eff Dec 1, 2001*)

**312 IAC 25-1-29 “Commission” defined**

Authority: IC 14-34-2-1

Affected: IC 14-10-1-1; IC 14-34

Sec. 29. “Commission” refers to the natural resources commission established under IC 14-10-1-1. (*Natural Resources Commission; 312 IAC 25-1-29; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3406, eff Dec 1, 2001*)

**312 IAC 25-1-30 “Community or institutional building” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 30. “Community or institutional building” means a structure, other than a public building or an occupied dwelling, that:

- (1) is used primarily for meetings, gatherings, or functions of local civic organizations or other community groups;
- (2) functions as an educational, cultural, historic, religious, scientific, correctional, mental health care, or physical health care facility; or
- (3) is used for:

- (A) water supply;
- (B) power generation;
- (C) sewage treatment; or
- (D) other public services.

(*Natural Resources Commission; 312 IAC 25-1-30; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3406, eff Dec 1, 2001*)

**312 IAC 25-1-31 “Compaction” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 31. “Compaction” means increasing the density of a material by reducing the voids between the particles. (*Natural Resources Commission; 312 IAC 25-1-31; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3406, eff Dec 1, 2001*)

**312 IAC 25-1-32 “Complete application” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 32. “Complete application” means an application for a permit or exploration approval that contains all information

required under IC 14-34 and this article. (*Natural Resources Commission; 312 IAC 25-1-32; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3406, eff Dec 1, 2001*)

**312 IAC 25-1-33 “Cropland” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 33. “Cropland” means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Land used for facilities in support of a cropland farming operation, which is adjacent to or an integral part of the operation, is also included. (*Natural Resources Commission; 312 IAC 25-1-33; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3406, eff Dec 1, 2001*)

**312 IAC 25-1-34 “Cumulative impact area” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 34. “Cumulative impact area” means the area, including the permit area, within which impacts resulting from a proposed operation may interact with the impacts of all anticipated mining on surface and ground water systems. Anticipated mining includes the entire projected lives through final bond release of the following:

- (1) The proposed operation.
- (2) Existing operations.
- (3) Any operation for which a permit application has been submitted to the department.
- (4) Any operation that must meet development requirements for leased federal coal for which actual mine development information is available.

(*Natural Resources Commission; 312 IAC 25-1-34; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3406, eff Dec 1, 2001*)

**312 IAC 25-1-35 “Cumulative measurement period” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 35. (a) “Cumulative measurement period” means, for purposes of 312 IAC 25-2, the period of time over which both cumulative production and cumulative revenue are measured.

(b) For purposes of determining the beginning of the cumulative measurement period, subject to approval by the director, the operator must select and consistently use one (1) of the following:

- (1) For mining areas where coal or other minerals were extracted prior to August 3, 1977, the date extraction of coal or other minerals commenced at that mining area or August 3, 1977.
- (2) For mining areas where extraction of coal or other minerals commenced on or after August 3, 1977, the date extraction of coal or other minerals commenced at that mining area, whichever is earlier.

(c) For annual reporting purposes under 312 IAC 25-2-12, the end of the period for which cumulative production and revenue is calculated is either for mining areas where:

- (1) coal or other minerals were extracted before the effective date of this section, the last day of the preceding month, and each anniversary of that date thereafter; or
- (2) extraction of coal or other minerals commenced on or after the effective date of this section, the last day of the calendar quarter during which coal extraction commenced, and each anniversary of that day thereafter.

(*Natural Resources Commission; 312 IAC 25-1-35; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3407, eff Dec 1, 2001*)

**312 IAC 25-1-36 “Cumulative production” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 36. "Cumulative production" means, for purposes of 312 IAC 25-2, the total tonnage of coal or other minerals extracted from a mining area during the cumulative measurement period. The inclusion of stockpiled coal and other mineral tonnages is governed by 312 IAC 25-2-10. *(Natural Resources Commission; 312 IAC 25-1-36; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3407, eff Dec 1, 2001)*

**312 IAC 25-1-37 "Cumulative revenue" defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 37. "Cumulative revenue" means, for purposes of 312 IAC 25-2, the total revenue derived from the sale of coal or other minerals and the fair market value of coal or other minerals transferred or used, but not sold, during the cumulative measurement period. *(Natural Resources Commission; 312 IAC 25-1-37; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3407, eff Dec 1, 2001)*

**312 IAC 25-1-38 "Department" defined**

Authority: IC 14-34-2-1

Affected: IC 14-9-1-1; IC 14-34

Sec. 38. "Department" refers to the department of natural resources established under IC 14-9-1-1. *(Natural Resources Commission; 312 IAC 25-1-38; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3407, eff Dec 1, 2001)*

**312 IAC 25-1-39 "Developed water resources" defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 39. "Developed water resources" means land that is used for storing water for beneficial purposes, including the following:

- (1) Stock ponds.
- (2) Irrigation.
- (3) Fire protection.
- (4) Flood control.
- (5) Water supply.

*(Natural Resources Commission; 312 IAC 25-1-39; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3407, eff Dec 1, 2001)*

**312 IAC 25-1-40 "Director" defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 40. "Director" refers to the director of the department of natural resources (or an authorized representative of the director). *(Natural Resources Commission; 312 IAC 25-1-40; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3408, eff Dec 1, 2001)*

**312 IAC 25-1-41 "Disturbed area" defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 41. "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as disturbed until reclamation is complete and the performance bond or other assurance of performance is released. *(Natural Resources Commission; 312 IAC 25-1-41; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3408, eff Dec 1, 2001)*

**312 IAC 25-1-42 “Diverse vegetation” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 42. “Diverse vegetation” means two (2) or more plant species that provide effective and permanent vegetative cover, compatible with the postmining land use, soils, and climate. (*Natural Resources Commission; 312 IAC 25-1-42; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3408, eff Dec 1, 2001*)

**312 IAC 25-1-43 “Diversion” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 43. “Diversion” means a channel, embankment, or other manmade structure constructed to divert water from one (1) area to another. (*Natural Resources Commission; 312 IAC 25-1-43; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3408, eff Dec 1, 2001*)

**312 IAC 25-1-44 “Downslope” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 44. “Downslope” means the land surface between the projected outcrop of the lowest coalbed being mined along each highwall and a valley floor. (*Natural Resources Commission; 312 IAC 25-1-44; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3408, eff Dec 1, 2001*)

**312 IAC 25-1-45 “Drinking, domestic, or residential water supply” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34; 30 CFR 701.5

Sec. 45. “Drinking, domestic, or residential water supply” means water received from a well or spring and any appurtenant delivery system that provides water for direct human consumption or household use. Wells and springs that serve only agricultural, commercial, or industrial enterprises are not included except to the extent the water supply is for direct human consumption, human sanitation, or domestic use. (*Natural Resources Commission; 312 IAC 25-1-45; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3408, eff Dec 1, 2001*)

**312 IAC 25-1-45.5 “Drinking water well” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 45.5. “Drinking water well”, for the purposes of 312 IAC 25-6-12.5 and 312 IAC 25-6-76.5, means a bored, drilled, or driven shaft or a dug hole that meets each of the following:

- (1) Supplies ground water for human consumption.
- (2) Has a depth greater than its largest surface dimension.
- (3) Is not permanently abandoned under 312 IAC 13-10-2.

(*Natural Resources Commission; 312 IAC 25-1-45.5; filed Jul 29, 2003, 3:45 p.m.: 26 IR 3860, eff Feb 1, 2004*)

**312 IAC 25-1-46 “Embankment” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 46. “Embankment” means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads, or railways, or for other similar purposes. (*Natural Resources Commission; 312*

*IAC 25-1-46; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3408, eff Dec 1, 2001)*

**312 IAC 25-1-47 “Ephemeral stream” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 47. “Ephemeral stream” means a stream that:

(1) flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice; and

(2) has a channel bottom that is always above the local water table.

*(Natural Resources Commission; 312 IAC 25-1-47; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3408, eff Dec 1, 2001)*

**312 IAC 25-1-48 “Excess spoil” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 48. “Excess spoil” means spoil in excess of that necessary to backfill and grade affected areas to the approximate original contour. The term may include box cut spoil where it has been demonstrated, for the duration of the mining operation, that the box cut spoil is not needed to restore the approximate original contour. *(Natural Resources Commission; 312 IAC 25-1-48; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3409, eff Dec 1, 2001)*

**312 IAC 25-1-49 “Existing structure” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 49. “Existing structure” means a structure or facility used in connection with, or to facilitate, surface coal mining and reclamation operations for which construction begins prior to the implementation of IC 14-34. *(Natural Resources Commission; 312 IAC 25-1-49; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3409, eff Dec 1, 2001)*

**312 IAC 25-1-50 “Extraction of coal as an incidental part” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 50. “Extraction of coal as an incidental part” means, for purposes of 312 IAC 25-2-3, the extraction of coal which is necessary to enable the construction to be accomplished. Only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line, or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. *(Natural Resources Commission; 312 IAC 25-1-50; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3409, eff Dec 1, 2001)*

**312 IAC 25-1-51 “Federal land” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 51. “Federal land” means any land, including mineral interests owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. *(Natural Resources Commission; 312 IAC 25-1-51; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3409, eff Dec 1, 2001)*

**312 IAC 25-1-52 “Fish and wildlife habitat” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34



Sec. 52. "Fish and wildlife habitat" means land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife. (*Natural Resources Commission; 312 IAC 25-1-52; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3409, eff Dec 1, 2001*)

**312 IAC 25-1-53 "Forestry" defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 53. "Forestry" means land used or managed for the long term production of wood, wood fiber, or wood derived products. Land used for facilities in support of a forest harvest and management operation, which is adjacent to or an integral part of the operation, is also included. (*Natural Resources Commission; 312 IAC 25-1-53; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3409, eff Dec 1, 2001*)

**312 IAC 25-1-54 "Fragile lands" defined**

Authority: IC 14-34-2-1

Affected: IC 14-34-18-3

Sec. 54. "Fragile lands" means geographic areas containing natural, ecologic, scientific, or aesthetic resources that could be damaged or destroyed by surface coal mining operations. Examples of fragile lands include the following:

- (1) Valuable habitats for fish or wildlife.
- (2) Critical habitats for endangered or threatened species of animals or plants.
- (3) Uncommon geologic formations.
- (4) Paleontological sites.
- (5) National natural landmarks.
- (6) Areas where mining may cause flooding.
- (7) Environmental corridors containing a concentration of ecologic and aesthetic features.
- (8) Areas of recreational value due to high environmental quality.
- (9) Buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited under IC 14-34-18-3 and 312 IAC 25-3-1 through 312 IAC 25-3-2.

(*Natural Resources Commission; 312 IAC 25-1-54; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3409, eff Dec 1, 2001*)

**312 IAC 25-1-55 "Fugitive dust" defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 55. "Fugitive dust" means particulate matter not emitted from a duct or stack that becomes airborne due to the forces of wind or surface coal mining and reclamation operations, or both, during emissions from any of the following:

- (1) Haul roads.
- (2) Wind erosion of exposed surfaces, storage piles, and spoil piles.
- (3) Reclamation operations.
- (4) Other activities in which material is either removed, stored, transported, or redistributed.

(*Natural Resources Commission; 312 IAC 25-1-55; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3410, eff Dec 1, 2001*)

**312 IAC 25-1-56 "General area" defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 56. "General area" with respect to hydrology, means the topographic and ground water basin surrounding a permit area that is of sufficient size, including area, extent, and depth, to include one (1) or more watersheds containing perennial streams and ground water zones and to allow assessment of the probable cumulative impacts on the quality and quantity of surface and ground

water systems in the basins. (*Natural Resources Commission; 312 IAC 25-1-56; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3410, eff Dec 1, 2001*)

**312 IAC 25-1-57 “Government-financed construction” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 57. “Government-financed construction” means construction funded fifty percent (50%) or more by funds appropriated from a government financing agency’s budget or obtained from general revenue bonds. The term does not mean a government financing agency guarantee, insurance, loan, funds obtained through industrial revenue bonds or their equivalent, or an in-kind payment. (*Natural Resources Commission; 312 IAC 25-1-57; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3410, eff Dec 1, 2001*)

**312 IAC 25-1-58 “Government financing agency” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 58. “Government financing agency” means a federal, Indiana, county, municipal, or local unit of government, or a department, bureau, agency, or office of the unit that directly or through another unit of government, finances construction. (*Natural Resources Commission; 312 IAC 25-1-58; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3410, eff Dec 1, 2001*)

**312 IAC 25-1-59 “Ground cover” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 59. “Ground cover” means the area of ground that is covered by the combined aerial parts of vegetation and the litter that is produced naturally onsite, expressed as percentage of the total area of measurement. At least ninety-five percent (95%) of the species present must be species listed in the revegetation plan. (*Natural Resources Commission; 312 IAC 25-1-59; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3410, eff Dec 1, 2001*)

**312 IAC 25-1-60 “Ground water” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 60. “Ground water” means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water-saturated. (*Natural Resources Commission; 312 IAC 25-1-60; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3410, eff Dec 1, 2001*)

**312 IAC 25-1-60.5 “Ground water management zone” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 60.5. “Ground water management zone” means a three (3) dimensional region of ground water around a potential or existing contaminant source where a contaminant is or was managed to prevent or mitigate deterioration of ground water quality such that the criteria established in 312 IAC 25-6-12.5(a) or 312 IAC 25-6-76.5(a) are met at and beyond the boundary of the region. (*Natural Resources Commission; 312 IAC 25-1-60.5; filed Jul 29, 2003, 3:45 p.m.: 26 IR 3860, eff Feb 1, 2004*)

**312 IAC 25-1-61 “Half-shrub” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 61. "Half-shrub" means a perennial plant with a woody base whose annually produced stems die each year. (*Natural Resources Commission; 312 IAC 25-1-61; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3411, eff Dec 1, 2001*)

**312 IAC 25-1-62 "Head-of-hollow fill" defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 62. "Head-of-hollow fill" means a fill structure consisting of any material, other than a coal processing waste and organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten (10) degrees. In fills with less than two hundred fifty thousand (250,000) cubic yards of material, associated with steep slope mining, the top surface of the fill will be at the elevation of the coal seam. In all other head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line and no significant area of natural drainage occurs above the fill draining into the fill areas. (*Natural Resources Commission; 312 IAC 25-1-62; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3411, eff Dec 1, 2001*)

**312 IAC 25-1-63 "High level management" defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 63. "High level management" means that the following agronomic practices must be implemented:

- (1) Using cropping systems that help maintain good tilth and high organic matter content.
- (2) Controlling erosion through conservation and water management practices so that the quality of the soil is maintained or improved rather than reduced.
- (3) Applying lime and fertilizer in accordance with soil test recommendations of the state agricultural experiment station for targeted yields of reference crops.
- (4) Using crop residue to the fullest extent practicable to protect and improve the soil.
- (5) Following conservation tillage practices where needed to reduce the hazards of soil compaction and erosion.
- (6) Using only the crop varieties that are adapted to the climate and the soil.
- (7) Controlling weeds, plant diseases, and harmful insects by currently accepted management techniques.
- (8) Draining wet areas using surface or subsurface drainage systems so that excess water on or in the soil does not restrict yields of adapted crops.

(*Natural Resources Commission; 312 IAC 25-1-63; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3411, eff Dec 1, 2001*)

**312 IAC 25-1-64 "Highwall" defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 64. "Highwall" means the face of exposed overburden and coal in an open cut of a surface coal mining activity or for entry to underground mining activities. (*Natural Resources Commission; 312 IAC 25-1-64; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3411, eff Dec 1, 2001*)

**312 IAC 25-1-65 "Historic lands" defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 65. "Historic lands" means areas containing historic, cultural, or scientific resources. Examples of historic lands include the following:

- (1) Archaeological sites.
- (2) National historic landmark sites.

(3) Properties listed on, or eligible for listing on, the Indiana state register of historic sites and structures or the National Register of Historic Places.

(4) Sites having religious or cultural significance to native Americans or religious groups.

(5) Properties for which historic designation is pending.

*(Natural Resources Commission; 312 IAC 25-1-65; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3411, eff Dec 1, 2001)*

### **312 IAC 25-1-66 “Historically used for cropland” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 66. “Historically used for cropland” means any of the following:

(1) Lands that have been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease, or option the conduct of surface coal mining and reclamation operations.

(2) Lands that the director determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific 5-years-in-10 criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved.

(3) Lands that would likely have been used as cropland for any five (5) out of the last ten (10) years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.

*(Natural Resources Commission; 312 IAC 25-1-66; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3412, eff Dec 1, 2001)*

### **312 IAC 25-1-67 “Hydrologic balance” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 67. “Hydrologic balance” means the relationship between the quality and quantity of water inflow to water outflow from and water storage in a hydrologic unit, such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationships among precipitation, run-off, evaporation, and changes in ground and surface water storage. *(Natural Resources Commission; 312 IAC 25-1-67; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3412, eff Dec 1, 2001)*

### **312 IAC 25-1-68 “Hydrologic regime” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 68. “Hydrologic regime” means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration. *(Natural Resources Commission; 312 IAC 25-1-68; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3412, eff Dec 1, 2001)*

### **312 IAC 25-1-69 “Imminent danger to the health and safety of the public” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 69. “Imminent danger to the health and safety of the public” means the existence of a condition or practice, or a violation of a permit or another requirement of IC 14-34 in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement. *(Natural Resources Commission; 312 IAC 25-1-69; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3412, eff Dec 1, 2001)*

**312 IAC 25-1-70 “Impounding structure” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 70. “Impounding structure” means a dam, embankment, or other structure used to impound water, slurry, or another liquid or semiliquid material. (*Natural Resources Commission; 312 IAC 25-1-70; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3412, eff Dec 1, 2001*)

**312 IAC 25-1-71 “Impoundment” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 71. “Impoundment” means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste. (*Natural Resources Commission; 312 IAC 25-1-71; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3412, eff Dec 1, 2001*)

**312 IAC 25-1-72 “In situ process” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 72. “In situ process” means an activity conducted on the surface or underground in connection with inplace distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, the following:

- (1) In situ gasification.
- (2) In situ leaching.
- (3) Slurry mining.
- (4) Solution mining.
- (5) Borehole mining.
- (6) Fluid recovery mining.

(*Natural Resources Commission; 312 IAC 25-1-72; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3413, eff Dec 1, 2001*)

**312 IAC 25-1-73 “Industrial/commercial” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 73. “Industrial/commercial” means land used for the following:

(1) Extraction or transformation of materials for the fabrication of products, including all heavy and light manufacturing facilities, such as:

- (A) lumber and wood processing;
- (B) chemical manufacturing;
- (C) petroleum refining; and
- (D) fabricated metal products manufacturing.

Land used for facilities in support of an operation, which is adjacent to or an integral part of the operation, is also included. Support facilities include all rail, road, and other transportation facilities.

(2) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments. Land used for facilities in support of a commercial operation, which is adjacent to or an integral part of the operation, is also included. Support facilities include parking, storage, or shipping facilities.

(*Natural Resources Commission; 312 IAC 25-1-73; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3413, eff Dec 1, 2001*)

**312 IAC 25-1-74 “Intermittent stream” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 74. “Intermittent stream” means a stream or reach of a stream that:

- (1) drains a watershed of at least one (1) square mile; or
- (2) is below the local water table for at least some part of the year and obtains its flow from both surface run-off and ground water discharge.

*(Natural Resources Commission; 312 IAC 25-1-74; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3413, eff Dec 1, 2001)*

**312 IAC 25-1-75 “Irreparable damage to the environment” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 75. “Irreparable damage to the environment” means any damage to the environment that cannot be or has not been corrected by actions of the applicant. *(Natural Resources Commission; 312 IAC 25-1-75; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3413, eff Dec 1, 2001)*

**312 IAC 25-1-75.5 “Land eligible for remining” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34-19

Sec. 75.5. “Lands eligible for remining” means, for the purposes of 312 IAC 25-4-105.5, 312 IAC 25-4-114, 312 IAC 25-4-115, and 312 IAC 25-5-7, those lands eligible for funding under IC 14-34-19 or 30 U.S.C. 1232(g)(4). *(Natural Resources Commission; 312 IAC 25-1-75.5; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2445, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register)*

**312 IAC 25-1-76 “Land occasionally cut for hay” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 76. “Land occasionally cut for hay” means pastureland. *(Natural Resources Commission; 312 IAC 25-1-76; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3413, eff Dec 1, 2001)*

**312 IAC 25-1-77 “Land use” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 77. “Land use” means a specific use or management-related activity, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur. The categories of land use are as follows:

- (1) Cropland.
- (2) Developed water resource.
- (3) Fish and wildlife habitat.
- (4) Forestry.
- (5) Industrial or commercial.
- (6) Pastureland (or land occasionally cut for hay).
- (7) Recreation.
- (8) Residential.
- (9) Undeveloped land.

Changes of land use or uses from one (1) of these categories to another is a change to an alternative land use that is subject to approval by the director. (*Natural Resources Commission; 312 IAC 25-1-77; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3413, eff Dec 1, 2001*)

**312 IAC 25-1-78 “Litter” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 78. “Litter” means the detached recognizable portions of the plants under evaluation that cover the ground surface. (*Natural Resources Commission; 312 IAC 25-1-78; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3414, eff Dec 1, 2001*)

**312 IAC 25-1-79 “Material damage” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34; 30 CFR 701.5

Sec. 79. “Material damage”, in the context of 312 IAC 25-4-91 and 312 IAC 25-6-123, means any:

- (1) functional impairment of surface lands, features, structures, or facilities;
- (2) physical change that has a significant adverse impact on the affected land’s capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or
- (3) significant change in the condition, appearance, or utility of any structure or facility from its presubsidence condition.

(*Natural Resources Commission; 312 IAC 25-1-79; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3414, eff Dec 1, 2001*)

**312 IAC 25-1-80 “Mining area” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 80. “Mining area” means, for purposes of 312 IAC 25-2-4 through 312 IAC 25-2-12, an individual excavation site or pit from which coal, other minerals, and overburden are removed. (*Natural Resources Commission; 312 IAC 25-1-80; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3414, eff Dec 1, 2001*)

**312 IAC 25-1-81 “MSHA” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 81. “MSHA” means the Mine Safety and Health Administration. (*Natural Resources Commission; 312 IAC 25-1-81; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3414, eff Dec 1, 2001*)

**312 IAC 25-1-82 “Mulch” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 82. “Mulch” means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing microclimatic conditions suitable for germination and growth. (*Natural Resources Commission; 312 IAC 25-1-82; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3414, eff Dec 1, 2001*)

**312 IAC 25-1-83 “Native species” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 83. “Native species” means species previously introduced and adapted in the general vicinity of the coal producing region

in Indiana. (*Natural Resources Commission; 312 IAC 25-1-83; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3414, eff Dec 1, 2001*)

**312 IAC 25-1-84 “Natural hazard lands” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 84. “Natural hazard lands”, for purposes of 312 IAC 25-3-3 through 312 IAC 25-3-5, means a geographic area in which natural conditions exist that pose or, as a result of surface coal mining operations, may pose a threat to the health, safety, or welfare of people, property, or the environment, including areas subject to the following:

- (1) Landslides.
- (2) Cave-ins.
- (3) Large or encroaching sand dunes.
- (4) Severe wind or soil erosion.
- (5) Frequent flooding.
- (6) Avalanches.
- (7) Areas of unstable geology.

(*Natural Resources Commission; 312 IAC 25-1-84; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3414, eff Dec 1, 2001*)

**312 IAC 25-1-85 “Noncommercial building” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34; 30 CFR 701.5

Sec. 85. “Noncommercial building” means any building other than an occupied residential dwelling that at the time the subsidence occurs is used on a regular or temporary basis as a public building or community or institutional building, as those terms are defined under sections 30 and 111 of this rule. Any building used only for commercial agricultural, industrial, retail, or other commercial enterprises is excluded. (*Natural Resources Commission; 312 IAC 25-1-85; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3415, eff Dec 1, 2001*)

**312 IAC 25-1-86 “Noxious weeds” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 86. “Noxious weeds” means species that have been included on an official Indiana list of noxious weeds. (*Natural Resources Commission; 312 IAC 25-1-86; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3415, eff Dec 1, 2001*)

**312 IAC 25-1-87 “Occupied dwelling” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 87. “Occupied dwelling” means any building that is currently being used on a regular or temporary basis for human habitation. (*Natural Resources Commission; 312 IAC 25-1-87; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3415, eff Dec 1, 2001*)

**312 IAC 25-1-88 “Occupied residential dwelling and structures related thereto” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34; 30 CFR 701.5

Sec. 88. “Occupied residential dwelling and structures related thereto” means, for purposes of 312 IAC 25-4-91 and 312 IAC 25-6-123, any building or other structure that, at the time the subsidence occurs is used either temporarily, occasionally, seasonally, or permanently for human habitation. The term also includes any building, structure, or facility installed on, above, below, or in a combination thereof, the land surface if that building, structure, or facility is adjunct to or used in connection with an occupied



residential dwelling. Examples of such structures include, but are not limited to, the following:

- (1) Garages.
- (2) Storage sheds and barns.
- (3) Greenhouses and related buildings.
- (4) Utilities and cables.
- (5) Fences and other enclosures.
- (6) Retaining walls.
- (7) Paved or improved patios.
- (8) Walks and driveways.
- (9) Septic sewage treatment facilities.
- (10) Lot drainage and lawn and garden irrigation systems.

Any structure used only for commercial agricultural, industrial, retail, or other commercial purposes is excluded. (*Natural Resources Commission; 312 IAC 25-1-88; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3415, eff Dec 1, 2001*)

### **312 IAC 25-1-89 “Operator” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 89. “Operator” means any person, partnership, or corporation engaged in coal mining who removes or intends to remove more than two hundred fifty (250) tons of coal from the earth or from coal refuse piles by coal mining within twelve (12) consecutive calendar months in any one (1) location. (*Natural Resources Commission; 312 IAC 25-1-89; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3415, eff Dec 1, 2001*)

### **312 IAC 25-1-90 “Other minerals” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 90. “Other minerals” means, for the purpose of 312 IAC 25-2-4 through 312 IAC 25-2-12, any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste, and fill material. (*Natural Resources Commission; 312 IAC 25-1-90; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3415, eff Dec 1, 2001*)

### **312 IAC 25-1-91 “Other treatment facilities” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 91. “Other treatment facilities” means any chemical treatments, such as flocculation or neutralization, or mechanical structures, such as clarifiers or precipitators, that:

- (1) have a point source discharge; and
- (2) are utilized to:
  - (A) prevent additional contributions of dissolved or suspended solids to stream flow or run-off outside the permit area;
  - or
  - (B) comply with all applicable state and federal water quality laws and regulations.

(*Natural Resources Commission; 312 IAC 25-1-91; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3416, eff Dec 1, 2001*)

### **312 IAC 25-1-92 “Outslope” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 92. “Outslope” means the face of the spoil or embankment sloping downward from the highest elevation to the toe. (*Natural Resources Commission; 312 IAC 25-1-92; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3416, eff Dec 1, 2001*)

**312 IAC 25-1-93 “Overburden” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 93. “Overburden” means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil. (*Natural Resources Commission; 312 IAC 25-1-93; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3416, eff Dec 1, 2001*)

**312 IAC 25-1-94 “Owned or controlled” and “owns or controls” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 94. (a) “Owned or controlled” and “owns or controls” means any one (1) or a combination of the relationships specified in the following and subsection (b):

(1) A permittee of a surface coal mining operation.

(2) Based on instruments of ownership or voting securities, owning of record in excess of fifty percent (50%) of a person.

(3) Any other relationship that gives one (1) person authority, directly or indirectly, to determine the manner in which an applicant, an operator, or other person conducts surface coal mining operations.

(b) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not, in fact, have the authority, directly or indirectly, to determine the manner in which the surface coal mining operation is conducted:

(1) An officer or director of the person.

(2) The operator of a surface coal mining operation.

(3) An ability to commit the financial or real property assets or working resources of a person.

(4) A general partner in a partnership.

(5) Based on the instruments of ownership or the voting securities of a corporation, ownership of record of ten percent (10%) through fifty percent (50%) of the corporation.

(6) Ownership or control of coal to be mined by another person under a lease, sublease, or other contract where there is a right to receive the coal after mining or authorization to determine the manner in which that person or another person conducts a surface coal mining operation.

(*Natural Resources Commission; 312 IAC 25-1-94; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3416, eff Dec 1, 2001*)

**312 IAC 25-1-95 “Pastureland” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 95. “Pastureland” means land used primarily for the long term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed or hay. Land used for facilities in support of pastureland or land occasionally cut for hay, which is adjacent to or an integral part of the operation, is also included. (*Natural Resources Commission; 312 IAC 25-1-95; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3416, eff Dec 1, 2001*)

**312 IAC 25-1-96 “Perennial stream” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 96. “Perennial stream” means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground water discharge or surface run-off. The term does not include an intermittent stream or ephemeral stream. (*Natural Resources Commission; 312 IAC 25-1-96; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3416, eff Dec 1, 2001*)

**312 IAC 25-1-97 “Performance bond” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 97. “Performance bond” means a surety bond, certificate of deposit, letter of credit, cash, or a combination thereof, by which a permittee assures faithful performance of all the requirements of IC 14-34, this article, and the requirements of the permit and reclamation plan. (*Natural Resources Commission, 312 IAC 25-1-97; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3417, eff Dec 1, 2001*)

**312 IAC 25-1-98 “Permanent diversion” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 98. “Permanent diversion” means a diversion remaining after surface coal mining and reclamation operations are completed that has been approved for retention by the director and other appropriate state agencies. (*Natural Resources Commission; 312 IAC 25-1-98; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3417, eff Dec 1, 2001*)

**312 IAC 25-1-99 “Permanent impoundment” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 99. “Permanent impoundment” means an impoundment that is approved by the director in the approved permit and, if required, by other state and federal agencies for retention as part of the postmining land use. (*Natural Resources Commission; 312 IAC 25-1-99; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3417, eff Dec 1, 2001*)

**312 IAC 25-1-100 “Permit” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 100. “Permit” means a permit to conduct surface coal mining and reclamation operations (approved by the director or the director’s delegate) under IC 14-34 and this article. (*Natural Resources Commission; 312 IAC 25-1-100; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3417, eff Dec 1, 2001*)

**312 IAC 25-1-101 “Permit area” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 101. “Permit area” means the area of land and water within the boundaries of the permit that are designated on the permit application maps, as approved by the director. The permit area includes all areas that are or will be affected by the surface coal mining and reclamation operations during the term of the permit. (*Natural Resources Commission; 312 IAC 25-1-101; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3417, eff Dec 1, 2001*)

**312 IAC 25-1-102 “Permittee” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 102. “Permittee” means a person holding, or required by IC 14-34 to hold, a permit to conduct surface coal mining and reclamation operations issued by the department under this article and the regulatory program. (*Natural Resources Commission; 312 IAC 25-1-102; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3417, eff Dec 1, 2001*)

**312 IAC 25-1-103 “Person” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 103. “Person” means the following:

(1) Any:

- (A) individual;
- (B) partnership;
- (C) association;
- (D) society;
- (E) joint venture;
- (F) joint stock company;
- (G) firm;
- (H) company;
- (I) corporation;
- (J) cooperative; or
- (K) other business organization.

(2) Any:

- (A) agency;
- (B) unit; or
- (C) instrumentality;

of federal, state, or local government, including any publicly owned utility or publicly owned corporation of federal, state, or local government.

*(Natural Resources Commission; 312 IAC 25-1-103; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3417, eff Dec 1, 2001)*

**312 IAC 25-1-104 “Person having an interest, which is or may be adversely affected or person with a valid legal interest” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 104. “Person having an interest, which is or may be adversely affected or person with a valid legal interest” includes any person:

- (1) who uses any resources of economic, recreational, aesthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the state; or
- (2) whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the state.

*(Natural Resources Commission; 312 IAC 25-1-104; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3418, eff Dec 1, 2001)*

**312 IAC 25-1-105 “Pipeline” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 105. (a) “Pipeline” means the physical facilities through which petroleum, natural gas, or another hazardous product is transported where:

- (1) pipe is used that has a nominal diameter of at least six (6) inches; or
  - (2) operations occur at a pressure of more than two hundred seventy-five (275) pounds per square inch.
- (b) A pipeline also includes the following:
- (1) Compressor units.
  - (2) Metering stations.
  - (3) Holders.

(4) Fabricated assemblies.

(5) The valves and other appurtenances attached to the pipe.

*(Natural Resources Commission; 312 IAC 25-1-105; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3418, eff Dec 1, 2001)*

**312 IAC 25-1-106 “Precipitation event” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 106. “Precipitation event” means a quantity of water resulting from:

(1) drizzle;

(2) rain;

(3) snow;

(4) snowmelt emanating from snow cover;

(5) sleet; or

(6) hail;

in a limited period of time. The term may be expressed according to a recurrence interval. *(Natural Resources Commission; 312 IAC 25-1-106; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3418, eff Dec 1, 2001)*

**312 IAC 25-1-107 “Previously mined area” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 107. “Previously mined area” means land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the standards of this article. *(Natural Resources Commission; 312 IAC 25-1-107; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3418, eff Dec 1, 2001)*

**312 IAC 25-1-108 “Prime farmland” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 108. “Prime farmland” means those lands that are defined by the United States Secretary of Agriculture and have historically been used for cropland. *(Natural Resources Commission; 312 IAC 25-1-108; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3418, eff Dec 1, 2001)*

**312 IAC 25-1-109 “Principal shareholder” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 109. “Principal shareholder” means any person who is of record the beneficial owner of ten percent (10%) or more of any class of voting stock. *(Natural Resources Commission; 312 IAC 25-1-109; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3419, eff Dec 1, 2001)*

**312 IAC 25-1-109.5 “Property boundary” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 109.5. “Property boundary”, for the purposes of 312 IAC 25-6-12.5 and 312 IAC 25-6-76.5, means the edge of a contiguous parcel of land owned by or leased to the permittee. Contiguous land shall include land separated by a public right-of-way, if that land would otherwise be contiguous. *(Natural Resources Commission; 312 IAC 25-1-109.5; filed Jul 29, 2003, 3:45 p.m.: 26 IR 3860, eff Feb 1, 2004)*

**312 IAC 25-1-110 “Property to be mined” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 110. “Property to be mined” means both the surface and mineral estates on and underneath lands that are within the permit area. (*Natural Resources Commission; 312 IAC 25-1-110; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3419, eff Dec 1, 2001*)

**312 IAC 25-1-111 “Public building” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 111. “Public building” means a structure that is owned by a public agency or used principally for public business meetings or other group gatherings. (*Natural Resources Commission; 312 IAC 25-1-111; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3419, eff Dec 1, 2001*)

**312 IAC 25-1-112 “Public office” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 112. “Public office” means a facility under the direction and control of a governmental entity that is open to public access on a regular basis during reasonable business hours. (*Natural Resources Commission; 312 IAC 25-1-112; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3419, eff Dec 1, 2001*)

**312 IAC 25-1-113 “Public park” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 113. “Public park” means an area dedicated or designated by any federal, Indiana, or local agency for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved, or held open to the public because of that use. (*Natural Resources Commission; 312 IAC 25-1-113; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3419, eff Dec 1, 2001*)

**312 IAC 25-1-114 “Public road” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 114. “Public road” means a thoroughfare open to the public for passage of vehicles owned or maintained by a federal, state, or local agency. (*Natural Resources Commission; 312 IAC 25-1-114; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3419, eff Dec 1, 2001*)

**312 IAC 25-1-115 “Randomly located” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 115. “Randomly located” means the selection of a location that is statistically independent of all previous and future location selections. (*Natural Resources Commission; 312 IAC 25-1-115; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3419, eff Dec 1, 2001*)

**312 IAC 25-1-116 “Recharge capacity” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 116. "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and run-off to infiltrate and reach the zone of saturation. (*Natural Resources Commission; 312 IAC 25-1-116; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3419, eff Dec 1, 2001*)

**312 IAC 25-1-117 "Reclamation" defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 117. "Reclamation" means those actions taken to restore mined land, as required by IC 14-34 and this article, to a postmining land use approved by the director. (*Natural Resources Commission; 312 IAC 25-1-117; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3419, eff Dec 1, 2001*)

**312 IAC 25-1-118 "Recreation" defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 118. "Recreation" means land used for public or private leisure-time use, including developed recreation facilities, such as parks, camps, and amusement areas, as well as areas for less intensive uses, such as hiking, canoeing, and other undeveloped recreational uses. (*Natural Resources Commission; 312 IAC 25-1-118; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3420, eff Dec 1, 2001*)

**312 IAC 25-1-119 "Recurrence interval" defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 119. "Recurrence interval" means the interval of time in which a precipitation event is expected to occur once, on the average. (*Natural Resources Commission; 312 IAC 25-1-119; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3420, eff Dec 1, 2001*)

**312 IAC 25-1-120 "Reference area" defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 120. "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods. A reference area must be representative of geology, soil, slope, and vegetation in the permit area. (*Natural Resources Commission; 312 IAC 25-1-120; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3420, eff Dec 1, 2001*)

**312 IAC 25-1-121 "Refuse pile" defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 121. "Refuse pile" means a surface deposit of coal mine waste that does not impound water, slurry, or another liquid or semiliquid material. (*Natural Resources Commission; 312 IAC 25-1-121; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3420, eff Dec 1, 2001*)

**312 IAC 25-1-122 "Regional director" defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 122. "Regional director" means a regional director of the United States Department of the Interior, Office of Surface Mining or a regional director's representative. (*Natural Resources Commission; 312 IAC 25-1-122; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3420, eff Dec 1, 2001*)

**312 IAC 25-1-123 “Renewable resource lands” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 123. “Renewable resource lands” means aquifers and areas for the recharge of aquifers and other underground waters and areas for agricultural and silvicultural production of food and fiber. (*Natural Resources Commission; 312 IAC 25-1-123; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3420, eff Dec 1, 2001*)

**312 IAC 25-1-124 “Replacement of water supply” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34; 30 CFR 701.5

Sec. 124. (a) “Replacement of water supply”, with respect to protected water supplies contaminated, diminished, or interrupted by surface or underground coal mining operations, means a provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes a provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies.

(b) Upon agreement by the permittee and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one (1) time payment in an amount that covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner.

(c) If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner. (*Natural Resources Commission; 312 IAC 25-1-124; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3420, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182*)

**312 IAC 25-1-125 “Residential” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 125. “Residential” means land used for single and multiple family housing, mobile home parks, and other residential lodging. Land used for facilities in support of a residential operation, which is adjacent to or an integral part of the operation, is also included. Support facilities include vehicle parking and open space that directly relate to the residential use. (*Natural Resources Commission; 312 IAC 25-1-125; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3421, eff Dec 1, 2001*)

**312 IAC 25-1-126 “Road” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 126. (a) “Road” means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the following:

- (1) Roadbed.
- (2) Shoulders.
- (3) Parking and side areas.
- (4) Approaches.
- (5) Structures.
- (6) Ditches.
- (7) Surface.
- (8) Such contiguous appendages as are necessary for the total structure.

(b) The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing,



or storage areas.

(c) The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas. (*Natural Resources Commission; 312 IAC 25-1-126; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3421, eff Dec 1, 2001*)

**312 IAC 25-1-127 “Rooting media” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 127. “Rooting media” means the soil material beneath the topsoil consisting of replaced B horizon, B/C mixture, or other suitable soil material as determined by the director. (*Natural Resources Commission; 312 IAC 25-1-127; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3421, eff Dec 1, 2001*)

**312 IAC 25-1-128 “Safety factor” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 128. “Safety factor” means the ratio of the available sheer strength to the developed sheer stress or the ratio of the sum of the resisting forces to the sum of the loading or driving forces as determined by accepted engineering practices. (*Natural Resources Commission; 312 IAC 25-1-128; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3421, eff Dec 1, 2001*)

**312 IAC 25-1-129 “Shadow area” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 129. “Shadow area” means any area beyond the limits of the permit area in which underground mine workings are located. This area includes all resources above and below the coal that are protected by IC 14-34 that may be adversely impacted by underground mining operations, including impacts of subsidence. (*Natural Resources Commission; 312 IAC 25-1-129; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3421, eff Dec 1, 2001*)

**312 IAC 25-1-130 “Shelter belt” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 130. “Shelter belt” means an area used for protection from wind or snow and that is subject to proof-of-productivity standards for fish and wildlife habitat. (*Natural Resources Commission; 312 IAC 25-1-130; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3421, eff Dec 1, 2001*)

**312 IAC 25-1-131 “Significant, imminent environmental harm to land, air, or water resources” construed**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 131. “Significant, imminent environmental harm to land, air, or water resources” is construed as follows:

- (1) “Environmental harm” means an adverse impact on land, air, or water resources (including plant and animal life) that is not contemplated by the permit.
- (2) “Imminent” means a condition, practice, or violation that is causing or may reasonably be expected to cause an environmental harm before the condition or practice can be abated.
- (3) “Significant” means the environmental harm:
  - (A) is more than local in scope;
  - (B) when continued, poses a serious environmental hazard to existing land, air, or water resources; and
  - (C) will have a long-lasting, detrimental effect before the end of a reasonable abatement time.

*(Natural Resources Commission; 312 IAC 25-1-131; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3422, eff Dec 1, 2001)*

**312 IAC 25-1-132 “Siltation structure” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 132. “Siltation structure” means a primary sediment control structure designed, constructed, and maintained as required by this article and includes a barrier, dam, or excavated depression that slows water run-off to allow sediment to settle out. A siltation structure cannot include a secondary sedimentation control structure (such as riprap, straw dike, check dam, mulch, dugout, or another measure that reduces overland flow velocity, reduces run-off volume, or traps sediment) to the extent that the secondary sedimentation structure drains to a siltation structure. *(Natural Resources Commission; 312 IAC 25-1-132; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3422, eff Dec 1, 2001)*

**312 IAC 25-1-133 “Slope” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 133. “Slope” means the average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance, for example: 1v:5h=20%=11.3 degrees. *(Natural Resources Commission; 312 IAC 25-1-133; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3422, eff Dec 1, 2001)*

**312 IAC 25-1-134 “Soil horizon” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 134. “Soil horizon” means each contrasting layer of soil parallel or nearly parallel to the land surface. Each soil horizon is differentiated on the basis of field characteristics and laboratory data. The three (3) major soil horizons are as follows:

- (1) The A horizon.
- (2) The B horizon.
- (3) The C horizon.

*(Natural Resources Commission; 312 IAC 25-1-134; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3422, eff Dec 1, 2001)*

**312 IAC 25-1-135 “Soil productivity” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 135. “Soil productivity” means the capacity of a soil for producing a specified plant or sequence of plants under a physically defined set of management practices. *(Natural Resources Commission; 312 IAC 25-1-135; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3422, eff Dec 1, 2001)*

**312 IAC 25-1-136 “Soil survey” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 136. “Soil survey” means a field and other investigation resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. A soil survey must meet the standards of the National Cooperative Soil Survey. *(Natural Resources Commission; 312 IAC 25-1-136; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3422, eff Dec 1, 2001)*

**312 IAC 25-1-137 “Spoil” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 137. “Spoil” means overburden that has been removed during a surface coal mining operation. (*Natural Resources Commission; 312 IAC 25-1-137; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3423, eff Dec 1, 2001*)

**312 IAC 25-1-138 “Stabilize” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 138. “Stabilize” means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating. (*Natural Resources Commission; 312 IAC 25-1-138; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3423, eff Dec 1, 2001*)

**312 IAC 25-1-139 “Steep slope” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 139. “Steep slope” means any slope of more than twenty (20) degrees or such lesser slope as may be designated by the director after consideration of soil, climate, and other characteristics of a region. (*Natural Resources Commission; 312 IAC 25-1-139; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3423, eff Dec 1, 2001*)

**312 IAC 25-1-140 “Subsoil” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 140. “Subsoil” means the B horizon. (*Natural Resources Commission; 312 IAC 25-1-140; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3423, eff Dec 1, 2001*)

**312 IAC 25-1-141 “Substantial legal and financial commitments in a surface coal mining operation” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 141. “Substantial legal and financial commitments in a surface coal mining operation”, for purposes of 312 IAC 25-3-3 through 312 IAC 25-3-5, means significant investments that have been made on the basis of a long term coal contract in power plants, railroads, coal handling, preparation, extraction or storage facilities, and other capital-intensive activities. An example is an existing mine not actually producing coal but in a substantial stage of development prior to production. Costs of acquiring the coal in place or of the right to mine it without an existing mine, as described in this example, alone are not sufficient to constitute substantial legal and financial commitments. (*Natural Resources Commission; 312 IAC 25-1-141; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3423, eff Dec 1, 2001*)

**312 IAC 25-1-142 “Substantially disturb” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 142. “Substantially disturb”, for purposes of coal exploration, means any one (1) or any combination of one (1) or more of the following:

- (1) To significantly impact land or water resources by blasting.
- (2) The removal of vegetation, topsoil, or overburden.

- (3) The construction of roads or other access routes.
- (4) The placement of excavated earth or waste material on the natural land surface or by other such activities.
- (5) The removal of more than two hundred fifty (250) tons of coal.

*(Natural Resources Commission; 312 IAC 25-1-142; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3423, eff Dec 1, 2001)*

**312 IAC 25-1-143 “Support facility” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 143. (a) “Support facility” means a facility resulting from, or incidental to, an activity identified in section 145(1) of this rule and the area upon which the facility is located.

(b) As used in subsection (a), “resulting from or incidental to” connotes an element of proximity to the activity.

(c) A support facility includes the following:

- (1) Mine buildings.
- (2) Bath houses.
- (3) Coal loading facilities.
- (4) Coal crushing and sizing facilities.
- (5) Coal storage facilities.
- (6) Equipment and storage facilities.
- (7) Fan buildings.
- (8) Hoist buildings.
- (9) Sheds, shops, and other buildings.
- (10) Facilities used to treat and store water for mine consumption.

(11) Railroads, surface conveyor systems, chutes, aerial tramways, and other transportation facilities, not including roads.

*(Natural Resources Commission; 312 IAC 25-1-143; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3423, eff Dec 1, 2001)*

**312 IAC 25-1-144 “Surface coal mining and reclamation operations” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 144. “Surface coal mining and reclamation operations” means surface coal mining operations and all activities necessary or incidental to the reclamation of such operations. The term includes surface coal mining operations. *(Natural Resources Commission; 312 IAC 25-1-144; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3424, eff Dec 1, 2001)*

**312 IAC 25-1-145 “Surface coal mining operation” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34-9; IC 14-34-11

Sec. 145. “Surface coal mining operation” means the following:

(1) An activity conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of IC 14-34-11, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. These activities include the following:

- (A) Excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, hilltop removal, box cut, open pit, and area mining.
- (B) The extraction of coal from a coal refuse pile.
- (C) The use of explosives and blasting.
- (D) In situ distillation or retorting.
- (E) Coal preparation.
- (F) The loading of coal for interstate commerce at or near the minesite.

(2) Areas upon which the activities described in subdivision (1) occur or where those activities disturb the natural land surface.

These areas also include the following:

- (A) Any adjacent land the use of which is incidental to any such activities.
- (B) All lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for:
  - (i) haulage and excavation;
  - (ii) workings;
  - (iii) impoundments;
  - (iv) dams;
  - (v) ventilation shafts;
  - (vi) entryways;
  - (vii) refuse banks;
  - (viii) dumps;
  - (ix) stockpiles;
  - (x) overburden piles;
  - (xi) spoil banks;
  - (xii) culm banks;
  - (xiii) tailings;
  - (xiv) holes or depressions;
  - (xv) repair areas;
  - (xvi) storage areas;
  - (xvii) processing areas;
  - (xviii) shipping areas; and
  - (xix) other areas upon which are:
    - (AA) sited structures;
    - (BB) facilities; or
    - (CC) other property or material on the surface;resulting from or incident to those activities.

(3) Exempted from the meaning of surface coal mining operations are the following activities:

- (A) The extraction of coal incidental to the extraction of other minerals, where coal does not exceed sixteen and two-thirds percent (16⅔%) of the tonnage of minerals removed for purposes of commercial use or sale.
- (B) Coal exploration subject to IC 14-34-9.

*(Natural Resources Commission; 312 IAC 25-1-145; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3424, eff Dec 1, 2001)*

**312 IAC 25-1-146 “Surface coal mining operations that exist on the date of enactment” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 146. “Surface coal mining operations that exist on the date of enactment” means, for purposes of 312 IAC 25-3-1 through 312 IAC 25-3-2, all surface mining operations that were being conducted on August 3, 1977. *(Natural Resources Commission; 312 IAC 25-1-146; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3425, eff Dec 1, 2001)*

**312 IAC 25-1-147 “Surface mining activities” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 147. “Surface mining activities” means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the material over a coal seam, before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location. *(Natural Resources Commission; 312 IAC 25-1-147; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3425, eff Dec 1, 2001)*

**312 IAC 25-1-148 “Surface soil” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 148. “Surface soil” means the A horizon. *(Natural Resources Commission; 312 IAC 25-1-148; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3425, eff Dec 1, 2001)*

**312 IAC 25-1-149 “Suspended solids or nonfilterable residue expressed as milligrams per liter” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 149. “Suspended solids or nonfilterable residue expressed as milligrams per liter” means organic or inorganic materials carried or held in suspension in water that are retained by a standard glass fiber filter in the procedure outlined by 40 CFR 136. *(Natural Resources Commission; 312 IAC 25-1-149; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3425, eff Dec 1, 2001)*

**312 IAC 25-1-150 “Temporary diversion” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 150. “Temporary diversion” means a diversion of a stream or overland flow that is used during coal exploration or surface coal mining and reclamation operations and not approved by the director to remain after reclamation as part of the approved postmining land use. *(Natural Resources Commission; 312 IAC 25-1-150; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3425, eff Dec 1, 2001)*

**312 IAC 25-1-151 “Temporary impoundment” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 151. “Temporary impoundment” means an impoundment used during a surface coal mining and reclamation operation, but not approved by the director in the approved permit to remain as part of the approved postmining land use. *(Natural Resources Commission; 312 IAC 25-1-151; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3425, eff Dec 1, 2001)*

**312 IAC 25-1-152 “Ton” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 152. “Ton” means two thousand (2,000) pounds avoirdupois (ninety thousand seven hundred eighteen hundred-thousandths (.90718) metric ton). *(Natural Resources Commission; 312 IAC 25-1-152; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3425, eff Dec 1, 2001)*

**312 IAC 25-1-153 “Topsoil” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 153. “Topsoil” means the A soil horizon layer of the three (3) major soil horizons. *(Natural Resources Commission; 312 IAC 25-1-153; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3425, eff Dec 1, 2001)*

**312 IAC 25-1-154 “Toxic-forming materials” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 154. "Toxic-forming materials" means earth materials or wastes that, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water. (*Natural Resources Commission; 312 IAC 25-1-154; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3426, eff Dec 1, 2001*)

**312 IAC 25-1-155 "Toxic mine drainage" defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 155. "Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations that contains a substance that through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to the substance. (*Natural Resources Commission; 312 IAC 25-1-155; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3426, eff Dec 1, 2001*)

**312 IAC 25-1-155.5 "Unanticipated event or condition" defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 155.5. "Unanticipated event or condition" means, for the purposes of 312 IAC 25-4-114, an event or condition that is encountered in a remining operation and was not contemplated by the applicable surface mining and reclamation permit. (*Natural Resources Commission; 312 IAC 25-1-155.5; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2445, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register*)

**312 IAC 25-1-156 "Underground development waste" defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 156. "Underground development waste" means waste rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed of during development and preparation of areas incident to underground mining activities. (*Natural Resources Commission; 312 IAC 25-1-156; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3426, eff Dec 1, 2001*)

**312 IAC 25-1-157 "Underground mining activities" defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 157. "Underground mining activities" means a combination of the following:

(1) Surface operations incident to underground extraction of coal or in situ processing, such as construction, use, maintenance, and reclamation of the following:

- (A) Roads.
- (B) Aboveground repair areas.
- (C) Storage areas.
- (D) Processing areas.
- (E) Shipping areas.
- (F) Areas upon which are sited support facilities, including hoist and ventilating ducts.
- (G) Areas utilized for the disposal and storage of waste.
- (H) Areas on which materials incident to underground mining operations are placed.

(2) Underground operations, such as underground construction, operation, and reclamation of the following:

- (A) Shafts.
- (B) Adits.

- (C) Underground support facilities.
- (D) In situ processing.
- (E) Underground mining, hauling, storage, and blasting.

*(Natural Resources Commission; 312 IAC 25-1-157; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3426, eff Dec 1, 2001)*

**312 IAC 25-1-158 “Undeveloped land—no current use or land management” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 158. “Undeveloped land—no current use or land management” means land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession. *(Natural Resources Commission; 312 IAC 25-1-158; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3426, eff Dec 1, 2001)*

**312 IAC 25-1-159 “Valid existing rights” defined and construed**

Authority: IC 14-34-2-1

Affected: IC 14-34-18-3

Sec. 159. (a) “Valid existing rights”, for purposes of 312 IAC 25-2-1, 312 IAC 25-3-1, and 312 IAC 25-3-5, means the following:

(1) Except for haul roads:

(A) those property rights in existence on August 3, 1977, that were created by a legally binding conveyance, lease, deed, contract, or other document that authorized the applicant to conduct surface coal mining operations; and

(B) the person proposing to conduct surface coal mining operations on such lands:

- (i) had been validly issued or exercised good faith effort to obtain, on or before August 3, 1977, all state and federal permits necessary to conduct operations on those lands;
- (ii) can demonstrate to the director that the coal is both needed for and immediately adjacent to, an ongoing surface mining operation for which all permits were obtained prior to August 3, 1977; or
- (iii) can demonstrate that the operation was in existence or operation at the time an area became protected under IC 14-34-18-3 or at the time of the coming into existence, within the prohibited distance of a structure, road, cemetery, or other activity listed in IC 14-34-18-3.

(2) For haul roads:

(A) a recorded right-of-way, recorded easement, or a permit for a coal haul road recorded as of August 3, 1977;

(B) any other road in existence as of August 3, 1977; or

(C) any haul road that was in existence or operating at the time an area became protected under IC 14-34-18-3, or at the time of the coming into existence, within the prohibited distance of a structure, road, cemetery, or other activity listed in IC 14-34-18-3.

(b) The interpretation of the terms of a document used to establish a valid existing right is based upon the common law concerning the interpretation of documents conveying mineral rights. If there is no applicable common law, the interpretation is based upon the following:

(1) The usage and custom at the time and place where a document came into existence.

(2) A showing by the applicant that the parties to the document contemplated the right to conduct the same underground or surface activities for which the applicant claims a valid existing right.

(c) As used in this section “valid existing right” does not mean the mere expectation of a right to conduct surface coal mining operations or the right to conduct underground coal mining. Examples of rights, which alone do not constitute valid existing rights, include, but are not limited to, coal exploration permits or licenses, applications or bids for leases, or where a person has only applied for a federal or state permit.

(d) If an area comes under the protection of IC 14-34-18-3 after August 3, 1977, valid existing rights are present if a validly authorized surface coal mining operation exists on that area on the date the protection comes into existence. *(Natural Resources Commission; 312 IAC 25-1-159; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3426, eff Dec 1, 2001)*



**312 IAC 25-1-160 “Valley fill” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 160. “Valley fill” means a fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten (10) degrees. (*Natural Resources Commission; 312 IAC 25-1-160; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3427, eff Dec 1, 2001*)

**312 IAC 25-1-161 “Violation notice” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 161. “Violation notice” means any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication. (*Natural Resources Commission; 312 IAC 25-1-161; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3427, eff Dec 1, 2001*)

**312 IAC 25-1-162 “Water table” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 162. “Water table” means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone. (*Natural Resources Commission; 312 IAC 25-1-162; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3427, eff Dec 1, 2001*)

**312 IAC 25-1-163 “Willful violation” defined**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 163. “Willful violation” means an act or omission that:

- (1) violates IC 14-34, this article, another state law, a federal statute, a federal regulation, or an individual permit condition; and
- (2) is committed by a person who intends the result that actually occurs.

(*Natural Resources Commission; 312 IAC 25-1-163; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3427, eff Dec 1, 2001*)

**Rule 2. General Provisions****312 IAC 25-2-1 Severability**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 1. If any provision of this article or any part thereof is disapproved by the Secretary of the United States Department of the Interior under 30 CFR 732.13(a) and 30 U.S.C. 1253(b), as a part of the review of an Indiana program submittal, such provision or part thereof shall be deemed to be conditionally withdrawn. The remainder of the Indiana program will be resubmitted under 30 U.S.C. 1253(c) and 30 CFR 732.13(f). Provided, however, in the event that, upon judicial review, under 30 U.S.C. 526(a)(1), of the Secretary’s decision disapproving any such provision or part thereof, the Secretary’s decision is overturned by a final judgment of the United States District Court, such provision will be deemed to have been included in the resubmitted program and shall be effective as part of the Indiana program. (*Natural Resources Commission; 312 IAC 25-2-1; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3428, eff Dec 1, 2001*)

**312 IAC 25-2-2 Enforceability**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 2. (a) Notwithstanding any other rule to the contrary, neither the director nor the commission shall enforce any provision of the rules promulgated to implement IC 14-34 if any court of competent jurisdiction renders a final judgment, which holds that the comparable provision in any federal regulation promulgated to implement P.L.95-87, the federal Surface Mining Control and Reclamation Act of 1977, is unconstitutional or otherwise invalid.

(b) Neither the director nor the commission shall enforce this article until the United States Department of the Interior has published in the Federal Register notice of approval of Indiana's permanent regulatory program. (*Natural Resources Commission; 312 IAC 25-2-2; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3428, eff Dec 1, 2001*)

**312 IAC 25-2-3 Government-financed highway or other construction; exemption for coal extraction; information**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 3. (a) Any person extracting coal incident to government-financed highway or other construction who extracts more than two hundred fifty (250) tons of coal shall maintain, on the site of the extraction operation and available for inspection, documents that show the following:

(1) A description of the construction project.

(2) The exact location of the construction, right-of-way, or boundaries of the area that will be directly affected by the construction.

(3) The government agency that is providing the financing and the kind and amount of public financing, including the percentage of the entire construction costs represented by the government financing.

(b) Coal extraction, which is incidental to government-financed construction, is otherwise exempt from IC 14-34. (*Natural Resources Commission; 312 IAC 25-2-3; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3428, eff Dec 1, 2001*)

**312 IAC 25-2-4 Exemption for coal extraction incidental to the extraction of other minerals**

Authority: IC 14-34-2-1

Affected: IC 14-8-2-273; IC 14-34-1-2

Sec. 4. Sections 2 through 3 of this rule, this section, and sections 5 through 12 of this rule implement the exemption contained in IC 14-8-2-273 concerning the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent (16⅔%) of the total tonnage of coal and other minerals removed for purposes of commercial use or sale. (*Natural Resources Commission; 312 IAC 25-2-4; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3428, eff Dec 1, 2001*)

**312 IAC 25-2-5 Exemption for coal extraction incidental to the extraction of other minerals; application requirements and procedures**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 5. (a) Any person who plans to commence or continue coal extraction after the effective date of this section, in reliance on the incidental mining exemption, shall file an administratively complete application for exemption with the director and shall not commence coal extraction until the director has approved the application.

(b) Operations in existence before the effective date of this section, which have been conducted in reliance upon the incidental mining exemption before that date, may continue mining operations for sixty (60) days after the effective date. Coal extraction may not continue after the sixty (60) day period unless that person files an administratively complete application for exemption with the director. If an administratively complete application for exemption is filed within the sixty (60) day period, the person may continue extracting coal in reliance on the exemption beyond the sixty (60) day period until the director makes an administrative decision on the application.

(c) The director shall notify the applicant if the application for exemption is incomplete and may at any time require the submittal of additional information.

(d) Following publication of the newspaper notice required by section 6(9) of this rule, the director shall provide a period of at least thirty (30) days during which time any person having an interest that is or may be adversely affected by a decision on the application may submit written comments or objections.

(e) Upon making an exemption determination, the director shall complete the following:

(1) No later than ninety (90) days after filing an administratively complete application, the director shall make a written determination whether, and under what conditions, the persons claiming the exemption are exempt under section 4 of this rule, this section, and sections 6 through 12 of this rule and shall notify the applicant and persons submitting comments on the application of the determination and the basis for the determination.

(2) The determination of exemption shall be based upon information contained in the application and any other information available to the director at that time.

(3) If the director fails to provide an applicant with the determination as specified in subdivision (1), an applicant who has not begun may commence coal extraction pending a determination on the application unless the director issues an interim finding, together with reasons therefore, that the applicant may not begin coal extraction.

(f) For administrative review, the following shall apply:

(1) Any adversely affected person may request administrative review of a determination under subsection (e) within thirty (30) days of the notification of the determination under 312 IAC 3-1-3.

(2) A petition for administrative review filed under 312 IAC 3-1-3 shall not suspend the effect of a determination under subsection (e).

*(Natural Resources Commission; 312 IAC 25-2-5; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3429, eff Dec 1, 2001)*

### **312 IAC 25-2-6 Exemption for coal extraction incidental to the extraction of other minerals; contents of application for exemption**

Authority: IC 14-34-2-1

Affected: IC 14-34; 30 CFR 702.12

Sec. 6. An application for exemption shall include, at a minimum, the following:

(1) The name and address of the applicant.

(2) A list of the minerals sought to be extracted.

(3) Estimates of annual production of coal and the other minerals within each mining area over the anticipated life of the mining operation.

(4) Estimated annual revenues to be derived from bona fide sales of coal and other minerals to be extracted within the mining area.

(5) Where coal or the other minerals are to be used rather than sold, estimated annual fair market values at the time of projected use of the coal and other minerals to be extracted from the mining area.

(6) The basis for all annual production, revenue, and fair market value estimates.

(7) A description, including county, section, township, range, and boundaries of the land, of sufficient certainty that the mining areas may be located and distinguished from other mining areas.

(8) An estimate to the nearest acre of the number of acres that will compose the mining area over the anticipated life of the mining operation.

(9) Evidence of publication, in a newspaper of general circulation in the county of the mining area, of public notice that an application for exemption has been filed with the director. The public notice must identify the persons claiming the exemption and must contain a description of the proposed operation and its locality that is sufficient for interested persons to identify the operation.

(10) Representative stratigraphic cross sections based on test borings or other information identifying and showing the relative position, approximate thickness, and density of the coal and each other mineral to be extracted for commercial use or sale, and the relative position and thickness of any material not classified as other minerals that will also be extracted during the conduct of mining activities.

(11) A map of appropriate scale that clearly identifies the mining area.

- (12) A general description of mining and mineral processing activities for the mining area.
- (13) A summary of sales commitments and agreements for future delivery, if any, that the applicant has received for other minerals to be extracted from the mining area or a description of potential markets for such minerals.
- (14) If the other minerals are to be commercially used by the applicant, a description specifying the use.
- (15) For operations having extracted coal or other minerals before filing an application for exemption, in addition to the information required in subdivisions (1) through (14), the following information must be submitted:
  - (A) Any relevant documents the operator has received from the director documenting its exemption from the requirements of IC 14-34.
  - (B) The cumulative production of the coal and other minerals from the mining area.
  - (C) Estimated tonnages of stockpiled coal and other minerals.
- (16) Any other information pertinent to the qualification of the operation as exempt.

*(Natural Resources Commission; 312 IAC 25-2-6; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3429, eff Dec 1, 2001)*

**312 IAC 25-2-7 Exemption for coal extraction incidental to the extraction of other minerals; public availability of information**

Authority: IC 14-34-2-1

Affected: IC 14-34; 30 CFR 702.13

Sec. 7. (a) Except as provided in subsection (c), all information submitted to the director under this rule shall be made immediately available for public inspection and copying and shall be maintained by the director until at least three (3) years after expiration of the period during which the subject mining area is active.

(b) The director may keep information submitted to the director under this rule confidential if the person submitting the information requests in writing, at the time of submission, that it be kept confidential and demonstrates to the director that the information concerns trade secrets or is privileged commercial or financial information of the persons intending to conduct operations under this rule.

(c) Information requested to be held confidential under subsection (b) shall not be made publicly available until after notice and opportunity to be heard is afforded to persons both seeking and opposing disclosure of the information. *(Natural Resources Commission; 312 IAC 25-2-7; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3430, eff Dec 1, 2001)*

**312 IAC 25-2-8 Exemption for coal extraction incidental to the extraction of other minerals; requirements for exemption**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 8. (a) Activities are exempt from the requirements of IC 14-34 only if all of the following are satisfied:

(1) The cumulative production of coal extracted from the mining area determined annually as described in this section does not exceed sixteen and two-thirds percent (16 $\frac{2}{3}$ %) of the total cumulative production of coal and other minerals removed during the period for purposes of bona fide sale or reasonable commercial use.

(2) Coal is produced from a geological stratum lying above or immediately below the deepest stratum from which other minerals are extracted for purposes of bona fide sale or reasonable commercial use.

(3) The cumulative revenue derived from the coal extracted from the mining area determined annually shall not exceed fifty percent (50%) of the total cumulative revenue derived from the coal and other minerals removed for purposes of bona fide sale or reasonable commercial use. If the coal extracted or the minerals removed are used by the operator or transferred to a related entity for use instead of being sold in a bona fide sale, then the fair market value of the coal or other minerals shall be calculated at the time of use or transfer and shall be considered rather than revenue.

(b) A person seeking, or who has obtained, an exemption from the requirements of IC 14-34, shall comply with the following:

(1) Each other mineral upon which an exemption under sections 4 through 7 of this rule, this section, and sections 9 through 12 of this rule is based must be a commercially valuable mineral for which a market exists or which is mined in bona fide anticipation that a market will exist for the mineral in the reasonable foreseeable future, not to exceed twelve (12) months from the end of the current period for which cumulative production is calculated. A legally binding agreement for the future sale of other minerals is sufficient to demonstrate the standard in this subdivision.

(2) If either coal or other minerals are transferred or sold by the operator to a related entity for its use or sale, the transaction must be made for legitimate business purposes.

*(Natural Resources Commission; 312 IAC 25-2-8; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3430, eff Dec 1, 2001)*

**312 IAC 25-2-9 Exemption for coal extraction incidental to the extraction of other minerals; conditions of exemption and right of inspection and entry**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 9. A person conducting activities covered by sections 4 through 7 of this rule, this section, and sections 10 through 12 of this rule shall do the following:

- (1) Maintain on-site, or at other locations available to the director, information necessary to verify the exemption, including, but not limited to, commercial use and sales information, extraction tonnages, and a copy of the exemption application and exemption approved by the director.
- (2) Notify the director upon the completion of the mining operation or permanent cessation of all coal extraction activities.
- (3) Conduct operations in accordance with the approved application, or, if authorized to extract coal under section 5(b) or 5(e)(3) of this rule, before submittal or approval of an exemption application, under the standards of sections 4 through 8 of this rule, this section, and sections 10 through 12 of this rule.
- (4) The director shall have the right to conduct inspections of any operation claiming an exemption under section 8 of this rule.
- (5) The director shall have a right of entry to, upon, and through any mining and reclamation operations without advance notice or a search warrant, upon presentation of appropriate credentials.
- (6) The director may, at reasonable times and without delay, have access to and copy any records relevant to the exemption.
- (7) The director shall have a right to gather physical and photographic evidence to document conditions, practices, or violations at a site.
- (8) No search warrant is required with respect to any activity required under subdivisions (4) through (7), except that a search warrant may be required for entry into a building.

*(Natural Resources Commission; 312 IAC 25-2-9; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3431, eff Dec 1, 2001)*

**312 IAC 25-2-10 Exemption for coal extraction incidental to the extraction of other minerals; stockpiling of minerals**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 10. (a) Coal extracted and stockpiled may be excluded from the calculation of cumulative production until the time of its sale, transfer to a related entity, or use:

- (1) up to an amount equaling a twelve (12) month supply of the coal required for future sale, transfer, or use, as calculated, based upon average annual sales, transfer, and use from the mining area over the two (2) preceding years; or
  - (2) for a mining area where coal has been extracted for a period of less than two (2) years, up to an amount that would represent a twelve (12) month supply of the coal required for future sales, transfer, or use, as calculated, based on the average amount of coal sold, transferred, or used each month.
- (b) The following requirements shall be for the purposes of determining other minerals:
- (1) The director shall disallow all or part of an operator's tonnages of stockpiled other minerals for purposes of meeting the requirements of sections 4 through 9 of this rule, this section, and sections 11 and 12 of this rule if the:
    - (A) operator fails to maintain adequate and verifiable records of the mining area of origin or the disposition of stockpiles; or
    - (B) disposition of the stockpiles indicates the lack of commercial use or market for the minerals.
  - (2) The director may allow an operator to utilize tonnages of stockpiled other minerals for purposes of meeting the requirements of sections 4 through 9 of this rule, this section, and sections 11 and 12 of this rule, only if both of the following are satisfied:
    - (A) The stockpiling is necessary to meet market conditions or is consistent with generally accepted industry practices.

(B) Except as provided in subdivision (3), the stockpiled other minerals do not exceed a twelve (12) month supply of the mineral required for future sales as approved by the director on the basis of the exemption application.

(3) The director may allow an operator to utilize tonnages of stockpiled other minerals beyond the twelve (12) month limit established in subdivision (2) if the operator can demonstrate to the director's satisfaction that the additional tonnage is required to meet future business obligations of the operator. A legally binding agreement for the future delivery of the minerals may be used to make this demonstration.

(4) The director may periodically revise the other mineral stockpile tonnage limits under the criteria established by subdivisions (2) and (3) based on additional information available to the director.

*(Natural Resources Commission; 312 IAC 25-2-10; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3431, eff Dec 1, 2001)*

### **312 IAC 25-2-11 Exemption for coal extraction incidental to the extraction of other minerals; revocation and enforcement**

Authority: IC 14-34-2-1

Affected: IC 4-21.5-3-7; IC 14-34; 30 CFR 702.17

Sec. 11. (a) The director shall conduct an annual compliance review of the mining area, utilizing the annual report submitted under section 12 of this rule, an on-site inspection, and any other information available to the director.

(b) If the director has reason to believe that a specific mining area was not exempt under the provisions of sections 4 through 10 of this rule, this section, and section 12 of this rule at the end of the previous reporting period, is not exempt, or will be unable to satisfy the exemption criteria at the end of the current reporting period, the director shall notify the operator that the exemption may be revoked and the reasons therefor. The exemption will be revoked unless the operator demonstrates to the director, within thirty (30) days, that the mining area in question should continue to be exempt.

(c) The following shall apply concerning revocation of an exemption:

(1) If the director finds that an operator has not demonstrated that activities conducted in the mining area qualify for the exemption, the director shall revoke the exemption and immediately notify the operator and any intervenors. If a decision is made not to revoke an exemption, the director shall immediately notify the operator and the intervenors, if any.

(2) Any adversely affected person may request administrative review of a decision on whether to revoke an exemption within thirty (30) days of notification of such decision in accordance with IC 4-21.5-3-7.

(3) A petition for administrative review filed under subdivision (2) shall not suspend the effect of a decision on whether to revoke an exemption.

(d) The following are requirements for operators:

(1) An operator mining in accordance with the terms of an approved exemption shall not be cited for violations of this article that occurred prior to the revocation of the exemption.

(2) An operator who does not conduct activities in accordance with the terms of an approved exemption and knows, or should know, that such activities are not in accordance with the approved exemption shall be subject to direct enforcement action for violations of this article that occurred during the period of such activities.

(3) Upon revocation of an exemption or denial of an exemption application, an operator shall stop conducting surface coal mining operations until a permit is obtained and shall comply with the reclamation standards of this article with regard to conditions, areas, and activities existing at the time of revocation or denial.

*(Natural Resources Commission; 312 IAC 25-2-11; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3432, eff Dec 1, 2001)*

### **312 IAC 25-2-12 Exemption for coal extraction incidental to the extraction of other minerals; reporting requirements**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 12. (a) Following approval by the director of an exemption for a mining area, the person receiving the exemption shall, for each mining area, file a written report annually with the director containing the information specified in subsections (c) and (d).

(b) The report shall be filed no later than thirty (30) days after the end of the twelve (12) month period as determined under the cumulative measurement period.

(c) The information in the report shall cover the following:

(1) Annual production of coal and other minerals and annual revenue derived from coal and other minerals during the

preceding twelve (12) month period.

(2) The cumulative production of coal and other minerals, and the cumulative revenue derived from coal and other minerals.

(d) For each period and mining area covered by the report, the report shall specify the following:

(1) The number of tons of extracted coal sold in bona fide sales, and the total revenue derived from the sales.

(2) The number of tons of coal extracted and used or transferred by the operator or related entity, and the estimated total fair market value of the coal.

(3) The number of tons of coal stockpiled.

(4) The number of tons of other commercially valuable minerals extracted and sold in bona fide sales, and total revenue derived from the sales.

(5) The number of tons of other commercially valuable minerals extracted and used or transferred by the operator or related entity, and the estimated total fair market value of the minerals.

(6) The number of tons of other minerals removed and stockpiled by the operator.

*(Natural Resources Commission; 312 IAC 25-2-12; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3432, eff Dec 1, 2001)*

### **Rule 3. Areas Unsuitable for Mining**

#### **312 IAC 25-3-1 Prohibitions; limitations**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 1. Subject to valid existing rights, no surface coal mining operation shall be conducted on any of the following areas after date of enactment of IC 14-34 unless those operations existed on August 3, 1977:

(1) On any lands within the boundaries of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)) or study rivers or study river corridors established in any guidelines pursuant to that act, and National Recreation Areas designated by act of Congress.

(2) On any federal lands within the boundaries of any national forest, provided, however, that surface coal mining operations may be permitted on such lands, if the secretary finds the following:

(A) There are no significant recreational, timber, economic, or other values that may be incompatible with surface coal mining operations.

(B) Surface operations and impacts are incident to an underground coal mine.

(3) On any lands where mining will adversely affect any publicly owned park or any place included in the National Register of Historic Places or the Indiana state register of historic sites and structures or natural landmarks included in the National Register unless approved jointly by the director and the federal, state, or local agency with jurisdiction over the park or place.

(4) Within one hundred (100) feet measured horizontally of the outside right-of-way line of any public road, except for the following:

(A) Where mine access roads or haulage roads join such right-of-way line.

(B) Where the director allows the public road to be relocated, or the area affected to be within one hundred (100) feet of such road, after:

(i) public notice and opportunity for a public hearing under section 2 of this rule; and

(ii) making a written finding that the interests of the affected public and landowners will be protected.

(5) Within three hundred (300) feet measured horizontally from any occupied dwelling unless the owner thereof has provided a written waiver consenting to surface coal mining operations closer than three hundred (300) feet.

(6) Within three hundred (300) feet measured horizontally of the following:

(A) Any public building.

(B) School.

(C) Church.

(D) Community or institutional building.

(E) Public park.

(7) Within one hundred (100) feet measured horizontally of a cemetery.

(8) That will violate any existing local zoning ordinances.

*(Natural Resources Commission; 312 IAC 25-3-1; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3433, eff Dec 1, 2001)*

### **312 IAC 25-3-2 Procedures**

Authority: IC 14-34-2-1

Affected: IC 4-21.5; IC 14-34-18

Sec. 2. (a) Upon receipt of a complete application for a surface coal mining and reclamation operation permit, the director shall review the application to determine whether surface coal mining operations are limited or prohibited under section 1 of this rule on the lands that would be disturbed by the proposed operations.

(b) If the proposed operation is located on any land listed in section 1(1), 1(6), 1(7), or 1(8) of this rule, the director shall reject the application if:

(1) the applicant had no valid existing rights for the area on August 3, 1977; or

(2) the operation did not exist on August 3, 1977.

(c) If the director is unable to determine whether the proposed operation is located within the boundaries of any of the lands in section 1(1), 1(6), 1(7), or 1(8) of this rule, the director shall transmit a copy of the relevant portions of the permit application to the appropriate federal, state, or local government agency for a determination or clarification of the relevant boundaries or distances with a notice to the appropriate agency that it must respond within thirty (30) days of receipt of the request. The director may, if requested by an appropriate agency, extend the thirty (30) day response period set forth in this subsection by an additional thirty (30) days. If no response is received within the thirty (30) day period set forth in this subsection, or within sixty (60) days if an extension is granted under this subsection, the director may make the necessary determinations based upon the information available.

(d) If the proposed operation includes federal lands within the boundaries of any national forest and the applicant seeks a determination that mining is permissible under section 1(2) of this rule, the applicant shall also submit a permit application to the regional director for processing.

(e) If the proposed mining operation is to be conducted within one hundred (100) feet measured horizontally of the outside right-of-way line of a public road (except where mine access roads or haulage roads join the right-of-way line) or where the applicant proposes to relocate a public road, the director shall perform the following:

(1) Require the applicant to obtain necessary approvals of the authority with jurisdiction over the public road.

(2) Provide an opportunity for a public hearing in the locality of the proposed mining operations to determine if the interests of the public and affected landowners will be protected.

(3) Provide notice of the public hearing in a newspaper of general circulation in the affected locale at least two (2) weeks before the hearing, if a hearing is requested.

(4) Make a written finding upon information received at the public hearing within thirty (30) days after completion of the hearing as to whether the interests of the public and affected landowners will be protected from the proposed mining operations.

(f) If the proposed surface coal mining operations would be conducted within three hundred (300) feet measured horizontally of any occupied dwelling, the applicant shall submit with the application a written waiver from the owner of the dwelling consenting to the operation within a closer distance of the dwelling as specified in the waiver. The waiver must be made knowingly and separate from a lease or deed unless the lease or deed contains an explicit waiver. A waiver obtained by the applicant from the owner of an occupied dwelling before August 3, 1977, to mine within three hundred (300) feet of the occupied dwelling satisfies this subsection.

(g) A waiver obtained under subsection (f) is effective against a subsequent purchaser if the subsequent purchaser had actual or constructive knowledge of the waiver at the time of the purchase. Constructive knowledge is established if:

(1) the waiver is properly filed in the public records under Indiana law; or

(2) mining took place inside the three hundred (300) foot limit before the date of purchase.

(h) If the proposed surface coal mining operations will adversely affect any public park or any place included in the National Register of Historic Places, the Indiana state register of historic sites and structures, or natural landmarks included in the national register, the director shall transmit to the federal, state, or local agency with jurisdiction over the park or national register or state register place, a copy of the completed permit application containing the following:

(1) A request for that agency's approval or disapproval of the operations.



(2) A notice to the appropriate agency that it has thirty (30) days from receipt of the request in which to respond. The director, upon request by the appropriate agency, may grant an extension to the thirty (30) day period of an additional thirty (30) days. Failure to interpose an objection within thirty (30) days (or within an extended period granted under this subdivision) constitutes an approval of the proposed permit.

(i) If subsection (h) applies, a permit for surface coal mining operations shall not be issued unless jointly approved by all affected agencies.

(j) A director who determines that a surface coal mining operation is not prohibited under IC 14-34-18, this section, and section 1 of this rule may designate the lands unsuitable for all or certain types of surface coal mining operations according to a petition filed under sections 3 through 12 of this rule.

(k) A determination by the director that a person holds or does not hold a valid existing right or that surface coal mining operations did or did not exist on August 3, 1977, is subject to review under IC 14-34 and IC 4-21.5. A determination of these issues by the Secretary of the United States Department of the Interior concerning any federal lands or under a federal program is subject to review under 30 CFR 775.11(c) and 30 CFR 775.13. (*Natural Resources Commission; 312 IAC 25-3-2; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3433, eff Dec 1, 2001*)

### **312 IAC 25-3-3 Criteria**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 3. (a) Upon petition, an area shall be designated as unsuitable for all or certain types of surface coal mining operations if the director determines that reclamation is not technologically and economically feasible under IC 14-34 and this article.

(b) Upon petition, an area may be (but is not required to be) designated as unsuitable for certain types of surface coal mining operations if the operations will:

- (1) be incompatible with existing state or local land use plans or programs;
- (2) affect fragile or historic lands in which the operations could result in significant damage to important historic, cultural, scientific, or esthetic values or natural systems;
- (3) affect renewable resource lands in which the operations could result in a substantial loss or reduction of long range productivity of water supply or food or fiber products; or
- (4) affect natural hazard lands in which the operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

(*Natural Resources Commission; 312 IAC 25-3-3; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3434, eff Dec 1, 2001*)

### **312 IAC 25-3-4 Land exempt from designation**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 4. Section 3 of this rule, this section, and section 5 of this rule do not apply to the following:

- (1) Land on which surface coal mining operations were being conducted on August 3, 1977.
- (2) Land covered by a permit issued under IC 14-34.
- (3) Land where substantial legal and financial commitments in surface coal mining operations were in existence prior to January 4, 1977.

(*Natural Resources Commission; 312 IAC 25-3-4; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3435, eff Dec 1, 2001*)

### **312 IAC 25-3-5 Exploration**

Authority: IC 14-34-2-1

Affected: IC 14-34-18

Sec. 5. Designation of any area as unsuitable for all or certain types of surface coal mining operations under IC 14-34-18 and this rule does not prohibit coal exploration operations in the area if conducted in accordance with IC 14-34, this article, and other applicable requirements. Exploration operations on any lands designated unsuitable for surface coal mining operations must be

approved by the director under 312 IAC 25-4-9 through 312 IAC 25-4-15, to ensure that exploration does not interfere with any value for which the area has been designated unsuitable for surface coal mining. (*Natural Resources Commission; 312 IAC 25-3-5; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3435, eff Dec 1, 2001*)

**312 IAC 25-3-6 Procedures for petition**

Authority: IC 14-34-2-1

Affected: IC 14-34-18

Sec. 6. (a) A person having an interest, which is or may be adversely affected, has the right to petition the director to have an area designated as unsuitable for surface coal mining operations, or to have an existing designation terminated.

(b) A complete petition for designation shall include the following:

- (1) The petitioner's name, address, and telephone number.
- (2) An identification of the petitioned area, including its location and size.
- (3) An identification of the petitioner's interest that is or may be adversely affected by surface coal mining operations.
- (4) Allegations of fact and supporting evidence that tend to establish that the area is unsuitable for all or certain types of surface coal mining operations.
- (5) A description of how mining of the area has affected or may adversely affect people, land, air, water, or other resources.

(c) A complete petition for termination shall include the following:

- (1) The petitioner's name, address, and telephone number.
- (2) An identification of the petitioned area, including its location and size.
- (3) An identification of the petitioner's interest that is or may be adversely affected by the continuation of the designation.
- (4) Allegations of fact, with supporting evidence, not contained in the record of the proceedings in which the area was designated unsuitable, that tend to establish that the designation should be terminated because the reasons for the designation under IC 14-34-18 have been significantly diminished or no longer exist.

(d) The director may request that a petitioner under this section provide other supplementary information that is readily available. (*Natural Resources Commission; 312 IAC 25-3-6; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3435, eff Dec 1, 2001*)

**312 IAC 25-3-7 Initial processing, record keeping, and notification**

Authority: IC 14-34-2-1

Affected: IC 5-14-3; IC 14-34

Sec. 7. (a) Within thirty (30) days of receipt of a petition, the director shall determine whether the petition is complete, except that for good cause the director may extend the time for making these determinations for an additional fifteen (15) days.

(b) As used in this section, "complete for a designation or termination petition" means that the information required under section 6(b) or 6(c) of this rule has been provided.

(c) The director shall determine whether any identified coal resources exist in the area covered by the petition without requiring any showing from the petitioner. If the director finds there are not any identified coal resources in that area, the petition shall be returned to the petitioner with a statement of the findings.

(d) Any petitions received after the close of the public comment period on a permit application relating to the same permit area shall not prevent the director from issuing a decision on that permit application. The director may return any petition received after the close of the public comment period to the petitioner with a statement why the petition cannot be considered. As used in this section, "close of the public comment period" means the close of any informal conference held under 312 IAC 25-4-112, or, if no conference is requested, at the close of the period for filing written comment and objections under 312 IAC 25-4-110 through 312 IAC 25-4-111.

(e) When the petition is determined complete, the director shall immediately accept the petition for further processing and advise the petitioner of this finding by certified mail.

(f) When the director finds that the petition is generally complete, but that it does not meet this test for portions of the petitioned area, the petition may be accepted in part for further processing in accordance with the procedures set forth in subsection

(g). The director shall advise the petitioner of those portions of the petitioned area that are not accepted for further processing, with a written statement of reasons.

(g) The director may reject petitions for designations or terminations of designations that are frivolous, or were previously and unsuccessfully proposed for designation, if it is determined that the new petition presents no new allegations of facts. The director shall return the petition to the petitioner, with a statement of findings and a reference to the record of the previous designation proceedings where the facts of a previous and unsuccessful petition were considered. Once the requirements of section 6 of this rule are met, no party shall bear any burden of proof, but each accepted petition shall be considered and acted upon by the director pursuant to the procedures of section 6 of this rule, this section, and sections 8 through 12 of this rule.

(h) The director shall return to the petitioner any petition that is found to be incomplete or frivolous, together with a written statement of reasons for the determination and the categories of information needed to make the petition acceptable for resubmittal.

(i) The director shall notify the person who submits a petition of any application for a permit received that proposes to include any area covered by the petition.

(j) If the petition covers an area for which designation has previously been considered and rejected, the director shall determine if the petition presents significant new allegations of facts with evidence that tends to establish the allegations. If the petition does not contain the allegations and evidence, the petition shall not be considered, but shall be returned to the petitioner with the director's written findings and a reference to the record of the previous proceedings in which the issues raised by the petitioner were considered.

(k) Within three (3) weeks after accepting the petition for further processing, the director shall circulate copies of the petition to, and request submission of relevant information from, the following:

- (1) Other interested governmental agencies.
- (2) The petitioner.
- (3) Intervenors.
- (4) Persons with an ownership interest of record in the property.
- (5) Other persons known to the director to have an interest in the property.

(l) Within five (5) weeks after accepting the petition for further processing, the director shall notify the general public of the receipt of the petition and request submissions of relevant information by a newspaper advertisement placed once a week for two (2) consecutive weeks in the locale of the area covered by the petition, in a newspaper of general circulation in Marion County, and in the Indiana Register.

(m) Until three (3) days before the director holds a hearing under this rule, any person may intervene in the proceeding by filing the following:

- (1) Allegations of facts.
- (2) Supporting evidence.
- (3) A short statement identifying the petition to which the allegations pertain.
- (4) The intervenor's name, address, and telephone number.

(n) Beginning immediately after a complete petition is filed, the director shall compile and maintain a record consisting of all documents relating to the petition filed with or prepared by the director. The director shall make the record available for public inspection under IC 5-14-3 at:

- (1) a central location in or near the area where the land petitioned is located; and
- (2) the Indianapolis office of the division of reclamation.

*(Natural Resources Commission; 312 IAC 25-3-7; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3435, eff Dec 1, 2001)*

### **312 IAC 25-3-8 Hearing requirements**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 8. (a) Within ten (10) months after the receipt of a complete petition, the director shall hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree, the hearing need not be held. The director may subpoena witnesses as necessary. A record of the hearing shall be made and preserved, and:

- (1) no party shall have the burden of proof or persuasion; and
- (2) all:
  - (A) relevant parts of the data base and inventory system; and
  - (B) public comment received during the public comment period set by the director or at the hearing;

shall be included in the record and considered by the director in deciding the petition.

(b) The director shall give notice of the date, time, and location of the hearing to:

(1) local, state, and federal agencies that may have an interest in the decision on the petition;

(2) the petitioner and the intervenors; and

(3) any person known by the director to have a property interest in the area covered by the petition.

Notice of the hearing shall be sent by certified mail to petitioners and intervenors and by regular mail to other persons involved in the proceedings and postmarked not less than thirty (30) days before the scheduled date of the hearing.

(c) The director shall notify the general public of the date, time, and location of the hearing by placing a newspaper advertisement once a week for two (2) consecutive weeks and once during the week prior to the scheduled date of the hearing in the locale of the area covered by the petition.

(d) The director may consolidate in a single hearing the hearings required for each of several petitions that relate to areas in the same locale.

(e) Prior to designating any land areas as unsuitable for surface coal mining operations, the director shall prepare a detailed statement, using existing and available information on the following:

(1) The potential coal resources of the area.

(2) The demand for coal resources.

(3) The impact of such designation on the following:

(A) The environment.

(B) The economy.

(C) The supply of coal.

(f) In the event that all petitioners and intervenors stipulate agreement prior to the hearing, the petition may be withdrawn from consideration. (*Natural Resources Commission; 312 IAC 25-3-8; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3436, eff Dec 1, 2001*)

### **312 IAC 25-3-9 Decision**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 9. (a) The director may decide to designate the petitioned land areas, in whole or in part, not to designate the petitioned land areas, or to place conditions on future operations in all or part of the petitioned area that would successfully mitigate the impacts of such operations.

(b) In reaching a decision, the director shall use the following:

(1) Information contained in the data base and inventory system established and maintained under section 10 of this rule.

(2) Information provided by other governmental agencies.

(3) The detailed statement prepared under section 8(e) of this rule.

(4) Any other relevant information submitted during the comment period.

(c) A final written decision shall be issued by the director, including a statement of the reasons for the director's decision, within sixty (60) days of completion of the public hearing, or, if no public hearing is held, then within twelve (12) months after receipt of the petition accepted for further processing. The director shall simultaneously send the decision by:

(1) certified mail to the petitioner and intervenors; and

(2) regular mail to:

(A) every other party to the proceeding; and

(B) the regional director or the Office of Surface Mining official in charge of the operations in Indiana.

(d) The decision of the director, with respect to a petition, or the failure of the director to act within the time limits set forth in this section, shall be subject to judicial review by a court of competent jurisdiction in accordance with state law and this article. (*Natural Resources Commission; 312 IAC 25-3-9; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3437, eff Dec 1, 2001*)

### **312 IAC 25-3-10 Data base and inventory system requirements**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 10. (a) The director shall develop a data base and inventory system that will permit evaluation of whether reclamation is feasible in areas covered by petitions.

(b) The director shall include in the system information relevant to the criteria in section 3 of this rule, including, but not limited to, the following:

(1) Information received from the United States Fish and Wildlife Service.

(2) The state historic preservation officer.

(3) The agency administering Section 127 of the Clean Air Act as amended (42 U.S.C. 7470 et seq.).

(c) The director shall add to the data base and inventory system information:

(1) on potential coal resources of the state, demand for those resources, the environment, the economy, and the supply of coal, sufficient to enable the director to prepare the statements required by section 8(e) of this rule; and

(2) that becomes available from petitions, publications, experiments, permit applications, mining and reclamation operations, and other sources.

*(Natural Resources Commission; 312 IAC 25-3-10; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3437, eff Dec 1, 2001)*

### **312 IAC 25-3-11 Public information**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 11. The director shall do the following:

(1) Make the information and data base system developed under section 10 of this rule available to the public for inspection free of charge and for copying at reasonable cost.

(2) Provide information to the public on the petition procedures necessary to have:

(A) an area designated as unsuitable for all or certain types of surface coal mining operations; or

(B) designations terminated and describe how the inventory and data base system can be used.

*(Natural Resources Commission; 312 IAC 25-3-11; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3438, eff Dec 1, 2001)*

### **312 IAC 25-3-12 Implementation; responsibility**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 12. (a) The director shall not issue permits that are inconsistent with designations made under this article.

(b) The director shall maintain a map or other unified and cumulative record of areas designated as unsuitable for all or certain types of surface coal mining operations.

(c) The director shall make available to any person any information within its control regarding designations, including mineral or elemental content that is potentially toxic in the environment, but excepting proprietary information on the chemical and physical properties of the coal. *(Natural Resources Commission; 312 IAC 25-3-12; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3438, eff Dec 1, 2001)*

## **Rule 4. Permitting Procedures**

### **312 IAC 25-4-1 Continued operation under interim permits**

Authority: IC 14-34-2-1

Affected: IC 14-36-1

Sec. 1. (a) Except as provided in subsection (b), no person shall conduct surface coal mining and reclamation operations on and after March 29, 1983, unless that person has first obtained a permanent program permit from the director under section 3 of this rule.

(b) A person conducting surface coal mining operations under an interim permit issued or amended by the commission in accordance with the requirements of IC 14-36-1, as amended, P.L. 159, Acts of 1978 and P.L. 331, Acts of 1981 or under an interim permit, the expiration of which has been extended by the commission, may conduct those operations beyond the term of such permit

and beyond the period prescribed in subsection (a), if:

- (1) not later than two (2) months following the approval of the Secretary of the United States Department of the Interior of this program, a complete application for a permanent program permit is filed with the director;
- (2) the commission has not yet rendered a decision with respect to such permanent program application; and
- (3) the operations are conducted in compliance with all terms and conditions of the interim permit, P.L. 159, Acts of 1978 and P.L. 331, Acts of 1981.

*(Natural Resources Commission; 312 IAC 25-4-1; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3438, eff Dec 1, 2001)*

### **312 IAC 25-4-2 Permits and exploration applications; responsibilities**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 2. (a) Persons seeking to engage in surface coal mining and reclamation operations must submit an application for and obtain a permit for those operations in accordance with section 1 of this rule, this section, and sections 3 through 134 of this rule.

(b) Persons seeking to conduct exploration must first file the notice of intention or obtain approval of the director as required under sections 9 through 15 of this rule.

(c) Following the submission by the director of a regulatory program under 30 CFR, Subchapter C, the director shall provide to the applicant written format for permit applications. *(Natural Resources Commission; 312 IAC 25-4-2; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3438, eff Dec 1, 2001)*

### **312 IAC 25-4-3 General requirements for permits**

Authority: IC 14-34-2-1

Affected: IC 14-34-3

Sec. 3. No person may open or develop a new or previously mined or abandoned site for surface coal mining operations within Indiana unless that person has first obtained a valid permit issued by the director under IC 14-34-3. *(Natural Resources Commission; 312 IAC 25-4-3; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3439, eff Dec 1, 2001)*

### **312 IAC 25-4-4 Compliance with permits**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 4. All persons shall conduct surface coal mining and reclamation operations under permits issued under IC 14-34 and this article, and shall comply with the terms and conditions of IC 14-34, this article, and the permit. *(Natural Resources Commission; 312 IAC 25-4-4; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3439, eff Dec 1, 2001)*

### **312 IAC 25-4-5 Permit applications; filing and deadlines**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 5. (a) Each person who conducts or expects to conduct new surface coal mining and reclamation operations shall file an application for a permit for those operations no later than one hundred eighty (180) days prior to the proposed commencement of such operations.

(b) An application for renewal of a permit shall be filed with the director at least one hundred twenty (120) days before the expiration of the permit involved.

(c) Any application for revision of a permit shall be filed with the director at least one hundred twenty (120) days before the date on which the permittee expects to revise surface coal mining or reclamation operations.

(d) Any application for a new permit required for a person succeeding by transfer, sale, or assignment of rights granted under a prior permit shall be filed with the director not later than thirty (30) days after that succession is approved by the director. *(Natural Resources Commission; 312 IAC 25-4-5; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3439, eff Dec 1, 2001)*

**312 IAC 25-4-6 Permit applications; general requirements; format and contents**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 6. (a) An application for a permit to conduct surface coal mining and reclamation operations shall be filed in the format required by the director. The application must be complete and must include the following:

- (1) For surface mining activities, all the applicable information required under sections 16 through 56 of this rule.
- (2) For underground mining activities, all the information required under sections 57 through 97 of this rule.
- (3) For special types of surface coal mining and reclamation operations, all the information required under sections 98 through 107 of this rule.

(b) Information set forth in an application must be current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the director.

(c) All technical data submitted in an application shall be accompanied by the following:

- (1) Names of persons or organizations that collected and analyzed the data.
- (2) Dates of the collection and analyses.
- (3) Descriptions of methodology used to collect and analyze the data.

(d) Technical analyses must be planned or directed by a professional qualified in the subject that is analyzed.

(e) An application shall state the name, address, and position of officials of each private or academic research organization or governmental agency consulted by the applicant in preparation of the application for information on land uses, soils, geology, vegetation, fish and wildlife, water quantity and quality, air quality, and archaeological, cultural, and historic features.

(f) An application must include maps and plans as provided in this subsection as follows:

(1) Maps submitted with an application must be presented in a consolidated format, to the extent possible, and shall include all types of information that are set forth on topographic maps of the United States Geological Survey of the 1:24,000 scale series. Maps of the permit area shall be at a scale of 1:6,000 or larger. Maps of the adjacent areas shall clearly show the lands and waters within those areas and shall be of an adequate scale to provide the appropriate information to the director.

(2) Maps and plans submitted with the application shall clearly show those portions of the permit area in which surface coal mining operations occurred prior to August 3, 1977.

*(Natural Resources Commission; 312 IAC 25-4-6; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3439, eff Dec 1, 2001)*

**312 IAC 25-4-7 Permit applications; format and contents review**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 7. Each application for a surface coal mining and reclamation permit under a regulatory program shall be reviewed as to its completeness prior to formal review and shall include the following:

- (1) This completeness review shall be completed not later than fifteen (15) working days after such permit is submitted.
- (2) The director shall contact the applicant not later than five (5) working days after a permit is reviewed for completeness and shall state:

(A) which portions of the permit application are incomplete; and

(B) those conditions and information requirements necessary to complete the application.

*(Natural Resources Commission; 312 IAC 25-4-7; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3440, eff Dec 1, 2001)*

**312 IAC 25-4-8 Verification of application**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 8. Applications for permits shall be verified, under oath, by a responsible official of the applicant, that the information contained in the application is true and correct to the best of the official's information and belief. *(Natural Resources Commission; 312 IAC 25-4-8; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3440, eff Dec 1, 2001)*

**312 IAC 25-4-9 Coal exploration; responsibilities**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 9. It is the responsibility of any person conducting or seeking to conduct coal exploration under a regulatory program to comply with this section and sections 10 through 15 of this rule. (*Natural Resources Commission; 312 IAC 25-4-9; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3440, eff Dec 1, 2001*)

**312 IAC 25-4-10 General requirements; coal exploration**

Authority: IC 14-34-2-1

Affected: IC 14-34; IC 14-38-2

Sec. 10. (a) General requirements for coal exploration activities shall be as follows:

- (1) Any person who conducts coal exploration activities for the purpose of determining the location, quantity, or quality of a coal seam shall comply with 312 IAC 25-6-1 through 312 IAC 25-6-4.
- (2) All exploration holes, wells, or other exposed openings created during exploration must meet the requirements of 312 IAC 25-6-8, 312 IAC 25-6-9, and 312 IAC 25-6-10.
- (3) Any person desiring to drill exploratory holes to a depth in excess of two hundred (200) feet shall first file a written application for a permit with the division of oil and gas, department of natural resources, consistent with rules promulgated pursuant to IC 14-38-2.
- (b) Any person who intends to conduct coal exploration by methods other than core drilling or the drilling of boreholes shall, prior to conducting such exploration activities, file an application and obtain the written approval of the director. The application shall include the following:
  - (1) The name, address, and telephone number of the applicant.
  - (2) The name, address, and telephone number of the representative of the applicant who will be present at and responsible for conducting the exploration activities.
  - (3) A brief narrative description of the area in which the applicant intends to conduct coal exploration activity, including quarter, quarter section, township, range, and county of the exploration area.
  - (4) An estimated timetable for conducting and completing each phase of the exploration and reclamation.
  - (5) A description of the measures to be used to comply with the applicable requirements of 312 IAC 25-6-1 through 312 IAC 25-6-4.
  - (6) A United States Geological Survey topographic map of the proposed exploration area at a scale of 1:24,000 or larger, showing:
    - (A) existing and proposed roads and access routes; and
    - (B) existing lakes, ponds, streams, and drainage features.
- (c) Any person desiring to drill an exploratory hole shall do the following:
  - (1) Meet the applicable performance standards set forth in 312 IAC 25-6-1 through 312 IAC 25-6-4.
  - (2) Notify the director, in writing, on an annual basis that he or she intends to conduct such exploration activity, including:
    - (A) a description of the exploration area;
    - (B) the period of supposed exploration;
    - (C) the practices proposed to be followed to protect the environment from adverse impacts; and
    - (D) the name, address and telephone number of the representative of the person who will be present and responsible for conducting the exploration activities.
  - (3) Keep a record of each hole drilled, including the following:
    - (A) The date drilled.
    - (B) The date plugged.
    - (C) The method of sealing or casing the drill hole.
    - (D) The location of the drill hole.
  - (4) Information recorded pursuant to subdivision (3) shall be retained by the operator for inspection by the department for a period of three (3) years; however, such information shall be treated as confidential and will not be subject to public



inspection.

(d) The director shall, except as otherwise provided in subsection (c)(4) and section 15 of this rule, place the notices submitted pursuant to subsection (c)(2) on public file and make them available for public inspection and copying. (*Natural Resources Commission; 312 IAC 25-4-10; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3440, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182*)

### **312 IAC 25-4-11 Exploration of more than 250 tons; special requirements**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 11. (a) Each application for approval of exploration operations removing more than two hundred fifty (250) tons of coal shall include the following, in addition to information required under section 10 of this rule:

- (1) A statement of why extraction of more than two hundred fifty (250) tons of coal is necessary for exploration.
  - (2) A narrative description of the proposed exploration area, cross-referenced to a United States Geological Survey topographic map to a scale of not less than 1:24,000.
  - (3) An exploration and reclamation operations plan, including the following:
    - (A) A narrative description of the following:
      - (i) The proposed exploration area, cross-referenced to the map required under subdivision (5).
      - (ii) Vegetative cover.
      - (iii) The distribution and important habitats of fish, wildlife, and plants, including, but not limited to, any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531, et seq.).
      - (iv) Cultural, archaeological, or historic resources listed, or eligible for listing, on the National Register of Historic Places or the Indiana state register of historic sites and structures, known archaeological resources located within the proposed exploration area, and any other information that the director may require regarding known or unknown cultural, archaeological, or historic resources consistent with section 27 or 68 of this rule.
    - (B) A narrative description of the methods to be used to conduct coal exploration and reclamation, including, but not limited to, the following:
      - (i) The types and uses of equipment.
      - (ii) Drilling.
      - (iii) Blasting.
      - (iv) Road or other access route construction.
      - (v) Excavated earth or other debris.
    - (C) The estimated amount of coal to be removed and a description of the methods to be used to determine this amount.
  - (4) The name and address of the owner of record of the surface land and of the subsurface mineral estate of the area to be explored. If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting exploration and reclamation.
  - (5) A map at a scale of 1:24,000 or larger, showing the areas of land to be disturbed by the proposed exploration and reclamation. The map shall specifically show the following:
    - (A) Existing roads, occupied dwellings, and pipelines.
    - (B) Proposed location of trenches, roads, and other access routes and structures to be constructed.
    - (C) The location of land excavations to be conducted.
    - (D) Water or coal exploratory holes and wells to be drilled or altered.
    - (E) Earth or debris disposal areas.
    - (F) Existing bodies of surface water.
    - (G) Historic, topographic, geologic, cultural, and drainage features.
    - (H) Habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531, et seq.).
- (b) Public notice of the application and opportunity to comment shall be provided as follows:
- (1) Within five (5) days after submitting the application for approval of exploration, the applicant shall provide public notice

of the filing of an administratively complete application with the director in a newspaper of general circulation published in the county of the proposed exploration area.

(2) The public notice shall contain the following information:

(A) The name and business address of the person seeking approval.

(B) The date of filing of the application.

(C) The address of the director at which written comments on the application may be submitted.

(D) The closing date of the comment period (which shall be thirty (30) days after the filing of the application).

(E) A description of the general area of exploration.

(3) Any person with an interest that is or may be adversely affected shall have the right to file written comments on the application within the comment period specified in subdivision (2).

*(Natural Resources Commission; 312 IAC 25-4-11; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3441, eff Dec 1, 2001)*

### **312 IAC 25-4-12 Exploration of more than 250 tons; approval or disapproval**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 12. The director shall approve a complete application filed in accordance with sections 9 through 11 of this rule, this section, and sections 13 through 15 of this rule after making a written finding that the applicant has demonstrated the exploration and reclamation described in that application will be conducted in accordance with IC 14-34, the coal exploration performance standards in 312 IAC 25-6-1 through 312 IAC 25-6-4, and sections 9 through 11 of this rule, this section, and sections 13 through 15 of this rule. *(Natural Resources Commission; 312 IAC 25-4-12; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3442, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182)*

### **312 IAC 25-4-13 Application approval or disapproval; public notice**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 13. (a) The director shall notify the applicant and any appropriate county planning agency, in writing, of its decision to approve or disapprove the application. If the application is disapproved, the notice to the applicant shall state the reason for disapproval. The director shall provide public notice of approval or disapproval of each application by publication in a newspaper of general circulation in the vicinity of the proposed exploration site or sites.

(b) Any person with an interest who is or may be adversely affected by a decision of the director under subsection (a) shall have the opportunity for administrative and judicial review as set forth in sections 122 and 123 of this rule. *(Natural Resources Commission; 312 IAC 25-4-13; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3442, eff Dec 1, 2001)*

### **312 IAC 25-4-14 Coal exploration violations**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 14. Any person who conducts any coal exploration in violation of:

(1) IC 14-34-9;

(2) sections 9 through 13 of this rule, this section, and section 15 of this rule; or

(3) 312 IAC 25-6-1 through 312 IAC 25-6-4;

shall be subject to IC 14-34-15 and IC 14-34-16. *(Natural Resources Commission; 312 IAC 25-4-14; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3442, eff Dec 1, 2001)*

### **312 IAC 25-4-15 Public availability of information**

Authority: IC 14-34-2-1

Affected: IC 4-21.5; IC 14-34

Sec. 15. (a) Except as provided in subsection (b), all information submitted to the director under sections 9 through 14 of this rule and this section will be made available for public inspection and copying (at reasonable charge) at the reclamation field office of the division of reclamation.

(b) The director will not make information available for public inspection if the person submitting the information requests, in writing, at the time of submission, that the information not be disclosed because the information contains trade secrets or proprietary commercial information. If the director determines that the information is not confidential, the person may request a hearing in the hearing officer's chambers within the time limitations set forth in IC 4-21.5. The record of this hearing will be sealed. Until such time as the hearing officer renders a written decision, the time for instituting judicial review has expired and unless otherwise ordered by a court of competent jurisdiction, such information shall only be disclosed to the hearing officer, appropriate employees in the department, and the person requesting the hearing. Other interested persons becoming parties to the proceeding shall not have access to such information until the period of judicial review has expired unless otherwise ordered by a court of competent jurisdiction. (*Natural Resources Commission; 312 IAC 25-4-15; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3442, eff Dec 1, 2001*)

### **312 IAC 25-4-16 Application; applicability**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 16. This section and sections 17 through 25 of this rule apply to any person who applies for a permit to conduct surface mining activities. (*Natural Resources Commission; 312 IAC 25-4-16; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3443, eff Dec 1, 2001*)

### **312 IAC 25-4-17 Surface mining permit applications; identification of interests Version a**

Authority: IC 14-34-2-1

Affected: IC 14-34; 30 CFR 778.13

*NOTE: This version of section effective until superseded by the following version of this section, which is effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register.*

Sec. 17. (a) An application shall contain the following information, except that the submission of a Social Security number is voluntary:

(1) A statement as to whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity.

(2) The name, address, telephone number, and, as applicable, the Social Security number and employer identification number of the following:

(A) The applicant.

(B) The applicant's resident agent.

(C) The person who will pay the abandoned mine land reclamation fee.

(b) For each person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in 312 IAC 25-1-94, the following information shall be submitted with the application, where applicable:

(1) The person's name, address, Social Security number, and employer identification number.

(2) The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.

(3) The title of the person's position, the date the position was assumed, and, if submitted under 312 IAC 25-7-5, the date of departure from the position.

(4) Each additional name and identifying number, including the following:

(A) The employer identification number.

(B) The federal or state permit number.

(C) The MSHA number with the date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five (5) years preceding the date of the application.

(5) The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States.

(c) For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant under the definition of “owned or controlled” and “owns or controls” in 312 IAC 25-1-94, the following information concerning the operation shall be submitted with the application:

(1) The name, address, and identifying numbers, including the following:

(A) The employer identification number.

(B) The federal or state permit number and the regulatory authority.

(C) The MSHA number with the date of issuance.

(2) The ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.

(d) The name and address of each legal or equitable owner of record of the surface and mineral property to be mined, each holder of record of any leasehold interest in the property to be mined, and any purchaser of record under a real estate contract for the property to be mined.

(e) The name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area.

(f) The MSHA numbers for all mine-associated structures that require MSHA approval.

(g) A statement of all lands, interest in lands, options, or pending bids on interests held or made by the applicant for lands contiguous to the area described in the permit application shall be submitted with the application. If requested by the applicant, any information required by this section, that is not on public file under Indiana law, shall be held in confidence by the director as provided under section 15(b) of this rule.

(h) After an applicant is notified that the application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (a) through (d).

(i) The applicant shall submit the information required by this section and section 18 of this rule in any prescribed format that is issued by the commission, which shall conform to the format requirements of the Office of Surface Mining Reclamation and Enforcement. (*Natural Resources Commission; 312 IAC 25-4-17; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3443, eff Dec 1, 2001, except subsections (d), (e), and (f)*)

### **312 IAC 25-4-17 Surface mining permit applications; identification of interests Version b**

Authority: IC 14-34-2-1

Affected: IC 14-34; 30 CFR 778.13

*NOTE: This version of section effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register. See also preceding version of this section, effective until superseded by this version of section.*

Sec. 17. (a) An application shall contain the following information, except that the submission of a Social Security number is voluntary:

(1) A statement as to whether the applicant is a:

(A) corporation;

(B) partnership;

(C) single proprietorship;

(D) association; or

(E) other business entity.

(2) The name, address, telephone number, and, as applicable, the Social Security number and employer identification number of the following:

(A) The applicant.

(B) The applicant’s resident agent.

(C) The person who will pay the abandoned mine land reclamation fee.

(b) For each person who owns or controls the applicant under the definition of “owned or controlled” and “owns or controls”

in 312 IAC 25-1-94, the following information shall be submitted with the application, where applicable:

- (1) The person's name, address, Social Security number, and employer identification number.
- (2) The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.
- (3) The title of the person's position, the date the position was assumed, and, if submitted under 312 IAC 25-7-5, the date of departure from the position.
- (4) Each additional name and identifying number, including the following:
  - (A) The employer identification number.
  - (B) The federal or state permit number.
  - (C) The MSHA number with the date of issuance under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five (5) years preceding the date of the application.
- (5) The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States.
- (c) For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in 312 IAC 25-1-94, the following information concerning the operation shall be submitted with the application:
  - (1) The name, address, and identifying numbers, including the following:
    - (A) The employer identification number.
    - (B) The federal or state permit number and the regulatory authority.
    - (C) The MSHA number with the date of issuance.
  - (2) The ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.
  - (d) The name and address of each legal or equitable owner of record of the surface and mineral property to be mined, each holder of record of any leasehold interest in the property to be mined, and any purchaser of record under a real estate contract for the property to be mined shall be submitted with the application.
  - (e) The name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area shall be submitted with the application.
  - (f) The MSHA numbers for all mine-associated structures that require MSHA approval shall be submitted with the application.
  - (g) A statement of all lands, interest in lands, options, or pending bids on interests held or made by the applicant for lands contiguous to the area described in the permit application shall be submitted with the application. If requested by the applicant, any information required by this section that is not on public file under Indiana law shall be held in confidence by the director as provided under section 15(b) of this rule.
  - (h) After an applicant is notified that the application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (a) through (d).
  - (i) The applicant shall submit the information required by this section and section 18 of this rule in any prescribed format that is issued by the commission, which shall conform to the format requirements of the Office of Surface Mining Reclamation and Enforcement. (*Natural Resources Commission; 312 IAC 25-4-17; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3443, eff Dec 1, 2001, except subsections (d), (e), and (f); filed Apr 1, 2004, 3:00 p.m.: 27 IR 2445, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register*)

### **312 IAC 25-4-18 Surface mining permit applications; compliance information**

Authority: IC 14-34-2-1

Affected: IC 14-34; 30 CFR 778.14

Sec. 18. (a) Each application shall contain the following information:

- (1) A statement of whether the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

- (A) had a federal or state coal mining permit suspended or revoked in the five (5) years preceding the date of submission of the application; or
  - (B) forfeited a performance bond or similar security deposited in lieu of bond.
- (2) A brief explanation of the facts involved in any such suspension, revocation, or forfeiture referred to in subdivision (1), including the following:
- (A) The identification number and date of issuance of the permit, and the date and amount of bond or similar security.
  - (B) The identification of the authority that suspended or revoked the permit or forfeited the bond, and the stated reasons for the action.
  - (C) The current status of the permit, bond, or similar security involved.
  - (D) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture.
  - (E) The current status of the proceedings required in clause (D).
- (3) A list of all violation notices received by the applicant during the three (3) year period preceding the application date, and a list of all outstanding violation notices received prior to the date of the application by any surface coal mining operation that is deemed or presumed to be owned or controlled by either the applicant or any person who is deemed or presumed to own or control the applicant under the definition of "owned or controlled" and "owns and controls" in 312 IAC 25-1-94. For each notice of violation issued under 312 IAC 25-7-6 or under a federal or state program for which the abatement period has not expired, the applicant shall certify that such notice of violation is in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation. For each violation notice reported, the list shall include the following information as applicable:
- (A) Any identifying numbers for the operation, including the following:
    - (i) The federal or state permit number and MSHA number.
    - (ii) The dates of issuance of the violation notice and MSHA number.
    - (iii) The name of the person to whom the violation notice was issued.
    - (iv) The name of the issuing regulatory authority, department, or agency.
  - (B) A brief description of the violation alleged in the notice.
  - (C) The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in this subdivision to obtain administrative or judicial review of the violation.
  - (D) The current status of the proceedings and of the violation notice.
  - (E) The actions, if any, taken by any person identified in this subdivision to abate the violation.
- (b) After an applicant is notified that the application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under this section. (*Natural Resources Commission; 312 IAC 25-4-18; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3444, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182*)

### **312 IAC 25-4-19 Surface mining permit applications; right of entry and operation information**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 19. (a) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin surface mining activities in the permit area and whether that right is the subject of pending litigation. The description shall:

- (1) identify the specific land to which the document pertains; and
  - (2) explain the legal rights claimed by the applicant.
- (b) Where the private mineral estate to be mined has been severed from the private surface estate, the applications shall also provide any of the following for land within the permit area:
- (1) A copy of the written consent of the surface owner to the extraction of coal by surface mining methods.
  - (2) A copy of the document of conveyance that expressly grants or reserves the right to extract the coal by surface mining methods.

(3) If the conveyance does not expressly grant the right to extract the coal by surface mining methods, documentation that, under applicable Indiana law, the applicant has the legal authority to extract the coal by those methods.

In lieu of copies of the consent, document, or other documentation required in this subsection, the applicant may provide an affidavit, signed by a responsible officer of the applicant, stating, under oath, that the information required does in fact exist and is available for inspection by any person at a given location set forth in that affidavit.

(c) Nothing in this section will be construed to afford the department the authority to adjudicate property title disputes. *(Natural Resources Commission; 312 IAC 25-4-19; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3444, eff Dec 1, 2001)*

### **312 IAC 25-4-20 Surface mining permit applications; relationship to areas designated unsuitable for mining**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 20. (a) Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for surface mining activities under 312 IAC 25-3-6 through 312 IAC 25-3-12 or under study for designation in an administrative proceeding under 312 IAC 25-3-6 through 312 IAC 25-3-12.

(b) If an applicant claims the exemption in section 115 of this rule, the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 1, 1977, concerning the proposed surface mining activities.

(c) Subject to valid existing rights, if an applicant proposes to conduct surface mining activities within three hundred (300) feet of an occupied dwelling, the application shall contain the waiver of the owner of the dwelling as required in 312 IAC 25-3-1(5). *(Natural Resources Commission; 312 IAC 25-4-20; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3445, eff Dec 1, 2001)*

### **312 IAC 25-4-21 Surface mining permit applications; permit term information**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 21. (a) Each permit shall be issued for a fixed term not to exceed five (5) years, except where the director grants a longer fixed period as provided in this section.

(b) Each application shall state the following:

(1) The anticipated starting and termination dates of the surface mining activities.

(2) The anticipated number of acres of land to be affected annually and over the total life of the permit.

(c) If the applicant proposes to conduct the surface mining activities in excess of five (5) years, the application shall contain the information required by section 119 of this rule. *(Natural Resources Commission; 312 IAC 25-4-21; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3445, eff Dec 1, 2001)*

### **312 IAC 25-4-22 Surface mining permit applications; personal injury and property damage insurance information**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 22. Each permit application shall contain a certificate of liability insurance consistent with 312 IAC 25-5. *(Natural Resources Commission; 312 IAC 25-4-22; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3445, eff Dec 1, 2001)*

### **312 IAC 25-4-23 Surface mining permit applications; identification of other safety and environmental licenses and permits**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 23. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed surface mining activities. This list shall identify each license and permit by the following:

(1) The type of permit or license.

(2) The name and address of issuing authority.

(3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses.

(4) If a decision has been made, the date of approval or disapproval by each issuing authority.

*(Natural Resources Commission; 312 IAC 25-4-23; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3445, eff Dec 1, 2001)*

**312 IAC 25-4-24 Surface mining permit applications; identification of library where application on file**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 24. Each application shall identify by name and address the county library where the applicant will simultaneously file a copy of the application for public inspection under section 109(d) of this rule. *(Natural Resources Commission; 312 IAC 25-4-24; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3446, eff Dec 1, 2001)*

**312 IAC 25-4-25 Surface mining permit applications; newspaper advertisement; proof of publication**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 25. A copy of the newspaper advertisement of the application and proof of publication of the advertisement shall be filed with the director and made a part of the complete application, not later than four (4) weeks after the last date of publication required by section 109(a) of this rule. *(Natural Resources Commission; 312 IAC 25-4-25; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3446, eff Dec 1, 2001)*

**312 IAC 25-4-26 Surface mining permit applications; environmental resources information; general requirements**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 26. Each permit application shall include a description of the existing premining environmental resources within the proposed permit area and adjacent areas that may be affected or impacted by the proposed surface mining activities. *(Natural Resources Commission; 312 IAC 25-4-26; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3446, eff Dec 1, 2001)*

**312 IAC 25-4-27 Surface mining permit applications; environmental resources information; cultural, historic, and archaeological resources**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 27. (a) Each application shall describe and identify the nature of cultural, historic, and archaeological resources in or within one thousand (1,000) feet for the proposed permit area. The description shall be based on information obtained from the division of historic preservation and archaeology.

(b) The director shall require the applicant to submit additional information to describe and identify the nature of cultural, historic, and archaeological resources if the director determines that sufficient information is not available from the division of historic preservation and archaeology to identify the nature of these resources. The sources of the information shall include each of the following:

(1) State and local cultural, historic, and archaeological preservation agencies.

(2) Research organizations.

(3) Institutions that maintain records of cultural, historic, and archaeological resources.

(c) If, based upon the written comments of the division of historic preservation and archaeology and other sources, the director determines there is a substantial likelihood that there are undiscovered sites containing cultural, historic, or archaeological resources that would be eligible for listing on the National Register of Historic Places or the Indiana state register of historic sites and structures that would be adversely affected by surface coal mining operations, the director may require the applicant to identify and



evaluate the nature of these resources through any of the following:

- (1) The collection of additional information.
- (2) The conduct of field investigations.
- (3) Other appropriate analyses.

(d) The director may require an applicant to evaluate the significance of an important site that contains cultural, historic, or archaeological resources identified in this section through any of the following:

- (1) The evaluation of records of research institutions and the division of historic preservation and archaeology.
- (2) The evaluation of written reports.
- (3) Field investigations.
- (4) Other appropriate investigations.

(e) The identification and evaluation of cultural, historic, and archaeological resources under subsection (b), (c), or (d) shall be conducted according to 312 IAC 21-3. (*Natural Resources Commission; 312 IAC 25-4-27; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3446, eff Dec 1, 2001*)

### **312 IAC 25-4-28 Surface mining permit applications; environmental resources information; hydrology**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 28. (a) Each application shall contain a description of the hydrology, including water quantity and water quality for:

- (1) the permit area;
- (2) the adjacent area; and
- (3) the general area.

(b) Information on hydrology and water quality and quantity outside the proposed permit area and within the general area shall be provided by the director from such areas or from areas with similar hydrologic conditions.

(c) The applicant shall submit additional information for the permit area as part of the permit application as required by the director and according to this section and sections 30 through 33 of this rule.

(d) Water quality analysis and sampling shall be conducted according to the methodology in the latest edition of Standard Methods for the Examination of Water and Wastewater. (*Natural Resources Commission; 312 IAC 25-4-28; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3447, eff Dec 1, 2001*)

### **312 IAC 25-4-29 Surface mining permit applications; environmental resources information; fish and wildlife**

Authority: IC 14-34-2-1

Affected: IC 14-22-34; IC 14-34

Sec. 29. (a) Each application shall include information on fish and wildlife species and their habitats present or likely to be present in the permit area and adjacent area, based on published literature, information available from state and federal fish and wildlife agencies, and any site-specific studies required under subsection (b).

(b) Site-specific information shall be required by the director as to respective species or habitats when the permit area or adjacent area is likely to include any of the following:

- (1) Species of plants or animals listed or proposed to be listed as endangered or threatened or critical habitats designated by the Secretary of the United States Department of the Interior under the federal Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.).
- (2) Species listed by the director as endangered under IC 14-22-34.
- (3) Habitats of unusually high value for fish and wildlife, such as the following:
  - (A) Important streams.
  - (B) Wetlands and riparian areas.
  - (C) Migration routes.
  - (D) Reproduction areas.
  - (E) Areas offering special shelter or protection.

(*Natural Resources Commission; 312 IAC 25-4-29; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3447, eff Dec 1, 2001*)

**312 IAC 25-4-30 Surface mining permit applications; environmental resources information; geology description**

Authority: IC 14-34-2-1

Affected: IC 14-22-34; IC 14-34

Sec. 30. (a) Each application shall contain geologic information in sufficient detail to assist in determining each of the following:

(1) The probable hydrologic consequences of the operation upon the quality and quantity of surface and ground water in the permit and adjacent areas, including the extent to which surface water and ground water monitoring is necessary.

(2) All potentially acid-forming or toxic-forming strata down to and including the stratum immediately beneath the lowest coal seam to be mined.

(3) Whether reclamation as required by this article and IC 14-34 can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

(b) Geologic information shall include, at a minimum, all of the following:

(1) A description of the geology of the proposed permit and adjacent areas down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined that may be adversely impacted by mining. The description shall include the areal and structural geology of the permit and adjacent areas and other parameters that influence the required reclamation and the occurrence, availability, movement, quantity, and quality of potentially impacted surface and ground waters. The description shall be based on the following:

(A) The cross sections, maps, and plans required by section 38 of this rule.

(B) The information obtained under subdivision (2) and subsection (c).

(C) Geologic literature and practices.

(2) Analyses of samples collected from test borings, drill cores, or fresh, unweathered, and uncontaminated samples from rock outcrops from the permit area, down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest seam to be mined, which may be adversely impacted by mining. The analyses shall result in the following:

(A) Logs showing the lithologic characteristics, including physical properties and thickness of each stratum and location of ground water where occurring.

(B) Chemical analyses identifying those strata that may contain acid-forming, toxic-forming, or alkalinity-producing materials and to determine their content, except that the director may find that the analysis for alkalinity-producing materials is unnecessary.

(C) Chemical analyses of the coal seam for acid-forming or toxic-forming materials, including the total sulfur and pyretic sulfur, except that the director may find that the analysis of pyretic sulfur content is unnecessary.

(c) If determined to be necessary to protect the hydrologic balance or to meet the performance standards of this article, the director may require the collection analysis and description of geologic information in addition to that required by subsection (b).

(d) At the request of the applicant, the director may waive, in writing, requirements in whole or in part, of subsection (b)(2) as to a specific permit if that information is unnecessary because other reliable information is available. In any event, information provided by the applicant that pertains to physical or chemical properties of the coal shall remain confidential and not subject to public inspection. (*Natural Resources Commission; 312 IAC 25-4-30; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3447, eff Dec 1, 2001*)

**312 IAC 25-4-31 Surface mining permit applications; environmental resources information; ground water**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 31. (a) Each application shall include the following ground water information for the permit area and the adjacent area:

(1) The location and extent of each aquifer that may be affected by the mining and the estimated level of the water table.

(2) The quality of subsurface water encountered.

(3) The location, usage, and ownership of existing wells, springs, and other ground water resources.

(4) The estimated recharge capacity of the ground water system in the permitted area using available information for such areas or for areas with similar hydrologic conditions.

(5) The approximate rates of discharge or usage and depth to the water in the coal seam, and each water-bearing stratum above

and potentially impacted stratum below the coal seam.

(6) A description of the seasonal variation in water quantity and water quality in the permit and adjacent areas as follows:

(A) Baseline information on seasonal water levels.

(B) The following water quality parameters:

(i) Total dissolved solids in milligrams per liter or specific conductance corrected to twenty-five (25) degrees Celsius.

(ii) The pH in standard units.

(iii) Any required state water quality standards and federal United States Environmental Protection Agency effluent limitations.

(iv) Total iron.

(v) Total manganese.

(vi) Acidity and alkalinity.

(vii) Any additional baseline information required by the director if the other baseline information requirements of this subsection are insufficient to evaluate potential adverse ground water impacts.

(b) If the determination of the probable hydrologic consequences as required by section 47 of this rule indicates that adverse impacts on or off the proposed permit area may occur to the hydrologic balance, or that acid-forming or toxic-forming material is present that may result in contamination of ground water or surface water supplies, the director shall require the applicant to provide information supplemental to that required under this section as necessary to evaluate the probable hydrologic consequences and to plan remedial and reclamation activities. The supplemental information may be based upon any of the following:

(1) Drilling.

(2) Aquifer tests.

(3) Hydrogeologic analysis of the water-bearing strata.

(4) Flood flows.

(5) Analysis of other water quality or quantity characteristics.

(c) The application shall include a ground water monitoring plan based upon the probable hydrologic consequences determination required under section 47(c) of this rule and the analysis of all baseline hydrologic, geologic, and other information in the permit application. The plan shall provide the following information:

(1) The monitoring of parameters that relate to the suitability of the ground water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance set forth in section 47(a) of this rule.

(2) The identification of the quantity and quality parameters to be monitored, sampling frequency, sampling procedures, and site locations.

(3) How the data may be used to determine the impacts of the operation upon the hydrologic balance.

(4) Specific water parameter information shall be monitored and data submitted to the director at least every three (3) months for each monitoring location. The required information shall include, at a minimum, the following:

(A) Total dissolved solids in milligrams per liter or specific conductance corrected to twenty-five (25) degrees Celsius.

(B) The pH in standard units.

(C) Total iron.

(D) Total manganese.

(E) Water levels.

(5) Any additional monitoring information required by the director if it is necessary to evaluate potential adverse ground water impacts that are not addressed by the other monitoring information requirements of this subsection.

(6) If an applicant can demonstrate, by the use of the probable hydrologic consequences determination and other available information, that a particular water-bearing stratum in the proposed permit and adjacent areas is not one which serves as an aquifer that significantly ensures the hydrologic balance within the cumulative impact area, then monitoring of that stratum may be waived by the director.

*(Natural Resources Commission; 312 IAC 25-4-31; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3448, eff Dec 1, 2001)*

### **312 IAC 25-4-32 Surface mining permit applications; environmental resources information; surface water information**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 32. (a) Surface water information shall include the following:

- (1) The name and location of the surface stream or tributary that will receive drainage from the permit area.
- (2) The location of any discharge into a surface water body.
- (3) The location and ownership of all streams, lakes, ponds, springs, and similar surface water bodies within the proposed permit and adjacent areas.

(b) Surface water information shall include a description of the seasonal variation in water quantity and quality of perennial streams in the permit and adjacent areas as well as those streams or other water bodies in the adjacent area that will receive drainage from the permit area in terms of the following:

- (1) Baseline information on seasonal flow rates.
- (2) The following baseline water quality parameters:
  - (A) Total dissolved solids in milligrams per liter or specific conductance corrected to twenty-five (25) degrees Celsius.
  - (B) Total suspended solids in milligrams per liter.
  - (C) The pH in standard units.
  - (D) Required state water quality standards and federal United States Environmental Protection Agency effluent limitations.
  - (E) Total iron.
  - (F) Total manganese.
  - (G) Acidity and alkalinity.
  - (H) Any additional baseline information required by the director if the other baseline information requirements of this subsection are insufficient to evaluate potential adverse surface water impacts.

(c) If the determination of the probable hydrologic consequences as required by section 47 of this rule indicates that adverse impacts on or off the proposed permit area may occur to the hydrologic balance or that acid-forming or toxic-forming material is present that may result in contamination of ground water or surface water supplies, the director shall require the applicant to provide information supplemental to that required under subsection (b) as necessary to evaluate the probable hydrologic consequences and to plan remedial and reclamation activities. The supplemental information may be based upon drilling, aquifer tests, hydrogeologic analysis of the water-bearing strata, flood flows, or analysis of other water quality or quantity characteristics.

(d) The application shall include a surface water monitoring plan based upon the probable hydrologic consequences determination required under section 47(c) of this rule and the analysis of all baseline hydrologic, geologic, and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the surface water for current and approved postmined land uses and to the objectives for protection of the hydrologic balance as set forth in section 47 of this rule as well as the effluent limitations found at 40 CFR 434.

- (1) The plan required by this subsection shall identify the following:
  - (A) The surface water quantity and quality parameters to be monitored.
  - (B) Sampling frequency and procedures.
  - (C) Site locations.
  - (D) A description of how the data may be used to determine the impacts of the operation upon the hydrologic balance.
- (2) At all monitoring locations in the surface water bodies such as streams, lakes, and impoundments that are potentially impacted or into which water will be discharged and at upstream monitoring locations, the following shall be monitored:
  - (A) Total dissolved solids in milligrams per liter or specific conductance corrected to twenty-five (25) degrees Celsius.
  - (B) Total suspended solids.
  - (C) The pH in standard units.
  - (D) Total iron.
  - (E) Total manganese.
  - (F) Flow.

(3) For point source discharges, monitoring shall be conducted in accordance with 40 CFR 122, 40 CFR 123, and 40 CFR 434 and as required by the effective National Pollutant Discharge Elimination System (NPDES) permit.

(4) The monitoring reports shall be submitted to the director every three (3) months.

(5) Any additional monitoring information required by the director if it is necessary to evaluate potential adverse surface water impacts that are not addressed by the other monitoring information requirements of this subsection.

*(Natural Resources Commission; 312 IAC 25-4-32; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3449, eff Dec 1, 2001)*

**312 IAC 25-4-33 Surface mining permit applications; environmental resources information; alternative water supply**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 33. The application shall identify the extent to which the proposed surface mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit area or adjacent areas for domestic, agricultural, industrial, or other legitimate use. If contamination, diminution, or interruption may result, then the description shall contain information on water availability and alternative water sources, including the suitability of alternative water sources for existing premining uses and approved postmining land uses. (*Natural Resources Commission; 312 IAC 25-4-33; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3450, eff Dec 1, 2001*)

**312 IAC 25-4-34 Surface mining permit applications; environmental resources information; climatological factors**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 34. When requested by the director, the climatological factors that are peculiar to the locality of the land to be affected, including:

- (1) the average seasonal precipitation;
- (2) the average direction and velocity of prevailing winds; and
- (3) the seasonal temperature ranges;

shall be included in the application. (*Natural Resources Commission; 312 IAC 25-4-34; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3450, eff Dec 1, 2001*)

**312 IAC 25-4-35 Surface mining permit applications; environmental resources information; soil resources**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 35. Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of the analyses, trials, and tests required under 312 IAC 25-6-11. (*Natural Resources Commission; 312 IAC 25-4-35; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3450, eff Dec 1, 2001*)

**312 IAC 25-4-36 Surface mining permit applications; environmental resources information; land use information**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 36. (a) The application shall contain:

(1) A map or aerial photograph showing, and a supporting narrative of, the uses of the land, including vegetative types, existing at the time of the filing of the application. If the premining use of the land was changed within five (5) years before the anticipated date of beginning the proposed operations, the historic use of the land shall be described.

(2) A narrative of land capability and productivity in conjunction with other environmental resources information required under sections 26 through 35 of this rule, this section, and sections 37 through 39 of this rule. The narrative shall provide an analysis or explanation of the following:

(A) The relative capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative types, and plant communities of the proposed permit area.

(B) The productivity of the proposed permit area before mining expressed as average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the United States Department of Agriculture, state agricultural universities, or appropriate state natural resources or agricultural agencies.

(C) Whether the proposed permit has been previously mined, and, if so, the following information, if available:

- (i) The type of mining method used.

- (ii) The coal seams or other mineral strata mined.
- (iii) The extent of coal or other mineral removed.
- (iv) The approximate dates of past mining.
- (v) The uses of the land preceding mining.

(b) The map or photograph shall indicate the proposed permit area that has been previously mined.

(c) The application shall contain a description of the existing land uses and land use classifications under local law, if any, of the proposed permit area and adjacent areas. (*Natural Resources Commission; 312 IAC 25-4-36; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3450, eff Dec 1, 2001*)

### **312 IAC 25-4-37 Surface mining permit applications; environmental resources information; maps**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 37. The permit application shall include maps showing the following information:

- (1) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area.
- (2) The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin surface mining activities.
- (3) The boundaries of all areas proposed to be affected over the estimated life of the permit, with a description of size, sequence, and timing of the mining of subareas for which it is anticipated that additional permits will be sought.
- (4) The location of all buildings on and within one thousand (1,000) feet of the proposed permit area, with identification of the current use of the buildings.
- (5) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including, but not limited to, the following:
  - (A) Major electric transmission lines.
  - (B) Pipelines.
  - (C) Agricultural drainage tile fields.
- (6) The location and boundaries of any proposed reference areas for determining the success of revegetation.
- (7) The locations of the following:
  - (A) Water supply intakes for current users of surface waters flowing into, out of, and within a hydrologic area defined by the director.
  - (B) Those surface waters that will receive discharges from affected area in the proposed permit area.
- (8) Each public road located in or within one hundred (100) feet of the proposed permit area.
- (9) The boundaries and location of the following:
  - (A) Any public park.
  - (B) Any cultural, archaeological, or historic resources listed, or eligible for listing, in the National Register of Historic Places or the Indiana state register of historic sites and structures.
  - (C) All archaeological and historic sites known by the division of historic preservation and archaeology within the permit and adjacent areas.
- (10) Each cemetery located in or within one hundred (100) feet of the proposed permit area.
- (11) Any land within the proposed permit area and adjacent area that is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act.

(*Natural Resources Commission; 312 IAC 25-4-37; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3451, eff Dec 1, 2001*)

### **312 IAC 25-4-38 Surface mining permit applications; environmental resources information; cross sections, maps, and plans**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 38. The application shall include cross sections, maps, and plans showing the following:

- (1) Elevations and locations of test borings and core samplings.
- (2) Elevations and locations of ground water monitoring stations and locations of surface water monitoring stations used to gather data for water quality and quantity if required in preparation of the application.
- (3) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined.
- (4) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area.
- (5) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas.
- (6) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas.
- (7) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drains, and irrigation ditches within the proposed permit area and adjacent areas.
- (8) Location and extent of existing or previously surface mined areas within the proposed permit area.
- (9) Location and dimensions of existing areas of spoil, waste, and noncoal waste disposal, dams, embankments, other impoundments, air pollution control facilities, and water treatment facilities within the proposed permit area.
- (10) Location and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas.
- (11) Sufficient slope measurements or cross sectional profiles with slope measurements to adequately represent the existing land surface configuration of the proposed permit area, measured and recorded according to the following:
  - (A) Each measurement shall consist of an angle of inclination, expressed as a percent, along the prevailing slope.
  - (B) Where the area has been previously mined, the measurements shall extend at least one hundred (100) feet beyond the limits of mining disturbances.
  - (C) Slope measurements shall take into account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.
- (12) Elevations and locations of monitoring stations used to gather data on fish and wildlife and air quality, if required, in preparation of the application.
- (13) Maps, plans, and cross sections included in a permit application, that are required by this section shall be prepared by or under the direction of and certified by a registered professional engineer or professional geologist, with assistance from experts in related fields, such as land surveying and landscape architecture.

*(Natural Resources Commission; 312 IAC 25-4-38; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3452, eff Dec 1, 2001)*

**312 IAC 25-4-39 Surface mining permit applications; environmental resources information; prime farmland investigation**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 39. (a) The applicant shall contact the United States Soil Conservation Service to determine if a soil survey exists for those lands and whether the applicable soil map units have been designated as prime farmlands. If no soil survey has been made for the lands within the proposed permit area, the applicant shall cause such a survey to be made. When a soil survey of lands within the proposed permit area contains soil map units that have been designated as prime farmlands:

- (1) the applicant shall submit an application in accordance with section 102 of this rule for such designated land; and
  - (2) after review by the United States Soil Conservation Service, the applicant may submit a request for negative determination for such designated land with the permit application establishing compliance with subsection (b).
- (b) In addition, land shall not be considered prime farmland where the applicant can demonstrate one (1) of the following:
- (1) That the land has not been historically used as cropland. As used in this section, "historically used for cropland" means the following:
    - (A) Lands that have been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease, or option the conduct of surface coal mining and reclamation operations.
    - (B) Lands that the director determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific 5-years-in-10 criterion, in

which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be protected.

(C) Lands that would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding such acquisition but for some fact of ownership or control of the land unrelated to the productivity of the land.

(2) The slope of the land is ten percent (10%) or greater.

(3) Other factors exist, such as very rocky surface, or the land is flooded during a growing season more than once in two (2) years.

(c) The soil survey shall be submitted with the permit application. (*Natural Resources Commission; 312 IAC 25-4-39; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3452, eff Dec 1, 2001*)

### **312 IAC 25-4-40 Surface mining permit applications; reclamation and operations plan; general requirements**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 40. (a) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area and the proposed life of the mine area where such information is necessary to demonstrate that reclamation required by IC 14-34 can be accomplished by the applicant. The description shall include, at a minimum, the following:

(1) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations.

(2) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of such facilities is necessary for postmining land use as specified in 312 IAC 25-6-64):

(A) Dams, embankments, and other impoundments.

(B) Overburden and topsoil handling and storage areas and structures.

(C) Coal removal, handling, storage, cleaning, and transportation areas and structures.

(D) Spoil, coal processing waste, and noncoal waste removal, handling, storage, transportation, and disposal areas and structures.

(E) Mine facilities.

(F) Water and air pollution control facilities.

(b) In addition to the requirements listed in subsection (a), each applicant for a surface coal mining and reclamation permit shall submit a description, plans, and drawings for each support facility to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall include the following:

(1) A map.

(2) Appropriate cross sections.

(3) Design drawings.

(4) Specifications sufficient to demonstrate compliance with 312 IAC 25-6-68.

(*Natural Resources Commission; 312 IAC 25-4-40; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3453, eff Dec 1, 2001*)

### **312 IAC 25-4-41 Surface mining permit applications; reclamation and operations plan; existing structures**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 41. (a) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include the following:

(1) Location.

(2) Plans or photographs of the structure that describe or depict its current condition.

(b) Structures in existence prior to the implementation of this permanent program under IC 14-34-1 shall meet the performance standards of IC 14-34-10, IC 14-34-11, and 312 IAC 25-6-5 through 312 IAC 25-6-132; however, when the operator demonstrates in the application for a permit that immediate compliance is not practicable because of conditions not within the control of the operator, such as:



- (1) a strike;
- (2) an act of God;
- (3) equipment availability;
- (4) weather; or
- (5) force majeure;

the director may approve a schedule for modification of existing structures that achieves compliance with 312 IAC 25-6-5 through 312 IAC 25-6-132 within a reasonable period of time. (*Natural Resources Commission; 312 IAC 25-4-41; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3453, eff Dec 1, 2001*)

**312 IAC 25-4-42 Surface mining permit applications; blasting plans; monitoring system**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 42. (a) Each application shall contain a blasting plan for the proposed permit area. The blasting plan shall include the following:

- (1) The maximum ground vibration and airblast limits the permittee will not exceed during blasting operations.
- (2) The bases for the establishment of the proposed ground vibration and airblast limits.
- (3) The methods to be applied to control the adverse effects of blasting operations.
- (4) Description of the blasting warning and site access control equipment and procedures to be used.
- (5) Description of the procedures for recording and retention of the information required by 312 IAC 25-6-33.

(b) Each application shall contain a description of any system to be used to monitor compliance with the standards of 312 IAC 25-6-32. The description shall include the types, capabilities, sensitivities, and proposed locations of all blast monitoring equipment proposed to be used.

(c) Blasting operations proposed to be conducted within five hundred (500) feet measured horizontally of an active underground mine must be jointly approved by the director, the Indiana bureau of mines and mining, and the Mine Safety and Health Administration. (*Natural Resources Commission; 312 IAC 25-4-42; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3453, eff Dec 1, 2001*)

**312 IAC 25-4-43 Surface mining permit applications; reclamation and operations plan; maps**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 43. Each application shall contain maps and plans of the proposed permit and adjacent areas as follows:

- (1) The maps and plans shall depict the lands proposed to be affected throughout the operation and any change in a facility or feature to be caused by the proposed operations if the facility or feature was shown under sections 37 and 38 of this rule.
- (2) The following shall be shown for the proposed permit area and adjacent area within one thousand (1,000) feet:

- (A) Buildings, utility corridors, and facilities to be used.
- (B) The area of land to be affected within the proposed permit area according to the sequence of mining and reclamation.
- (C) Each area of land for which a performance bond will be posted under 312 IAC 25-5.
- (D) Each coal storage, cleaning, and loading area.
- (E) Each topsoil, spoil, coal waste, and noncoal waste storage area.
- (F) Each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used.
- (G) Each source of waste and each disposal facility relating to coal processing or pollution control.
- (H) Each facility to be used to protect and enhance fish and wildlife and related environmental values.
- (I) Each explosive storage and handling facility.
- (J) Location of each:
  - (i) siltation structure;
  - (ii) permanent water impoundment;
  - (iii) coal processing waste bank; and
  - (iv) coal processing waste dam and embankment;

in accordance with section 49 of this rule, and fill area for the disposal of excess spoil in accordance with section 54 of this rule.

(K) Each air pollution collection and control facility if required.

(3) Maps, plans, and cross sections required under subdivision (2)(D) through (2)(F) and (2)(J) shall be prepared by, or under the direction of, and certified by a registered professional engineer or professional geologist, with necessary assistance from experts in related fields such as land surveying and landscape architecture, except that maps, plans, and cross sections for:

(A) siltation structures may only be prepared by a registered professional engineer; and

(B) spoil disposal facilities may only be prepared by a registered professional engineer.

(4) All monitoring locations used to demonstrate compliance with 312 IAC 25-6-12.5.

*(Natural Resources Commission; 312 IAC 25-4-43; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3454, eff Dec 1, 2001; filed Jul 29, 2003, 3:45 p.m.: 26 IR 3860, eff Feb 1, 2004)*

### **312 IAC 25-4-44 Surface mining permit applications; reclamation and operations plan; air pollution control**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 44. The permit application under sections 40 through 43 of this rule, this section, and sections 45 through 56 of this rule shall contain one (1) of the following for the proposed mining operation:

(1) A copy of an active Indiana air pollution control board operation permit.

(2) A copy of a completed application for an Indiana air pollution control board operation permit.

(3) A written statement from the air pollution control board indicating that such a permit is not necessary.

*(Natural Resources Commission; 312 IAC 25-4-44; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3454, eff Dec 1, 2001; errata, 27 IR 1890)*

### **312 IAC 25-4-45 Surface mining permit applications-reclamation and operations plan; reclamation plan; general requirements Version a**

Authority: IC 14-34-2-1

Affected: IC 14-34-10

*NOTE: This version of section effective until superseded by the following version of this section, which is effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register.*

Sec. 45. (a) Each application shall contain a plan for reclamation of the lands within the proposed permit area, showing how the applicant will comply with IC 14-34-10, 312 IAC 25-6, and the environmental protection standards of IC 14-34 and this article. The plan shall include, at a minimum, all information required under sections 40 and 44 of this rule, this section, and sections 46 through 56 of this rule.

(b) Each plan shall contain the following information for the proposed permit area:

(1) A detailed timetable for the completion of each major step in the reclamation plan.

(2) A detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under 312 IAC 25-5, with supporting calculations for the estimates.

(3) A plan for backfilling, soil stabilization, compacting, and grading, with contour maps, topographical maps, or cross sections that show the anticipated final surface configuration of the proposed permit area in accordance with 312 IAC 25-6-48 through 312 IAC 25-6-53 and 312 IAC 25-6-144.

(4) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 312 IAC 25-6-11. A demonstration of the suitability of topsoil substitutes or supplements under 312 IAC 25-6-11(c) shall be based upon analysis of the thickness of soil horizons, pH, buffer pH, phosphorous, potassium, percent coarse fragments and texture, and areal extent of the different kinds of soils. The requirement to determine percent coarse fragments may be waived by an authorized representative of the director, if he or she determines that the alternate material is a type of silt-blown, alluvial soil for which the analyses of percent coarse fragments would be unnecessary. The director may require other chemical and physical analyses, field-site trials, or greenhouse tests if necessary to demonstrate suitability.

(5) A plan for revegetation as required in 312 IAC 25-6-54 through 312 IAC 25-6-61, including descriptions of the following:

- (A) Schedule of revegetation.
  - (B) Species and amounts per acre of seeds and seedlings to be used.
  - (C) Methods to be used in planting and seeding.
  - (D) Mulching techniques.
  - (E) Irrigation, if appropriate, and pest and disease control measures, if any.
  - (F) Measures proposed to be used to determine the success of revegetation as required in 312 IAC 25-6-59 through 312 IAC 25-6-61.
  - (G) Methods for evaluating the results of topsoil handling and reclamation procedures related to revegetation.
- (6) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 312 IAC 25-6-7.
- (7) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 312 IAC 25-6-12, 312 IAC 25-6-19, 312 IAC 25-6-36, 312 IAC 25-6-42, and 312 IAC 25-6-50 and a description of the contingency plans that have been developed to preclude sustained combustion of such materials.
- (8) A description, including appropriate cross sections and maps, of the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration holes, other boreholes, wells, and other openings within the proposed permit area, in accordance with 312 IAC 25-6-8 through 312 IAC 25-6-10.
- (9) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 U.S.C. 7401 et seq.), and the Clean Water Act (33 U.S.C. 1251 et seq.), and other applicable air and water quality laws and regulations, and health and safety standards.

*(Natural Resources Commission; 312 IAC 25-4-45; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3454, eff Dec 1, 2001, except subsection (b)(4); errata, 27 IR 1890)*

**312 IAC 25-4-45 Surface mining permit applications; reclamation and operations plan; reclamation plan; general requirements Version b**

Authority: IC 14-34-2-1

Affected: IC 14-34-10

*NOTE: This version of section effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register. See also preceding version of this section, effective until superseded by this version of section.*

Sec. 45. (a) Each application shall contain a plan for reclamation of the lands within the proposed permit area, showing how the applicant will comply with IC 14-34-10, 312 IAC 25-6, and the environmental protection standards of IC 14-34 and this article. The plan shall include, at a minimum, all information required under sections 40 and 44 of this rule, this section, and sections 46 through 56 of this rule.

(b) Each plan shall contain the following information for the proposed permit area:

- (1) A detailed timetable for the completion of each major step in the reclamation plan.
- (2) A detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under 312 IAC 25-5, with supporting calculations for the estimates.
- (3) A plan for backfilling, soil stabilization, compacting, and grading, with contour maps, topographical maps, or cross sections that show the anticipated final surface configuration of the proposed permit area in accordance with 312 IAC 25-6-48 through 312 IAC 25-6-53 and 312 IAC 25-6-144.
- (4) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 312 IAC 25-6-11. A demonstration of the suitability of topsoil substitutes or supplements under 312 IAC 25-6-11(c) shall be based upon analysis of the:
  - (A) thickness of soil horizons;
  - (B) total depth;
  - (C) pH;
  - (D) buffer pH;
  - (E) phosphorous;

- (F) potassium;
- (G) percent coarse fragments and texture; and
- (H) areal extent;

of the different kinds of soils. The requirement to determine percent coarse fragments may be waived by an authorized representative of the director if he or she determines that the alternate material is a type of silt-blown, alluvial soil for which the analyses of percent coarse fragments would be unnecessary. The director may require other chemical and physical analyses, field-site trials, or greenhouse tests if necessary to demonstrate suitability.

- (5) A plan for revegetation as required in 312 IAC 25-6-54 through 312 IAC 25-6-61, including descriptions of the following:
  - (A) Schedule of revegetation.
  - (B) Species and amounts per acre of seeds and seedlings to be used.
  - (C) Methods to be used in planting and seeding.
  - (D) Mulching techniques.
  - (E) Irrigation, if appropriate, and pest and disease control measures, if any.
  - (F) Measures proposed to be used to determine the success of revegetation as required in 312 IAC 25-6-59 through 312 IAC 25-6-61.
  - (G) Methods for evaluating the results of topsoil handling and reclamation procedures related to revegetation.
- (6) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 312 IAC 25-6-7.
- (7) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 312 IAC 25-6-12, 312 IAC 25-6-19, 312 IAC 25-6-36, 312 IAC 25-6-42, and 312 IAC 25-6-50 and a description of the contingency plans that have been developed to preclude sustained combustion of such materials.
- (8) A description, including appropriate cross sections and maps, of the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration holes, other boreholes, wells, and other openings within the proposed permit area, in accordance with 312 IAC 25-6-8 through 312 IAC 25-6-10.
- (9) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 U.S.C. 7401 et seq.), the Clean Water Act (33 U.S.C. 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards.

*(Natural Resources Commission; 312 IAC 25-4-45; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3454, eff Dec 1, 2001, except subsection (b)(4); errata, 27 IR 1890; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2446, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register)*

### **312 IAC 25-4-46 Surface mining permit applications; reclamation plan; fish and wildlife protection and enhancement**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 46. Each plan shall describe how the permittee will minimize, to the extent possible using best technology currently available, disturbances and adverse impacts on fish and wildlife and related environmental values during surface coal mining and reclamation operations and how these values will be enhanced where practicable. If the plan does not include enhancement measures, the plan shall explain why such measures are not practicable. The plan shall comply with the following requirements:

- (1) The plan shall be consistent with 312 IAC 25-6-46.
- (2) The plan shall apply, at a minimum, to species and habitats identified under section 29 of this rule.
- (3) The plan shall include a description of the following:
  - (A) Any measures necessary to comply with the federal Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.).
  - (B) Protective measures that will be used during active mining, which may include buffer zones, selective location and special design of roads and power lines, and surface water monitoring.
  - (C) Enhancement measures that will be used during and after reclamation to develop or improve aquatic and terrestrial habitats, such as the following:

- (i) Replacement of streams and wetlands.
- (ii) Retention of ponds, impoundments, and depressions that seasonally impound water.
- (iii) Establishment of wildlife food and cover vegetation.
- (iv) Replacement of perches and nest boxes.
- (v) Construction or development of terrain features that provide shelter, cover, protection, or nesting places for wildlife species.

*(Natural Resources Commission; 312 IAC 25-4-46; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3455, eff Dec 1, 2001)*

**312 IAC 25-4-47 Surface mining permit applications; reclamation and operations plan; reclamation plan; protection of hydrologic balance**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 47. (a) Each reclamation plan shall contain a detailed description, including maps and drawings of the measures to be taken during the mining and reclamation process, through bond release, to assure the protection of the following:

- (1) The quality of surface and ground water systems, within the permit area and adjacent area, from adverse effects of the mining and reclamation process.
- (2) The rights of present users of that water.
- (3) The quantity of surface and ground water systems, within the permit area and adjacent area, from adverse effects of the mining and reclamation process or to provide alternative sources of water under section 33 of this rule and 312 IAC 25-6-25 where the protection of quantity cannot be assured.
- (4) The prevention of material damage outside the permit area.
- (5) Compliance with applicable federal and state water quality laws and regulations.
- (6) The hydrologic balance within the permit and adjacent areas.

(b) The description in subsection (a) shall include the following:

- (1) A plan for the control of drainage under 312 IAC 25-6-5 through 312 IAC 25-6-69 of surface and ground water drainage into, through, and out of the proposed permit area.
- (2) A plan for the treatment, where required under 312 IAC 25-6-5 through 312 IAC 25-6-69, of surface and ground water drainage from the area to be affected by the proposed activities and proposed quantitative limits on pollutants in discharges subject to 312 IAC 25-6-13, according to the more stringent of:

(A) 312 IAC 25-6-5 through 312 IAC 25-6-69; or

(B) other applicable state or federal laws.

(3) A plan for the restoration of the approximate recharge capacity of the permit area under 312 IAC 25-6-22 and as required by section 45 of this rule.

(4) A plan for the collection, recording, and reporting of ground and surface water quality and water quantity data under 312 IAC 25-6-23.

(5) A plan to avoid acid or toxic drainage.

(6) A plan to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to stream flow.

(7) A plan to provide water treatment facilities when needed.

(8) A plan to control drainage.

(9) A plan to demonstrate compliance with 312 IAC 25-6-12.5.

(c) The description in subsection (a) shall include a determination of the probable hydrologic consequences (PHC) of the mining and reclamation operations proposed, in the permit and adjacent areas, with respect to the quantity and quality of surface and ground water systems under all seasonal conditions, including the contents of dissolved and total suspended solids, total iron, pH, total manganese, and other parameters required by the director. Information shall be provided as follows:

(1) The PHC determination shall be based on baseline hydrologic, geologic, and other information collected for the permit application and may include data statistically representative of the site.

(2) The PHC determination shall include findings on the following:

(A) Whether adverse impacts may occur to the hydrologic balance.

(B) Whether acid-forming or toxic-forming materials are present that could result in the contamination of surface or ground water supplies.

(C) Whether the proposed operation may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit or adjacent areas that is used for domestic, agricultural, industrial, or other legitimate purpose.

(D) What impact the proposed operation will have on the following:

(i) Sediment yields from the disturbed area.

(ii) Acidity, total suspended and dissolved solids, and other important water quality parameters of local impact.

(iii) Flooding or stream flow alteration.

(iv) Ground water and surface water availability.

(v) Other characteristics as required by the director.

(3) Sampling and analysis shall be conducted under section 28(d) of this rule.

(4) An application for a permit revision shall be reviewed by the director to determine whether a new or updated PHC determination shall be required.

(d) The description in subsection (a) shall include a plan specifically addressing any potentially adverse hydrologic consequences identified in the PHC determination prepared under subsection (c) and shall include preventative and remedial measures. (*Natural Resources Commission; 312 IAC 25-4-47; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3456, eff Dec 1, 2001; filed Jul 29, 2003, 3:45 p.m.: 26 IR 3861, eff Feb 1, 2004*)

### **312 IAC 25-4-48 Surface mining permit applications; reclamation and operations plan; postmining land uses**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 48. (a) Each plan shall contain a detailed description of the proposed use, following reclamation of the land within the proposed permit area, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans. This description shall explain each of the following:

(1) How the proposed postmining land use is to be achieved and the necessary support activities that may be needed to achieve the proposed land use.

(2) Where a land use different from the premining land use is proposed, all materials needed for approval of the alternative use under 312 IAC 25-6-64.

(3) The consideration given to making all of the proposed surface mining activities consistent with surface owner plans and applicable state and local land use plans and programs.

(b) The description shall be accompanied by a copy of the comments concerning the proposed use by the legal or equitable owner of record of the surface of the proposed permit area and the state and local government agencies that would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation. (*Natural Resources Commission; 312 IAC 25-4-48; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3457, eff Dec 1, 2001*)

### **312 IAC 25-4-49 Surface mining permit applications; reclamation and operations plan; reclamation plan for ponds, impoundments, dams, and embankments Version a**

Authority: IC 14-34-2-1

Affected: IC 14-34

*NOTE: This version of section effective until superseded by the following version of this section, which is effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register.*

Sec. 49. (a) Each application shall include a plan for each proposed siltation structure, water impoundment, and coal processing waste dam or embankment within the proposed permit area. The information required shall be provided as follows:

(1) Each general plan shall do the following:

(A) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer or by a professional geologist either of whom shall be experienced in the design and construction of impoundments.

- (B) Contain a description, map, and cross section of the structure and its location.
- (C) Contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure.
- (D) Contain a survey describing the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred.
- (E) Contain a certification statement that includes a schedule setting forth the dates when any detailed design plans for structures that are not submitted with the general plan will be submitted to the director. The director shall have approved, in writing, the detailed design plan for a structure before construction of the structure begins.

(2) Each detailed design plan for a structure shall do the following:

- (A) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer, with assistance from experts in related fields, such as geology, land surveying, and landscape architecture.
- (B) Include any geotechnical investigation, design, and construction requirements for the structure.
- (C) Describe the operation and maintenance requirements for each structure.
- (D) Describe the timetable and plans to remove each structure, if appropriate.
- (E) Identify those structures that meet or exceed the size and other criteria of 30 CFR 77.216(a), and include a copy of the plans for design and construction that has been approved by the Mine Safety and Health Administration for those identified structures.

(b) Siltation structures, whether temporary or permanent, shall be designed in compliance with the requirements of 312 IAC 25-6-17. Any siltation structure or earthen structure that will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of 312 IAC 25-6-20.

(c) Permanent and temporary impoundments shall be designed to comply with the requirements of 312 IAC 25-6-20.

(d) Coal processing waste dams and embankments shall be designed to comply with the requirements of 312 IAC 25-6-34, 312 IAC 25-6-36 and 312 IAC 25-6-43 through 312 IAC 25-6-45. Each plan shall also comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1, and 30 CFR 77.216-2 and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation that will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist according to the following:

- (1) The number, location, and depth of boring and test pits shall be determined using current, prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.
- (2) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions that may affect the particular dam, embankment, or reservoir site shall be considered.
- (3) All springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.
- (4) Consideration shall be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(e) If:

- (1) the structure is twenty (20) feet or higher;
- (2) the drainage area above the structure is one (1) square mile or larger; or
- (3) the volume of water impounded is more than one hundred (100) acre-feet;

an application shall be submitted to the division of water, in the Department of Natural Resources, and approval shall be obtained from the director before construction of the structure begins. If necessary to protect the health or safety of persons, property, or the environment even though the volume of water impounded is less than one hundred (100) acre-feet, the director may require an application to be made. (*Natural Resources Commission; 312 IAC 25-4-49; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3457, eff Dec 1, 2001*)

**312 IAC 25-4-49 Surface mining permit applications; reclamation and operations plan; reclamation plan for siltation structures, impoundments, dams, and embankments, and refuse piles Version b**

Authority: IC 14-34-2-1

Affected: IC 14-34

*NOTE: This version of section effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in*

*the Indiana Register. See also preceding version of this section, effective until superseded by this version of section.*

Sec. 49. (a) Each application shall include a general plan and a detailed design plan for each proposed siltation structure, water impoundment, and coal processing waste dam, embankment, or refuse pile within the proposed permit area. The information required shall be provided as follows:

(1) Each general plan shall do the following:

- (A) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer or by a professional geologist either of whom shall be experienced in the design and construction of impoundments.
- (B) Contain a description, map, and cross section of the structure and its location.
- (C) Contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure.
- (D) Contain a survey describing the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred.
- (E) Contain a certification statement that includes a schedule setting forth the dates when any detailed design plans for structures that are not submitted with the general plan will be submitted to the director. The director shall have approved, in writing, the detailed design plan for a structure before construction of the structure begins.

(2) Each detailed design plan for a structure shall do the following:

- (A) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer, with assistance from experts in related fields, such as geology, land surveying, and landscape architecture.
- (B) Include any geotechnical investigation, design, and construction requirements for the structure.
- (C) Describe the operation and maintenance requirements for each structure.
- (D) Describe the timetable and plans to remove each structure, if appropriate.
- (E) Identify those structures that meet or exceed the size and other criteria of 30 CFR 77.216(a), and include a copy of the plans for design and construction that has been approved by the Mine Safety and Health Administration for those identified structures.

(b) Siltation structures, whether temporary or permanent, shall be designed in compliance with the requirements of 312 IAC 25-6-17. Any siltation structure or earthen structure that will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of 312 IAC 25-6-20.

(c) Permanent and temporary impoundments shall be designed to comply with the requirements of 312 IAC 25-6-20 and the requirements of the Mine Safety and Health Administration at 30 CFR 77.216-1 and 30 CFR 77.216-2.

(d) Refuse piles shall be designed to comply with 312 IAC 25-6-36 through 312 IAC 25-6-39.

(e) Coal processing waste dams and embankments shall be designed to comply with the requirements of 312 IAC 25-6-34, 312 IAC 25-6-36, and 312 IAC 25-6-43 through 312 IAC 25-6-45. Each plan shall also comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 30 CFR 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area to determine the structural competence of the foundation that will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist according to the following:

- (1) The number, location, and depth of boring and test pits shall be determined using current, prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.
- (2) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions that may affect the particular dam, embankment, or reservoir site shall be considered.
- (3) All springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.
- (4) Consideration shall be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(f) If the structure meets the Class B or C criteria for dams in TR-60 or meets the size and other criteria of 30 CFR 77.216(a), each plan under subsections (b), (c), and (e) shall include the following:

(1) A stability analysis of the structure that shall include, but not be limited to:

- (A) Strength parameters.
- (B) Pore pressures.
- (C) Long term seepage conditions.



(2) A description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

(g) If the proposed siltation structure, water impoundment, coal processing waste dam, or embankment is permanent and the:

(1) structure is twenty (20) feet or higher;

(2) drainage area above the structure is one (1) square mile or larger; or

(3) volume of water impounded is more than one hundred (100) acre-feet;

an application shall be submitted to the division of water, in the department of natural resources, and approval shall be obtained from the director before construction of the structure begins. (*Natural Resources Commission; 312 IAC 25-4-49; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3457, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2447, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register*)

**312 IAC 25-4-50 Surface mining permit applications; reclamation and operations plan; surface mining near underground mining**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 50. For surface mining activities within the proposed permit area to be conducted within five hundred (500) feet measured horizontally of an underground mine, the application shall describe the measures to be used to comply with 312 IAC 25-6-35. (*Natural Resources Commission; 312 IAC 25-4-50; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3458, eff Dec 1, 2001*)

**312 IAC 25-4-51 Surface mining permit applications; reclamation and operations plan; diversions**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 51. Each application shall contain descriptions, including maps and cross sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 312 IAC 25-6-14 and 312 IAC 25-6-15. (*Natural Resources Commission; 312 IAC 25-4-51; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3458, eff Dec 1, 2001*)

**312 IAC 25-4-52 Surface mining permit applications; reclamation and operation plan; protection of public parks and historic lands**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 52. (a) For any public parks or any historic lands listed on the National Register of Historic Places or the Indiana state register of historic sites and structures that may be adversely affected by the proposed operations, each plan shall describe the measures to be used:

(1) to prevent adverse impacts; or

(2) if valid existing rights exist or joint agency approval is to be obtained under 312 IAC 25-3-1(3), to minimize adverse impacts.

(b) The director may impose conditions that require the applicant to protect historic or archaeological properties listed on, or eligible for listing on, the National Register of Historic Places or the Indiana state register of historic sites and structures through appropriate mitigation and treatment measures consistent with the standards established under 312 IAC 21-3. Mitigation and treatment measures must be approved by the director after consideration of the comments of the division of historic preservation and archaeology. Required measures that avoid impacts must remain in place throughout all mining and reclamation operations. Required measures that involve the mitigation of impacts through excavation or documentation may be taken after permit issuance provided that they are completed before the property is affected by any mining operation. (*Natural Resources Commission; 312 IAC 25-4-52; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3458, eff Dec 1, 2001*)

**312 IAC 25-4-53 Surface mining permit applications; reclamation and operations plan; relocation or use of public roads**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 53. Each application shall describe, with appropriate maps and cross sections, the measures to be used to ensure that the interest of the public and landowners affected are protected if, under 312 IAC 25-3-1, the applicant seeks to have the director approve:

- (1) conducting the proposed surface mining activities within one hundred (100) feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or
- (2) relocating a public road.

*(Natural Resources Commission; 312 IAC 25-4-53; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3459, eff Dec 1, 2001)*

**312 IAC 25-4-54 Surface mining permit applications; reclamation and operations plan; disposal of excess spoil**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 54. (a) Each application shall contain descriptions, including appropriate maps and cross section drawings, of the proposed disposal site and design of the spoil disposal structures according to 312 IAC 25-6-34.

(b) For excess spoil disposal areas other than box cut spoil, the plans shall include the following:

- (1) A description of the geotechnical investigation design, construction, operations, maintenance, and removal, if appropriate, of the site and structures.
- (2) The results of a geotechnical investigation of the proposed disposal site, including the following:
  - (A) The character of bedrock and any adverse geologic conditions in the disposal area.
  - (B) A survey identifying all springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the disposal site.
  - (C) A survey of the potential effects of subsidence of the subsurface strata due to past and future mining operations.
  - (D) A technical description of the rock materials to be utilized in the construction of those disposal structures:
    - (i) containing rock chimney cores; or
    - (ii) underlain by a rock drainage blanket.
  - (E) A stability analysis, including, but not limited to:
    - (i) strength parameters;
    - (ii) pore pressures; and
    - (iii) long term seepage conditions.

These data shall be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered.

(3) If, under 312 IAC 25-6-34, rock-toe buttresses or key-way cuts are required, the application shall include the following:

- (A) The number, location, and depth of borings or test pits that shall be determined with respect to the size of the spoil disposal structure and subsurface conditions.
- (B) Engineering specifications utilized to design the rock-toe buttress or key-way cut that shall be determined in accordance with subdivision (2)(E).

(c) Where box cut spoil is proposed to be considered as excess spoil, the application shall contain the following:

- (1) Appropriate maps, plans, and cross sections that demonstrate that over the life of the mining operation the box cut spoil is not needed to restore the approximate original contour.
- (2) Plans for the design, construction, and reclamation of the box cut spoil area that meet the requirements of 312 IAC 25-6-34.

*(Natural Resources Commission; 312 IAC 25-4-54; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3459, eff Dec 1, 2001)*

**312 IAC 25-4-55 Surface mining permit applications; reclamation and operations plan; transportation facilities**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 55. Each application shall contain a description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross sections, and the following:

- (1) Specifications for each culvert, bridge, drainage ditch, and drainage structure.
- (2) A description of measures to be taken to comply with 312 IAC 25-6-65.
- (3) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

*(Natural Resources Commission; 312 IAC 25-4-55; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3459, eff Dec 1, 2001)*

### **312 IAC 25-4-56 Surface mining permit applications; reclamation and operations plan; road systems**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 56. (a) Each applicant for a surface coal mining and reclamation permit shall submit plans and drawings for each road, as defined in 312 IAC 25-1-126, to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall include the following:

- (1) A map, appropriate cross sections, design drawings, and specifications for road widths, gradients, surfacing materials, cuts, fill embankments, culverts, bridges, drainage ditches, low water crossings, and drainage structures.
- (2) The drawings and specifications of each proposed road that is located in the channel of an intermittent or perennial stream, as necessary for approval of the road by the director in accordance with 312 IAC 25-6-65(d)(1).
- (3) The drawings and specifications for each proposed ford of an intermittent or perennial stream that is used as a temporary route, as necessary for approval of the ford by the director in accordance with 312 IAC 25-6-66(3)(B).
- (4) A description of measures to be taken to obtain approval of the director for alteration or relocation of a natural stream channel under 312 IAC 25-6-66(4)(E).
- (5) The drawings and specifications for each low water crossing of perennial or intermittent stream channels so that the director can maximize the protection of the stream in accordance with 312 IAC 25-6-66(4)(F).
- (6) A description of the plans to remove and reclaim each road that would not be retained under an approved postmining land use and the schedule for this removal and reclamation.

(b) The plans and drawings for each primary road shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer with experience in the design and construction of roads, as meeting:

- (1) the requirements of this article;
- (2) current, prudent engineering practices; and
- (3) any design criteria established by the director.

(c) Each primary road shall be in compliance with the minimum static safety factor of one and three-tenths (1.3) for all embankments specified in 312 IAC 25-6-66 or shall comply with the design requirements of 312 IAC 25-6-66. *(Natural Resources Commission; 312 IAC 25-4-56; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3460, eff Dec 1, 2001)*

### **312 IAC 25-4-57 Underground mining permit applications; legal and financial information; applicability**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 57. This section and sections 58 through 66 of this rule apply to any person who applies for a permit to conduct underground mining activities. *(Natural Resources Commission; 312 IAC 25-4-57; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3460, eff Dec 1, 2001)*

### **312 IAC 25-4-58 Underground mining permit applications; identification of interests**

Authority: IC 14-34-2-1

Affected: IC 14-34; 30 CFR 778.13

Sec. 58. (a) An application shall contain the following information, except the submission of a Social Security number is voluntary:

- (1) A statement as to whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity.
- (2) The name, address, telephone number, and, as applicable, the Social Security number and employer identification number of the following:
  - (A) The applicant.
  - (B) The applicant's resident agent.
  - (C) The person who will pay the abandoned mine land reclamation fee.
- (3) The following for each person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in 312 IAC 25-1-94 as applicable:
  - (A) The person's name, address, Social Security number, and employer identification number.
  - (B) The person's ownership or control relationship to the applicant, including percentage of ownership and location in organization structure.
  - (C) The title of the person's position, the date the position was assumed, and, when submitted under 312 IAC 25-7-5, the date of departure from the position.
  - (D) Each additional name and identifying number, including the following:
    - (i) The employer identification number.
    - (ii) The federal or state permit number.
    - (iii) The MSHA number with the date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five (5) years preceding the date of the application.
  - (E) The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States.
- (4) The following for any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in 312 IAC 25-1-94:
  - (A) Name, address, and identifying numbers, including the following:
    - (i) The employer identification number.
    - (ii) The federal or state permit number and MSHA number.
    - (iii) The date of issuance of the MSHA number.
    - (iv) The regulatory authority.
  - (B) Ownership or control relationship to the applicant, including percentage of ownership and location in the organizational structure.
- (5) The name and address of:
  - (A) each legal or equitable owner of record of the surface and mineral property to be mined;
  - (B) each holder of record of any leasehold interest in the property to be mined; and
  - (C) any purchaser of record under a real estate contract for the property to be mined.
- (6) The name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area.
- (7) The MSHA numbers for all mine-associated structures that require MSHA approval.
- (8) A statement of all lands, interest in lands, options, or pending bids on interests held or made by the applicant for lands contiguous to the area described in the permit application. If requested by the applicant, any information required by this section that is not on public file under Indiana law shall be held in confidence by the director as provided under section 15(b) of this rule.
- (b) After an applicant is notified that the application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsection (a)(1) through (a)(4).
- (c) The applicant shall submit the information required by this section and section 59 of this rule in any prescribed format that is issued by the commission, which shall conform to the format requirements of the Office of Surface Mining Reclamation and Enforcement. (*Natural Resources Commission; 312 IAC 25-4-58; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3460, eff Dec 1, 2001*)

**312 IAC 25-4-59 Underground mining permit applications; compliance information**

Authority: IC 14-34-2-1

Affected: IC 14-34; 30 CFR 778.14

Sec. 59. (a) Each application shall contain the following information:

(1) A statement of whether the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

(A) had a federal or state coal mining permit suspended or revoked in the five (5) years preceding the date of submission of the application; or

(B) forfeited a performance bond or similar security deposited in lieu of a bond.

(2) A brief explanation of the facts involved, if any such suspension, revocation, or forfeiture referred to in subdivision (1) has occurred, including the following:

(A) The identification number and date of issuance of the permit, and the date and amount of bond or similar security.

(B) Identification of the authority that suspended or revoked the permit or forfeited the bond, and the stated reasons for the action.

(C) The current status of the permit, bond, or similar security involved.

(D) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture.

(E) The current status of the proceedings identified in clause (D).

(3) A list of all violation notices received by the applicant during the three (3) year period preceding the application date, and a list of all outstanding violation notices received prior to the date of the application by any surface coal mining operation that is deemed or presumed to be owned or controlled by either the applicant or any person who is deemed or presumed to own or control the applicant under the definition of "owned or controlled" and "owns and controls" in 312 IAC 25-1-94. For each notice of violation issued under 312 IAC 25-7-6 or under a federal or state program for which the abatement period has not expired, the applicant shall certify that such notice of violation is in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation. For each violation notice reported, the list shall include the following information as applicable:

(A) Any identifying numbers for the operation, including the federal or state permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department, or agency.

(B) A brief description of the violation alleged in the notice.

(C) The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in this subdivision to obtain administrative or judicial review of the violation.

(D) The current status of the proceedings and of the violation notice.

(E) The actions, if any, taken by any person identified in this subdivision to abate the violation.

(b) After the applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under this section. (*Natural Resources Commission; 312 IAC 25-4-59; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3461, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182*)

**312 IAC 25-4-60 Underground mining permit applications; legal and financial information; right of entry and operation information**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 60. (a) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin underground mining activities in the permit area and whether that right is the subject of pending litigation. The description shall:

(1) identify the specific lands to which the document pertains; and

(2) explain the legal rights claimed by the applicant.

(b) For underground mining activities where the associated surface operations involve the surface mining of coal and the private mineral estate to be mined has been severed from the private surface estate, the application shall also provide the following for lands to be affected by those operations within the permit area:

(1) A copy of the written consent of the surface owner to the extraction of coal by surface mining methods.

(2) A copy of the document of conveyance that expressly grants or reserves the right to extract the coal by surface mining methods.

(3) If the conveyance does not expressly grant the right to extract coal by surface mining methods, documentation that, under the applicable Indiana law, the applicant has the legal authority to extract the coal by those methods.

In lieu of copies of the consent, document, or other documentation required in this subsection, the applicant may provide an affidavit, signed by a responsible officer of the applicant, stating, under oath, that the information required does in fact exist and is available for inspection by any person at a given location set forth in that affidavit.

(c) Nothing in this section shall be construed to afford the department the authority to adjudicate property title disputes. *(Natural Resources Commission; 312 IAC 25-4-60; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3462, eff Dec 1, 2001)*

### **312 IAC 25-4-61 Underground mining permit applications; legal and financial information; areas designated unsuitable for mining**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 61. (a) Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for underground mining activities or under study for designation in an administrative proceeding initiated under 312 IAC 25-3-6 through 312 IAC 25-3-12.

(b) If an applicant claims the exemption in section 115 of this rule, the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 1, 1977, concerning the proposed underground mining activities.

(c) Subject to valid existing rights, if an applicant proposes to conduct or locate surface operations or facilities within three hundred (300) feet of an occupied dwelling, the application shall include the waiver of the owner of the dwelling as required in 312 IAC 25-3-1(5). *(Natural Resources Commission; 312 IAC 25-4-61; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3462, eff Dec 1, 2001)*

### **312 IAC 25-4-62 Underground mining permit applications; legal and financial information; permit terms**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 62. (a) Each permit shall be issued for a fixed term, not to exceed five (5) years, except where the director grants a longer fixed period as provided in this section.

(b) Each application shall state:

(1) the anticipated or actual starting and termination date of each phase of the underground mining activities;

(2) the anticipated number of acres of surface lands to be affected; and

(3) the horizontal and vertical extent of proposed underground mine workings; for each phase of mining and over the total life of the permit.

(c) If the applicant proposes to conduct the underground mining activities in excess of five (5) years, the application shall contain the information required by section 119 of this rule. *(Natural Resources Commission; 312 IAC 25-4-62; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3462, eff Dec 1, 2001)*

### **312 IAC 25-4-63 Underground mining permit applications; legal and financial information; personal injury and property damage information**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 63. Each application shall contain a certificate of liability insurance consistent with 312 IAC 25-5. (*Natural Resources Commission; 312 IAC 25-4-63; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3463, eff Dec 1, 2001*)

**312 IAC 25-4-64 Underground mining permit applications; legal and financial information; identification of other licenses and permits**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 64. Each application shall contain a list of other licenses and permits needed by the applicant to conduct the proposed underground mining activities. This list shall identify each license and permit by the following:

(1) The type of permit or license.

(2) The name and address of issuing authority.

(3) The identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses.

(4) If a decision has been made, the date of approval or disapproval by each issuing authority.

(*Natural Resources Commission; 312 IAC 25-4-64; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3463, eff Dec 1, 2001*)

**312 IAC 25-4-65 Underground mining permit applications; identification of library where application on file**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 65. Each application shall identify by name and address the county library where the applicant will simultaneously file a copy of the application for public inspection under section 109(d) of this rule. (*Natural Resources Commission; 312 IAC 25-4-65; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3463, eff Dec 1, 2001*)

**312 IAC 25-4-66 Underground mining permit applications; legal and financial information; newspaper advertisement and proof of publication**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 66. A copy of the newspaper advertisement of the application and proof of publication of the advertisement shall be filed with the director and made a part of the complete application not later than four (4) weeks after the last date of publication required under section 109(a) of this rule. (*Natural Resources Commission; 312 IAC 25-4-66; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3463, eff Dec 1, 2001*)

**312 IAC 25-4-67 Underground mining permit applications; environmental resources information; general requirements**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 67. Each permit application shall include a description of the existing premining environmental resources within the proposed permit area and adjacent areas that may be affected or impacted by the proposed underground mining activities. (*Natural Resources Commission; 312 IAC 25-4-67; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3463, eff Dec 1, 2001*)

**312 IAC 25-4-68 Underground mining permit applications; environmental resources information; cultural, historic, and archaeological resources**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 68. (a) Each application shall describe and identify the nature of cultural, historic, and archaeological resources in or within one thousand (1,000) feet of the proposed permit area. The description shall be based on information obtained from the

division of historic preservation and archaeology.

(b) The director shall require the applicant to submit additional information to describe and identify the nature of cultural, historic, and archaeological resources if the director determines that sufficient information is not available from the division of historic preservation and archaeology to identify the nature of these resources. The sources of the information shall include each of the following:

- (1) State and local cultural, historic, and archaeological preservation agencies.
- (2) Research organizations.
- (3) Institutions that maintain records of cultural, historic, and archaeological resources.

(c) If, based upon the written comments of the division of historic preservation and archaeology and other sources, the director determines there is a substantial likelihood that there are undiscovered sites containing cultural, historic, or archaeological resources that would be eligible for listing on the National Register of Historic Places or the Indiana state register of historic sites and structures that would be adversely affected by surface coal mining operations, the director may require the applicant to identify and evaluate the nature of these resources through any of the following:

- (1) The collection of additional information.
- (2) The conduct of field investigations.
- (3) Other appropriate analyses.

(d) The director may require an applicant to evaluate the significance of an important site that contains cultural, historic, or archaeological resources identified in this section through any of the following:

- (1) The evaluation of records of research institutions and the division of historic preservation and archaeology.
- (2) The evaluation of written reports.
- (3) Field investigations.
- (4) Other appropriate investigations.

(e) The identification and evaluation of cultural, historic, and archaeological resources under subsection (b), (c), or (d) shall be conducted according to 312 IAC 21-3. (*Natural Resources Commission; 312 IAC 25-4-68; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3464, eff Dec 1, 2001*)

### **312 IAC 25-4-69 Underground mining permit applications; environmental resources information; hydrology**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 69. (a) Each application shall contain a description of the hydrology, including water quantity and water quality for the permit area, the adjacent area, and the general area.

(b) Information on hydrology and water quality and water quantity outside the proposed permit area and within the general area shall be provided by the director from such areas with similar hydrologic conditions.

(c) The applicant shall submit additional information for the permit area as part of the permit application as required by the director and according to this section and sections 70 through 74 of this rule.

(d) Water quality analysis and sampling shall be conducted according to the methodology in the latest edition of Standard Methods for the Examination of Water and Wastewater. (*Natural Resources Commission; 312 IAC 25-4-69; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3464, eff Dec 1, 2001*)

### **312 IAC 25-4-70 Underground mining permit applications; environmental resources information; fish and wildlife**

Authority: IC 14-34-2-1

Affected: IC 14-22-34; IC 14-34

Sec. 70. (a) Each application shall include information on fish and wildlife species and their habitats present or likely to be present in the permit area and adjacent area, based on published literature, information available from state and federal fish and wildlife agencies, and any site-specific studies required under subsection (b).

(b) Site-specific information shall be required by the director as to respective species or habitats when the permit area or adjacent area is likely to include any of the following:

- (1) Species of plants or animals listed or proposed to be listed as endangered or threatened or critical habitats designated by



the Secretary of the Interior under the federal Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.).

(2) Species listed by the director as endangered under IC 14-22-34.

(3) Habitats of unusually high value for fish and wildlife such as important streams, wetlands and riparian areas, migration routes, reproduction areas, and areas offering special shelter or protection.

*(Natural Resources Commission; 312 IAC 25-4-70; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3464, eff Dec 1, 2001)*

**312 IAC 25-4-71 Underground mining permit applications; environmental resources information; geology description**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 71. (a) Each application shall contain geologic information in sufficient detail to assist in each of the following:

(1) Determining the probable hydrologic consequences of the operation upon the quality and quantity of surface and ground water in the permit and adjacent areas, including the extent to which surface water and ground water monitoring is necessary.

(2) Determining all potentially acid-forming or toxic-forming strata down to and including the stratum immediately beneath the coal seam to be mined.

(3) Determining whether reclamation as required by this article can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

(4) Preparing the subsidence control plan under section 91 of this rule.

(b) Geologic information shall include, at a minimum, each of the following:

(1) A description of the geology of the proposed permit and adjacent areas down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined that may be adversely impacted by mining. This description shall include the areal and structural geology of the permit and adjacent areas and other parameters that influence the required reclamation, and it shall also show how the areal and structural geology may affect the occurrence, availability, movement, quantity, and quality of potentially impacted surface and ground water. It shall be based on all of the following:

(A) The cross sections, maps, and plans required by section 79 of this rule.

(B) The information obtained under subdivisions (2) and (3) and subsection (c).

(C) Geologic literature and practices.

(2) For any portion of a permit area in which the strata down to the coal seam to be mined will be removed or are already exposed, samples shall be collected and analyzed from test borings, drill cores, or fresh, unweathered, and uncontaminated samples from rock outcrops, down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined that may be adversely impacted by mining. The analyses shall result in the following:

(A) Logs showing the lithologic characteristics, including physical properties and thickness of each stratum and location of ground water where occurring.

(B) Chemical analyses identifying those strata that may contain acid-forming, toxic-forming, or alkalinity-producing materials and to determine their content, except that the director may find that the analysis for alkalinity-producing material is unnecessary.

(C) Chemical analysis of the coal seam for acid-forming or toxic-forming materials, including the total sulfur and pyritic sulfur, except that the director may find that the analysis of pyritic sulfur content is unnecessary.

(3) For lands within the permit and adjacent areas where the strata above the coal seam to be mined will not be removed, samples shall be collected and analyzed from test borings or drill cores to provide the following data:

(A) Logs of drill holes showing the lithologic characteristics, including physical properties and thickness of each stratum that may be impacted and location of ground water where occurring.

(B) Chemical analyses for acid-forming, toxic-forming, or alkalinity-producing materials and their content in the strata immediately above and below the coal seam to be mined.

(C) Chemical analyses of the coal seam for acid-forming or toxic-forming materials, including the total sulfur and pyritic sulfur, except that the director may find that the analysis of pyritic sulfur content is unnecessary.

(D) For standard room-and-pillar mining operations, the thickness and engineering properties of clays or soft rock such as clay shale, if any, in the stratum immediately above and below each coal seam to be mined.

- (c) If determined to:
  - (1) be necessary to protect the hydrologic balance;
  - (2) minimize or prevent subsidence; or
  - (3) meet the performance standards of this article;

the director may require the collection, analysis, and description of geologic information in addition to that required by subsection (b).

(d) At the request of the applicant, the director may waive, in writing, in whole or in part, any requirement of subsection (b)(2) and (b)(3) as to a specific permit if that information is unnecessary because other reliable information is available. In any event, information provided by the applicant that pertains to physical or chemical properties of the coal shall remain confidential and not subject to public inspection. (*Natural Resources Commission; 312 IAC 25-4-71; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3465, eff Dec 1, 2001*)

### **312 IAC 25-4-72 Underground mining permit applications; environmental resources information; ground water**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 72. (a) Each application shall include the following ground water information for the permit area and the adjacent area:

- (1) The location and extent of each aquifer that may be affected by the mining and the estimated level of the water table.
- (2) The quality of subsurface water encountered.
- (3) The location, usage, and ownership for the permit and adjacent areas of existing wells, springs, and other ground water resources.
- (4) The estimated recharge capacity of the ground water system in the permitted area using available information for such areas or for areas with similar hydrologic conditions.
- (5) The approximate rates of discharge or usage and depth to the water in the coal seam, and each water-bearing stratum above and potentially impacted stratum below the coal seam.
- (6) A description of the seasonal variation in water quantity and water quality in the permit and adjacent areas as follows:
  - (A) Baseline information on seasonal water levels.
  - (B) The following water quality parameters:
    - (i) Total dissolved solids in milligrams per liter or specific conductance corrected to twenty-five (25) degrees Celsius.
    - (ii) The pH in standard units.
    - (iii) Any required state water quality standards and federal United States Environmental Protection Agency effluent limitations.
    - (iv) Total iron.
    - (v) Total manganese.
    - (vi) Acidity and alkalinity.
    - (vii) Any additional baseline information required by the director if the other baseline information requirements of this subsection are insufficient to evaluate potential adverse ground water impacts.

(b) If the determination of the probable hydrologic consequences as required by section 85 of this rule indicates that adverse impacts on or off the proposed permit area may occur to the hydrologic balance, or that acid-forming or toxic-forming material is present that may result in contamination of ground water or surface water supplies, the director shall require the applicant to provide information supplemental to that required under this section as necessary to evaluate the probable hydrologic consequences and to plan remedial and reclamation activities. The supplemental information may be based upon any of the following:

- (1) Drilling.
- (2) Aquifer tests.
- (3) Hydrogeologic analysis of the water-bearing strata.
- (4) Flood flows.
- (5) Analysis of other water quality or quantity characteristics.

(c) The application shall include a ground water monitoring plan based upon the probable hydrologic consequences determination required under section 85(c) of this rule and the analysis of all baseline hydrologic, geologic, and other information

in the permit application. The plan shall provide the following information:

- (1) The monitoring of parameters that relate to the suitability of the ground water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance set forth in section 85(a) of this rule.
- (2) The identification of the quantity and quality parameters to be monitored, sampling frequency, sampling procedures, and site locations.
- (3) How the data may be used to determine the impacts of the operation upon the hydrologic balance.
- (4) Specific water parameter information shall be monitored and data submitted to the director at least every three (3) months for each monitoring location. The required information shall include, at a minimum, the following:
  - (A) Total dissolved solids in milligrams per liter or specific conductance corrected to twenty-five (25) degrees Celsius.
  - (B) The pH in standard units.
  - (C) Total iron.
  - (D) Total manganese.
  - (E) Water levels.
- (5) Any additional monitoring information required by the director if it is necessary to evaluate potential adverse ground water impacts that are not addressed by the other monitoring requirements of this subsection.
- (6) If an applicant can demonstrate, by the use of the probable hydrologic consequences determination and other available information, that a particular water-bearing stratum in the proposed permit and adjacent areas is not one which serves as an aquifer that significantly ensures the hydrologic balance within the cumulative impact area, then monitoring of that stratum may be waived by the director.

*(Natural Resources Commission; 312 IAC 25-4-72; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3466, eff Dec 1, 2001)*

**312 IAC 25-4-73 Underground mining permit applications; environmental resources information; surface water information**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 73. (a) Surface water information shall include the following:

- (1) The name and location of the surface stream or tributary that will receive drainage from the permit area.
- (2) The location of any discharge into a surface water body.
- (3) The location and ownership of all streams, lakes, ponds, springs, and similar surface water bodies within the proposed permit and adjacent areas.

(b) Surface water information shall include a description of the seasonal variation in water quantity and quality of perennial streams in the permit and adjacent areas as well as those streams or other water bodies in the adjacent area which will receive drainage from the permit area in terms of the following:

- (1) Baseline information on seasonal flow rates.
- (2) The following water quality parameters:
  - (A) Total dissolved solids in milligrams per liter or specific conductance corrected to twenty-five (25) degrees Celsius.
  - (B) Total suspended solids in milligrams per liter.
  - (C) The pH in standard units.
  - (D) Total iron.
  - (E) Total manganese.
  - (F) Acidity and alkalinity.
  - (G) Any additional baseline information required by the director if the other baseline information requirements of this subsection are insufficient to evaluate potential adverse surface water impacts.

(c) If a determination of the probable hydrologic consequences as required by section 85 of this rule indicates that adverse impacts on or off the proposed permit area may occur to the hydrologic balance, or that acid-forming or toxic-forming material is present that may result in the contamination of ground water or surface water supplies, the director shall require an applicant to provide information supplemental to that required under subsection (b) as necessary to evaluate the probable hydrologic consequences and to plan remedial and reclamation activities. The supplemental information may be based upon drilling, aquifer tests, hydrogeologic analysis of the water-bearing strata, flood flows, or analysis of other water quality or quantity characteristics.

(d) The application shall include a surface water monitoring plan based upon the probable hydrologic consequences determination required under section 85(c) of this rule and the analysis of all baseline hydrologic, geologic, and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the surface water for current and approved postmined land uses and to the objective for protection of the hydrologic balance as set forth in section 85 of this rule as well as the effluent limitations found at 40 CFR 434. (*Natural Resources Commission; 312 IAC 25-4-73; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3467, eff Dec 1, 2001*)

**312 IAC 25-4-74 Underground mining permit applications; environmental resources information; alternative water supply**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 74. The application shall identify the extent to which the proposed underground mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit area or adjacent area for domestic, agricultural, industrial, or other legitimate use. If contamination, diminution, or interruption may result, then the description shall identify the alternative sources of water supply that could be developed to replace the existing sources. (*Natural Resources Commission; 312 IAC 25-4-74; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3467, eff Dec 1, 2001*)

**312 IAC 25-4-75 Underground mining permit applications; environmental resources information; climatological factors**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 75. When requested by the director, the climatological factors that are peculiar to the locality of the land to be affected, including:

- (1) the average seasonal precipitation;
- (2) the average direction and velocity of prevailing winds; and
- (3) the seasonal temperature ranges;

shall be included in the application. (*Natural Resources Commission; 312 IAC 25-4-75; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3467, eff Dec 1, 2001*)

**312 IAC 25-4-76 Underground mining permit applications; environmental resources information; soil resources**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 76. Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of the analyses, trials, and tests required under 312 IAC 25-6-75. (*Natural Resources Commission; 312 IAC 25-4-76; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3468, eff Dec 1, 2001*)

**312 IAC 25-4-77 Underground mining permit applications; environmental resources information; land use**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 77. (a) The application shall contain the following:

(1) A map or aerial photograph showing, and a supporting narrative of, the uses of the land, including vegetative types, existing at the time of the filing of the application. If the premining use of the land was changed within five (5) years before the anticipated date of beginning the proposed operations, the historic use of the land shall be described.

(2) A narrative of land capability and productivity, in conjunction with other environmental resources information required under sections 67 through 76 of this rule, this section, and sections 78 through 80 of this rule. The narrative shall provide analysis or explanation of the following:

(A) The relative capability of the land before any mining to support a variety of uses, giving consideration to soil and

foundation characteristics, topography, vegetative types and plant communities, and the hydrology of the proposed permit area.

(B) The productivity of the proposed permit area before mining expressed as average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the United States Department of Agriculture, state agricultural universities, or appropriate state natural resource or agricultural agencies.

(C) Whether the proposed permit area has been previously mined and, if so, the following information:

- (i) The type of mining method used.
- (ii) The coal seams or other mineral strata mined.
- (iii) The extent of coal or other minerals removed.
- (iv) The approximate dates of past mining.
- (v) The uses of the land preceding mining.

(b) The map or photograph shall indicate the proposed permit area that has been previously mined.

(c) The application shall contain a description of the existing land uses and land use classifications under local law, if any, of the proposed permit area and adjacent areas. (*Natural Resources Commission; 312 IAC 25-4-77; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3468, eff Dec 1, 2001*)

### **312 IAC 25-4-78 Underground mining permit applications; environmental resources information; maps**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 78. The permit application shall include maps showing the following:

- (1) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area.
- (2) The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin underground mining activities.
- (3) The boundaries of all areas proposed to be affected over the estimated life of the permit, with a description of size, sequence, and timing of the mining of subareas for which it is anticipated that additional permits will be sought.
- (4) The location of all buildings in and within one thousand (1,000) feet of the proposed permit area, with identification of the current use of the buildings.
- (5) The location of surface and subsurface manmade features, within, passing through, or passing over the proposed permit area, including, but not limited to, the following:
  - (A) Major electric transmission lines.
  - (B) Pipelines.
  - (C) Agricultural drainage tile fields.
- (6) The location and boundaries of any proposed reference areas for determining the success of revegetation.
- (7) The locations of the following:
  - (A) Water supply intakes for current users of surface waters flowing into, out of, and within a hydrologic area defined by the director.
  - (B) Those surface waters that will receive discharges from affected areas in the proposed permit area.
- (8) Each public road located in, or within, one hundred (100) feet of the proposed permit area.
- (9) The boundaries and locations of the following:
  - (A) Any public park.
  - (B) Any cultural, archaeological, or historic resources listed, or eligible for listing, in the National Register of Historic Places or the Indiana state register of historic sites and structures.
  - (C) All archaeological and historic sites known by the division of historic preservation and archaeology within the permit and adjacent areas.
- (10) Each cemetery located in or within one hundred (100) feet of the proposed permit area.
- (11) Any land within the proposed permit area and adjacent area that is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and

Scenic Rivers Act.

*(Natural Resources Commission; 312 IAC 25-4-78; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3468, eff Dec 1, 2001)*

**312 IAC 25-4-79 Underground mining permit applications; environmental resources information; cross sections, maps, and plans**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 79. The application shall include cross sections, maps, and plans showing the following:

- (1) Elevations and locations of test borings and core samplings.
- (2) Elevations and locations of ground water monitoring stations and locations of surface water monitoring stations used to gather data on water quality and quantity in preparation of the application.
- (3) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined.
- (4) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area.
- (5) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas.
- (6) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas, and portrayal of seasonal differences of head in different aquifers on cross sections and contour maps.
- (7) Location of surface water bodies, such as streams, lakes, ponds, springs, constructed or natural drains, and irrigation ditches, within the proposed permit area and adjacent areas.
- (8) Location and extent of existing or previously surface-mined areas within the proposed permit area.
- (9) Location and dimensions of existing areas of spoil, waste, and noncoal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area.
- (10) Location and depth, if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas.
- (11) Sufficient slope measurements or cross sectional profiles with slope measurements to adequately represent the existing land surface configuration of the proposed permit area, measured and recorded according to the following:
  - (A) Each measurement shall consist of an angle of inclination, expressed as a percent, along the prevailing slope.
  - (B) Where the area has been previously mined, the measurements shall extend at least one hundred (100) feet beyond the limits of mining disturbances.
  - (C) Slope measurements shall take into account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.
- (12) Elevations and locations of monitoring stations used to gather data on fish and wildlife and air quality, if required, in preparation of the application.
- (13) Maps, plans, and cross sections included in a permit application that are required by this section shall be prepared by, or under the direction of and certified by a registered professional engineer or professional geologist, with assistance from experts in related fields such as land surveying and landscape architecture.

*(Natural Resources Commission; 312 IAC 25-4-79; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3469, eff Dec 1, 2001)*

**312 IAC 25-4-80 Underground mining permit applications; environmental resources information; prime farmland investigation**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 80. (a) The applicant shall contact the United States Soil Conservation Service to determine if a soil survey exists for those lands and whether the applicable soil map units have been designated as prime farmlands. If no soil survey has been made for the lands within the proposed permit area, the applicant shall cause such a survey to be made. When a soil survey of lands within the proposed permit area contains soil map units that have been designated as prime farmlands the applicant:

- (1) shall submit an application in accordance with section 102 of this rule for such designated land; and

(2) after review by the United States Soil Conservation Service, may submit a request for negative determination for such designated land with the permit application establishing compliance with subsection (b).

(b) In addition, land shall not be considered prime farmland where the applicant can demonstrate one (1) of the following:

(1) That the land has not been historically used as cropland. As used in this section, "historically used for cropland" means the following:

(A) Lands that have been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease, or option the conduct of surface coal mining and reclamation operations.

(B) Lands that the director determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific 5-years-in-10 criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be protected.

(C) Lands that would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding such acquisition but for some fact of ownership or control of the land unrelated to the productivity of the land.

(2) The slope of the land is ten percent (10%) or greater.

(3) Other factors exist, such as very rocky surface, or the land is flooded during a growing season or seasons more than once in two (2) years.

(c) The soil survey shall be submitted with the permit application. (*Natural Resources Commission; 312 IAC 25-4-80; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3470, eff Dec 1, 2001*)

### **312 IAC 25-4-81 Underground mining permit applications; operation plan; general requirements**

Authority: IC 14-34-2-1

Affected: IC 14-34; 30 CFR 784.11; 30 CFR 784.30

Sec. 81. (a) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area and the proposed life of the mine area where such information is necessary to demonstrate that reclamation required by IC 14-34 can be accomplished by the applicant. The description shall include, at a minimum, the following:

(1) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations.

(2) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless the retention of such facilities is necessary for a postmining land use as specified in 312 IAC 25-6-128:

(A) Dams, embankments, and other impoundments.

(B) Overburden and topsoil handling and storage areas and structures.

(C) Coal removal, handling, storage, cleaning, and transportation areas and structures.

(D) Spoil, coal processing waste, mine development waste, and noncoal waste removal handling, storage, transportation, and disposal areas and structures.

(E) Mine facilities.

(F) Water pollution control facilities.

(b) In addition to the requirements listed in subsection (a), each applicant for an underground coal mining and reclamation permit shall submit a description, plans, and drawings for each support facility to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall include a map, appropriate cross sections, design drawings, and specifications sufficient to demonstrate compliance with 312 IAC 25-6-132 for each facility.

(c) If an application proposes to mine within a zone of influence, the application must include a typical detailed mine plan to a scale of no greater than one (1) inch equals one hundred (100) feet. The mine plan shall depict the pillar, entry, crosscut, and panel dimensions within the zone of influence. (*Natural Resources Commission; 312 IAC 25-4-81; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3470, eff Dec 1, 2001*)

**312 IAC 25-4-82 Underground mining permit applications; operation plan; existing structures**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 82. (a) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include the following:

- (1) Location.
- (2) Plans of the structures that describe its current condition.

(b) Structures in existence prior to the implementation of this permanent program under IC 14-34 shall meet the performance standards of 312 IAC 25-6-5 through 312 IAC 25-6-133; however, when the operator demonstrates in the application for a permit that immediate compliance is not practicable, the director may approve a schedule for modification of existing structures that achieves compliance with 312 IAC 25-6-5 through 312 IAC 25-6-133 within a reasonable period of time. (*Natural Resources Commission; 312 IAC 25-4-82; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3471, eff Dec 1, 2001*)

**312 IAC 25-4-83 Underground mining permit applications; reclamation plan; general requirements**

Authority: IC 14-34-2-1

Affected: IC 14-34-10; IC 14-34-11

Sec. 83. (a) Each application shall contain a plan for the reclamation of the lands within the proposed permit area, showing how the applicant will comply with IC 14-34-10, IC 14-34-11, and the environmental protection performance standards of IC 14-34 and this article. The plan shall include, at a minimum, all information required under sections 83 through 97 of this rule.

(b) Each plan shall contain the following information for the proposed permit area:

- (1) A detailed timetable for the completion of each major step in the reclamation plan.
- (2) A detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under 312 IAC 25-5, with supporting calculations for the estimates.
- (3) A plan for backfilling, soil stabilization, compacting, and grading, with contour maps, topographical maps, or cross sections that show the anticipated final surface configuration of the proposed permit area in accordance with 312 IAC 25-6-112 through 312 IAC 25-6-114 and 312 IAC 25-6-144.
- (4) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 312 IAC 25-6-75. A demonstration of the suitability of topsoil substitutes or supplements under 312 IAC 25-6-75(c) shall be based upon analysis of the thickness of soil horizons, total depth, pH, buffer pH, phosphorous, potassium, percent coarse fragments, texture, and areal extent of the different kinds of soils. The requirement to determine percent coarse fragments may be waived by an authorized representative of the director, if he or she determines that the alternate material is a type of silt-blown, alluvial soil for which the analyses of percent coarse fragments would be unnecessary. The director may require other chemical and physical analyses, field-site trials, or greenhouse tests if determined to be necessary or desirable to demonstrate the suitability of the topsoil substitute or supplements.
- (5) A plan for revegetation as required in 312 IAC 25-6-115 through 312 IAC 25-6-122, including, but not limited to, descriptions of the:
  - (A) schedule of revegetation;
  - (B) species and amounts per acre of seeds and seedlings to be used;
  - (C) methods to be used in planting and seeding;
  - (D) mulching techniques;
  - (E) irrigation, if appropriate, and pest and disease control measures, if any;
  - (F) measures proposed to be used to determine the success of revegetation as required in 312 IAC 25-6-120 through 312 IAC 25-6-122; and
  - (G) a soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation.
- (6) A description of the measures to be used to maximize the use and conservation of the coal resources as required in 312 IAC 25-6-92.
- (7) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials



constituting a fire hazard are disposed of in accordance with 312 IAC 25-6-105 and 312 IAC 25-6-112 and a description of the contingency plans that have been developed to preclude sustained combustion of such materials.

(8) A description, including appropriate cross sections and maps, of the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration holes, other boreholes, wells, and other openings within the proposed permit area, in accordance with 312 IAC 25-6-72 through 312 IAC 25-6-74.

(9) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 U.S.C. 7401 et seq.), the Clean Water Act (33 U.S.C. 1251 et seq.), other applicable air and water quality laws and regulations, and health and safety standards.

*(Natural Resources Commission; 312 IAC 25-4-83; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3471, eff Dec 1, 2001)*

### **312 IAC 25-4-84 Underground mining permit applications; reclamation plan; fish and wildlife protection and enhancement**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 84. Each plan shall describe how the permittee will minimize, to the extent possible using best technology currently available, disturbances and adverse impacts on fish and wildlife and related environmental values during surface coal mining and reclamation operations and how these values will be enhanced where practicable. If the plan does not include enhancement measures, the plan shall explain why such measures are not practicable. The plan shall comply with the following requirements:

(1) The plan shall be consistent with 312 IAC 25-6-109.

(2) The plan shall apply, at a minimum, to species and habitats identified under section 70 of this rule.

(3) The plan shall include a description of the following:

(A) Any measures necessary to comply with the federal Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.).

(B) Protective measures that will be used during active mining, which may include buffer zones, selective location and special design of roads and power lines, and surface water monitoring.

(C) Enhancement measures that will be used during and after reclamation to develop or improve aquatic and terrestrial habitats, such as the following:

(i) Replacement of streams and wetlands.

(ii) Retention of ponds, impoundments, and depressions that seasonally impound water.

(iii) Replacement of perches and nest boxes.

(iv) Construction or development of terrain features that provide shelter, cover, protection, or nesting places for wildlife species.

*(Natural Resources Commission; 312 IAC 25-4-84; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3472, eff Dec 1, 2001)*

### **312 IAC 25-4-85 Underground mining permit applications; reclamation plan; protection of hydrologic balance**

Authority: IC 14-34-2-1

Affected: IC 14-34; 30 CFR 784.14

Sec. 85. (a) Each reclamation plan shall contain a detailed description, with appropriate maps and cross section drawings, of the measures to be taken during and after the proposed underground mining activities, through bond release, under 312 IAC 25-6-70 through 312 IAC 25-6-132, to ensure the protection of the following:

(1) The quality of surface and ground water in the proposed permit area and adjacent area from adverse effects of the proposed underground mining activities.

(2) The rights of present users to that surface and ground water.

(3) The quantity of surface and ground water in the proposed permit area and adjacent area from adverse effects of the proposed underground mining activities, or to provide alternative sources of water, under section 74 of this rule and 312 IAC 25-6-88, where the protection of quantity cannot be ensured.

(4) Water quality by locating openings for mines under 312 IAC 25-6-85.

(5) The prevention of material damage outside the permit area.

- (6) Compliance with applicable federal and state water quality laws and regulations.
- (7) The hydrologic balance within the permit and adjacent areas.
- (b) The description in subsection (a) shall include the following:
  - (1) A plan for the control, under 312 IAC 25-6-70 through 312 IAC 25-6-132, of surface and ground water drainage into, through, and out of the proposed permit area.
  - (2) A plan for the treatment, where required under 312 IAC 25-6-70 through 312 IAC 25-6-132, of surface and ground water drainage from the area to be affected by the proposed activities, and proposed quantitative limits on pollutants in discharges subject to 312 IAC 25-6-77, according to the more stringent of the following:
    - (A) 312 IAC 25-6-70 through 312 IAC 25-6-132.
    - (B) Other applicable state and federal laws.
  - (3) A plan for the collection, recording, and reporting of ground and surface water quality and water quantity data under 312 IAC 25-6-86.
  - (4) A plan to avoid acid or toxic drainage.
  - (5) A plan to prevent, to the extent possible using the best technology currently available, adding contributions of suspended solids to stream flow.
  - (6) A plan to provide water treatment facilities when needed.
  - (7) A plan to control drainage.
  - (8) A plan to demonstrate compliance with 312 IAC 25-6-76.5.
- (c) The description in subsection (a) shall include the following:
  - (1) A determination of the probable hydrologic consequences (PHC) of the proposed underground mining activities, on the proposed permit area and adjacent area, with respect to the hydrologic regime and the quantity and quality of water in surface and ground water systems under all seasonal conditions, including the following:
    - (A) The contents of dissolved and total suspended solids.
    - (B) Total iron.
    - (C) pH.
    - (D) Total manganese.
    - (E) Other parameters required by the director.
  - (2) Whether the underground mining activities may result in contamination, diminution, or interruption of a well or spring in existence at the time the permit application is submitted and used for domestic, drinking, or residential purposes within the permit or adjacent areas.
- (d) Sampling and analysis shall be conducted under 312 IAC 25-6-86. Information shall be provided as follows:
  - (1) The PHC determination shall be based on baseline hydrologic, geologic, and other information collected for the permit application and may include data statistically representative of the site.
  - (2) The PHC determination shall include findings on the following:
    - (A) Whether adverse impacts may occur to the hydrologic balance.
    - (B) Whether acid-forming or toxic-forming materials are present that could result in the contamination of surface or ground water supplies.
    - (C) What impact the proposed operation will have on the following:
      - (i) Sediment yields from the disturbed area.
      - (ii) Acidity, total suspended and dissolved solids, and other important water quality parameters of local impact.
      - (iii) Flooding or stream flow alteration.
      - (iv) Ground water and surface water availability.
      - (v) Other characteristics as required by the director.
  - (3) Any application for a permit revision shall be reviewed by the director to determine whether a new or updated PHC determination shall be required.
- (e) Each plan shall contain a detailed description, with appropriate drawings, of permanent entry seals and down slope barriers, designed to ensure stability under anticipated hydraulic heads developed while promoting mine inundation after mine closure for the proposed permit area.
- (f) The plan shall specifically address any potential adverse hydrologic consequences identified in the PHC determination prepared under subsection (c) and shall include preventive and remedial measures. (*Natural Resources Commission; 312 IAC 25-4-*

85; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3472, eff Dec 1, 2001; filed Jul 29, 2003, 3:45 p.m.: 26 IR 3862, eff Feb 1, 2004)

**312 IAC 25-4-86 Underground mining permit applications; reclamation plan; postmining land uses**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 86. (a) Each plan shall contain a detailed description of the proposed use, following reclamation, of the land to be affected within the proposed permit area by surface operations or facilities, and the relationship of the proposed use to existing land use policies and plans. The description shall explain each of the following:

- (1) How the proposed postmining land use is to be achieved and the necessary support activities that may be needed to achieve the proposed land use.
- (2) Where a land use different from the premining land use is proposed, all materials needed for approval of the alternative use under 312 IAC 25-6-128.
- (3) The consideration given to making all of the proposed underground mining activities consistent with surface owner plans and applicable state and local use plans and programs.

(b) The description shall be accompanied by a copy of the comments concerning the proposed use from the legal or equitable owner of record of the surface areas to be affected by surface operations or facilities within the proposed permit area and the state and local government agencies that would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

(c) The applicant may, if approved by the director, request that information required by this section for consideration of any proposed postmining land use changes be submitted toward the end of the life of an underground mine if the applicant demonstrates in the original application that the land will be returned to the appropriate land use capability as required in 312 IAC 25-6-128. The request for an alternative postmining land use change may be made through the permit revision of renewal provisions in sections 126 through 134 of this rule. (*Natural Resources Commission; 312 IAC 25-4-86; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3473, eff Dec 1, 2001*)

**312 IAC 25-4-87 Underground mining permit applications; reclamation plan for ponds, impoundments, dams, and embankments Version a**

Authority: IC 14-34-2-1

Affected: IC 14-34

*NOTE: This version of section effective until superseded by the following version of this section, which is effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register.*

Sec. 87. (a) Each application shall include a general plan for each proposed siltation structure, water impoundment, and coal processing waste dam or embankment within the proposed permit area. The information required shall be provided as follows:

- (1) Each general plan shall be as follows:
  - (A) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer or by a professional geologist either of whom shall be experienced in the design and construction of impoundments.
  - (B) Contain a description, map, and cross section of the structure and its location.
  - (C) Contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure.
  - (D) Contain a survey describing the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred.
  - (E) Contain a certification statement that includes a schedule setting forth the dates when any detailed design plans for structures that are not submitted with the general plan will be submitted to the director. The director shall have approved, in writing, the detailed design plan for a structure before construction of the structure begins.
- (2) Each detailed design plan for a structure shall be as follows:
  - (A) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer with assistance from experts in related fields such as geology, land surveying, and landscape architecture.
  - (B) Include any geotechnical investigation, design, and construction requirements for the structure.

(C) Describe the operation and maintenance requirements for each structure.

(D) Describe the timetable and plans to remove each structure if appropriate.

(E) Identify those structures that meet or exceed the size and other criteria of 30 CFR 77.216(a), and include a copy of the plans for design and construction approved by the Mine Safety and Health Administration for those identified structures.

(b) Siltation structures, whether temporary or permanent, shall be designed in compliance with the requirements of 312 IAC 25-6-81. Any siltation structure or earthen structure that will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of 312 IAC 25-6-84.

(c) Permanent and temporary impoundments shall be designed to comply with the requirements of 312 IAC 25-6-84.

(d) Coal processing waste dams and embankments shall be designed to comply with the requirements of 312 IAC 25-6-98 and 312 IAC 25-6-106 through 312 IAC 25-6-108. Each plan shall also comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1, and 30 CFR 77.216-2 and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area to determine the structural competence of the foundation that will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(1) The number, location, and depth of borings and test pits shall be determined using current, prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.

(2) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions that may affect the particular dam, embankment, or reservoir site shall be considered.

(3) All springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(4) Consideration shall be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(e) If:

(1) the structure is twenty (20) feet or higher;

(2) the drainage area above the structure is one (1) square mile or larger; or

(3) the volume of water impounded is more than one hundred (100) acre-feet;

an application shall be submitted to the division of water, department of natural resources, and prior approval shall be obtained from the director before construction of the structure begins. If necessary to protect the health or safety of persons or property or the environment, even though the volume of water impounded is less than one hundred (100) acre-feet, the director may require an application to be made. (*Natural Resources Commission; 312 IAC 25-4-87; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3473, eff Dec 1, 2001*)

### **312 IAC 25-4-87 Underground mining permit applications; reclamation plan for siltation structures, impoundments, dams, embankments, and refuse piles Version b**

Authority: IC 14-34-2-1

Affected: IC 14-34

*NOTE: This version of section effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register. See also preceding version of this section, effective until superseded by this version of section.*

Sec. 87. (a) Each application shall include a general plan and a detailed design plan for each proposed siltation structure, water impoundment, and coal processing waste dam, embankment, or refuse pile within the proposed permit area. The information required shall be provided as follows:

(1) Each general plan shall be as follows:

(A) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer or by a professional geologist either of whom shall be experienced in the design and construction of impoundments.

(B) Contain a description, map, and cross section of the structure and its location.

(C) Contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure.

(D) Contain a survey describing the potential effect on the structure from subsidence of the subsurface strata resulting

from past underground mining operations if underground mining has occurred.

(E) Contain a certification statement that includes a schedule setting forth the dates when any detailed design plans for structures that are not submitted with the general plan will be submitted to the director. The director shall have approved, in writing, the detailed design plan for a structure before construction of the structure begins.

(2) Each detailed design plan for a structure shall be as follows:

(A) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer with assistance from experts in related fields, such as geology, land surveying, and landscape architecture.

(B) Include any geotechnical investigation, design, and construction requirements for the structure.

(C) Describe the operation and maintenance requirements for each structure.

(D) Describe the timetable and plans to remove each structure if appropriate.

(E) Identify those structures that meet or exceed the size and other criteria of 30 CFR 77.216(a) and include a copy of the plans for design and construction approved by the Mine Safety and Health Administration for those identified structures.

(b) Siltation structures, whether temporary or permanent, shall be designed in compliance with the requirements of 312 IAC 25-6-81. Any siltation structure or earthen structure that will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of 312 IAC 25-6-84.

(c) Permanent and temporary impoundments shall be designed to comply with the requirements of 312 IAC 25-6-84, 30 CFR 77.216-1, and 30 CFR 77.216-2.

(d) Refuse piles shall be designed to comply with 312 IAC 25-6-98 through 312 IAC 25-6-102.

(e) Coal processing waste dams and embankments shall be designed to comply with the requirements of 312 IAC 25-6-98 and 312 IAC 25-6-106 through 312 IAC 25-6-108. Each plan shall also comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 30 CFR 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area to determine the structural competence of the foundation that will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist according to the following:

(1) The number, location, and depth of borings and test pits shall be determined using current, prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.

(2) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions that may affect the particular dam, embankment, or reservoir site shall be considered.

(3) All springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(4) Consideration shall be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(f) If the structure meets the Class B or C criteria for dams in TR-60 or meets the size and other criteria of 30 CFR 77.216(a), each plan under subsections (b), (c), and (e) shall include the following:

(1) A stability analysis of the structure that shall include, but not be limited to:

(A) Strength parameters.

(B) Pore pressures.

(C) Long term seepage conditions.

(2) A description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

(g) If the proposed siltation structure, water impoundment, coal processing waste dam, or embankment is permanent and the:

(1) structure is twenty (20) feet or higher;

(2) drainage area above the structure is one (1) square mile or larger; or

(3) volume of water impounded is more than one hundred (100) acre-feet;

an application shall be submitted to the division of water, department of natural resources, and prior approval shall be obtained from the director before construction of the structure begins. If necessary to protect the health or safety of persons or property or the environment, even though the volume of water impounded is less than one hundred (100) acre-feet, the director may require an application to be made. (*Natural Resources Commission; 312 IAC 25-4-87; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3473, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2448, eff upon the Department of Natural Resources receiving notice of approval from*

*the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register)*

**312 IAC 25-4-88 Underground mining permit applications; reclamation plan; protection of public parks and historic lands**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 88. (a) For any public parks or any historic lands listed on the National Register of Historic Places or the Indiana state register of historic sites and structures that may be adversely affected by the proposed operations, each plan shall describe the measures to be used:

(1) to prevent adverse impacts; or

(2) if valid existing rights exist or joint agency approval is to be obtained under 312 IAC 25-3-1(3), to minimize adverse impacts.

(b) The director may impose conditions that require the applicant to protect historic or archaeological properties listed on, or eligible for listing on, the National Register of Historic Places or the Indiana state register of historic sites and structures through appropriate mitigation and treatment measures consistent with the standards established under 312 IAC 21-3. Mitigation and treatment measures must be approved by the director after consideration of the comments of the division of historic preservation and archaeology. Required measures that avoid impacts must remain in place throughout all mining and reclamation operations. Such measures that involve the mitigation of impacts through excavation or documentation may be taken after permit issuance provided they are completed before the property is affected by any mining operation. *(Natural Resources Commission; 312 IAC 25-4-88; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3474, eff Dec 1, 2001)*

**312 IAC 25-4-89 Underground mining permit applications; reclamation plan; relocation or use of public roads**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 89. Each application shall describe, with appropriate maps and cross sections, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 312 IAC 25-3-2(e)(4), the applicant seeks to have the director approve:

(1) conducting the proposed underground mining activities within one hundred (100) feet, measured horizontally, of the right-of-way of any public road, except where mine access or haul roads join that right-of-way; or

(2) relocating a public road.

*(Natural Resources Commission; 312 IAC 25-4-89; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3475, eff Dec 1, 2001)*

**312 IAC 25-4-90 Underground mining permit applications; reclamation plan; underground development waste**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 90. Each plan shall contain descriptions, including appropriate maps and cross section drawings of the proposed disposal methods and sites for placing underground development waste and excess spoil generated at surface areas affected by surface operations and facilities, according to 312 IAC 25-6-98. Each plan shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal, if appropriate, of the structures and be prepared according to section 54 of this rule. *(Natural Resources Commission; 312 IAC 25-4-90; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3475, eff Dec 1, 2001)*

**312 IAC 25-4-91 Underground mining permit applications; reclamation plan; subsidence control plan**

Authority: IC 14-34-2-1

Affected: IC 14-34; 30 CFR 784.20

Sec. 91. (a) Each application must include the following:

(1) A map of the permit and adjacent areas at a scale of 1:12,000, or larger if determined necessary by the director, showing the location and type of structures and renewable resource lands that subsidence may materially damage or for which the value or reasonably foreseeable use may be diminished by subsidence, and showing the location and type of drinking, domestic, and residential water supplies that could be contaminated, diminished, or interrupted by subsidence.

(2) A narrative indicating whether subsidence, if it occurred, could cause material damage to or diminish the value or reasonably foreseeable use of such structures or renewable resource lands or could contaminate, diminish, or interrupt drinking, domestic, or residential water supplies.

(3) A survey of the condition of all noncommercial buildings or occupied residential dwellings and structures related thereto, that may be materially damaged or for which the reasonably foreseeable use may be diminished by subsidence, within the area encompassed by the applicable angle of draw, as well as a survey of the quantity and quality of all drinking, domestic, and residential water supplies within the permit area and adjacent area that could be contaminated, diminished, or interrupted by subsidence. If the applicant cannot make this survey because the owner will not allow access to the site, the applicant will notify the owner, in writing, of the effect that denial of access will have as described in 312 IAC 25-6-123(c)(4). The applicant must pay for any technical assessment or engineering evaluation used to determine the premining condition or value of such noncommercial buildings or occupied residential dwellings and structures related thereto and the quantity and quality of drinking, domestic, or residential water supplies. The applicant must provide copies of the survey and any technical assessment or engineering evaluation to the property owner and the director.

(b) If the survey conducted under subsection (a) shows that no structures, or drinking, domestic, or residential water supplies, or renewable resource lands exist, or that no material damage or diminution in value or reasonably foreseeable use of such structures or lands, and no contamination, diminution, or interruption of such water supplies would occur as a result of mine subsidence, and if the director agrees with this conclusion, no further information need be provided under this section. If the survey shows that structures, renewable resource lands, or water supplies exist and that subsidence could cause material damage or diminution in value or reasonably foreseeable use, or contamination, diminution, or interruption of protected water supplies, or if the director determines that damage, diminution in value or foreseeable use, or contamination, diminution, or interruption could occur, the application must include a subsidence plan that contains the following provisions:

(1) A description of the method of coal removal (such as longwall mining, room-and-pillar removal, hydraulic mining, or other extraction methods), including the size, sequence, and timing of the development of underground workings.

(2) A map of the underground workings that:

(A) describes the location and extent of the areas in which planned subsidence mining methods will be used; and

(B) identifies all areas where the measures described in subdivisions (4), (5), and (7) will be taken:

(i) to prevent or minimize subsidence and subsidence-related damage; and

(ii) when applicable, to correct subsidence-related material damage.

(3) A description of the physical conditions, such as dept of cover, seam thickness, and lithology of overlaying strata, that affect the likelihood or extent of subsidence and subsidence-related damage.

(4) A description of the monitoring, if any, needed to determine the commencement and degree of subsidence so that, when appropriate, other measures can be taken to prevent, reduce, or correct material damage in accordance with 312 IAC 25-6-123(c).

(5) Except for those areas where planned subsidence is projected to be used, a detailed description of the subsidence control measures that will be taken to prevent or minimize subsidence and subsidence-related damage, including, but not limited to, the following:

(A) Backstowing or backfilling of voids.

(B) Leaving support pillars of coal.

(C) Leaving areas in which no coal is removed, including a description of the overlying area to be protected by leaving the coal in place.

(D) Taking measures on the surface to prevent or minimize material damage or diminution in value of the surface.

(6) A description of the anticipated effects of planned subsidence, if any.

(7) For those areas where planned subsidence is projected to be used, a description of methods to be employed to minimize damage from planned subsidence to noncommercial buildings and occupied residential dwellings and structures related thereto; or the written consent of the owner of the structure or facility that minimization measures not be taken; or, unless the anticipated damage would constitute a threat to health or safety, a demonstration that the costs of minimizing damage exceed

the anticipated costs of repair.

(8) A description of the measures to be taken in accordance with 312 IAC 25-6-88 and 312 IAC 25-6-123(c) to replace adversely affected protected water supplies or to mitigate or remedy and any subsidence-related material damage to the land and protected structures.

(9) Other information specified by the director as necessary to demonstrate that the operations will be conducted in accordance with 312 IAC 25-6-123.

*(Natural Resources Commission; 312 IAC 25-4-91; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3475, eff Dec 1, 2001)*

### **312 IAC 25-4-92 Underground mining permit applications; reclamation plan; diversions**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 92. Each application shall contain descriptions, including maps and cross sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 312 IAC 25-6-78 and 312 IAC 25-6-79.

*(Natural Resources Commission; 312 IAC 25-4-92; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3476, eff Dec 1, 2001)*

### **312 IAC 25-4-93 Underground mining permit applications; reclamation plan; maps**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 93. Each application shall contain maps, plans, and cross sections of the proposed permit and adjacent areas as follows:

(1) The maps, plans, and cross sections shall show the underground mining activities to be conducted, the land to be affected throughout the operations, and any change in a facility or feature to be caused by the proposed operations if the facility or feature was shown under sections 78 and 79 of this rule.

(2) The following shall be shown for the proposed permit area:

(A) Buildings, utility corridors, and facilities to be used.

(B) The area of land to be affected within the proposed permit area according to the sequence of mining and reclamation.

(C) Each area of land for which a performance bond will be posted under 312 IAC 25-5.

(D) Each coal storage, cleaning, and loading area.

(E) Each topsoil, spoil, coal preparation waste, underground development waste, and noncoal waste storage area.

(F) Each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used.

(G) Each source of waste and each waste disposal facility relating to coal processing or pollution control.

(H) Each facility to be used to protect and enhance fish and wildlife related environmental values.

(I) Each explosive storage and handling facility.

(J) Location of each:

(i) siltation structure;

(ii) permanent water impoundment;

(iii) coal processing waste bank; and

(iv) coal processing waste dam and embankment;

in accordance with section 87 of this rule and disposal areas for underground development waste and excess spoil in accordance with section 90 of this rule.

(K) Each profile, at cross sections specified by the director, of the anticipated final surface configuration to be achieved for the affected areas.

(L) Location of each water and subsidence monitoring point.

(M) Location of each facility that will remain on the proposed permit area as a permanent feature after the completion of underground mining activities.

(3) Maps, plans, and cross sections required under subdivision (2)(D) through (2)(F) and 2(I) through (2)(K) shall be prepared by, or under the direction of, and certified by a professional engineer or professional geologist, with necessary assistance from experts in related fields such as land surveying and landscape architecture, except that maps, plans, and cross sections of:



(A) siltation structures may only be prepared by a registered engineer; and

(B) excess spoil and underground development waste facilities may only be prepared by a registered professional engineer.

(4) All monitoring locations used to demonstrate compliance with 312 IAC 25-6-76.5.

*(Natural Resources Commission; 312 IAC 25-4-93; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3476, eff Dec 1, 2001; filed Jul 29, 2003, 3:45 p.m.: 26 IR 3863, eff Feb 1, 2004)*

**312 IAC 25-4-94 Underground mining permit applications; reclamation plan; transportation facilities**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 94. Each application shall contain a detailed description of each road, conveyor, and rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross sections, and the following:

(1) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure.

(2) A description of measures to be taken to comply with 312 IAC 25-6-129.

(3) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

*(Natural Resources Commission; 312 IAC 25-4-94; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3477, eff Dec 1, 2001)*

**312 IAC 25-4-95 Underground mining permit applications; reclamation plan for road systems**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 95. (a) Each applicant for an underground coal mining and reclamation permit shall submit plans and drawings for each road, as defined in 312 IAC 25-1-126, to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall include the following:

(1) A map, appropriate cross sections, design drawings, and specifications for road widths, gradients, surfacing materials, cuts, fill embankments, culverts, bridges, drainage ditches, low water crossings, and drainage structures.

(2) The drawings and specifications of each proposed road that is located in the channel of an intermittent or perennial stream, as necessary for approval of the road by the director in accordance with 312 IAC 25-6-129.

(3) The drawings and specifications for each proposed ford of an intermittent or perennial stream that is used as a temporary route, as necessary for approval of the ford by the director in accordance with 312 IAC 25-6-129 and 312 IAC 25-6-130.

(4) A description of measures to be taken to obtain approval of the director for alteration or relocation of a natural stream channel under 312 IAC 25-6-130.

(5) The drawings and specifications for each low water crossing of perennial or intermittent stream channels so that the director can maximize the protection of the stream in accordance with 312 IAC 25-6-129 and 312 IAC 25-6-130.

(6) A description of the plans to remove and reclaim each road that would not be retained under an approved postmining land use and the schedule for this removal and reclamation.

(b) The plans and drawings for each primary road shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer with experience in the design and construction of roads, as meeting:

(1) the requirements of this article;

(2) current, prudent engineering practices; and

(3) any design criteria established by the director.

(c) Each primary road shall be in compliance with the minimum static safety factor of one and three-tenths (1.3) for all embankments specified in 312 IAC 25-6-130 or shall comply with the design requirements of 312 IAC 25-6-130. *(Natural Resources Commission; 312 IAC 25-4-95; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3477, eff Dec 1, 2001)*

**312 IAC 25-4-96 Underground mining permit applications; reclamation plan; return of coal processing waste to abandoned underground workings**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 96. (a) Each plan shall describe the design, operation, and maintenance of any proposed coal processing waste disposal facility, including flow diagrams and any other necessary drawings and maps, for the approval of the director under 312 IAC 25-6-41.

(b) Each plan shall describe the following:

- (1) The source and quality of waste to be stowed.
- (2) The area to be backfilled.
- (3) The percent of the mine void to be filled.
- (4) The method of constructing underground retaining walls.
- (5) The influence of the backfilling operation on active underground mine operations.
- (6) The surface area to be supported by the backfill.
- (7) The anticipated occurrence of surface effects following backfilling.

(c) The applicant shall describe the following:

- (1) The source of the hydraulic transport mediums.
- (2) The method of dewatering the placed backfill.
- (3) The retainment of water underground.
- (4) The treatment of water if released to surface streams.
- (5) The effect on the hydrologic regime.

(d) The plan shall describe the following:

- (1) Each permanent monitoring well to be located in the backfilled area.
- (2) The stratum underlying the mined coal.
- (3) The gradient from the backfilled area.

(e) The requirements of this section shall also apply to pneumatic backfilling operations, except where the operations are exempted by the director from requirements specifying the hydrologic monitoring.

(f) Approval is required from the Mine Safety and Health Administration for return of coal processing waste to abandoned underground workings. (*Natural Resources Commission; 312 IAC 25-4-96; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3478, eff Dec 1, 2001*)

**312 IAC 25-4-97 Underground mining permit applications; reclamation plan; air pollution control**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 97. The permit application under sections 81 through 96 of this rule and this section shall contain one (1) of the following for the proposed mining operation:

- (1) A copy of an active Indiana air pollution control board operation permit.
- (2) A copy of completed application for an Indiana air pollution control board operation permit.
- (3) A written statement from the Indiana air pollution control board indicating that such a permit is not necessary.

(*Natural Resources Commission; 312 IAC 25-4-97; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3478, eff Dec 1, 2001*)

**312 IAC 25-4-98 Special categories of mining; applicability**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 98. This section and sections 99 through 107 of this rule establish the minimum requirements for regulatory program provisions for permits for certain categories of surface coal mining and reclamation operations. These requirements are in addition to the general permit requirements contained in this rule. Sections 1 through 39 of this rule apply to these operations unless otherwise

specifically provided in this section and sections 99 through 107 of this rule. (*Natural Resources Commission; 312 IAC 25-4-98; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3478, eff Dec 1, 2001*)

**312 IAC 25-4-99 Special categories of mining; experimental practices mining**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 99. (a) Experimental practices provide a variance from environmental protection performance standards of IC 14-34 and 312 IAC 25-6-1 through 312 IAC 25-6-148 for experimental or research purposes or allow an alternative postmining land use and may be undertaken if they are approved by the director and the director of the Office of Surface Mining and if they are incorporated in a permit or permit revision issued in accordance with the requirements of 312 IAC 25-6-1 through 312 IAC 25-6-148.

(b) An application for an experimental practice shall contain descriptions, maps, plans, and data that show the following:

(1) The nature of the experimental practice, including the following:

(A) A description of the performance standards for which variances are requested.

(B) The duration of the experimental practice.

(C) Any special monitoring that will be conducted.

(2) How use of the experimental practice encourages advances in mining and reclamation technology or allows a postmining land use for industrial, commercial, residential, or public use (including recreational facilities) on an experimental basis.

(3) That the experimental practice:

(A) is potentially more, or at least as, environmentally protective during and after mining operations as would otherwise be required by standards under 312 IAC 25-6-1 through 312 IAC 25-6-148; and

(B) will not reduce the protection afforded public health and safety below that provided by the requirements of 312 IAC 25-6-1 through 312 IAC 25-6-148.

(4) That the applicant will conduct monitoring of the effects of the experimental practice. The monitoring program shall ensure the collection, analysis, and reporting of reliable data that are sufficient to enable the director and the director of the Office of Surface Mining to:

(A) evaluate the effectiveness of the experimental practice; and

(B) identify, at the earliest possible time, potential risk to the environment and public health and safety that may be caused by the experimental practice during and after mining.

(c) Applications for experimental practices shall comply with the public notice requirements of sections 109 through 113 of this rule.

(d) No application for an experimental practice under this section shall be approved until the director first finds the following in writing, and the director of the Office of Surface Mining then concurs:

(1) The experimental practice encourages either of the following:

(A) Advances in mining and reclamation technology.

(B) Allows a postmining land use for industrial, commercial, residential, or public use (including recreational facilities) on an experimental basis.

(2) The experimental practice is potentially more, or at least as, environmentally protective, during and after mining operations, as would otherwise be required by standards under 312 IAC 25-6-1 through 312 IAC 25-6-148.

(3) The mining operations approved for a particular land use or other purpose are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practice.

(4) The experimental practice does not reduce the protection afforded public health and safety below that provided by standards under 312 IAC 25-6-1 through 312 IAC 25-6-148.

(e) Experimental practices granting variances from the special environmental protection performance standards of IC 14-34-10 through IC 14-34-11 applicable to prime farmland shall be approved only after consultation with the United States Department of Agriculture, Soil Conservation Service.

(f) Each person undertaking an experimental practice shall conduct the periodic monitoring, recording, and reporting program set forth in the application and shall satisfy such additional requirements as the director or the director of the Office of Surface Mining may impose to ensure protection of the public health and safety and the environment.

(g) Each experimental practice shall be reviewed by the director at a frequency set forth in the approved permit, but no less

frequently than every two and one-half (2½) years. After review, the director may require such reasonable modifications of the experimental practice as are necessary to ensure that the activities fully protect the environment and the public health and safety. Copies of the decision of the director shall be sent to the permittee and shall be subject to the provisions for administrative and judicial review of sections 122 through 123 of this rule.

(h) Revisions or modifications to an experimental practice shall be processed in accordance with the requirements of section 127 of this rule and approved by the director. Any revisions that propose significant alterations in the experimental practice shall, at a minimum, be subject to the following:

(1) The notice, hearing, and public participation requirements of sections 109 through 113 of this rule.

(2) Concurrence by the director of the Office of Surface Mining; however, revisions that do not propose significant alterations in the experimental practice shall not require concurrence by the director of the Office of Surface Mining.

*(Natural Resources Commission; 312 IAC 25-4-99; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3479, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182)*

### **312 IAC 25-4-100      Special categories of mining; steep slope procedures**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 100. (a) This section applies to any permittee who conducts or intends to conduct steep slope surface coal mining and reclamation operations, except where an operator proposes to conduct surface coal mining and reclamation operations on flat or gently rolling terrain, leaving a plain or predominately flat area, but on which an occasional steep slope is encountered as the mining operation proceeds.

(b) Any application for a permit for surface coal mining and reclamation operations covered by this section shall contain sufficient information to establish that the operations will be conducted in accordance with the requirements of 312 IAC 25-6-144.

*(Natural Resources Commission; 312 IAC 25-4-100; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3480, eff Dec 1, 2001)*

### **312 IAC 25-4-101      Special categories of mining; approximate original contour variance for steep slope mining; permits**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 101. (a) The director may issue a permit for steep slope surface mining activities incorporating a variance from the requirement for restoration of the affected lands to their approximate original contour after first finding in writing on the basis of a complete application that all of the following requirements are met:

(1) The applicant has demonstrated that the purpose of the variance is to make the lands to be affected within the permit area suitable for an alternative postmining land use.

(2) The proposed alternative postmining land use, after consultation with the appropriate land use planning agencies, if any, is found to constitute an equal or better economic or public use.

(3) The applicant has demonstrated compliance with the requirements for acceptable alternative postmining land uses of 312 IAC 25-6-64 or 312 IAC 25-6-128.

(4) The applicant has demonstrated that the watershed of lands within the proposed permit area and adjacent areas will be improved by the operations. The watershed will only be deemed improved if all of the following conditions are met:

(A) There will be a reduction in the amount of total suspended solids or other pollutants discharged to ground or surface waters from the permit area as compared to such discharges prior to mining so as to improve public or private uses or the ecology of such waters, or there will be reduced flood hazards within the watershed containing the permit area by reduction of the peak flow discharges from precipitation events or thaws.

(B) The total volume of flows from the proposed permit area, during every season of the year, will not vary in a way that adversely affects the ecology of any surface water or any existing or planned use of surface or ground water.

(C) The appropriate state environmental agency approves the plan.

(5) The applicant has demonstrated that the owner of the surface of the lands within the permit area has knowingly requested or given consent in writing as part of the application that a variance be granted. The request or consent shall be made or given

separately from any other surface owner consent given for the operation and shall show an understanding that the variance could not be granted without the surface owner's request or consent.

(6) The applicant has demonstrated that the proposed operations will be conducted in compliance with the requirements of 312 IAC 25-6-144.

(7) All other requirements of IC 14-34 and this article will be met by the proposed operations.

(8) The proposed use is designed and certified by a qualified registered professional engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site.

(9) Only the amount of spoil as is necessary to:

- (A) achieve the postmining land use;
- (B) ensure the stability of spoil retained on the bench; and
- (C) meet all other requirements of IC 14-34 and this article;

is placed off the mine bench. All spoil not retained on the bench shall be placed in accordance with 312 IAC 25-6-34, 312 IAC 25-6-50, or 312 IAC 25-6-98.

(10) Federal, Indiana, and local government agencies with an interest in the proposed land use have an adequate period in which to review and comment on the proposed use.

(b) If a variance is granted under this section:

- (1) the requirements of 312 IAC 25-6-144 shall be made a specific condition of the permit; and
- (2) the permit shall be specifically marked to indicate that it contains a variance from approximate original contour.

(c) Permits incorporating a variance from approximate original contour will be reviewed by the director to evaluate the progress and development of the mining activities, and to establish that the permittee is proceeding in accordance with the terms of the variance. Permit reviews under this subsection shall be conducted according to the following timeframes:

- (1) Within the sixth month preceding the third year from the date of its issuance.
- (2) Before each permit renewal.
- (3) Not later than the middle of each permit term.

(d) If the permittee demonstrates to the director at any of the times specified in subsection (c) that the operations involved have been and continue to be conducted in compliance with the terms and conditions of the permit, the requirements of IC 14-34, and this article, the review required at that time need not be held.

(e) The terms and conditions of a permit incorporating variance under this section may be modified at any time by the director, if the director determines that more stringent measures are necessary to ensure that the operations involved are conducted in compliance with the requirements of IC 14-34 and this article. (*Natural Resources Commission; 312 IAC 25-4-101; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3480, eff Dec 1, 2001*)

### **312 IAC 25-4-102 Special categories of mining; prime farmland Version a**

Authority: IC 14-34-2-1

Affected: IC 4-21.5; IC 14-34

*NOTE: This version of section effective until superseded by the following version of this section, which is effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register.*

Sec. 102. (a) In an initial permit application under this article for an existing surface coal mining operation that held a valid permit on August 3, 1977, with continuous permits held since that date, the applicant shall set forth the geographical area that is encompassed by the operation. The permit applied for, however, need only cover the area to be affected during the period of the permit for which the application is made. The director shall determine the geographical areas that are exempt from the prime farmland provisions of IC 14-34 and this article. In making the determination, the director shall consider all relevant factors bearing upon the extent of the geographical area upon which the applicant intended to conduct surface coal mining operations as of August 3, 1977, including the following:

- (1) A map showing the geographical location of the area for which the determination is requested and the area previously affected by surface coal mining and reclamation operations.
- (2) Information concerning the contractual coal sales commitments that existed before August 4, 1977, for the mining

operation.

(3) Maps and other documents that identify the location and extent of the applicant's surface and mineral rights control for all properties within the area upon which the determination is requested and whether the applicant:

- (A) acquired the rights before August 4, 1977;
- (B) acquired the rights after August 3, 1977; or
- (C) does not control the rights currently.

(4) Mining plans, maps, or other documents prepared before August 4, 1977, that identify the area intended to be mined by the existing operations.

(5) Maps or other documents identifying the extent of coal exploration activity performed by the applicant in the area before August 4, 1977.

(6) Copies of any other permits issued to the applicant by governmental agencies before August 4, 1977, with respect to those operations upon those lands for which this determination is sought.

(7) The legal and financial commitments made by the applicant in connection with the mining operation as of August 3, 1977, with respect to those lands for which this determination is requested.

(8) Any other relevant information.

(b) In making the determination required under subsection (a), no one (1) or group of factors is controlling. The determination shall be made by the director based upon all relevant factors of the particular surface coal mining operation for which the permit and determination is sought. The determination applies to all subsequent and continuous permits for the existing surface coal mining operation or until the director determines the operations have permanently ceased.

(c) The requirements of subsection (d) apply to a permittee who conducts or intends to conduct surface coal mining and reclamation operations on prime farmland historically used for cropland. Subsection (d) does not apply to an existing surface coal mining operation that held a valid permit on August 3, 1977, with continuous permits held since that date.

(d) If land within the proposed permit area is identified as prime farmland under section 39 or 80 of this rule, the applicant shall submit a plan for the mining and restoration of the land. Each plan must include the following:

(1) A soil survey of the permit area under the standards of the National Cooperative Soil Survey and under the procedures set forth in United States Department of Agriculture Handbooks 436 (Soil Taxonomy, 1975) and 18 (Soil Survey Manual, 1951). The soil survey shall include a description of soil mapping units and a representative soil profile as determined by the United States Soil Conservation Service, including, but not limited to, soil horizon depths, pH, and the range of soil densities for each prime farmland soil unit within the permit area. Other representative soil-profile descriptions from the locality, prepared according to the standards of the National Cooperative Soil Survey, may be used if their use is approved by the State Conservationist, United States Soil Conservation Service. The director may request the operator to provide information on other physical and chemical soil properties as needed to make a determination that the operator has the technical capability to restore the prime farmland within the permit area to the soil reconstruction standards of 312 IAC 25-6-139 through 312 IAC 25-6-143.

(2) The proposed method and type of equipment to be used for removal, storage, and replacement of soil under 312 IAC 25-6-139 through 312 IAC 25-6-143.

(3) The location of areas to be used for the separate stockpiling of the soil and a plan for soil stabilization before redistribution.

(4) Applicable agricultural school studies, scientific data from comparable areas, or similar documentation that supports the use of suitable material other than the A horizon, B horizon, or C horizon to obtain on the restored area equivalent or higher levels of yield as nonmined prime farmlands in the surrounding area under equivalent levels of management.

(5) A plan describing the conservation practices to be used to adequately control erosion and sedimentation and restoration of an adequate soil moisture regime during the period from completion of regrading until release of the performance bond under 312 IAC 25-5. Proper adjustments must be proposed so that final graded land is not exposed to erosion during seasons when vegetation or conservation practices cannot be established due to weather conditions.

(6) A demonstration based on soil surveys, scientific data, or standard agronomic practices that the applicant using the proposed method of reclamation has the capability, within a reasonable time, to achieve equivalent or higher levels of yield after mining as existed before mining.

(7) Current estimated level of yields under high levels of management of prime farmland.

*(Natural Resources Commission; 312 IAC 25-4-102; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3481, eff Dec 1, 2001)*

**312 IAC 25-4-102 Special categories of mining; prime farmland Version b**

Authority: IC 14-34-2-1

Affected: IC 4-21.5; IC 14-34; 30 CFR 785.17

*NOTE: This version of section effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register. See also preceding version of this section, effective until superseded by this version of section.*

Sec. 102. (a) In an initial permit application under this article for an existing surface coal mining operation that held a valid permit on August 3, 1977, with continuous permits held since that date, the applicant shall set forth the geographical area that is encompassed by the operation. The permit applied for, however, need only cover the area to be affected during the period of the permit for which the application is made. The director shall determine the geographical areas that are exempt from the prime farmland provisions of IC 14-34 and this article. In making the determination, the director shall consider all relevant factors bearing upon the extent of the geographical area upon which the applicant intended to conduct surface coal mining operations as of August 3, 1977, including the following:

- (1) A map showing the geographical location of the area for which the determination is requested and the area previously affected by surface coal mining and reclamation operations.
- (2) Information concerning the contractual coal sales commitments that existed before August 4, 1977, for the mining operation.
- (3) Maps and other documents that identify the location and extent of the applicant's surface and mineral rights control for all properties within the area upon which the determination is requested and whether the applicant:
  - (A) acquired the rights before August 4, 1977;
  - (B) acquired the rights after August 3, 1977; or
  - (C) does not control the rights currently.
- (4) Mining plans, maps, or other documents prepared before August 4, 1977, that identify the area intended to be mined by the existing operations.
- (5) Maps or other documents identifying the extent of coal exploration activity performed by the applicant in the area before August 4, 1977.
- (6) Copies of any other permits issued to the applicant by governmental agencies before August 4, 1977, with respect to those operations upon those lands for which this determination is sought.
- (7) The legal and financial commitments made by the applicant in connection with the mining operation as of August 3, 1977, with respect to those lands for which this determination is requested.
- (8) Any other relevant information.

(b) In making the determination required under subsection (a), no one (1) or group of factors is controlling. The determination shall be made by the director based upon all relevant factors of the particular surface coal mining operation for which the permit and determination is sought. The determination applies to all subsequent and continuous permits for the existing surface coal mining operation or until the director determines the operations have permanently ceased.

(c) The requirements of subsection (d) apply to a permittee who conducts or intends to conduct surface coal mining and reclamation operations on prime farmland historically used for cropland. Subsection (d) does not apply to an existing surface coal mining operation that held a valid permit on August 3, 1977, with continuous permits held since that date.

(d) If land within the proposed permit area is identified as prime farmland under section 39 or 80 of this rule, the applicant shall submit a plan for the mining and restoration of the land. Each plan must include the following:

- (1) A soil survey of the permit area under the standards of the National Cooperative Soil Survey and under the procedures set forth in United States Department of Agriculture Handbooks 436 (Soil Taxonomy, 1975) and 18 (Soil Survey Manual, 1951). The soil survey shall include a description of soil mapping units and a representative soil profile as determined by the United States Natural Resources Conservation Service, including, but not limited to:
  - (A) soil horizon depths;
  - (B) pH; and
  - (C) the range of soil densities;

for each prime farmland soil unit within the permit area. Other representative soil-profile descriptions from the locality, prepared according to the standards of the National Cooperative Soil Survey, may be used if their use is approved by the state

conservationist, United States Natural Resources Conservation Service. The director may request the operator to provide information on other physical and chemical soil properties as needed to make a determination that the operator has the technical capability to restore the prime farmland within the permit area to the soil reconstruction standards of 312 IAC 25-6-139 through 312 IAC 25-6-143.

(2) The proposed method and type of equipment to be used for removal, storage, and replacement of soil under 312 IAC 25-6-139 through 312 IAC 25-6-143.

(3) The location of areas to be used for the separate stockpiling of the soil and a plan for soil stabilization before redistribution.

(4) Applicable agricultural school studies, scientific data from comparable areas, or similar documentation that supports the use of suitable material other than the A horizon, B horizon, or C horizon to obtain on the restored area equivalent or higher levels of yield as nonmined prime farmlands in the surrounding area under equivalent levels of management.

(5) A plan describing the conservation practices to be used to adequately control erosion and sedimentation and restoration of an adequate soil moisture regime during the period from completion of regrading until release of the performance bond under 312 IAC 25-5. Proper adjustments must be proposed so that final graded land is not exposed to erosion during seasons when vegetation or conservation practices cannot be established due to weather conditions.

(6) A demonstration based on soil surveys, scientific data, or standard agronomic practices that the applicant using the proposed method of reclamation has the capability, within a reasonable time, to achieve equivalent or higher levels of yield after mining as existed before mining.

(7) Current estimated level of yields under high levels of management of prime farmland.

(e) Before any permit is issued for areas that include prime farmland, the director shall consult with the state conservationist of the Natural Resources Conservation Service. The state conservationist shall do the following:

(1) Provide for the review of and comment on the proposed method of soil reconstruction in the plan submitted under subsection (d).

(2) Suggest revisions resulting in more complete and adequate reconstruction if the state conservationist considers the soil reconstruction methods to be inadequate. The state conservationist has fifteen (15) days after consultation with the director to respond.

(3) Provide to the director a list of prime farmland soils, their location, physical and chemical characteristics, crop yields, and associated data necessary to support adequate prime farmland descriptions.

(4) Assist the director in determining the adequacy of all soil surveys required in subsection (d)(1) through (d)(3).

(f) A permit for the mining and reclamation of prime farmland may be granted by the director if the director finds, in writing, upon the basis of a complete application, the following:

(1) The approved proposed postmining land use of prime farmland will be cropland.

(2) The permit incorporates as specific conditions the contents of the plan submitted under subsection (d), after consideration of any revisions to that plan suggested by the state conservationist under subsection (e).

(3) The applicant has the technological capability to restore the prime farmland, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management.

(4) The proposed operations will be conducted in compliance with the requirements of 312 IAC 15-6-139 [*sic.*, 312 IAC 25-6-139] through 312 IAC 15-6-143 [*sic.*, 312 IAC 25-6-143] and other environmental protection performance and reclamation standards for mining and reclamation of prime farmland of the regulatory program.

(5) The aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining. Waterbodies, if any, to be constructed during mining and reclamation must be located within the postreclamation nonprime farmland portions of the permit area. The creation of any waterbody must be approved by the director, and the consent of all affected property owners within the permit area shall be obtained.

*(Natural Resources Commission; 312 IAC 25-4-102; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3481, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2449, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register)*



**312 IAC 25-4-103      Special categories of mining; variances for delay in contemporaneous reclamation requirement in combined surface and underground operations**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 103. (a) This section applies to any person who conducts or intends to conduct combined surface mining activities and underground mining activities, where contemporaneous reclamation as required by 312 IAC 25-6-48 is not practicable and a delay is requested to allow underground mining activities to be conducted before the reclamation operation for the surface mining activities can be completed, if that delay will allow underground mining activities to be conducted to ensure both maximum practical recovery of coal resources and to avoid multiple future disturbances of surface lands or waters.

(b) Any person who desires to obtain a variance under this section shall file with the director complete applications for both the surface mining activities and underground mining activities which are to be combined. The mining and reclamation operation plans for these permits shall contain appropriate narratives, maps, and plans that do the following:

- (1) Show why the proposed underground mining activities are necessary or desirable to assure maximum practical recovery of coal.
- (2) Show how multiple future disturbances of surface lands or waters will be avoided.
- (3) Identify the specific surface areas for which a variance is sought and the particular sections of IC 14-34 and this article.
- (4) Show how the activities will comply with 312 IAC 25-6-134 through 312 IAC 25-6-136 and other applicable requirements.
- (5) Show why the variance sought is necessary for the implementation of the proposed underground mining activities.
- (6) Provide an assessment of the adverse environmental consequences and damages, if any, that may result if the reclamation of surface mining activities is delayed.
- (7) Show how off-site storage of spoil will be conducted to comply with IC 14-34 and 312 IAC 25-6-34.

(c) A permit incorporating a variance under this section shall be issued by the director after the director finds, in writing, upon the basis of a complete application filed in accordance with this section the following:

- (1) The applicant has presented as part of the permit application specific, feasible plans for the proposed underground mining activities.
- (2) The proposed underground mining activities are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple future disturbances of surface land waters.
- (3) The applicant has satisfactorily demonstrated that the applications for the surface mining activities and underground mining activities conform to the requirements of the regulatory program and that all other permits necessary for the underground mining activities have been issued by the appropriate authority.
- (4) The surface area of surface mining activities proposed for the variance have been shown by the applicant to be necessary for implementing the proposed underground mining activities.
- (5) No substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation otherwise required by IC 14-34 and 312 IAC 25-6-5 through 312 IAC 25-6-69.
- (6) The operations will, insofar as a variance is authorized, be conducted in compliance with 312 IAC 25-6-134 through 312 IAC 25-6-136.
- (7) Provisions for off-site storage of spoil will comply with the appropriate requirements of IC 14-34 and 312 IAC 25-6-34.
- (8) Liability under the performance bond required to be filed by the applicant with the director under 312 IAC 25-5, and shall be for the duration of the underground mining activities and until all requirements of 312 IAC 25-5 have been complied with.
- (9) The permit for the surface mining activities contains specific conditions:
  - (A) delineating the particular surface areas for which a variance is authorized;
  - (B) identifying the particular requirements of 312 IAC 25-6-134 through 312 IAC 25-6-136 that are to be complied with in lieu of the otherwise applicable provisions of IC 14-34 and 312 IAC 25-6-5 through 312 IAC 25-6-69; and
  - (C) providing a detailed schedule for compliance with the particular requirements of 312 IAC 25-6-134 through 312 IAC 25-6-136 identified in clause (B).

(d) Variances granted under permits issued under this section will be reviewed by the director within three (3) years from the dates of issuance of the permit and any permit renewals. (*Natural Resources Commission; 312 IAC 25-4-103; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3482, eff Dec 1, 2001*)

**312 IAC 25-4-104 Special categories of mining; augering**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 104. (a) This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing auguring operations.

(b) Any application for a permit for operations covered by this section shall contain, in the mining and reclamation plan, a description of the auguring methods to be used and the measures to be used to comply with 312 IAC 25-6-137 and 312 IAC 25-6-138. (*Natural Resources Commission; 312 IAC 25-4-104; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3483, eff Dec 1, 2001*)

**312 IAC 25-4-105 Special categories of mining; in situ processing activities**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 105. (a) This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing in situ processing activities.

(b) Any application for a permit for operations covered by this section shall be made according to all requirements of sections 1 through 104 of this rule, this section, and sections 106 through 134 of this rule applicable to underground mining activities. In addition, the mining and reclamation operations plan for operations involving in situ processing activities shall contain information establishing how those operations will be conducted in compliance with 312 IAC 25-6-147 and 312 IAC 25-6-148, including the following:

- (1) Delineation of proposed holes, wells, and production zones for approval of the director.
- (2) Specifications of drill holes and casings proposed to be used.
- (3) A plan for treatment, confinement, or disposal of all acid-forming, toxic-forming, or radioactive gases, solids, or liquids constituting a fire, health, safety, or environmental hazard caused by the mining and recovery process.
- (4) Plans for monitoring surface water, ground water, and air quality as required by the director.

(c) No permit shall be issued for operations covered by this section unless the director first finds, in writing, upon the basis of a complete application made in accordance with subsection (b), that the operation will be conducted in compliance with sections 1 through 39 of this rule relating to underground mining activities and 312 IAC 25-6-70 through 312 IAC 25-6-132, 312 IAC 25-6-147, and 312 IAC 25-6-148. (*Natural Resources Commission; 312 IAC 25-4-105; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3483, eff Dec 1, 2001*)

**312 IAC 25-4-105.5 Special categories of mining; lands eligible for remining**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 105.5. (a) This section contains permitting requirements to implement section 114(d) of this rule. Any person who submits a permit application to conduct surface coal mining operation on lands eligible for remining must comply with this section.

(b) Any application for a permit under this section shall be made according to all requirements of this rule applicable to surface coal mining and reclamation operations. The application shall contain the following:

- (1) To the extent not otherwise addressed in the permit application, an identification of potential environmental and safety problems related to prior mining activity at the site that could be reasonably anticipated to occur. This identification shall be based on a due diligence investigation that shall include the following:

- (A) Visual observation at the site.
- (B) A record review of past mining at the site.
- (C) Environmental sampling tailored to current site conditions.

- (2) With regard to potential environmental and safety problems referred to in subdivision (1), a description of the mitigative measures that will be taken to ensure that the applicable reclamation requirements of the regulatory program can be met.

(c) The requirements of this section shall not apply after September 30, 2004. (*Natural Resources Commission; 312 IAC 25-4-105.5; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2451, eff upon the Department of Natural Resources receiving notice of approval from*

*the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register)*

**312 IAC 25-4-106      Special categories of mining; coal preparation plants not located within the permit area of a specific mine**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 106. (a) This section applies to a person who operates or intends to operate a coal preparation plant outside the permit area of a specific mine. That person must obtain a permit from the director under the regulatory program in accordance with this section.

(b) Any application for a permit for operations under this section shall contain in the mining and reclamation plan, specific plans, including descriptions, maps, and cross sections of the construction, operation, maintenance, and removal of the coal preparation plant. The plan shall demonstrate that those operations will be conducted in compliance with 312 IAC 25-6-145 and 312 IAC 25-6-146. *(Natural Resources Commission; 312 IAC 25-4-106; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3484, eff Dec 1, 2001)*

**312 IAC 25-4-107      Special categories of mining; coal preparation plants not located within the permit area of a specific mine which were not regulated prior to the effective date of this rule**

Authority: IC 14-34-2-1

Affected: IC 4-21.5-1-6; IC 14-34-18-3

Sec. 107. (a) This section applies to a person who operates or intends to operate a coal preparation plant outside the permit area of a specific mine and who was not subject to this article before February 1, 1994.

(b) No person shall operate a coal preparation plant after September 29, 1994, unless that person applies for a permit under section 106 of this rule by April 2, 1994.

(c) Except as prohibited under IC 14-34-18-3 or 312 IAC 25-3-1, a person who operates a coal preparation plant that was not subject to this article before February 1, 1994, shall not continue to operate without a permit after September 29, 1994, unless:

(1) a permit application is timely filed under subsection (b); and

(2) the commission has not entered a final agency action under IC 4-21.5-1-6 with respect to issuance or denial of the permit.

*(Natural Resources Commission; 312 IAC 25-4-107; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3484, eff Dec 1, 2001)*

**312 IAC 25-4-108      Review, public participation, and approval or disapproval of permit applications; permit terms and conditions; responsibility**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 108. The applicant shall provide all information in a complete permit application for review by the director in accordance with this section and sections 109 through 121 of this rule. *(Natural Resources Commission; 312 IAC 25-4-108; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3484, eff Dec 1, 2001)*

**312 IAC 25-4-109      Review, public participation, and approval or disapproval of permit applications; permit terms and conditions; responsibility**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 109. (a) An applicant for a permit, or revision or renewal of a permit, shall place an advertisement in a newspaper of general circulation that is published in the county in which the proposed surface coal mining and reclamation operation is located at least once a week for four (4) consecutive weeks. As used in this section, "published" refers to the process of composing, issuing, and distributing the newspaper to the public and does not refer only to the mechanical work of printing. If the proposed operation lies within more than one (1) county, the advertisement shall be placed in one (1) newspaper in each county where the proposed

operation will lie. The applicant shall place the advertisement in the newspaper at the same time the complete permit application is filed with the director. The advertisement must include, at a minimum, the following information:

- (1) The name and business address of the applicant.
- (2) A map or description that accomplishes all of the following:
  - (A) Clearly shows or describes the exact location and boundaries of the proposed permit area, including:
    - (i) a legal description of the area by quarter, quarter section, township, range, and county; and
    - (ii) the distance and direction of the site from a town, city, or another permanent feature sufficient for the operation to be readily located by a local resident.
  - (B) States the name of each United States Geological Survey seven and five-tenths (7.5) minute quadrangle map that contains the area described.

If a map is used, it shall indicate the north direction.

- (3) The location where a copy of the application is available for public inspection.
- (4) The names of the property owners of the property included in the application.
- (5) The name and address of the director to which written comments, objections, or requests for informal conferences on the application may be submitted under sections 110 through 112 of this rule.
- (6) If an applicant seeks a permit to mine within one hundred (100) feet of the outside right-of-way of a public road or to relocate or close a public road:
  - (A) a concise statement describing the public road;
  - (B) the particular part to be relocated or closed;
  - (C) where the relocation or closure is to occur; and
  - (D) the approximate timing and duration of the relocation.
- (7) A copy of the advertisement shall be mailed to the following:
  - (A) Each person identified in the application as owners of record of all surface and subsurface areas adjacent to any part of the permit area.
  - (B) Every person who has requested notice of such application.
- (8) If the application includes a request for an experimental practice under section 99 of this rule, a statement indicating that an experimental practice is requested and identifying the regulatory provisions for which a variance is requested.
- (9) The applicant shall make an application for a permit, or significant revision or renewal of a permit under sections 127 through 131 of this rule, available for the public to inspect and copy by filing a full copy of the application or permit with the appropriate library as required by this section. This copy of the application need not include confidential information exempt from disclosure under sections 15, 30, and 113 of this rule.
- (b) The applicant must file in the main public library identified in this subsection, for each county where the proposed mining is to occur, a complete copy of the application submitted to the director. This copy of the application is available for public inspection and reproduction. The main public library is the main branch of the library specified for the county as follows:
  - (1) Clay County, Brazil Public Library.
  - (2) Crawford County, Crawford County Public Library.
  - (3) Daviess County, Washington Carnegie Public Library.
  - (4) Dubois County, Jasper Public Library.
  - (5) Fountain County, Covington Public Library.
  - (6) Gibson County, Princeton Public Library.
  - (7) Greene County, Linton Public Library.
  - (8) Knox County, Knox County Public Library.
  - (9) Lawrence County, Lawrence County Public Library.
  - (10) Martin County, Shoals Public Library.
  - (11) Monroe County, Monroe County Public Library.
  - (12) Orange County, Paoli Public Library.
  - (13) Owen County, Spencer-Owen County Public Library.
  - (14) Parke County, Rockville Public Library.
  - (15) Perry County, Tell City-Perry County Public Library.
  - (16) Pike County, Petersburg and Pike County Public Library.

- (17) Posey County, Alexandrian Free Public Library.
- (18) Spencer County, Rockport-Ohio Township Public Library.
- (19) Sullivan County, Sullivan County Public Library.
- (20) Vanderburgh County, Evansville-Vanderburgh County Public Library.
- (21) Vermillion County, Clinton Public Library.
- (22) Vigo County, Vigo County Public Library.
- (23) Warrick County, Boonville-Warrick County Public Library.
- (24) Warren County, Williamsport-Washington Township Public Library.

(c) The applicant shall file the copy of the complete application under subsection (a)(9) by the first date of the newspaper advertisement of the application. The applicant shall file any subsequent modification of the application in the library described in subsection (b) for each county where mining is to occur at the same time the modification is submitted to the director.

(d) This subsection establishes standards with respect to the placement of a copy of the application in a library as required under subsections (b) through (c) as follows:

- (1) The applicant shall pay the library a fifty dollar (\$50) nonrefundable fee.
- (2) The applicant may remove the application or permit from the library only after all bond has been released from the permit.
- (3) If the applicant does not remove the application or permit from the library, the library, at its discretion, may return the application or permit to the applicant or destroy it after all bond has been released from the permit or retain the application or permit as its own.
- (4) An accurate and complete copy of the application or permit, except information exempted from public disclosure under sections 15, 30, and 113 of this rule, shall remain on file at the library and the office of the division of reclamation nearest the mining operation until final bond release and shall be available for public inspection and copying at a reasonable charge during normal business hours.
- (5) The applicant shall not be responsible for the maintenance of the copy of the application on file with the library.

(e) Upon receipt of a complete application for a permit or a revision or renewal of a permit, the director shall issue written notification of the following:

- (1) The applicant's intention to surface mine a particularly described tract of land.
- (2) The application number.
- (3) Where a copy of the application may be inspected.
- (4) Where comments on the application may be submitted under section 110 of this rule.
- (f) A copy of the written notification described in subsection (e) shall be sent to the following:

(1) Federal, state, and local government agencies with jurisdiction over or an interest in the area of the proposed operations, including the United States Department of Agriculture Soil Conservation Service, the United States Army Corps of Engineers, the National Park Service, state and federal fish and wildlife agencies, and the state historic preservation officer.

(2) Governmental planning agencies with jurisdiction to act with regard to land use, air, or water quality planning in the area of the proposed operation.

(3) Sewage and water treatment authorities and water companies either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment, or distribution facilities located in these areas.

(4) Operators of any pipeline located within the permit area or the adjacent area.

(5) The federal or state governmental agencies with authority to issue all other permits and licenses needed by the applicant in connection with operations proposed in the application.

(g) To avoid duplication, the director shall provide for the coordination of review and issuance of permits for surface coal mining and reclamation operations with applicable requirements of the following:

- (1) The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).
- (2) The Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661 et seq.).
- (3) The Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703 et seq.).
- (4) The National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq.).
- (5) The Bald Eagle Protection Act, as amended (16 U.S.C. 668a).

*(Natural Resources Commission; 312 IAC 25-4-109; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3484, eff Dec 1, 2001)*

**312 IAC 25-4-110      Review, public participation, and approval or disapproval of permit applications and permit terms and conditions; written comments on permit applications**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 110. (a) Written comments on permit applications may be submitted to the director by the public entities to whom notification is provided under section 109(e) of this rule, with respect to the effects of the proposed mining operations on the environment within their area of responsibility.

(b) These comments shall be submitted to the director within thirty (30) days of notification.

(c) The director will immediately transmit a copy of all such comments for filing and public inspection at the library where the applicant filed a copy of the application for permit under section 109(b) of this rule. A copy will also be transmitted to the applicant. (*Natural Resources Commission; 312 IAC 25-4-110; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3486, eff Dec 1, 2001*)

**312 IAC 25-4-111      Review, public participation, and approval or disapproval of permit applications and permit terms and conditions; right to file written objections**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 111. (a) Any person whose interests are or may be adversely affected or an officer or head of any federal, state, or local government agency or authority shall have the right to file written objections to an initial or revised application for a permit with the director, within thirty (30) days after the last publication of the newspaper notice required by section 109(a) of this rule.

(b) The director shall, immediately upon receipt of any written objections:

(1) transmit a copy of them to the applicant; and

(2) file a copy for public inspection at the library where the applicant filed a copy of the application for permit under section 109(b) of this rule.

(*Natural Resources Commission; 312 IAC 25-4-111; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3486, eff Dec 1, 2001*)

**312 IAC 25-4-112      Review, public participation, and approval or disapproval of permit applications; permit terms and conditions; informal conferences**

Authority: IC 14-34-2-1

Affected: IC 4-21.5-3; IC 14-34; 30 CFR 773.13(c)

Sec. 112. (a) Any person having an interest that is or may be adversely affected by the decision on the application or an officer or a head of a federal, state, or local government agency or authority may request, in writing, that the director hold an informal conference on the application for a permit, significant revision to the permit, or renewal of a permit. The request shall:

(1) briefly summarize the issues to be raised by the requestor at the conference;

(2) state whether the requestor desires to have the conference conducted in the locality of the proposed mining operations; and

(3) be filed with the director no later than thirty (30) days after the last publication of the newspaper advertisement required under section 109(a) of this rule.

(b) Except as provided in subsection (c), if an informal conference is requested in accordance with subsection (a), the director shall hold an informal conference within a reasonable time following the receipt of the request. The informal conference shall be conducted as follows:

(1) If requested under subsection (a)(2), it shall be held in the locality of the proposed surface coal mining and reclamation operation.

(2) The date, time, and location of the informal conference shall be sent to the applicant and other parties to the conference and advertised by the director in a newspaper of general circulation in the locality of the proposed surface coal mining and reclamation operation at least two (2) weeks before the scheduled conference.

(3) If requested, in writing, by a conference requestor at a reasonable time before the conference, the director may arrange with the applicant to grant parties to the conference access to the proposed permit area, and, to the extent that the applicant

has the right to grant access to it, to the adjacent area prior to the established date of the conference for the purpose of gathering information relevant to the conference.

(4) The requirements of IC 4-21.5-3 shall not apply to the conduct of the informal conference. The conference shall be conducted by a representative of the director, who may accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record shall be made of the conference unless waived by all the parties. The record shall be maintained and shall be accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee under 312 IAC 25-5.

(c) If all parties requesting the informal conference withdraw their request before the conference is held, the informal conference may be canceled.

(d) Informal conferences held in accordance with this section may be used by the director as the public hearing required under 312 IAC 25-3-2(e) on proposed relocation or closing of public roads. (*Natural Resources Commission; 312 IAC 25-4-112; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3487, eff Dec 1, 2001*)

**312 IAC 25-4-113      Review, public participation, and approval or disapproval of permit applications; permit terms and conditions; public availability Version a**

Authority: IC 14-34-2-1

Affected: IC 4-21.5-3-5; IC 5-14-3; IC 14-34

*NOTE: This version of section effective until superseded by the following version of this section, which is effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register.*

Sec. 113. (a) Information contained in a permit application on file with the director is a public record under IC 5-14-3, except as provided in this section.

(b) Information in a permit application that pertains only to the analysis of chemical and physical properties of the coal to be mined (except information regarding mineral or elemental contents of the coal that are potentially toxic in the environment) is confidential.

(c) Unless otherwise provided in this article, information contained in the reclamation plan required under sections 40 through 56 and 81 through 97 of this rule, that is not on public file under Indiana law, is a trade secret.

(d) The director shall provide for procedures to separate the information that is a public record from the information that is a trade secret.

(e) An applicant must clearly identify information which the applicant wishes to protect as a trade secret and must submit that information separately from other portions of the application.

(f) A person who opposes or seeks disclosure of information which pertains to the analysis of chemical and physical properties of the coal to be mined or information claimed as a trade secret may submit the request under section 110 of this rule. The person seeking or opposing disclosure and the applicant shall be notified, in writing, of an order made by the director with respect to that request. The order is subject to administrative review under IC 4-21.5-3-5 and sections 122 through 123 of this rule. (*Natural Resources Commission; 312 IAC 25-4-113; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3487, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182*)

**312 IAC 25-4-113      Review, public participation, and approval or disapproval of permit applications; permit terms and conditions; public availability Version b**

Authority: IC 14-34-2-1

Affected: IC 4-21.5-3-5; IC 5-14-3; IC 14-34

*NOTE: This version of section effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register. See also preceding version of this section, effective until superseded by this version of section.*

Sec. 113. (a) Information contained in a permit application on file with the director is a public record under IC 5-14-3, except as provided in this section.

(b) Information in a permit application that pertains only to the analysis of chemical and physical properties of the coal to be mined (except information regarding mineral or elemental contents of the coal that are potentially toxic in the environment) is confidential.

(c) Unless otherwise provided in this article, information contained in the reclamation plan required under sections 40 through 56 and 81 through 97 of this rule that is not on public file under Indiana law is a trade secret.

(d) The director shall provide for procedures to separate the information that is a public record from the information that is a trade secret.

(e) An applicant must clearly identify information that the applicant wishes to protect as a trade secret and must submit that information separately from other portions of the application.

(f) Information on the nature and location of archaeological resources on public and Indian land, as required under 16 U.S.C. 470aa through 16 U.S.C. 470mm, is confidential.

(g) A person who opposes or seeks disclosure of information that pertains to the analysis of chemical and physical properties of the coal to be mined, confidential information, or information claimed as a trade secret may submit the request under section 110 of this rule. The person seeking or opposing disclosure and the applicant shall be notified, in writing, of an order made by the director with respect to that request. The order is subject to administrative review under IC 4-21.5-3-5 and sections 122 through 123 of this rule. (*Natural Resources Commission; 312 IAC 25-4-113; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3487, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2451, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register*)

**312 IAC 25-4-114      Review, public participation, and approval or disapproval of permit applications; permit terms and conditions; review of permit applications Version a**

Authority: IC 14-34-2-1

Affected: IC 4-21.5-3-5; IC 4-21.5-5; IC 5-15-3; IC 14-34-4-6; IC 14-34-17

*NOTE: This version of section effective until superseded by the following version of this section, which is effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register.*

Sec. 114. (a) The director shall review the complete application for a permit, revision, or renewal, written comments, written objections submitted, and records of any informal conference or hearing held on the application and issue a written decision, either granting, requiring modification of, or denying the application within the following times:

(1) If:

(A) an informal conference is held under section 112 of this rule or a hearing under IC 14-34-4-6, the decision shall be made within sixty (60) days of the close of the conference or hearing unless a later time is necessary to provide an opportunity for a hearing under subsection (b)(2); or

(B) no informal conference is held under section 112 of this rule, or no hearing is held under IC 14-34-4-6, the decision shall be made within one hundred eighty (180) days from the date the administratively complete application is submitted to the director.

(2) The applicant for a permit or revision of a permit shall have the burden of establishing that the application is in compliance with all requirements of this article and the approved regulatory program.

(b) The director shall conduct a review of violations as follows:

(1) Based on available information concerning federal and state failure to abate cessation orders, unabated federal and state imminent harm cessation orders, delinquent civil penalties issued under 312 IAC 25-7, delinquent civil penalties issued under Section 518 of the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1268), or any state's equivalent counterpart, bond forfeitures where violations upon which the forfeitures were based have not been corrected, delinquent abandoned mine reclamation fees, and unabated violations of federal and state laws, rules, and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, the director shall not issue the permit if any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person



who owns or controls the applicant is currently in violation of IC 14-34, the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), or any other law, rule, or regulation referred to in this subdivision. In the absence of a failure to abate a cessation order, the director may presume that a notice of violation issued under 312 IAC 25-7 or a federal or state program has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, except where evidence to the contrary is set forth in the permit application, or where the notice of violation is issued for nonpayment of abandoned mine reclamation fees or civil penalties. If a current violation exists, the director shall require the applicant or person who owns or controls the applicant, before the issuance of the permit, to do either of the following:

(A) Submit to the director proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation.

(B) Establish to the director that the applicant, or any person owned or controlled by either the applicant or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of that violation. If the initial judicial review authority under IC 14-34-17 and IC 4-21.5-5 or a federal or state counterpart to IC 14-34-17 or IC 4-21.5-5, affirms the violation, then the applicant shall, within thirty (30) days of the judicial action, submit the proof required under clause (A).

(2) Any permit that is issued on the basis of proof submitted under subdivision (1)(A) that a violation is in the process of being corrected or pending the outcome of an appeal described in subdivision (1)(B), shall be conditionally issued.

(c) If the director makes a finding that the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violation of IC 14-34, the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), of such nature, duration, and with such resulting irreparable damage to the environment that indicates an intent not to comply with the provisions of IC 14-34, the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. Section 1201 et seq.), no permit shall be issued. Before such a finding becomes final, the applicant or operator shall be afforded an opportunity for a hearing on the determination as provided in IC 4-21.5 and 312 IAC 3. (*Natural Resources Commission; 312 IAC 25-4-114; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3488, eff Dec 1, 2001*)

**312 IAC 25-4-114 Review, public participation, and approval or disapproval of permit applications; permit terms and conditions; review of permit applications Version b**

Authority: IC 14-34-2-1

Affected: IC 4-21.5-3-5; IC 4-21.5-5; IC 5-15-3; IC 14-34-4-6; IC 14-34-17

*NOTE: This version of section effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register. See also preceding version of this section, effective until superseded by this version of section.*

Sec. 114. (a) The director shall review the complete application for a permit, revision or renewal, written comments, written objections submitted, and records of any informal conference or hearing held on the application and issue a written decision either granting, requiring modification of, or denying the application within the following times:

(1) If:

(A) an informal conference is held under section 112 of this rule or a hearing under IC 14-34-4-6, the decision shall be made within sixty (60) days of the close of the conference or hearing unless a later time is necessary to provide an opportunity for a hearing under subsection (b)(2); or

(B) no informal conference is held under section 112 of this rule, or no hearing is held under IC 14-34-4-6, the decision shall be made within one hundred eighty (180) days from the date the administratively complete application is submitted to the director.

(2) The applicant for a permit or revision of a permit shall have the burden of establishing that the application is in compliance with all requirements of this article and the approved regulatory program.

(b) The director shall conduct a review of violations as follows:

(1) Based on available information concerning federal and state failure to abate cessation orders, unabated federal and state imminent harm cessation orders, delinquent civil penalties issued under 312 IAC 25-7, delinquent civil penalties issued under Section 518 of the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1268), or any state's equivalent counterpart, bond forfeitures where violations upon which the forfeitures were based have not been corrected, delinquent

abandoned mine reclamation fees, and unabated violations of federal and state laws, rules, and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, the director shall not issue the permit if any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of IC 14-34, the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), or any other law, rule, or regulation referred to in this subdivision. In the absence of a failure to abate a cessation order, the director may presume that a notice of violation issued under 312 IAC 25-7 or a federal or state program has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, except where evidence to the contrary is set forth in the permit application or where the notice of violation is issued for nonpayment of abandoned mine reclamation fees or civil penalties. If a current violation exists, the director shall require the applicant or person who owns or controls the applicant, before the issuance of the permit, to do either of the following:

(A) Submit to the director proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation.

(B) Establish to the director that the applicant, or any person owned or controlled by either the applicant or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of that violation. If the initial judicial review authority under IC 14-34-17 and IC 4-21.5-5, or a federal or state counterpart to IC 14-34-17 or IC 4-21.5-5, affirms the violation, then the applicant shall, within thirty (30) days of the judicial action, submit the proof required under clause (A).

(2) Any permit that is issued on the basis of proof submitted under subdivision (1)(A) that a violation is in the process of being corrected or pending the outcome of an appeal described in subdivision (1)(B) shall be conditionally issued.

(c) If the director makes a finding that the applicant, anyone who owns or controls the applicant, or the operator specified in the application controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violation of IC 14-34, the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.) of such nature, duration, and with such resulting irreparable damage to the environment that indicates an intent not to comply with the provisions of IC 14-34, the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. Section 1201 et seq.), no permit shall be issued. Before such a finding becomes final, the applicant or operator shall be afforded an opportunity for a hearing on the determination as provided in IC 4-21.5 and 312 IAC 3.

(d) After October 24, 1992, the following apply:

(1) The prohibitions of subsection (b) regarding the issuance of a new permit shall not apply to any violation that:

(A) occurs after October 24, 1992;

(B) is unabated; and

(C) results from an unanticipated event or condition that arises from *[sic., from]* a surface coal mining and reclamation operation on lands that are eligible for remining under a permit:

(i) issued before September 30, 2004, or any renewals thereof; and

(ii) held by the person making application for the new permit.

(2) A permit issued under section 105.5 of this rule, an event or condition shall be presumed to be unanticipated for the purposes of this subsection if the event or condition:

(A) arose after permit issuance;

(B) was related to prior mining; and

(C) was not identified in the permit.

*(Natural Resources Commission; 312 IAC 25-4-114; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3488, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2452, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register)*

### **312 IAC 25-4-115      Review, public participation, and approval or disapproval of permit applications; permit terms and conditions; permit approval or denial Version a**

Authority: IC 14-34-2-1

Affected: IC 14-34

*NOTE: This version of section effective until superseded by the following version of this section, which is effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register.*

Sec. 115. (a) No permit application or application for a significant revision of a permit shall be approved unless the application affirmatively demonstrates, and the director makes written findings on the basis of information set forth in the application or from information otherwise available that is documented in the approval, the following:

- (1) The permit application is accurate and complete and in compliance with all requirements of IC 14-34, the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), and this article.
- (2) The applicant has demonstrated that reclamation, as required by IC 14-34, the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), and this article, can be accomplished under the reclamation plan contained in the permit application.
- (3) The proposed permit area is shown:
  - (A) not within an area under study or administrative proceedings under a petition filed under 312 IAC 25-3-6 through 312 IAC 25-3-12 to have an area designated as unsuitable for surface coal mining operations unless the applicant demonstrates that before January 4, 1977, substantial legal and financial commitments had been made in relation to the operation covered by the permit application; or
  - (B) not within an area designated as unsuitable for mining under 312 IAC 25-3.
- (4) For mining operations where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the director the documentation required under section 19(b) or 60(b) of this rule.
- (5) The assessment of the probable cumulative impacts of all anticipated coal mining in the cumulative impact area on the hydrologic balance, as described in sections 47(c) and 85(c) of this rule, has been made by the director, and the operations proposed under the application have been designed to prevent material damage to the hydrologic balance outside the proposed permit area.
- (6) The applicant has demonstrated that any existing structure will comply with the applicable performance standards of 312 IAC 25-6-5 through 312 IAC 25-6-148 and section 116 of this rule.
- (7) The applicant has paid all reclamation fees required by 312 IAC 25-10 and all reclamation fees from previous and existing operations as required by 30 CFR 870.12.
- (8) The applicant has satisfied the applicable requirements of section 98 of this rule with respect to special categories of mining.
- (9) The applicant has, if applicable, satisfied the requirements for approval of a long term, intensive agricultural postmining land use, in accordance with the requirements of 312 IAC 25-6-54 or 312 IAC 25-6-115.
- (10) The operation would not affect the continued existence of endangered or threatened species, or result in destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).
- (11) The effect has been taken into account of the proposed mining operation on properties or sites eligible for listing on the National Register of Historic Places or the Indiana state register of historic sites and structures. This finding may be supported in part by the inclusion of appropriate permit conditions or changes in the operation plan to protect these properties or sites or by a documented decision that no additional protection measures are necessary. In making this finding, the director shall take into account the following:
  - (A) The relative importance of the property or site to other properties or sites of a similar nature in Indiana that are listed on or eligible for listing on the National Register of Historic Places or on the Indiana state register of historic sites and structures based upon information available from the division of historic preservation and archaeology of the department.
  - (B) The estimated cost of any treatment or mitigation measures required by the director. The estimate shall be provided by the applicant and shall be prepared by a person qualified as a principal investigator at 312 IAC 21-3-4. The estimate shall be accompanied by the scope of work and any other documents that provide the basis for that estimate. A decision that treatment or mitigation measures are not required shall not be based on cost alone.
- (12) For a proposed remining operation where the applicant intends to reclaim under 312 IAC 25-6-53 or 312 IAC 25-6-114, the site of the operation is a previously mined area as defined in 312 IAC 25-1-107.
  - (b) If the director decides to approve the application, the applicant will submit the performance bond or other equivalent guarantee required under 312 IAC 25-5 prior to the issuance of the permit.
  - (c) After an application is approved, but before the permit is issued, the director shall reconsider the decision to approve the application based on the compliance review required by section 114(b)(1) of this rule in light of any new information submitted

under sections 17 and 18 of this rule. (*Natural Resources Commission; 312 IAC 25-4-115; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3489, eff Dec 1, 2001*)

**312 IAC 25-4-115      Review, public participation, and approval or disapproval of permit applications; permit terms and conditions; permit approval or denial Version b**

Authority: IC 14-34-2-1

Affected: IC 14-34

*NOTE: This version of section effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register. See also preceding version of this section, effective until superseded by this version of section.*

Sec. 115. (a) No permit application or application for a significant revision of a permit shall be approved unless the application affirmatively demonstrates, and the director makes written findings on the basis of information set forth in the application or from information otherwise available that is documented in the approval, the following:

- (1) The permit application is accurate and complete and in compliance with all requirements of IC 14-34, the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), and this article.
- (2) The applicant has demonstrated that reclamation, as required by IC 14-34, the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), and this article, can be accomplished under the reclamation plan contained in the permit application.
- (3) The proposed permit area is shown not within an area:
  - (A) under study or administrative proceedings under a petition filed under 312 IAC 25-3-6 through 312 IAC 25-3-12 to have an area designated as unsuitable for surface coal mining operations unless the applicant demonstrates that before January 4, 1977, substantial legal and financial commitments had been made in relation to the operation covered by the permit application; or
  - (B) designated as unsuitable for mining under 312 IAC 25-3.
- (4) For mining operations where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the director the documentation required under section 19(b) or 60(b) of this rule.
- (5) The assessment of the probable cumulative impacts of all anticipated coal mining in the cumulative impact area on the hydrologic balance, as described in sections 47(c) and 85(c) of this rule, has been made by the director, and the operations proposed under the application have been designed to prevent material damage to the hydrologic balance outside the proposed permit area.
- (6) The applicant has demonstrated that any existing structure will comply with the applicable performance standards of 312 IAC 25-6-5 through 312 IAC 25-6-148 and section 116 of this rule.
- (7) The applicant has paid all reclamation fees required by 312 IAC 25-10 and all reclamation fees from previous and existing operations as required by 30 CFR 870.12.
- (8) The applicant has satisfied the applicable requirements of section 98 of this rule with respect to special categories of mining.
- (9) The applicant has, if applicable, satisfied the requirements for approval of a long term, intensive agricultural postmining land use, in accordance with the requirements of 312 IAC 25-6-54 or 312 IAC 25-6-115.
- (10) The operation would not affect the continued existence of endangered or threatened species, or result in destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).
- (11) The effect has been taken into account of the proposed mining operation on properties or sites eligible for listing on the National Register of Historic Places or the Indiana state register of historic sites and structures. This finding may be supported in part by the inclusion of appropriate permit conditions or changes in the operation plan to protect these properties or sites or by a documented decision that no additional protection measures are necessary. In making this finding, the director shall take into account the following:
  - (A) The relative importance of the property or site to other properties or sites of a similar nature in Indiana that are listed on or eligible for listing on the National Register of Historic Places or on the Indiana state register of historic sites and structures based upon information available from the division of historic preservation and archeology of the

department.

(B) The estimated cost of any treatment or mitigation measures required by the director. The estimate shall be provided by the applicant and shall be prepared by a person qualified as a principal investigator at 312 IAC 21-3-4. The estimate shall be accompanied by the scope of work and any other documents that provide the basis for that estimate. A decision that treatment or mitigation measures are not required shall not be based on cost alone.

(12) For a proposed remining operation where the applicant intends to reclaim under 312 IAC 25-6-53 or 312 IAC 25-6-114, the site of the operation is a previously mined area as defined in 312 IAC 25-1-107.

(13) For permits to be issued under section 105.5 of this rule, the permit application must contain the following:

(A) Lands eligible for remining.

(B) An identification of any potential environmental and safety problems related to prior mining activity that could reasonably be anticipated to occur at the site.

(C) Mitigation plans to sufficiently address potential environmental and safety problems so that reclamation as required by the applicable requirements of the regulatory program can be accomplished.

(b) If the director decides to approve the application, the applicant will submit the performance bond or other equivalent guarantee required under 312 IAC 25-5 prior to the issuance of the permit.

(c) After an application is approved, but before the permit is issued, the director shall reconsider the decision to approve the application based on the compliance review required by section 114(b)(1) of this rule in light of any new information submitted under sections 17 and 18 of this rule. (*Natural Resources Commission; 312 IAC 25-4-115; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3489, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2453, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register*)

**312 IAC 25-4-116      Review, public participation, and approval or disapproval of permit applications; permit terms and conditions; existing structures, permit approval or denial**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 116. (a) No application for a permit or revision that proposes to use an existing structure in connection with or to facilitate the proposed surface coal mining and reclamation operation shall be approved, unless the applicant demonstrates and the director finds, in writing, on the basis of information set forth in the complete application under section 41 of this rule that:

(1) the structure meets the performance standards of IC 14-34 and 312 IAC 25-6; and

(2) no significant harm to the environment or public health or safety will result from use of the structure.

(b) If the applicant demonstrates, and the director finds, that immediate compliance with the performance standards of 312 IAC 25-6 for any structure is not practicable, the director shall require the applicant to submit a compliance plan for modification or reconstruction of the structure and shall find prior to the issuance of the permit that:

(1) the modification or reconstruction of the structure will bring the structure into compliance with the design and performance standards of 312 IAC 25-6 as soon as possible, but not later than six (6) months after issuance of the permit;

(2) the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction; and

(3) the applicant will monitor the structure to determine compliance with the performance standards of 312 IAC 25-6.

(*Natural Resources Commission; 312 IAC 25-4-116; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3490, eff Dec 1, 2001*)

**312 IAC 25-4-117      Review, public participation, and approval or disapproval of permit applications; permit terms and conditions; permit approval or denial actions**

Authority: IC 14-34-2-1

Affected: IC 4-21.5; IC 14-34-2-2; 30 CFR 773.15; 30 CFR 773.19

Sec. 117. (a) The director shall approve, require modification of, or deny all applications for permits on the basis of the following qualifications:

(1) Complete applications for permits and revisions or renewals thereof.

(2) Public participation as provided for in this article.

(3) Compliance with any applicable provisions of sections 98 through 107 of this rule.

(4) Processing and review of applications as required by sections 108 through 116 of this rule, this section, and sections 119 through 121 of this rule.

(b) The director shall take action, as required under subsection (a), within the following times:

(1) Except as provided for in subdivision (2), a complete application submitted to the director after the time required under section 5(a) of this rule and in accordance with section 5(b) of this rule shall be processed by the director, so that an application is approved or denied within the following terms:

(A) If an informal conference has been held under section 112 of this rule, within sixty (60) days of the close of the conference.

(B) If no informal conference has been held under section 112 of this rule, then within the time frames specified in section 5 of this rule.

(2) Notwithstanding any other provision of this section, no time limit under IC 14-34 or this section requiring the director to act shall expire from the time a proceeding is initiated under section 114(c) of this rule until a final agency determination under IC 4-21.5 and IC 14-34-2-2 has been made.

(c) If an informal conference is held under section 112 of this rule, the director shall give written findings to the permit applicant and to each person who is a party to the conference, approving, modifying, or denying the application in whole, or in part, and stating the specific reasons therefor in the decision.

(d) If no such informal conference has been held, the director shall give its written findings to the permit applicant, approving, modifying, or denying the application in whole, or in part, and stating the specific reasons in the decision.

(e) Simultaneously, the director shall do the following:

(1) Give a copy of the decision to each person and government official who filed a written objection or comment with respect to the application and the local office of surface mining.

(2) Publish a summary of the decision in a newspaper of general circulation in the general area of the proposed operation.

(f) Within ten (10) days after the granting of a permit, including the filing of the performance bond or other equivalent guarantee that complies with 312 IAC 25-5, the director shall notify the local government officials in the local political subdivision in which the land to be affected is located that a permit has been issued and shall describe the location of the lands within the permit area. (*Natural Resources Commission; 312 IAC 25-4-117; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3490, eff Dec 1, 2001*)

**312 IAC 25-4-118      Review, public participation, and approval or disapproval of permit applications; permit terms and conditions; permit conditions Version a**

Authority: IC 14-34-2-1

Affected: IC 4-21.5-3; IC 14-34-13; IC 14-34-15-1; IC 14-34-15-2; 30 CFR 773.17

*NOTE: This version of section effective until superseded by the following version of this section, which is effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register.*

Sec. 118. Each permit issued by the director shall be subject to the following conditions:

(1) The permittee shall conduct surface coal mining and reclamation operations only on those lands that are specifically designated as the permit area on the maps submitted with the application and authorized for the term of the permit and are subject to the performance bond or other equivalent guarantee in effect under 312 IAC 25-5.

(2) The permittee shall conduct all surface coal mining and reclamation operations only as described in the approved application, except to the extent that the director otherwise directs in the permit.

(3) The permittee shall comply with the terms and conditions of the permit, all applicable performance standards of IC 14-34, and the requirements of this article.

(4) Without advance notice, delay, or a search warrant, upon presentation of appropriate credentials, the permittee shall allow the authorized representatives of the director to:

(A) have the right of entry provided for in IC 14-34-15-1; and

(B) be accompanied by private persons for the purpose of conducting an inspection in accordance with IC 14-34-15-2 when the inspection is in response to an alleged violation reported to the director by a private person.

- (5) The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit, including, but not limited to, the following:
  - (A) Any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of noncompliance.
  - (B) Immediate implementation of measures necessary to comply.
  - (C) Warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance.
- (6) As applicable, the permittee shall comply with the requirements of section 41 of this rule and 312 IAC 25-6-5 through 312 IAC 25-6-132 for compliance, modification, or abandonment of existing structures.
- (7) The operator shall pay all reclamation fees required by IC 14-34-13 for coal produced under the permit for sale, transfer, or use in the manner required by 312 IAC 25-10.
- (8) Within thirty (30) days after a cessation order is issued under 312 IAC 25-7-5, for operations conducted under the permit, except where a stay of the cessation order is granted and remains in effect, the permittee shall either submit to the director the following information, current to the date the cessation order was issued, or notify the director, in writing, that there has been no change since the immediately preceding submittal of such information:
  - (A) any new information needed to correct or update the information previously submitted to the director by the permittee under section [sic., sections] 17(c) and 58(a)(4) of this rule; or
  - (B) if not previously submitted, the information required from a permit applicant by section [sic., sections] 17(c) and 58(a)(4) of this rule.

*(Natural Resources Commission; 312 IAC 25-4-118; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3491, eff Dec 1, 2001, except subdivision (4); errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182)*

**312 IAC 25-4-118      Review, public participation, and approval or disapproval of permit applications; permit terms and conditions; permit conditions Version b**

Authority: IC 14-34-2-1

Affected: IC 4-21.5-3; IC 14-34-13; IC 14-34-15-1; IC 14-34-15-2; 30 CFR 773.17

*NOTE: This version of section effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register. See also preceding version of this section, effective until superseded by this version of section.*

Sec. 118. Each permit issued by the director shall be subject to the following conditions:

- (1) The permittee shall conduct surface coal mining and reclamation operations only on those lands that are specifically designated as the permit area on the maps submitted with the application and authorized for the term of the permit and are subject to the performance bond or other equivalent guarantee in effect under 312 IAC 25-5.
- (2) The permittee shall conduct all surface coal mining and reclamation operations only as described in the approved application, except to the extent that the director otherwise directs in the permit.
- (3) The permittee shall comply with the terms and conditions of the permit, all applicable performance standards of IC 14-34, and the requirements of this article.
- (4) Without advance notice, delay, or a search warrant, upon presentation of appropriate credentials, the permittee shall allow the authorized representatives of the director and the Secretary of the Interior to:
  - (A) have the right of entry provided for in IC 14-34-15-1; and
  - (B) be accompanied by private persons for the purpose of conducting an inspection in accordance with IC 14-34-15-2 when the inspection is in response to an alleged violation reported to the director by a private person.
- (5) The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit, including, but not limited to, the following:
  - (A) Any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of noncompliance.
  - (B) Immediate implementation of measures necessary to comply.
  - (C) Warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance.

(6) As applicable, the permittee shall comply with the requirements of section 41 of this rule and 312 IAC 25-6-5 through 312 IAC 25-6-132 for compliance, modification, or abandonment of existing structures.

(7) The operator shall pay all reclamation fees required by IC 14-34-13 for coal produced under the permit for sale, transfer, or use in the manner required by 312 IAC 25-10.

(8) Within thirty (30) days after a cessation order is issued under 312 IAC 25-7-5, for operations conducted under the permit, except where a stay of the cessation order is granted and remains in effect, the permittee shall either submit to the director the information in clauses (A) and (B), current to the date the cessation order was issued, or notify the director, in writing, that there has been no change since the immediately preceding submittal of such information:

(A) any new information needed to correct or update the information previously submitted to the director by the permittee under sections 17(c) and 58(a)(4) of this rule; or

(B) if not previously submitted, the information required from a permit applicant by sections 17(c) and 58(a)(4) of this rule.

*(Natural Resources Commission; 312 IAC 25-4-118; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3491, eff Dec 1, 2001, except subdivision (4); errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2454, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register)*

**312 IAC 25-4-119      Review, public participation, and approval or disapproval of permit applications; permit terms and conditions; permit terms**

Authority: IC 14-34-2-1

Affected: IC 14-34; 30 CFR 773.19

Sec. 119. (a) Each permit shall be issued for a fixed term not to exceed five (5) years. A longer fixed permit term may be granted by the director if:

(1) the application is full and complete for the specified longer term and complies with this article; and

(2) the applicant shows that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing of equipment and the opening of the operation, and this need is confirmed, in writing, by the applicant's proposed source for the financing.

(b) A permit shall terminate if the permittee has not commenced the surface coal mining and reclamation operation covered by the permit within three (3) years of the issuance of the permit. The director may grant a reasonable extension of time for commencement of these operations, upon receipt of a written statement showing that an extension is necessary, if:

(1) litigation precludes the commencement or threatens substantial economic loss to the permittee; or

(2) there are conditions beyond the control and without the fault or negligence of the permittee.

With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at the time that the construction of the synthetic fuel or generating facility is initiated. An extension of time granted by the director under this subsection shall be specifically set forth in the permit, and notice of the extension shall be made to the public.

(c) Permits may be ordered suspended, revoked, or modified by the director in accordance with the following:

(1) Sections 99 through 101, 103, and 122 of this rule.

(2) 312 IAC 25-7-1 through 312 IAC 25-7-4.

(3) 312 IAC 25-7-7.

(4) 312 IAC 25-7-13 through 312 IAC 25-7-21.

*(Natural Resources Commission; 312 IAC 25-4-119; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3491, eff Dec 1, 2001)*

**312 IAC 25-4-120      Review, public participation, and approval or disapproval of permit applications; permit terms and conditions; right of entry**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 120. (a) A permit must ensure that the requirements of this section are satisfied.



(b) Except to the extent the director otherwise directs in the permit that specific actions be taken, the permittee shall conduct all surface coal mining and reclamation operations as described in the complete application.

(c) The permittee shall allow the director, without advance notice or a search warrant, upon presentation of appropriate credentials and without delay, to do the following:

(1) Have the rights of entry to, upon, and through any coal exploration or surface coal mining and reclamation operation.

(2) Be accompanied by private persons for the purposes of conducting an inspection when the inspection is in response to an alleged violation reported to the director by the private person.

(d) The permittee shall conduct surface coal mining and reclamation operations only on those lands specifically designated on the permit maps submitted under sections 26 through 56 or 67 through 97 of this rule and approved for the term of the permit and that are subject to the performance bond in effect under 312 IAC 25-5-1 through 312 IAC 25-5-19.

(e) The operator shall pay all reclamation fees required by 30 CFR 870 for coal produced under the permit for sale, transfer, or use, in the manner required by 30 CFR 870. (*Natural Resources Commission; 312 IAC 25-4-120; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3492, eff Dec 1, 2001*)

**312 IAC 25-4-121      Review, public participation, and approval or disapproval of permit applications; permit terms and conditions; mine maps**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 121. All operations in existence prior to July 29, 1982, that seek approval of a permit under the requirements of IC 14-34 shall be required to submit to the director an accurate map of the mine and permit area at a scale of 1:6000 or larger. The map shall show, as of the effective date of the permanent regulatory program permit, the lands from which coal has not yet been removed and the lands and structures that have been used or disturbed to facilitate mining as of that date. This map shall be submitted to the director within sixty (60) days after the effective date of such permit. (*Natural Resources Commission; 312 IAC 25-4-121; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3492, eff Dec 1, 2001*)

**312 IAC 25-4-122      Administrative review of approval or denial of application**

Authority: IC 14-34-2-1

Affected: IC 4-21.5; IC 14-34

Sec. 122. (a) Whenever an application for any permit, revision, or renewal is approved or denied under the provisions of this article or IC 14-34, the applicant or any person with an interest that is or may be adversely affected shall be entitled to a hearing before the commission on such approval or denial upon filing within thirty (30) days after receipt of notice of such approval or denial or within thirty (30) days after publication of the summary of the decision in the newspaper pursuant to section 117(e)(2) of this rule a written request for such hearing. Such hearings and appeals therefrom shall be conducted in accordance with IC 4-21.5.

(b) Appeal from the commission's or director's final determination granting or denying a permit shall be as provided in section 123 of this rule.

(c) Where a hearing is requested under subsection (a), the commission may, under such conditions as it may prescribe, grant appropriate temporary relief pending final determination of the proceedings if:

(1) all parties to the proceedings are notified and given an opportunity to be heard on a request for temporary relief;

(2) the person requesting temporary relief shows a substantial likelihood that he or she will prevail on the merits of the final determination of the proceeding;

(3) temporary relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources; and

(4) the relief sought is not the issuance of a permit where a permit has been denied, in whole or in part, by the director.

(*Natural Resources Commission; 312 IAC 25-4-122; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3492, eff Dec 1, 2001*)

**312 IAC 25-4-123      Administrative and judicial review of decisions by the commission on permit applications; judicial review**

Authority: IC 14-34-2-1

Affected: IC 4-21.5; IC 14-34-15-12

Sec. 123. (a) Any action of the director or the commission is subject to judicial review by a court of competent jurisdiction. The court shall comply with IC 4-21.5 in all judicial review proceedings. The availability of judicial review under section 122 of this rule and this section does not limit the operation of rights under IC 14-34-15-12.

(b) The commencement of a judicial review proceeding under section 122 of this rule and this section does not operate as a stay of the action, order, or decision of the director or the commission.

(c) Pending final determinations of the judicial review proceeding, the court may grant temporary relief if:

- (1) all parties to the proceedings were notified and given an opportunity to be heard on a request for temporary relief;
- (2) the person requesting the relief shows a substantial likelihood that he or she will prevail on the merits of the final determination of the proceeding; and
- (3) the temporary relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources.

*(Natural Resources Commission; 312 IAC 25-4-123; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3493, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182)*

**312 IAC 25-4-124      Administrative and judicial review of improvidently issued permits; general procedures**

Authority: IC 14-34-2-1

Affected: IC 4-21.5; IC 14-34

Sec. 124. (a) If the director has reason to believe that a surface coal mining and reclamation permit was improvidently issued, the director shall review the circumstances under which the permit was issued, using the criteria in subsection (b). If the director finds the permit was improvidently issued, the director shall comply with subsection (c).

(b) The director shall find that a surface coal mining and reclamation permit was improvidently issued if:

- (1) under the violations review criteria of the regulatory program at the time the permit was issued:
  - (A) the director should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or
  - (B) the permit was issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order subsequently was issued;
- (2) the violation, penalty, or fee:
  - (A) remains unabated or delinquent; and
  - (B) is not the subject of a good faith appeal or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; and
- (3) where:
  - (A) the permittee was linked to the violation, penalty, or fee through ownership or control; or
  - (B) under the violations review criteria of the regulatory program at the time the permit was issued, an ownership or control link between the permittee and the person responsible for the violation, penalty, or fee still exists, or where the link was severed, the permittee continues to be responsible for the violation, penalty, or fee.

(c) If the director finds, under subsection (b), that, because of an unabated violation or a delinquent penalty or fee, a permit was improvidently issued, one (1) or more of the following remedial measures shall be used:

- (1) Implement, with the cooperation of the permittee or other person responsible, and the responsible agency, a plan for abatement of the violation or a schedule for payment of the penalty or fee.
- (2) Impose on the permit a condition requiring the permittee or other person responsible to abate the violation in a reasonable period of time or pay the penalty or fee.
- (3) Suspend the permit until the violation is abated or the penalty or fee is paid.
- (4) Rescind the permit under section 125 of this rule.

*(Natural Resources Commission; 312 IAC 25-4-124; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3493, eff Dec 1, 2001)*

**312 IAC 25-4-125      Administrative and judicial review of decisions by the director on permit applications; judicial review; improvidently issued permits; rescission procedures**

Authority: IC 14-34-2-1

Affected: IC 4-21.5-3; IC 14-34

Sec. 125. (a) Where the director, under section 124(c)(4) of this rule, elects to rescind an improvidently issued permit, the director shall serve on the permittee a notice of proposed suspension and rescission that includes the reasons for the finding of the director under section 124(b) of this rule and states that, after a specified period of time not to exceed ninety (90) days, the permit automatically will become suspended, and not to exceed ninety (90) days thereafter rescinded, unless within those periods the permittee submits proof, and the director finds one (1) of the following:

(1) The finding of the director under section 124(b) of this rule was erroneous.

(2) The permittee or other person responsible has abated the violation on which the finding was based, or paid the penalty or fee, to the satisfaction of the responsible agency.

(3) The violation, penalty, or fee is the subject of a good faith appeal or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency.

(4) Since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty, or fee.

(b) After permit suspension or rescission, the permittee shall cease all surface coal mining and reclamation operations under the permit, except for violation abatement and for reclamation and other environmental protection measures as required by the director.

(c) The permittee may file an appeal for administrative review of the notice under IC 4-21.5-3. (*Natural Resources Commission; 312 IAC 25-4-125; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3494, eff Dec 1, 2001*)

**312 IAC 25-4-126      Permit reviews; revisions, renewals, transfer, sale, and assignment of rights granted under permits; review**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 126. (a) The director will review each permit issued and outstanding annually during the term of the permit or no less frequent than the middle of the permit term.

(b) After this review, the director may, by order, require reasonable revision or modification of the permit provisions to ensure compliance with IC 14-34 and this article.

(c) Copies of the decision of the director will be sent to the permittee.

(d) Any order of the director requiring revision or modification of permits shall be based upon written findings and shall be subject to the provisions for administrative and judicial review of sections 122 and 123 of this rule. (*Natural Resources Commission; 312 IAC 25-4-126; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3494, eff Dec 1, 2001*)

**312 IAC 25-4-127      Permit reviews; revisions, renewals, and transfer, sale, or assignment of rights granted under permits; permit revisions**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 127. (a) A revision to a permit shall be obtained according to the following:

(1) For changes in surface coal mining or reclamation operations described in the original application and approved under the original permit, when such changes constitute a significant departure from the method of conduct of mining or reclamation operations contemplated by the original permit. Changes that constitute a significant departure shall include, but are not limited to, those that could result in the operator's inability to comply with 312 IAC 25-6-1 through 312 IAC 25-6-148 or present a hazard to public health and safety.

(2) When required by an order issued under section 126 of this rule.

(3) In order to continue operation after the cancellation or material reduction of the liability insurance policy, or performance

bond upon which the original permit was issued.

(b) The application for revision shall be filed in accordance with the following:

(1) The permittee shall submit the application to the director within the time provided for under section 5(c) of this rule.

(2) Any application for a revision that proposes significant alterations in the operations described in the materials submitted in the application for the original permit under sections 16 through 107 of this rule or in the conditions of the original permit shall, at a minimum, be subject to the requirements of sections 108 through 123 of this rule.

(c) Any extensions to the area covered by a permit, except for incidental boundary revisions under subsection (d), shall be made by application for a new permit and shall not be approved under section 126 of this rule, this section, and sections 128 through 134 of this rule.

(d) Incidental boundary revision criteria consist of the following:

(1) Incidental boundary revisions are those that:

(A) do not constitute a significant departure from the method of conduct of mining or reclamation operations contemplated by the original permit as defined in subsection (a)(1);

(B) are required for the orderly and continuous mining and reclamation operation;

(C) adjoin the permit acreage;

(D) would be mined and reclaimed in conformity with the approved permit plans; and

(E) do not exceed ten percent (10%) of the original permit acres or twenty (20) acres, whichever is less.

(2) The aggregate of all incidental boundary revisions for the permit shall not exceed fifteen percent (15%) of the original permit area, provided, however, the aggregate of all incidental boundary revisions that involve coal removal shall not exceed ten percent (10%) of the original permit area. The director may waive the fifteen percent (15%) aggregate limitation if the director finds all other provisions of subdivision (1) are met and the interests of the public will not be adversely affected.

(3) A permittee may obtain an incidental boundary revision by submitting to the director an application that shall contain the following information:

(A) The size of the original permit area, and of the additional area.

(B) The premining and postmining land uses.

(C) A showing that the other requirements of subdivisions (1) and (2) are satisfied.

(D) A map showing the additional area.

(E) Proof of the permittee's legal right to enter and conduct surface coal mining and reclamation operations on the additional area.

(F) Any necessary plans that are not contained in the already approved permit.

(G) A statement indicating whether or not any areas unsuitable for mining as provided in 312 IAC 25-3-1 and 312 IAC 25-3-3 are contained within the proposed additional acreage.

(4) No application for an incidental boundary revision shall be approved unless the applicant demonstrates and the director finds the following:

(A) That reclamation as required by IC 14-34 and this article can be accomplished.

(B) The application complies with all requirements of IC 14-34 and this article.

(C) The pertinent findings required under section 115 of this rule are made.

(5) The director shall approve or deny the incidental boundary revision within thirty (30) days of submittal. The director may extend this thirty (30) day time limitation, where the director finds thirty (30) days is insufficient to adequately review the application and make the findings specified in subdivision (4).

(6) Nothing in this subsection shall be construed to alter the general requirements of IC 14-34 and this article for submittal of fees and bond.

(7) The director may require an applicant for an incidental boundary revision to protect, within the expanded boundaries, any historic or archaeological properties listed or eligible for listing on the National Register of Historic Places or the Indiana state register of historic sites and structures to prevent or minimize adverse impacts through appropriate mitigation and treatment measures.

*(Natural Resources Commission; 312 IAC 25-4-127; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3494, eff Dec 1, 2001)*

**312 IAC 25-4-128 Permit reviews; revisions, renewals, transfer, sale, and assignment of rights granted under permits; permit renewals, general requirements**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 128. (a) Any valid, existing permit issued under this program shall carry with it the right of successive renewal upon expiration of the term of the permit in accordance with sections 129 through 131 of this rule. Successive renewal shall be available only for those areas that were specifically approved by the director on the application for the existing permit as within the boundaries of the permit.

(b) Permit renewal shall not be available for conducting surface coal mining and reclamation operations on lands beyond the boundaries of the permit area approved under the existing permit except as provided in section 129(b)(2) of this rule. (*Natural Resources Commission; 312 IAC 25-4-128; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3496, eff Dec 1, 2001*)

**312 IAC 25-4-129 Permit reviews; revisions, renewals, transfer, sale, and assignment of rights granted under permits; completed applications**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 129. (a) Complete applications for renewals of a permit shall be made within the time prescribed by section 5(b) of this rule. Renewal applications shall be in a form and with contents required by the director under this program and in accordance with subsection (b)(2), including, at a minimum, the following:

(1) A statement of the name and address of the permittee, the term of the renewal requested, the permit number, and a description of any changes to the matters set forth in the original application for a permit or prior permit renewal.

(2) A copy of the newspaper notice and proof of publication of same under section 109(a) of this rule.

(3) Evidence that a liability insurance policy will be provided by the applicant for the proposed period of renewal.

(b) Processing and review of renewals shall satisfy the following:

(1) Complete applications for renewal shall be subject to the requirements of public notification and participation contained in sections 109 through 112 of this rule.

(2) If a complete application for renewal of a permit includes a proposal to extend the mining and reclamation operation beyond the boundaries authorized in the existing permit, the portion of the complete application for renewal of a valid permit that addresses any new land areas shall be subject to the full standards applicable to new permit applications under:

(A) IC 14-34;

(B) sections 2 through 8 of this rule;

(C) sections 16 through 128 of this rule;

(D) this section;

(E) sections 130 through 143 of this rule;

(F) 312 IAC 25-5; and

(G) the regulatory program.

(3) Before the permit renewal becomes valid, the permittee shall submit to the director any additional performance bond required to comply with 312 IAC 25-5.

(*Natural Resources Commission; 312 IAC 25-4-129; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3496, eff Dec 1, 2001*)

**312 IAC 25-4-130 Permit reviews; revisions, renewals, transfer, sale, and assignment of rights granted under permits; terms**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 130. Any permit renewal shall be for a term not to exceed the period of the original permit established under section 119 of this rule. (*Natural Resources Commission; 312 IAC 25-4-130; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3496, eff Dec 1, 2001*)

**312 IAC 25-4-131 Permit reviews; revisions, renewals, transfer, sale, and assignment of rights granted under permits; approval criteria**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 131. (a) The director shall, upon the basis of a complete application for renewal and completion of all procedures required under sections 129 and 130 of this rule, issue a renewal of a permit unless it is established and written findings by the director are made that:

- (1) the terms and conditions of the existing permit are not being satisfactorily met;
  - (2) the present surface coal mining and reclamation operations are not in compliance with the environmental protection standards under IC 14-34 and 312 IAC 25-6;
  - (3) the requested renewal substantially jeopardizes the operator's continuing responsibility to comply with IC 14-34 and the regulations on existing areas;
  - (4) the operator has not provided evidence that any performance bond required to be in effect for the operations will continue in full force and effect for the proposed period of renewal, as well as any additional bond the director might require under 312 IAC 25-5; or
  - (5) any additional revised or updated information required by the director has not been provided by the applicant.
- (b) In determining whether to approve or deny a renewal, the burden shall be on the opponents of renewal.
- (c) The director shall send copies of the director's decision to the following:

- (1) The applicant.
- (2) Any persons who filed objections or comments to the renewal.
- (3) Any persons who were parties to any informal conference held on the permit renewal.

(d) Any person having an interest that is or may be adversely affected by the decision of the director will have the right to administrative and judicial review set forth in sections 122 and 123 of this rule. (*Natural Resources Commission; 312 IAC 25-4-131; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3496, eff Dec 1, 2001*)

**312 IAC 25-4-132 Permit reviews; revisions, renewals, transfer, sale, and assignment of rights granted under permits; transfer, assignment or sale of permit rights, general requirements**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 132. No transfer, assignment, or sale of the rights granted under any permit issued pursuant to this article shall be made without the prior written approval of the director, in accordance with this section and sections 133 through 134 of this rule. (*Natural Resources Commission; 312 IAC 25-4-132; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3497, eff Dec 1, 2001*)

**312 IAC 25-4-133 Permit reviews; revisions, renewals, transfer, sale, and assignment of rights granted under permits; approval for transfer, assignment, or sale of permit rights**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 133. (a) Any person seeking to succeed by transfer, assignment, or sale, to the rights granted by a permit shall, before the date of the transfer, assignment, or sale, establish the following:

- (1) Obtain the performance bond coverage of the original permittee by accomplishing one (1) of the following:
  - (A) Receive transfer of the original bond.
  - (B) Execute a written agreement with the original permittee and any successor in interest that provides:
    - (i) the bond posted by the original permittee and any successor continues in force on the areas affected by the original permittee and any successor; and
    - (ii) for any supplemental or additional bond required by the director.

If an agreement is reached under this clause, the director may release any bond posted by the original permittee or a successor that exceeds what is required by the agreement.

- (C) Provide sufficient bond to cover the original permit in its entirety from inception to completion of reclamation operations.
- (D) Use another method that provides the reclamation of all areas affected by the original permittee is assured under bonding coverage at least equal to that of the original permittee.
- (2) Provide the director with an application for approval of the proposed transfer, assignment, or sale, including the following:
  - (A) The name and address of the existing permittee.
  - (B) The name and address of the person proposing to succeed by the transfer, assignment, or sale and the name and address of that person's resident agent.
  - (C) For surface mining activities, the same information as is required by sections 17 through 19, 20(c), and 22 through 23 of this rule for applications for new permits for those activities.
  - (D) For underground mining activities, the same information as is required by sections 58 through 60, 61(c), and 63 through 64 of this rule for applications for new permits for those activities.
- (3) Obtain the written approval of the director for transfer, assignment, or sale of rights.
- (b) A person applying for approval of the transfer, assignment, or sale of rights granted by a permit shall advertise the filing of the application in a newspaper of general circulation in the locality of the operations involved. The newspaper advertisement shall indicate the name and address of the applicant, the original permittee, the number and particular geographic location of the permit, and the address to which written comments may be sent. Any person whose interests are or may be adversely affected, including the head of any local, Indiana, or federal government agency, may submit written comments on the application for approval by the director within thirty (30) days of the last date of the public notice.
- (c) The director shall not grant approval for a transfer, sale, or assignment of rights under a permit, except, upon a written finding, the following:
  - (1) The person seeking approval shall conduct the operations covered by the permit in accordance with the following:
    - (A) The requirements for permits for special categories of mining under sections 98 through 107 of this rule.
    - (B) The criteria for permit approval or denial under section 115 of this rule.
    - (C) The criteria for permit approval or denial for existing structures under section 116 of this rule.
  - (2) The applicant has submitted a performance bond under subsection (a)(1) that is at least equivalent to the bond of the original permittee.
  - (3) The applicant shall continue to conduct the operations involved in full compliance with the terms and conditions of the original permit unless a new permit is obtained under section 134 of this rule.
  - (4) A surface coal mining and reclamation operation owned or controlled by the applicant is not currently in violation of a federal or state statute, rule, or regulation. If this finding cannot be made, the applicant must establish either of the following:
    - (A) The current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation.
    - (B) The applicant, or any person owned or controlled by either the applicant or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. An appeal taken from an order or determination of the department must conform to IC 14-34. If the initial judicial review authority either denies a stay applied for in the appeal or affirms the violation, the applicant shall promptly submit documentation to establish the requirements of clause (A).
  - (5) The written findings required under section 115 of this rule.
  - (d) The director shall notify the permittee, the successor, any person who provides comments under this section, and the Office of Surface Mining of the findings made under subsection (c). (*Natural Resources Commission; 312 IAC 25-4-133; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3497, eff Dec 1, 2001*)

**312 IAC 25-4-134 Permit reviews; revisions, renewals, transfer, sale, and assignment of rights granted under permits; succeeding to rights granted under permit; requirements**

Authority: IC 14-34-2-1  
 Affected: IC 14-34

Sec. 134. (a) A successor in interest to a permittee who is able to obtain the bond coverage of the original permittee may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan and permit of the

original permittee and shall immediately provide notice to the director of the consummation of the transfer, assignment, or sale of permit rights.

(b) Under section 133(c)(3) of this rule, a successor in interest seeking to change the conditions of mining or reclamation operations or any of the terms or conditions of the original permit shall apply:

(1) for a new permit under sections 2 through 123 of this rule if the change involves conducting operations outside the original permit area; or

(2) for a revised permit under section 127 of this rule.

*(Natural Resources Commission; 312 IAC 25-4-134; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3498, eff Dec 1, 2001)*

### **312 IAC 25-4-135 Small operator assistance; objective**

Authority: IC 14-34-2-1

Affected: IC 14-34-3-5

Sec. 135. The objective of this section and sections 136 through 143 of this rule is to meet the intent of IC 14-34-3-5 by:

(1) providing financial and other necessary assistance to qualified small operators; and

(2) assuring that the director shall have sufficient information to make a reasonable assessment of the probable cumulative impacts of all anticipated mining upon the hydrology of the area and particularly upon water availability.

*(Natural Resources Commission; 312 IAC 25-4-135; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3498, eff Dec 1, 2001)*

### **312 IAC 25-4-136 Small operator assistance; definitions**

Authority: IC 14-34-2-1

Affected: IC 14-34; 30 CFR 795.3

Sec. 136. The following definitions apply to section 135 of this rule, this section, and sections 137 through 143 of this rule:

(1) "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(2) "Probable cumulative impacts" means the expected total:

(A) qualitative and quantitative; or

(B) direct and indirect;

effects of mining and reclamation activities on the hydrologic regime.

(3) "Probable hydrologic consequences" means the projected result of proposed surface coal mining and reclamation operations that may reasonably be expected to change:

(A) the quantity or quality of the surface and ground water;

(B) the surface or ground water flow, timing, and pattern;

(C) the stream channel conditions; and

(D) the aquatic habitat on the permit area and other affected areas.

(4) "Program administrator" means the Indiana or federal official who has the authority and responsibility for overall management of the small operator assistance program.

(5) "Qualified laboratory" means a designated public agency, private firm, institution, or analytical laboratory that can provide the required determination of probable hydrologic consequences or statement of results of test borings or core samplings or other services as specified as section 140 of this rule under the small operator assistance program and that meets the standards of section 141 of this rule.

*(Natural Resources Commission; 312 IAC 25-4-136; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3498, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182)*

### **312 IAC 25-4-137 Small operator assistance; eligibility for assistance**

Authority: IC 14-34-2-1

Affected: IC 14-34; 30 CFR 795.6

Sec. 137. An applicant is eligible for assistance if he or she does the following:

(1) Intends to apply for a permit under IC 14-34 and this article.



(2) Establishes that his or her probable total attributed production from all locations on which the operator is issued the surface coal mining and reclamation permit will not exceed three hundred thousand (300,000) tons. Production from the following operations shall be attributed to the applicant:

- (A) The pro rata share, based upon percentage of ownership of applicant, of coal produced by operations in which the applicant owns more than a ten percent (10%) interest.
- (B) The pro rata share, based upon percentage of ownership of applicant, of coal produced in other operations by persons who own more than ten percent (10%) of the applicant's operation.
- (C) All coal produced by operations owned by persons who directly or indirectly control the applicant by reason of ownership, direction of management, or in any other manner.
- (D) All coal produced by operations owned by members of the applicant's family and the applicant's relatives unless it is established that there is no direct or indirect business relationship between or among them.

(3) Is not restricted in any manner from receiving a permit under IC 14-34 or this article.

(4) Does not organize or reorganize his or her company solely for the purpose of obtaining assistance under the small operator assistance program.

*(Natural Resources Commission; 312 IAC 25-4-137; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3499, eff Dec 1, 2001)*

**312 IAC 25-4-138      Small operator assistance; filing for assistance**

Authority: IC 14-34-2-1

Affected: IC 14-34; 30 CFR 795.7

Sec. 138. Each application for assistance shall include the following information:

(1) A statement of the operator's intent to file a permit application.

(2) The names and addresses of the following:

- (A) The permit applicant.
- (B) The operator if different from the applicant.

(3) A schedule of the estimated total production of coal from the proposed permit area and all other locations from which production is attributed to the applicant under section 137 of this rule. The schedule shall include, for each location, the following:

- (A) The operator or company name under which coal is or will be mined.
- (B) The permit number and MSHA number.
- (C) The actual coal production for the year preceding the year for which the applicant applies for assistance, and production that may be attributed to the applicant under section 137 of this rule.
- (D) The estimated coal production and any production that may be attributed to the applicant for each year of the proposed permit.

(4) A description of the following:

- (A) The proposed method of coal mining.
- (B) The anticipated starting and termination dates of mining operations.
- (C) The number of acres of land to be affected by the proposed mining operation.
- (D) A general statement on the probable depth and thickness of the coal resource, including a statement of the reserves in the permit area and the method by which they were calculated.

(5) A United States Geological Survey topographic map at a scale of 1:24,000 or larger or other topographic map of equivalent detail that clearly shows the following:

- (A) The area of land to be affected and the natural drainage above and below the affected area.
- (B) The names of property owners within the area to be affected and on adjacent lands.
- (C) The location of existing structures and developed water sources within the area to be affected and on adjacent lands.
- (D) The location of any existing or proposed test borings or core samplings.
- (E) The location and extent of known workings of any underground mines.

(6) Copies of documents that show the following:

- (A) The applicant has a legal right to enter and commence mining within the permit area.
- (B) A legal right of entry has been obtained for the program administrator and laboratory personnel to inspect the lands

to be mined and adjacent areas to collect environmental data or install necessary instruments.

*(Natural Resources Commission; 312 IAC 25-4-138; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3499, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182)*

**312 IAC 25-4-139 Small operator assistance; application approval and notice**

Authority: IC 14-34-2-1

Affected: IC 14-34; 30 CFR 795.8

Sec. 139. (a) If the program administrator finds the applicant eligible, the program administrator shall inform the applicant in writing that the application is approved.

(b) If the program administrator finds the applicant ineligible, the program administrator shall inform the applicant, in writing, that the application is denied and shall state the reasons for denial. *(Natural Resources Commission; 312 IAC 25-4-139; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3500, eff Dec 1, 2001)*

**312 IAC 25-4-140 Small operator assistance; program services and data requirements**

Authority: IC 14-34-2-1

Affected: IC 14-34; 30 CFR 795.9

Sec. 140. (a) To the extent possible with available funds, the program administrator shall select and pay a qualified laboratory to make the determination and statement and provide other services referenced in subsection (b) for eligible operators who request assistance. Data collection and analysis may proceed concurrently with the development of mining and reclamation plans by the operator.

(b) The program administrator shall determine the data needed for each applicant or group of applicants. Data collected and the results provided to the program administrator shall be sufficient to satisfy the requirements for the following:

(1) The determination of the probable hydrologic consequences of the surface mining and reclamation operation in the proposed permit area and adjacent areas, including the engineering analyses and designs necessary for the determination in accordance with sections 47 and 85 of this rule, and any other applicable provisions of this article.

(2) The drilling and statement of the results of test borings or core samplings from the proposed permit area, in accordance with sections 30 and 71 of this rule and any other applicable provisions of this article.

(3) The development of cross section maps and plans required by sections 38 and 79 of this rule.

(4) The collection of archaeological and historic information and related plans required by sections 27, 37, 68, and 78 of this rule and any other archaeological and historic information required by the director.

(5) Preblast surveys required by section 42 of this rule.

(6) The collection of site-specific resources information, the production of protection and enhancement plans for fish and wildlife habitats required by sections 46 and 70 of this rule, and information and plans for any other environmental values required by the director under IC 14-34 or this article.

(c) Data collection and analysis may proceed concurrently with the development of mining and reclamation plans by the operator.

(d) Data collected under the small operator assistance program shall be made publicly available in accordance with section 113 of this rule. The program administrator shall develop procedures for interstate coordination and exchange of data. *(Natural Resources Commission; 312 IAC 25-4-140; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3500, eff Dec 1, 2001)*

**312 IAC 25-4-141 Small operator assistance; qualified laboratories**

Authority: IC 14-34-2-1

Affected: IC 14-34; 30 CFR 795.10

Sec. 141. (a) To be designated a qualified laboratory, a firm shall demonstrate the following:

(1) It is staffed with experienced, professional, or technical personnel in the fields applicable to the work to be performed.

(2) It has adequate space for material preparation and cleaning and sterilizing equipment and has stationary equipment, storage, and space to accommodate workloads during peak periods.

(3) It meets applicable federal or Indiana safety and health requirements.

(4) It has analytical, monitoring, and measuring equipment capable of meeting applicable standards.

(5) It has the capability of collecting necessary field samples and making hydrologic field measurements and analytical laboratory determinations by acceptable hydrologic, geologic, or analytical methods in accordance with the requirements of sections 28 through 32, 47, and 69 through 73 of this rule, and any other applicable provisions of this article. Other appropriate methods or guidelines for data acquisition may be approved by the program administrator.

(6) It has the capability of performing services for either the determination or statement referenced in section 140 of this rule.

(b) Subcontractors may be used to provide some of the required services provided their use is identified at the time a determination is made that a firm is qualified. (*Natural Resources Commission; 312 IAC 25-4-141; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3500, eff Dec 1, 2001*)

### **312 IAC 25-4-142 Small operator assistance; assistance funding**

Authority: IC 14-34-2-1

Affected: IC 14-34; 30 CFR 795.11

Sec. 142. (a) Funds specifically authorized for the Small Operator Assistance Program shall be used to provide the services specified in section 140 of this rule and shall not be used to cover administrative expenses.

(b) The program administrator shall establish a formula for allocating funds to provide services for eligible small operators if available funds are less than those required to provide the services under this rule. (*Natural Resources Commission; 312 IAC 25-4-142; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3501, eff Dec 1, 2001*)

### **312 IAC 25-4-143 Small operator assistance; applicant liability**

Authority: IC 14-34-2-1

Affected: IC 14-34; 30 CFR 795.12

Sec. 143. (a) A coal operator who has received assistance under sections 135 through 141 of this rule and this section shall reimburse the director for the cost of the services rendered if any of the following occurs:

(1) The applicant submits false information, fails to submit a permit application within one (1) year from the date of receipt of the approved laboratory report, or fails to mine after obtaining a permit.

(2) The program administrator finds that the operator's actual and attributed annual production of coal for all locations exceeds three hundred thousand (300,000) tons during the twelve (12) months immediately following the date on which the operator is issued the surface coal mining and reclamation permit.

(3) The permit is sold, transferred, or assigned to another person and the transferee's total actual and attributed production exceeds the three hundred thousand (300,000) ton production limit during the twelve (12) months immediately following the date on which the permit was originally issued. Under this section the applicant and its successor are jointly and severally obligated to reimburse the director.

(4) The applicant does not begin mining within six (6) months after obtaining the permit.

(b) The program administrator may waive the reimbursement obligation if he or she finds that the applicant at all times acted in good faith. (*Natural Resources Commission; 312 IAC 25-4-143; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3501, eff Dec 1, 2001*)

## **Rule 5. Bonding Liability Insurance**

### **312 IAC 25-5-1 General requirements**

Authority: IC 14-34-2-1

Affected: IC 14-34-3; IC 14-34-6; IC 14-34-9; IC 14-34-10

Sec. 1. This rule sets forth requirements for bonding and insuring surface coal mining and reclamation operations. (*Natural Resources Commission; 312 IAC 25-5-1; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3501, eff Dec 1, 2001*)

**312 IAC 25-5-2 Objectives**

Authority: IC 14-34-2-1  
Affected: IC 14-34

Sec. 2. The objective of this rule is to set forth the requirements and responsibilities for filing and maintaining bonds and insurance for surface coal mining and reclamation operations in accordance with IC 14-34. (*Natural Resources Commission; 312 IAC 25-5-2; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3501, eff Dec 1, 2001*)

**312 IAC 25-5-3 Responsibilities of department of natural resources**

Authority: IC 14-34-2-1  
Affected: IC 14-34

Sec. 3. (a) The department shall prescribe and furnish forms for filing performance bonds under section 6 of this rule.

(b) The department shall prescribe terms and conditions for performance bonds and insurance that meet the requirements of this rule.

(c) The department shall determine the amount of the bond under section 8 of this rule.

(d) The department shall release liability under bonds under section 16 of this rule.

(e) The department shall cause all or part of a bond to be forfeited under section 17 of this rule.

(f) The department shall require in the permit that adequate bond coverage be in effect at all times. Except as provided in section 10(e)(2) of this rule, operating without bond coverage is a violation of a permit. (*Natural Resources Commission; 312 IAC 25-5-3; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3502, eff Dec 1, 2001*)

**312 IAC 25-5-4 Definitions**

Authority: IC 14-34-2-1  
Affected: IC 14-34-3; IC 14-34-6; IC 14-34-9; IC 14-34-10

Sec. 4. (a) The definitions in this section apply throughout this rule.

(b) "Collateral bond" means an indemnity agreement in a sum certain deposited with the department and executed by the permittee and supported by one (1) or more of the following:

(1) The deposit of cash in one (1) or more accounts, payable only to the Indiana department of natural resources upon demand after the department has determined the need for forfeiture and has notified the permittee of forfeiture action.

(2) Certificates of deposit made payable and assigned to the Indiana department of natural resources. Total deposits of the applicant at the institution certifying the certificate of deposit shall not exceed one hundred thousand dollars (\$100,000) or the maximum insurable amount as determined by Federal Deposit Insurance Corporation and Federal Savings and Loan Insurance Corporation.

(3) An irrevocable letter of credit of any bank organized or authorized to transact business in Indiana, in accordance with section 12(b)(3) of this rule.

(c) "Surety bond" means an indemnity agreement in a sum certain executed by the permittee as principal that is supported by the performance guarantee of a corporation licensed to do business as a surety in Indiana. (*Natural Resources Commission; 312 IAC 25-5-4; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3502, eff Dec 1, 2001*)

**312 IAC 25-5-5 Filing bonds; requirements**

Authority: IC 14-34-2-1  
Affected: IC 14-34-3; IC 14-34-6; IC 14-34-9; IC 14-34-10

Sec. 5. (a) After a surface coal mining and reclamation permit application has been approved, but before such permit is issued, the applicant shall file with the department, on a form prescribed and furnished by the department, a bond or bonds for performance made payable, as appropriate, to "State of Indiana Department of Natural Resources", and conditioned upon the faithful performance of all the requirements of IC 14-34, this article, and the permit.

(b) The bond or bonds shall be filed with the department as follows:

(1) The bond or bonds shall be provided for that area of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit.

(2) For succeeding increments of surface coal mining and reclamation operations to be initiated and conducted within the permit area, the permittee shall file with the department an additional bond or bonds to cover such increments in accordance with this section. The bond for succeeding increments shall be filed with the department at least thirty (30) days prior to commencing any surface coal mining and reclamation operations on that incremental area.

(3) The operator shall identify the initial and successive areas of increments for bonding on the permit application map or aerial photograph submitted for approval under 312 IAC 25-4-36 or 312 IAC 25-4-77 and shall specify the bond amount to be provided for each area or increment.

(4) Independent increments shall be of sufficient size and configuration to provide for efficient reclamation operations should reclamation by the regulatory authority become necessary under section 17 of this rule.

(c) Performance bonds for surface disturbances of underground operations and other long term operations may be bonded for a period not less than the permit term; however, continuous bond coverage must be maintained during active operations and the applicable liability period, and the bond shall be conditioned to extend, replace, or pay the full amount of the bond one hundred twenty (120) days prior to the expiration of any bond term.

(d) An operator shall not disturb any surface areas, succeeding increments, or extend any underground shafts, tunnels, or operations prior to acceptance by the director of the required performance bond.

(e) The applicant shall file, with the approval of the director, a bond or bonds under one (1) of the following schemes to cover the bond amounts for the permit area as determined in accordance with section 8 of this rule:

(1) A performance bond or bonds for the entire permit area.

(2) A cumulative bond schedule and the performance bond required for full reclamation of the initial area to be disturbed.

(3) An incremental bond schedule and the performance bond required for the first increment in the schedule.

*(Natural Resources Commission; 312 IAC 25-5-5; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3502, eff Dec 1, 2001)*

### **312 IAC 25-5-6 Performance bonds; form**

Authority: IC 14-34-2-1

Affected: IC 14-34-3; IC 14-34-6; IC 14-34-9; IC 14-34-10

Sec. 6. (a) The form of the performance bond shall be approved by the director. The director may allow for any of the following:

(1) A surety bond.

(2) A collateral bond.

(3) An escrow account bond.

(4) Combined surety/escrow bonding.

(5) A combination of any of the bonding methods in subdivisions (1) through (4).

(b) Where the mining operation is owned by two (2) or more persons or entities, the director may allow each person to provide separate financial assurance provided that the total of such assurance is sufficient to accomplish reclamation.

(c) A blanket bond covering statewide or county wide operations may be furnished if the terms and conditions thereof are sufficient to comply with this rule and if approved by the director. *(Natural Resources Commission; 312 IAC 25-5-6; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3503, eff Dec 1, 2001)*

### **312 IAC 25-5-7 Period of liability Version a**

Authority: IC 14-34-2-1

Affected: IC 14-34-3; IC 14-34-6; IC 14-34-9; IC 14-34-10

*NOTE: This version of section effective until superseded by the following version of this section, which is effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register.*

Sec. 7. (a) Liability under the bond shall be for the duration of the surface coal mining and reclamation operation and for a period coincident with the operator's responsibility for revegetation requirements in 312 IAC 25-6-59 through 312 IAC 25-6-61,

312 IAC 25-6-120, and 312 IAC 25-6-122, except with the approval of the director, a bond may be posted and approved to guarantee specific phases of reclamation within the permit area provided the sum of phase bonds posted equals or exceeds the total amount required under sections 8 and 9 of this rule. The scope of work to be guaranteed and the liability assumed under each phase bond shall be specified in detail.

(b) The period of liability shall commence after the last year of augmented seeding, fertilizing, irrigation, or other work and shall continue for not less than five (5) years. The period of liability shall begin again whenever augmented seeding, fertilizing, irrigation, or other work is required or conducted on the site prior to bond release, except as provided in 312 IAC 25-6-59.

(c) A portion of a bonded area requiring extended liability because of augmentation may be separated from the original area and bonded separately upon approval by the department. Before determining that extended liability should apply to only a portion of the original bonded area, the department shall determine that such portion:

- (1) is not significant in extent in relation to the entire area under the bond; and
- (2) is limited to isolated, distinguishable, and contiguous portions of the bonded area and does not comprise scattered or intermittent occurrences throughout the bonded area.

(d) If the department approves a long term intensive agricultural postmining land use, in accordance with 312 IAC 25-6-64 or 312 IAC 25-6-128, the applicable five (5) year or ten (10) year period of liability shall commence at the date of initial planting.

(e) The bond liability of the permittee shall include only those actions that the operator is obliged to take under the permit, including completion of the reclamation plan, so that the land will be capable of supporting the postmining land use approved under 312 IAC 25-6-64 or 312 IAC 25-6-128. (*Natural Resources Commission; 312 IAC 25-5-7; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3503, eff Dec 1, 2001*)

### **312 IAC 25-5-7 Period of liability Version b**

Authority: IC 14-34-2-1

Affected: IC 14-34-3; IC 14-34-6; IC 14-34-9; IC 14-34-10

*NOTE: This version of section effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register. See also preceding version of this section, effective until superseded by this version of section.*

Sec. 7. (a) Liability under the bond shall be for the duration of the surface coal mining and reclamation operation and for a period coincident with the operator's responsibility for revegetation requirements in 312 IAC 25-6-59 through 312 IAC 25-6-61, 312 IAC 25-6-120, and 312 IAC 25-6-122, except, with the approval of the director, a bond may be posted and approved to guarantee specific phases of reclamation within the permit area provided the sum of phase bonds posted equals or exceeds the total amount required under sections 8 and 9 of this rule. The scope of work to be guaranteed and the liability assumed under each phase bond shall be specified in detail.

(b) The period of liability shall commence after the last year of augmented seeding, fertilizing, irrigation, or other work and shall continue for not less than five (5) years. The period of liability shall begin again whenever augmented seeding, fertilizing, irrigation, or other work is required or conducted on the site prior to bond release, except as provided in 312 IAC 25-6-59. On lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof, the liability period is two (2) years. To the extent that success standards are established by 312 IAC 25-6-59(c)(1) or 312 IAC 25-6-120(c)(1), the lands shall equal or exceed the standards during the growing season of the last year of the responsibility period.

(c) A portion of a bonded area requiring extended liability because of augmentation may be separated from the original area and bonded separately upon approval by the department. Before determining that extended liability should apply to only a portion of the original bonded area, the department shall determine that such portion:

- (1) is not significant in extent in relation to the entire area under the bond; and
- (2) is limited to isolated, distinguishable, and contiguous portions of the bonded area and does not comprise scattered or intermittent occurrences throughout the bonded area.

(d) If the department approves a long term intensive agricultural postmining land use, in accordance with 312 IAC 25-6-64 or 312 IAC 25-6-128, the applicable five (5) year or ten (10) year period of liability shall commence at the date of initial planting.

(e) The bond liability of the permittee shall include only those actions that the operator is obliged to take under the permit, including completion of the reclamation plan, so that the land will be capable of supporting the postmining land use approved under 312 IAC 25-6-64 or 312 IAC 25-6-128. (*Natural Resources Commission; 312 IAC 25-5-7; filed Jun 21, 2001, 2:53 p.m.: 24 IR*

3503, *eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2455, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register*)

**312 IAC 25-5-8 Bond amount; determination**

Authority: IC 14-34-2-1

Affected: IC 14-34-3; IC 14-34-6; IC 14-34-9; IC 14-34-10

Sec. 8. (a) The director shall approve a bond rate per acre based on the probable difficulty of reclamation due to, but not limited to, factors such as the following:

- (1) Prime farmland requirements.
- (2) Postmining land uses.
- (3) Depth of overburden.
- (4) Topsoil handling requirements.
- (5) Use of alternate topsoil materials.
- (6) Topography.
- (7) Potential toxic producing materials.
- (8) Excess spoil.
- (9) Surface and ground water requirements.
- (10) Nature of overburden.
- (11) Revegetation requirements.
- (12) Remining of previously disturbed areas.
- (13) Refuse disposal considerations.

(b) The minimum amount of bond for a surface or underground coal mining and reclamation operation shall be ten thousand dollars (\$10,000) for the entire area under permit.

(c) The bond per acre shall be no more than ten thousand dollars (\$10,000) per acre nor less than three thousand dollars (\$3,000) per acre. (*Natural Resources Commission; 312 IAC 25-5-8; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3504, eff Dec 1, 2001*)

**312 IAC 25-5-9 Adjustment of amount**

Authority: IC 14-34-2-1

Affected: IC 14-34-3; IC 14-34-6; IC 14-34-9; IC 14-34-10

Sec. 9. (a) The amount of bond or deposit required and the terms of each acceptance of the applicant's bonds shall be adjusted by the director from time to time as affected land acreages are increased or decreased or where the cost of future reclamation changes. The director shall notify the permittee, the surety, and any other person with a property interest in collateral of any proposed bond adjustment, and provide the permittee an opportunity for an informal conference on the adjustment. Bond adjustments are not subject to procedures of bond release under section 16 of this rule.

(b) A permittee may request reduction of the amount of performance bond upon submission of evidence to the director proving that the permittee's method of operation or other circumstances will reduce the estimated cost to the director to reclaim the area bonded. This reduction of bond shall be deemed a bond adjustment.

(c) In the event that an approved operations and reclamation plan is modified in accordance with this rule, the director will review the bond for adequacy and, if necessary, will adjust the bond to conform to the operations and reclamation plan as modified. (*Natural Resources Commission; 312 IAC 25-5-9; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3504, eff Dec 1, 2001*)

**312 IAC 25-5-10 General terms and conditions of bond**

Authority: IC 14-34-2-1

Affected: IC 14-34-3; IC 14-34-6; IC 14-34-9; IC 14-34-10

Sec. 10. (a) The performance bond shall be in an amount determined by the director as provided in section 8 of this rule.

(b) The performance bond shall be payable to "State of Indiana Department of Natural Resources".

(c) The performance bond shall be conditioned upon faithful performance of all of the requirements of IC 14-34, this article, the director, and the conditions of the permit.

(d) The duration of the bond shall be for the time period provided in section 7 of this rule.

(e) Reporting requirements for the bond shall be as follows:

(1) The bond shall provide for a mechanism for a bank or surety company to give prompt notice to the director and the permittee of any action filed alleging:

(A) the insolvency or bankruptcy of the surety company or the bank; or

(B) any violations that would result in suspension or revocation of the surety's charter or bank's charter or license to do business.

(2) Upon the incapacity of a bank or surety company by reason of:

(A) bankruptcy;

(B) insolvency or suspension; or

(C) revocation of its charter or license;

the permittee shall be deemed to be without bond coverage. The director shall issue a notice of violation to any operator who is without bond coverage and shall specify a reasonable period to replace bond coverage not to exceed ninety (90) days. During this period the director will conduct weekly inspections to ensure continuing compliance with the permit, this article, and IC 14-34. Such notice of violation, if abated within the period allowed, shall not be counted as a notice of violation for purposes of determining a pattern of willful violation under 312 IAC 25-7-7 and need not be reported as a past violation in permit applications under 312 IAC 25-4-18 and 312 IAC 25-4-59. If such notice of violation is not abated in accordance with the schedule, a cessation order shall be issued. (*Natural Resources Commission; 312 IAC 25-5-10; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3504, eff Dec 1, 2001*)

### **312 IAC 25-5-11 Surety bonds; types and conditions**

Authority: IC 14-34-2-1

Affected: IC 14-34-3; IC 14-34-6; IC 14-34-9; IC 14-34-10

Sec. 11. (a) The bond shall be executed by the operator and a corporate surety licensed to do business in Indiana. Surety bond coverage for permitted lands not disturbed may be canceled with the consent of the director.

(b) Surety bonds shall be noncancelable during their term. (*Natural Resources Commission; 312 IAC 25-5-11; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3505, eff Dec 1, 2001*)

### **312 IAC 25-5-12 Collateral bonds**

Authority: IC 14-34-2-1

Affected: IC 14-34; 30 CFR 800.21

Sec. 12. (a) Collateral bonds, except for letters of credit, shall be subject to the following conditions:

(1) The director shall obtain possession of and keep in custody all collateral deposited by the applicant until authorized for release or replacement as provided in this rule.

(2) The director shall value collateral at its current market value, not face value.

(3) The director shall require that certificates of deposit be assigned to the state, in writing, and upon the books of the bank issuing such certificates.

(b) Letters of credit shall be subject to the following conditions:

(1) The letter may only be issued by a bank organized or authorized to do business in Indiana.

(2) The letter must be irrevocable prior to a release by the director.

(3) The letter must be payable to "State of Indiana, Department of Natural Resources" in part or in full upon demand by and receipt from the director of a notice of forfeiture issued in accordance with section 17 of this rule.

(4) The letter must contain terms that authorize the director to draw upon the letter, in full, to obtain cash collateral in the event that the permittee has failed to furnish, to the director, a replacement bond consistent with this rule at least thirty (30) days prior to the expiration of the letter, and that such drafts need not be accompanied by a notice of forfeiture in accordance with section 17(d) of this rule.

(5) The total amount of letters of credit that will be accepted from any bank for any permittee, on all permits held by that



permittee, shall not exceed the bank's maximum legal lending limit as required by the appropriate Indiana or federal banking regulatory agency.

(6) The letter of credit shall provide that:

- (A) the bank shall give prompt notice to the permittee and the director of any notice received or action filed alleging:
  - (i) the insolvency or bankruptcy of the bank; or
  - (ii) any violations of regulatory requirements that could result in suspension or revocation of the bank's charter or license to do business;

(B) in the event the bank becomes unable to fulfill its obligations under the letter of credit for any reason, notice shall be given immediately to the permittee and the director; and

(C) upon the incapacity of a bank by reason of:

- (i) bankruptcy;
- (ii) insolvency or suspension; or
- (iii) revocation of its charter or license;

the permittee shall be deemed to be without performance bond coverage in violation of section 5(b) of this rule.

(c) Persons with an interest in collateral posted as bond, and who desire notification of actions pursuant to the bond, shall request the notification, in writing, to the director at the time the collateral is offered. (*Natural Resources Commission; 312 IAC 25-5-12; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3505, eff Dec 1, 2001*)

### **312 IAC 25-5-13 Escrow bonding**

Authority: IC 14-34-2-1

Affected: IC 14-34-3; IC 14-34-6; IC 14-34-9; IC 14-34-10

Sec. 13. (a) The director may authorize the permittee to supplement the bond through the establishment of an escrow account deposited in one (1) or more accounts payable on demand only to the state or deposited with the director directly. The total bond, including the escrow amount, shall not be less than the amount required under the terms of performance bonds, including any adjustments, less amounts released in accordance with release of performance bonds.

(b) Interest paid on an escrow account shall be retained in the escrow account and applied to the bond value of the escrow account unless the director has approved that the interest be paid to the permittee. (*Natural Resources Commission; 312 IAC 25-5-13; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3505, eff Dec 1, 2001*)

### **312 IAC 25-5-14 Surety/escrow bonding combined**

Authority: IC 14-34-2-1

Affected: IC 14-34-3; IC 14-34-6; IC 14-34-9; IC 14-34-10

Sec. 14. The director may accept a combined surety/escrow bonding schedule provided the following:

(1) A surety bond payable to the state is posted in the amount determined under section 8 of this rule for reclamation of each successive increment.

(2) An interest-bearing escrow account payable to the state with a predetermined deposit amount and frequency is established.

(3) The amount of the surety bond shall always be sufficient to cover the difference between the escrow balance and the total reclamation cost.

(4) The terms and conditions of the escrow account shall be developed jointly by the permittee, surety, and director. Deposits to the escrow account by the permittee shall be made periodically and so reported to the director. Failure to make deposits on schedule shall be just cause for action by the director.

(5) A certified escrow account balance statement shall be provided periodically to the surety and the director.

(*Natural Resources Commission; 312 IAC 25-5-14; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3506, eff Dec 1, 2001*)

### **312 IAC 25-5-15 Bond replacement**

Authority: IC 14-34-2-1

Affected: IC 14-34-3; IC 14-34-6; IC 14-34-9; IC 14-34-10

Sec. 15. (a) The director may allow permittees to replace existing bonds with other bonds if the liability that has accrued against the permittee on the permit area is transferred to such replacement bonds.

(b) The director shall not release existing performance bonds until the permittee has submitted and the director has approved acceptable replacement performance bonds. A replacement of performance bonds under this section shall not constitute a release of bond under section 16 of this rule. (*Natural Resources Commission; 312 IAC 25-5-15; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3506, eff Dec 1, 2001*)

### **312 IAC 25-5-16 Performance bond release; requirements Version a**

Authority: IC 14-34-2-1

Affected: IC 4-21.5-3-27; IC 14-34-10-2; 30 CFR 800.40

*NOTE: This version of section effective until superseded by the following version of this section, which is effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register.*

Sec. 16. (a) A permittee may file a request with the department for the release of all or part of a performance bond or deposit. Within thirty (30) days after an application for bond or deposit release is filed with the department, the operator shall submit a copy of an advertisement placed at least once a week for four (4) successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. The advertisement must be part of any bond release application and shall include the following:

- (1) The precise location of the land affected.
- (2) The number of acres.
- (3) The permittee's name.
- (4) The permit number and the date approved.
- (5) The amount of the bond filed and the portion sought to be released.
- (6) The type and appropriate dates of reclamation work performed.
- (7) A description of the results achieved relative to the operator's approved reclamation plan.

The advertisement shall also state that any person with a valid legal interest that might be adversely affected by release of the bond, or the responsible officer or head of any federal, Indiana, or local governmental agency that has jurisdiction by law or is authorized to develop and enforce environmental standards with respect to the operations, may file written comments or objections or may request a public hearing or informal conference concerning the proposed release from bond with the department within thirty (30) days after the last publication of notice. The notice shall contain the address of the division for submission of comment and the calendar date for the close of the comment period. In addition, as part of any bond release application, the applicant shall submit copies of letters that the applicant has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities or water companies in the locality in which the surface coal mining and reclamation activities took place, providing notification of the request to seek release from the bond.

(b) Within thirty (30) days after receipt of the notification and request, or as soon afterwards as weather conditions permit, the department shall conduct an inspection and evaluation of the reclamation work. The evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability pollution will continue, and the estimated cost of abating the pollution. The surface owner, agent, or lessee shall be given notice of the inspection by the director and may participate with the department in the inspection. The department shall notify, in writing, the permittee and any other interested person of a decision whether to release all or part of the performance bond or deposit within sixty (60) days after receipt of the request, if no public hearing is held under subsection (f). If a public hearing is held under subsection (f), an administrative law judge shall enter an order under IC 4-21.5-3-27 within thirty (30) days after the hearing is completed.

(c) The department may release the bond or deposit, in whole or in part, upon a determination the reclamation covered by the bond or deposit or portion thereof has been accomplished as required by IC 14-34 according to the following schedule:

- (1) Phase I. After the operator completes the backfilling, regrading, and drainage control of a bonded area under the approved reclamation plan, sixty percent (60%) of the bond or collateral for the applicable permit may be released.
- (2) Phase II. After the operator establishes revegetation on the regraded mined lands under the approved reclamation plan, an additional twenty-five percent (25%) of the total original bond amount may be released. No part of the bond or deposit shall be released under this subdivision if the lands to which the release would be applicable are contributing suspended solids to

the streamflow or run-off outside the permit area in excess of the limitations in IC 14-34 and until soil productivity for prime farmlands has returned to the equivalent levels of yield as nonmined land of the same soil type in the surrounding area as determined from the soil survey performed under IC 14-34. If a siltation structure is to be retained as a permanent impoundment, a bond release may occur under this subdivision if provisions for sound future maintenance by the operator or the landowner are made with the department.

(3) Phase III. The department may release the remaining bond only after:

(A) the operator has successfully completed all surface coal mining and reclamation activities required in IC 14-34, this article, or the permit; and

(B) the expiration of the period specified for operator responsibility in IC 14-34-10-2.

(d) If the director disapproves the application for release of the bond or portion thereof, the director shall notify the permittee, the surety, and any person with an interest in collateral as provided for in section 12 of this rule, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing an opportunity for a public hearing.

(e) If an application is made for total or partial bond release, the department shall notify any municipality in which a surface coal mining operation is located by certified mail at least thirty (30) days before granting the release.

(f) Any person with a valid legal interest that might be adversely affected by release of the bond or the responsible officer or head of any federal, state, or local government agency that has jurisdiction by law or is authorized to develop and enforce environmental standards with respect to the operation may file written objections to the proposed release with the department within thirty (30) days after the last publication of the notice under subsection (a). If written objections are filed, and a hearing requested, the department shall inform all the interested parties of the time and place of the hearing and hold a public hearing in the locality of the surface coal mining operation proposed for bond release within thirty (30) days of the request for such hearing (or, at the option of the person filing the hearing request, in Indianapolis or Jasonville). The date, time, and location of the hearing shall also be advertised by the department in a newspaper of general circulation in the locality of the mine for two (2) consecutive weeks.

(g) The department may set a dispute under this section for an informal conference. Conduct of an informal conference does not alter or prejudice the rights and responsibilities under this section of a permittee, a person who files objections, the department, or another interested person.

(h) For the purpose of such hearing, the department shall have the authority to:

(1) administer oaths;

(2) subpoena witnesses or written or printed materials;

(3) compel the attendance of witnesses or production of the materials; and

(4) take evidence, including, but not limited to, inspections of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity.

A verbatim record of each public hearing shall be made and a transcript made available on the motion of any party or by order of the department. (*Natural Resources Commission; 312 IAC 25-5-16; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3506, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.; 25 IR 1182*)

### **312 IAC 25-5-16 Performance bond release; requirements Version b**

Authority: IC 14-34-2-1

Affected: IC 4-21.5-3-27; IC 14-34-10-2; 30 CFR 800.40

*NOTE: This version of section effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register. See also preceding version of this section, effective until superseded by this version of section.*

Sec. 16. (a) A permittee may file a request with the department for the release of all or part of a performance bond or deposit. Within thirty (30) days after an application for bond or deposit release is filed with the department, the operator shall submit a copy of an advertisement placed at least once a week for four (4) successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. The advertisement must be part of any bond release application and shall include the following:

(1) The precise location of the land affected.

(2) The number of acres.

(3) The permittee's name.

(4) The permit number and the date approved.

- (5) The amount of the bond filed and the portion sought to be released.
- (6) The type and appropriate dates of reclamation work performed.
- (7) A description of the results achieved relative to the operator's approved reclamation plan.

The advertisement shall also state that any person with a valid legal interest that might be adversely affected by release of the bond, or the responsible officer or head of any federal, Indiana, or local governmental agency that has jurisdiction by law or is authorized to develop and enforce environmental standards with respect to the operations, may file written comments or objections or may request a public hearing or informal conference concerning the proposed release from bond with the department within thirty (30) days after the last publication of notice. The notice shall contain the address of the division for submission of comment and the calendar date for the close of the comment period. In addition, as part of any bond release application, the applicant shall submit copies of letters that the applicant has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities or water companies in the locality in which the surface coal mining and reclamation activities took place, providing notification of the request to seek release from the bond.

(b) The permittee shall include in the application for bond release a notarized statement that certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of this article and the approved reclamation plan. The certification shall be submitted for each application or phase of bond release.

(c) Within thirty (30) days after receipt of the notification and request, or as soon afterwards as weather conditions permit, the department shall conduct an inspection and evaluation of the reclamation work. The evaluation shall consider, among other things:

- (1) the degree of difficulty to complete any remaining reclamation;
- (2) whether pollution of surface and subsurface water is occurring;
- (3) the probability pollution will continue; and
- (4) the estimated cost of abating the pollution.

The surface owner, agent, or lessee shall be given notice of the inspection by the director and may participate with the department in the inspection. The department shall notify, in writing, the permittee and any other interested person of a decision whether to release all or part of the performance bond or deposit within sixty (60) days after receipt of the request if no public hearing is held under subsection (f). If a public hearing is held under subsection (f), an administrative law judge shall enter an order under IC 4-21.5-3-27 within thirty (30) days after the hearing is completed.

(d) The department may release the bond or deposit, in whole or in part, upon a determination the reclamation covered by the bond or deposit or portion thereof has been accomplished as required by IC 14-34 according to the following schedule:

- (1) Phase I. After the operator completes the backfilling, regrading, and drainage control of a bonded area under the approved reclamation plan, sixty percent (60%) of the bond or collateral for the applicable permit may be released.
- (2) Phase II. After the operator establishes revegetation on the regraded mined lands under the approved reclamation plan, an additional twenty-five percent (25%) of the total original bond amount may be released. No part of the bond or deposit shall be released under this subdivision if the lands to which the release would be applicable are contributing suspended solids to the streamflow or run-off outside the permit area in excess of the limitations in IC 14-34 and until soil productivity for prime farmlands has returned to the equivalent levels of yield as nonmined land of the same soil type in the surrounding area as determined from the soil survey performed under IC 14-34. If a siltation structure is to be retained as a permanent impoundment, a bond release may occur under this subdivision if provisions for sound future maintenance by the operator or the landowner are made with the department.
- (3) Phase III. The department may release the remaining bond only after:
  - (A) the operator has successfully completed all surface coal mining and reclamation activities required in IC 14-34, this article, or the permit; and
  - (B) the expiration of the period specified for operator responsibility in IC 14-34-10-2.

(e) If the director disapproves the application for release of the bond or portion thereof, the director shall notify the permittee, the surety, and any person with an interest in collateral as provided for in section 12 of this rule, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing an opportunity for a public hearing.

(f) If an application is made for total or partial bond release, the department shall notify any municipality in which a surface coal mining operation is located by certified mail at least thirty (30) days before granting the release.

(g) Any person with a valid legal interest that might be adversely affected by release of the bond or the responsible officer or head of any federal, state, or local government agency that has jurisdiction by law or is authorized to develop and enforce

environmental standards with respect to the operation may file written objections to the proposed release with the department within thirty (30) days after the last publication of the notice under subsection (a). If written objections are filed, and a hearing requested, the department shall inform all the interested parties of the time and place of the hearing and hold a public hearing in the locality of the surface coal mining operation proposed for bond release within thirty (30) days of the request for such hearing (or, at the option of the person filing the hearing request, in Indianapolis or Jasonville). The date, time, and location of the hearing shall also be advertised by the department in a newspaper of general circulation in the locality of the mine for two (2) consecutive weeks.

(h) The department may set a dispute under this section for an informal conference. Conduct of an informal conference does not alter or prejudice the rights and responsibilities under this section of a permittee, a person who files objections, the department, or another interested person.

(i) For the purpose of such hearing, the department shall have the authority to:

- (1) administer oaths;
- (2) subpoena witnesses or written or printed materials;
- (3) compel the attendance of witnesses or production of the materials; and
- (4) take evidence, including, but not limited to, inspections of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity.

A verbatim record of each public hearing shall be made and a transcript made available on the motion of any party or by order of the department. (*Natural Resources Commission; 312 IAC 25-5-16; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3506, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2455, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register*)

### **312 IAC 25-5-17 Forfeiture of bonds**

Authority: IC 14-34-2-1

Affected: IC 4-21.5; IC 14-34-3; IC 14-34-6; IC 14-34-9; IC 14-34-10

Sec. 17. (a) The director shall forfeit all or part of a bond for any permit area or an increment of a permit area if reclamation operations are not conducted in accordance with the reclamation plan or the operator defaults on the conditions under which the bond was posted.

(b) The director may withhold forfeiture if the permittee and surety, if any, agree to a compliance schedule to comply with the violations of the permit or bond conditions.

(c) The director may allow the surety to complete the reclamation plan if the surety can demonstrate the ability to complete the reclamation plan, including achievement of the capability to support the alternative postmining land use approved by the director. No bond shall be released, except for partial releases authorized under section 16 of this rule, until successful completion of all reclamation under the terms of the permit, including applicable liability periods of section 7 of this rule.

(d) In the event a determination to forfeit bond is made, the department shall do the following:

- (1) Send written notification by certified mail, return receipt requested, to the permittee and the surety on the bond, if any, of the director's determination to forfeit all or part of the bond and the reasons for the forfeiture, including a finding of the amount to be forfeited.
- (2) Advise the permittee and surety of their rights to appeal the final determination in accordance with IC 4-21.5.
- (3) Proceed in an action for collection of the bond as provided by applicable laws for the collection of defaulted bonds or other debts, consistent with this section, for the amount forfeited, if an appeal is not filed within a time established by the director and a stay of collection issued by the hearing officer or such appeal is unsuccessful.
- (4) If an appeal is filed, defend the action.

(e) The written determination to forfeit all or part of the bond, including the reasons for forfeiture and the amount to be forfeited, shall be a final decision by the director.

(f) Upon default, the director may forfeit any and all bonds deposited to complete those reclamation operations for which the bonds were posted.

(g) The director shall utilize funds collected from bond forfeiture to complete the reclamation plan on the permit area on which bond coverage applies and to cover associated administrative expenses. (*Natural Resources Commission; 312 IAC 25-5-17; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3508, eff Dec 1, 2001*)

**312 IAC 25-5-18 Determination of forfeiture amount**

Authority: IC 14-34-2-1

Affected: IC 14-34-3; IC 14-34-6; IC 14-34-9; IC 14-34-10

Sec. 18. The department shall forfeit the amount of the bond for which liability is outstanding and deposit the proceeds thereof in a dedicated account for use in the payment of all costs associated with the conduct of reclamation activities by the department. Funds forfeited and not used to contract for completion of reclamation work, as indicated in this section, shall be returned by the department to the appropriate entity after reclamation operations have been completed. (*Natural Resources Commission; 312 IAC 25-5-18; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3508, eff Dec 1, 2001*)

**312 IAC 25-5-19 Liability insurance; terms and conditions**

Authority: IC 14-34-2-1

Affected: IC 14-34-3; IC 14-34-6; IC 14-34-9; IC 14-34-10

Sec. 19. (a) The department shall require the applicant to submit at the time of permit application a certificate certifying that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operation for which the permit is sought. The certificate shall provide for personal injury and property damage protection in an amount adequate to compensate all persons injured or property damaged as a result of surface coal mining and reclamation operations, including use of explosives and damage to water wells, and entitled to compensation under the applicable provisions of Indiana law. Minimum insurance coverage for bodily injury shall be three hundred thousand dollars (\$300,000) for each occurrence and five hundred thousand dollars (\$500,000) aggregate; and minimum insurance coverage for property damage shall be two hundred fifty thousand dollars (\$250,000) for each occurrence and five hundred thousand dollars (\$500,000) aggregate.

(b) The policy shall be maintained in full force during the life of the permit or any renewal thereof, including completion of all reclamation operations under this article.

(c) The policy shall include a rider requiring that the insurer notify the department whenever substantive changes are made in the policy, including any termination or failure to renew.

(d) The department may accept from the applicant, in lieu of a certificate for a public liability insurance policy, satisfactory evidence from the applicant that it is self-insured in whole or in part. (*Natural Resources Commission; 312 IAC 25-5-19; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3508, eff Dec 1, 2001*)

**Rule 6. Performance Standards****312 IAC 25-6-1 Coal exploration; applicability**

Authority: IC 14-34-2-1

Affected: IC 14-34-3; IC 14-34-6; IC 14-34-9; IC 14-34-10

Sec. 1. Each person who conducts coal exploration activities for the purpose of determining the location, quantity, or quality of a coal seam shall comply with this section and sections 2 through 4 of this rule. (*Natural Resources Commission; 312 IAC 25-6-1; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3509, eff Dec 1, 2001*)

**312 IAC 25-6-2 Coal exploration; required documents**

Authority: IC 14-34-2-1

Affected: IC 14-34-3; IC 14-34-6; IC 14-34-9; IC 14-34-10

Sec. 2. Each person who conducts coal exploration operations under section 1 of this rule, this section, sections 3 and 4 of this rule, 312 IAC 25-4-10(b), and 312 IAC 25-4-11 shall, while in the exploration area, possess written approval of the director for the activities. The written approval shall be available for review by the authorized representative of the director upon request. (*Natural Resources Commission; 312 IAC 25-6-2; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3509, eff Dec 1, 2001*)

**312 IAC 25-6-3 Coal exploration; performance standards**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 3. (a) The performance standards in this section are applicable to all coal exploration activities conducted for the purpose of determining the location, quantity, or quality of a coal seam that coal exploration activities substantially disturb the natural land surface as defined at 312 IAC 25-1-142.

(b) Habitats of unique or unusually high value for fish, wildlife, and other related environmental values and critical habitats of threatened or endangered species identified under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) shall not be disturbed during coal exploration.

(c) Vehicular travel on other than established graded and surfaced roads shall be limited by the person who conducts exploration to that absolutely necessary to conduct the exploration. Travel shall be confined to graded and surfaced roads during periods when excessive damage to vegetation or rutting of the land surface could result. All roads or other transportation facilities used for coal exploration shall comply with the applicable provisions of sections 65(b) through 65(f), 67, and 68 of this rule.

(d) If excavations, artificial flat areas, or embankments are created during exploration, these areas shall be returned to the approximate original contour promptly after such features are no longer needed for coal exploration.

(e) Topsoil shall be removed, stored, and redistributed on disturbed areas as necessary to assure revegetation or as required by the director.

(f) Revegetation of areas disturbed by coal exploration shall be performed by the person who conducts the exploration, or that person's agent, and shall be accomplished in a manner that encourages prompt revegetation and recovery of a diverse, effective, and permanent vegetative cover. All revegetation shall be in compliance with the plan approved by the director as follows:

(1) All disturbed land shall be seeded or planted to the same seasonal variety native to the disturbed area. If the land use of the exploration area is intensive agriculture, planting of the crops normally grown will meet the requirements of this section.

(2) The vegetative cover shall be capable of stabilizing the soil surface from erosion.

(g) Small and temporary diversions of overland flow of water around new roads, drill pads, and support facilities shall be diverted in a manner that:

(1) prevents erosion;

(2) to the extent possible using the best technology currently available, prevents additional contributions of suspended solids to streamflow or run-off outside the exploration area; and

(3) complies with all other applicable state or federal requirements.

All other drainage shall be diverted as provided in sections 14 and 15 of this rule.

(h) All facilities and equipment shall be removed from the exploration area when they are no longer needed for exploration, except for those facilities and equipment that the director determines may remain to:

(1) provide environmental quality data;

(2) reduce or control the on-site and off-site effects of the exploration activities; or

(3) facilitate future surface mining and reclamation operations by the person conducting the exploration under an approved permit.

(i) All coal exploration shall be conducted in a manner that minimizes disturbance of the prevailing hydrologic balance in accordance with sections 12 through 26 of this rule. The director may specify additional measures which shall be adopted by the person engaged in coal exploration.

(j) Toxic-forming or acid-forming materials shall be handled and disposed of in accordance with sections 19, 21, 22, and 50 of this rule. The director may specify additional measures that shall be adopted by the person engaged in coal exploration.

(k) All exploration holes, wells, or other exposed openings created during exploration shall meet the requirements of sections 8 through 10 of this rule. (*Natural Resources Commission; 312 IAC 25-6-3; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3509, eff Dec 1, 2001*)

**312 IAC 25-6-4 Coal exploration; permit requirements**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 4. (a) Any person who extracts coal for commercial use or sale during coal exploration operations must first obtain a permit for those operations from the director under 312 IAC 25-4-1 through 312 IAC 25-4-134.

(b) With the prior written approval of the director, no permit to conduct surface coal mining operations is required for the sale or commercial use of coal extracted during exploration operations if such sale or commercial use is for coal testing purposes only. The person conducting the exploration shall file an application for such approval with the director. The application shall demonstrate that the coal testing is necessary for the development of a surface coal mining and reclamation operation for which a surface coal mining operations permit application is to be submitted in the near future and that the proposed commercial use or sale of coal extracted during exploration operations is solely for the purpose of testing the coal. The application shall contain each of the following:

- (1) The name of the testing firm and the locations at which the coal will be tested.
- (2) If the coal will be sold directly to or commercially used directly by the intended end user, a statement from the intended end user, or if the coal is sold indirectly to the intended end user through an agent or broker, a statement from the agent or broker. The statement shall include each of the following:
  - (A) The specific reason for the test, including why the coal may be so different from the intended user's other coal supplies as to require testing.
  - (B) The amount of coal necessary for the test and why a lesser amount is not sufficient.
  - (C) A description of the specific tests that will be conducted.
- (3) Evidence that sufficient reserves of coal are available to the person conducting exploration or its principals for future commercial use or sale to the intended end user, or agent or broker of such user identified in this subsection, to demonstrate that the amount of coal to be removed is not the total reserve but is a sampling of a larger reserve.
- (4) An explanation as to why other means of exploration, such as core drilling, are not adequate to determine the quality of the coal and/or the feasibility of developing a surface coal mining operation.

*(Natural Resources Commission; 312 IAC 25-6-4; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3510, eff Dec 1, 2001)*

### **312 IAC 25-6-5 Surface mining; applicability**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 5. This section and sections 6 through 69 of this rule apply to all surface mining activities conducted under IC 14-34.  
*(Natural Resources Commission; 312 IAC 25-6-5; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3510, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182)*

### **312 IAC 25-6-6 Surface mining; signs and markers**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 6. (a) All signs required to be posted shall be of a standard design that can be seen and read easily and shall be made of durable material. The signs and other markers shall be maintained for the duration of all operations to which they pertain.

(b) Signs identifying the mine area shall be displayed at all points of access to the permit area from public roads and highways. Signs shall show the name, business address, and telephone number of the permittee and identification number of the current mining and reclamation permit or other authorization to operate. Such signs shall not be removed until after release of all bonds.

(c) The perimeter of the permit area shall be clearly marked before the beginning of surface mining activities.

(d) If blasting is conducted incident to surface mining activities, the permittee shall do the following:

- (1) Conspicuously display signs reading "Blasting Area" along the edge of any blasting area that comes within one hundred (100) feet of any public road right-of-way, and at the point where any other road provides access to the blasting area.
- (2) Conspicuously flag the immediate vicinity of charged holes.
- (3) Place at all entrances to the permit area from public roads conspicuous signs that state "Warning Explosives in Use", that:
  - (A) clearly explain the blast warning and all clear signals that are in use; and
  - (B) explain the marking of blasting areas and charged holes within the permit area.

(e) Where topsoil or other vegetation-supporting material is segregated and stockpiled as required under section 11 of this



rule, the stockpiled material shall be clearly marked. However, the permittee may remove the markers while reworking or removing the stockpiles.

(f) Buffer zones shall be marked along their boundaries as required under section 28 of this rule. (*Natural Resources Commission; 312 IAC 25-6-6; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3510, eff Dec 1, 2001*)

**312 IAC 25-6-7 Surface mining; coal recovery**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 7. Surface mining activities shall be conducted so as to maximize the utilization and conservation of the coal, while utilizing the best appropriate technology currently available to maintain environmental integrity, so that re-affecting the land in the future through surface coal mining operations is minimized. (*Natural Resources Commission; 312 IAC 25-6-7; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3511, eff Dec 1, 2001*)

**312 IAC 25-6-8 Surface mining; casing and sealing drilled holes; general requirements**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 8. (a) Each drilled hole, shaft, well, or other exposed underground opening shall be cased, sealed, or managed to prevent acid or toxic water drainage from entering ground or surface waters and to minimize disturbance to the prevailing hydrologic balance. Each hole extending below or beyond the stratum immediately below the lowermost coal seam to be mined by the surface methods, within the permit area, shall be sealed in a manner to prevent exposure by mining activity.

(b) Use of a drilled hole, shaft, or other underground opening as a water well must meet the provisions of section 24 of this rule.

(c) This section does not apply to holes solely drilled and used for blasting. (*Natural Resources Commission; 312 IAC 25-6-8; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3511, eff Dec 1, 2001*)

**312 IAC 25-6-9 Surface mining; casing and sealing drilled holes; temporary**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 9. Each drilled hole, well, or other exposed underground opening identified in the approved permit application for use to return coal processing waste or water to underground workings, or to be used to monitor ground water conditions, shall be temporarily sealed before use and protected during use by barricades, fences, or other protective devices. (*Natural Resources Commission; 312 IAC 25-6-9; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3511, eff Dec 1, 2001*)

**312 IAC 25-6-10 Surface mining; casing and sealing drilled holes; permanent**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 10. Each drilled hole, shaft, well, or other exposed underground opening when no longer in use for exploration, monitoring, or other mine uses or unless approved for transfer as a water well under section 24 of this rule, shall be cased, sealed, or otherwise managed to prevent acid or other toxic drainage from entering ground and surface waters. Permanent closure measures shall be designed to prevent access to the mine workings by people, livestock, fish and wildlife, and machinery. (*Natural Resources Commission; 312 IAC 25-6-10; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3511, eff Dec 1, 2001*)

**312 IAC 25-6-11 Surface mining; topsoil and subsoil**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 11. (a) All topsoil shall be removed as a separate layer from the area to be disturbed and segregated. Additional topsoil requirements are as follows:

- (1) Where the topsoil is of insufficient quantity or of poor quality to sustain vegetation, the material approved by the director as a topsoil substitute or supplement in accordance with subsection (c) shall be removed separately from the area to be disturbed and segregated.
- (2) If the topsoil is less than six (6) inches thick, the permittee may remove the topsoil and the unconsolidated materials immediately below the topsoil to a total depth of six (6) inches and treat the mixture as topsoil.
- (3) Topsoil need not be removed:
  - (A) at sites disturbed only by power poles, signs, fence posts, electrical substations, transformers and switchboxes, explosives magazines, temporary buildings on skids, topsoil stockpiles, culvert installations, cable routes, cable storage areas, powerline cable suspension towers or "horses", pumps, pump hoses, and pipelines; and
  - (B) with the director's approval, for minor disturbances that will not permanently destroy the existing vegetation and will not cause erosion.

(b) All material to be removed under this rule shall be removed after the vegetative cover that would interfere with its removal and use is cleared from the area to be disturbed, but before any drilling, blasting, mining, or other disturbance, except those disturbances described in subsection (a)(3), takes place.

(c) Selected overburden materials may be substituted for, or used as a supplement to, topsoil if the operator demonstrates to the director in the permit application that the resulting soil medium is equal to or more suitable for sustaining vegetation than the existing topsoil.

(d) Storage requirements are as follows:

- (1) Materials removed under subsections (a) and (f) shall be segregated and stockpiled when it is impractical to redistribute such materials promptly on regraded areas within the permit area.
- (2) Stockpiled materials shall:
  - (A) be selectively placed on stable sites within the permit area or within other bonded permit areas of the same permittee within the same mining operation;
  - (B) be protected from contamination and unnecessary compaction that would interfere with revegetation;
  - (C) be protected from wind and water erosion through prompt establishment and maintenance of an effective, quick growing nonnoxious vegetative cover, or through other measures approved by the director in the permit application; and
  - (D) not be moved until required for redistribution unless approved by the director in the permit application.
- (3) Where long term surface disturbances will result from facilities such as support facilities and preparation plants and where stockpiling of materials removed under subsection (a) would be detrimental to the quality or quantity of those materials, the director may, in the permit application, approve the temporary distribution of the soil materials removed on an approved site within the permit area or another permit area of the same permittee within the same mining operation to enhance the current use of that site until needed for later reclamation, provided that:
  - (A) such action will not permanently diminish the capability of the topsoil of the host site; and
  - (B) the material will be retained in a condition more suitable for redistribution than if stockpiled.

(e) Redistribution requirements are as follows:

- (1) Topsoil materials removed under subsection (a) shall be redistributed in a manner that:
  - (A) achieves an approximately uniform, stable thickness consistent with the approved postmining land use, contours, and surface water drainage systems;
  - (B) prevents excess compaction of the materials; and
  - (C) protects the materials from wind and water erosion before and after seeding and planting.
- (2) Before redistribution of the materials removed under subsections (a) and (f), the regraded land shall be treated if necessary to reduce potential slippage of the redistributed material and to promote root penetration. If no harm will be caused to the redistributed material and reestablished vegetation, such treatment may be conducted after such material is replaced.
- (3) Redistribution of topsoil or topsoil substitutes on the approved postmining embankments of permanent impoundments or of roads shall not be required if the permittee demonstrates that:
  - (A) placement of such materials on the embankments is inconsistent with the requirement to use the best technology currently available to prevent sedimentation; and

(B) the embankments will be otherwise stable against erosion.

(4) Nutrients and soil amendments shall be applied, in amounts determined by soil tests using standard agronomic laboratory procedures, to the initially redistributed material when necessary to establish vegetative cover.

(f) The director may require that portions of the subsoil be removed and segregated, stockpiled and redistributed as subsoil in accordance with the requirements of subsections (d) and (e) if he finds such subsoil layers are necessary to comply with the revegetation requirements of this rule. *(Natural Resources Commission; 312 IAC 25-6-11; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3512, eff Dec 1, 2001)*

### **312 IAC 25-6-12 Hydrologic balance; general requirements**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 12. (a) Surface mining activities shall be planned and conducted to minimize changes to the prevailing hydrologic balance in both the permit area and adjacent areas, to prevent material damage to the hydrologic balance outside the permit area, in order to prevent long term adverse changes in that balance which could result from those activities.

(b) Changes in water quality and quantity, in the depth to ground water, and in the location of surface water drainage channels shall be minimized so that the approved postmining land use of the permit area is not adversely affected.

(c) In no case shall federal and Indiana water quality statutes, regulations, rules, standards, or effluent limitations be violated.

(d) Operations shall be conducted to minimize water pollution. If necessary, treatment methods shall be used to control water pollution.

(e) Each person who conducts surface mining activities shall emphasize mining and reclamation practices that prevent or minimize water pollution. Changes in flow of drainage shall be used in preference to the use of water treatment facilities.

(f) Acceptable practices to control and minimize water pollution include the following:

(1) Stabilizing disturbed areas through land shaping.

(2) Diverting run-off.

(3) Achieving quickly germinating and growing stands of temporary vegetation.

(4) Regulating channel velocity of water.

(5) Lining drainage channels with rock or vegetation.

(6) Mulching.

(7) Selectively placing and sealing acid-forming and toxic-forming materials.

(8) Selectively placing waste materials in backfill areas.

(g) If the practices listed in subsection (f) are not adequate to meet the requirements of sections 5 through 11 of this rule, this section, and sections 13 through 68 of this rule, the person who conducts surface mining activities shall operate and maintain the necessary water treatment facilities for as long as treatment is required under sections 5 through 11 of this rule, this section, and sections 13 through 68 of this rule. *(Natural Resources Commission; 312 IAC 25-6-12; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3513, eff Dec 1, 2001)*

### **312 IAC 25-6-12.5 Hydrologic balance; application of ground water quality standards at surface coal mining and reclamation operations permitted under IC 14-34 on which coal extraction, including augering, coal processing, coal processing waste disposal, or spoil deposition, occurs after the effective date of this section, or on which disposal activity subject to IC 13-19-3-3 has occurred and the area is not fully released from the performance bond required by IC 14-34-6**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 12.5. (a) Ground water is classified under 327 IAC 2-11 to determine appropriate criteria that shall be applied to ground water.

(b) Surface coal mining and reclamation operations must be planned and conducted to prevent violations of ground water quality standards under 327 IAC 2-11.

(c) Surface coal mining and reclamation operations must be planned and conducted to prevent impacts to the ground water in a drinking water well or a nondrinking water supply well, including an industrial, commercial, or agricultural supply well, that result in a contaminant concentration that, based on best scientific information, renders the well unusable for its current use. If a drinking water well or a nondrinking water supply well is affected by contamination, diminution, or interruption proximately resulting from surface mining activities, 312 IAC 25-4-33 and 312 IAC 25-6-25 govern water replacement.

(d) The ground water management zone described in 327 IAC 2-11-9 must be established as follows:

(1) At each drinking water well that is within three hundred (300) feet from the edge of any of the following:

(A) A coal extraction area.

(B) A coal mine processing waste disposal site if not within a coal extraction area.

(C) An area where coal is extracted by auger mining methods.

(D) A location at which coal is crushed, washed, screened, stored, and loaded at or near the mine site unless the location is within the coal extraction area.

(E) A spoil deposition area.

(2) Within three hundred (300) feet from the edge of an area or site described in subdivision (1) where there is no drinking water well that is within three hundred (300) feet from the edge of an area or site described in subdivision (1). If the property boundary or permit boundary is located within three hundred (300) feet from the edge of an area or site described in subdivision (1), the director shall require that a monitoring well be placed at a location approved by the director between the property boundary or permit boundary and the edge of an area or site described in subdivision (1). If a standard listed in 327 IAC 2-11 is exceeded at a monitoring well described in subdivision (2) that the director determines was caused by an activity under subdivision (1), the permittee must submit to the director a plan describing, in detail, the steps to be taken to prevent material damage to the hydrologic balance beyond the permit boundary and a timetable for implementation. This plan must be submitted within thirty (30) days of the discovery of an exceedance and include information relative to access, additional monitoring, and any measures to be taken to minimize changes to the prevailing hydrologic balance and to prevent material damage to the hydrologic balance beyond the permit boundary.

(3) If a drinking water well is located within three hundred (300) feet of an area or site described in subdivision (1) and it is determined that there is a substantial likelihood of impact, the director may require that a monitoring well be placed at a location approved by the director between the drinking water well and the edge of an area or site described in subdivision (1). If a standard listed in 327 IAC 2-11 is exceeded at a monitoring well described in subdivision (3) that the director determines was caused by an activity under subdivision (1), the permittee shall submit to the director a plan describing, in detail, the steps to be taken and a timetable for taking the action that takes into account site-specific conditions to provide protection for the drinking water well. This plan must be submitted within thirty (30) days of the discovery of an exceedance and include information relative to access, additional monitoring, and any measures to be taken to minimize changes to the prevailing hydrologic balance and to prevent material damage to the hydrologic balance beyond the permit boundary.

(e) The criteria established in subsection (a) must be met at and beyond the boundary of the ground water management zone.

*(Natural Resources Commission; 312 IAC 25-6-12.5; filed Jul 29, 2003, 3:45 p.m.; 26 IR 3864, eff Feb 1, 2004)*

### **312 IAC 25-6-13 Surface mining; hydrologic balance; water quality standards and effluent limitations**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 13. (a) All surface drainage from the disturbed area shall be controlled through use of a siltation structure, a series of siltation structures, or such alternative techniques as provided in section 16 of this rule before leaving the permit area.

(b) Siltation structures and other approved alternate techniques as provided in section 16(b) of this rule shall be operated and maintained to achieve applicable federal and state effluent limitations.

(c) For the purposes of this section only, "disturbed area" shall not include those areas in which only diversion ditches, siltation structures, or roads are installed in accordance with sections 5 through 12 of this rule, this section, and sections 14 through 68 of this rule.

(d) Siltation structures required by this section shall be constructed in accordance with section 17 of this rule in appropriate locations before beginning any surface mining activities in the drainage area to be affected.

(e) Discharges of water from areas disturbed by surface mining activities shall be made in compliance with each of the

following:

- (1) All applicable state and federal water quality laws and regulations.
- (2) Effluent limitations for coal mining promulgated by the federal United States Environmental Protection Agency set forth in 40 CFR 434.

*(Natural Resources Commission; 312 IAC 25-6-13; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3513, eff Dec 1, 2001)*

**312 IAC 25-6-14 Hydrologic balance; diversion; general requirements**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 14. (a) Flow may be diverted around disturbed areas through temporary or permanent diversions if approved by the director for:

- (1) mined areas abandoned before May 3, 1978;
  - (2) reclaimed areas that meet the criteria of section 17(e) of this rule for siltation structure removal;
  - (3) undisturbed areas; or
  - (4) active surface coal mining operations after passing through a siltation structure and meeting the applicable effluent limitations.
- (b) Diversions shall be designed to:
- (1) minimize adverse impacts to the hydrologic balance within the permit and adjacent areas;
  - (2) prevent material damage to public or private property; and
  - (3) assure the safety of the public.

(c) Diversions shall not be used to divert water into underground mines without the approval of the director under section 26 of this rule.

(d) A diversion and its appurtenant structures shall be designed, located, constructed, maintained, and used to:

- (1) be stable;
- (2) provide protection against flooding and resultant damage to life and property;
- (3) prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow outside the permit area; and
- (4) comply with all applicable local, state, and federal laws and regulations.

(e) A temporary diversion shall be removed promptly when no longer needed to achieve the purpose for which the temporary diversion was authorized. The land disturbed by the removal process shall be restored in accordance with the approved reclamation plan and sections 5 through 13 of this rule, this section, and sections 15 through 69 of this rule.

(f) Before any diversion is removed, downstream water treatment facilities previously protected by the diversion shall be modified or removed, as necessary, to prevent overtopping or failure of the facilities. This requirement does not relieve the permittee from maintaining water treatment facilities as otherwise required.

(g) A permanent diversion or a stream channel reclaimed after the removal of a temporary diversion shall be designed and constructed to restore or approximate the premining characteristics of the original stream channel, including the natural riparian vegetation, to promote the recovery and the enhancement of the aquatic habitat.

(h) Consideration during design shall be given to:

- (1) the anticipated flow velocity;
- (2) the erosion characteristics of the channel and side slopes;
- (3) the need for adequate freeboard above the design water surface elevation; and
- (4) the need for channel lining or energy dissipaters.

*(Natural Resources Commission; 312 IAC 25-6-14; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3513, eff Dec 1, 2001)*

**312 IAC 25-6-15 Hydrologic balance; diversions of perennial streams, intermittent streams, miscellaneous flows; supplemental requirements**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 15. (a) This section provides requirements that are supplemental to those contained in section 14 of this rule for the following:

- (1) Diversions of perennial streams.
- (2) Intermittent streams with a watershed greater than one (1) square mile.
- (3) Miscellaneous flows.

Subsection (b) governs perennial streams and intermittent streams with a watershed greater than one (1) square mile. Subsection (c) governs miscellaneous flows.

(b) Requirements for temporary and permanent diversions are as follows:

- (1) Diversion of perennial streams and intermittent streams with watershed greater than one (1) square mile may be approved by the director after making a finding related to stream buffer zones that the diversions will not adversely affect the water quantity and quality and related environmental resources of the stream.
- (2) The design capacity of channels for temporary and permanent stream channel diversions shall be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream from the diversion.
- (3) The requirements of section 14(d)(2) of this rule shall be met when the temporary and permanent diversions for intermittent streams having a watershed greater than one (1) square mile and perennial streams are designed so that the combination of channel, bank, and floodplain configuration is adequate to pass safely the peak run-off of a ten (10) year, six (6) hour precipitation event for a temporary diversion and a one hundred (100) year, six (6) hour precipitation event for a permanent diversion.
- (4) All stream channel diversion subject to this subsection shall be designed under the supervision of a qualified registered professional engineer in accordance with good engineering practices and the requirements of this section and shall be certified after construction by the qualified registered professional engineer as having been constructed in accordance with the approved plans.

(c) Requirements for miscellaneous flows are as follows:

- (1) Miscellaneous flows that consist of all flows except those specified in subsection (b) may be diverted around disturbed areas if required and approved by the director. Miscellaneous flows include ground water discharges, overland flow, ephemeral streams, and intermittent streams having a watershed not greater than one (1) square mile.
- (2) The design, location, construction, maintenance, and removal of diversion of miscellaneous flows shall meet all the performance standards set forth in section 14 of this rule.
- (3) The requirements of section 14(d)(2) of this rule shall be met when the temporary and permanent diversions for miscellaneous flows are designed so that a combination of channel, bank, and floodplain configuration is adequate to pass safely the peak run-off of a two (2) year, six (6) hour precipitation event for a temporary diversion and a ten (10) year, six (6) hour precipitation event for a permanent diversion.

*(Natural Resources Commission; 312 IAC 25-6-15; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3514, eff Dec 1, 2001)*

### **312 IAC 25-6-16 Surface mining; hydrologic balance; sediment control measures**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 16. (a) Appropriate sediment control measures shall be designed, constructed, and maintained using the best technology currently available to do as follows:

- (1) Prevent, to the extent possible, additional contributions of suspended solids to stream flow or to run-off outside the permit area.
- (2) Meet the more stringent of applicable Indiana or federal effluent limitations.
- (3) Minimize erosion to the extent possible.

(b) Sediment control measures include practices carried out within and adjacent to the disturbed area. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include, but are not limited to, the following:

- (1) Disturbing the smallest practicable area at any one (1) time during the mining operation through progressive backfilling, grading, and prompt revegetation as required in section 54(b) of this rule.
- (2) Stabilizing the backfilled material to promote a reduction in the rate and volume of run-off in accordance with the

requirements of section 50 of this rule.

- (3) Retaining sediment within the disturbed areas.
- (4) Diverting run-off away from disturbed areas.
- (5) Diverting run-off using protected channels or pipes through disturbed areas so as not to cause additional erosion.
- (6) Using straw dikes, riprap, check dams, mulches, vegetation sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce run-off volume, or trap sediment.
- (7) Treating with chemicals.

*(Natural Resources Commission; 312 IAC 25-6-16; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3515, eff Dec 1, 2001)*

**312 IAC 25-6-17 Surface mining; hydrologic balance; siltation structures Version a**

Authority: IC 14-34-2-1

Affected: IC 14-34; IC 25-31

*NOTE: This version of section effective until superseded by the following version of this section, which is effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register.*

Sec. 17. (a) Siltation structures shall be constructed according to the following:

- (1) Additional contributions of suspended solids sediment to stream flow or run-off outside the permit area shall be prevented to the extent possible using the best technology currently available.
- (2) All surface drainage from the disturbed area shall be passed through a siltation structure before leaving the permit area except as provided in subdivision (5) or section 13 of this rule.
- (3) Siltation structures for an area shall be constructed before beginning any surface mining activities in that area and, upon construction, shall be certified by a qualified registered professional engineer or qualified registered professional land surveyor to be constructed as designed and as approved in the reclamation plan.
- (4) Any siltation structure that impounds water shall be designed, constructed, and maintained in accordance with section 20 of this rule.
- (5) Siltation structures shall be maintained until removal is authorized by the director and the disturbed area has been stabilized and revegetated in accordance with the reclamation plan and sections 48 through 61 of this rule so that the following requirements are met:
  - (A) Removal of the structure will not result in violations of applicable water quality standards in the receiving stream.
  - (B) Postmining drainage is shown to be of the approximate quality of the drainage from the area prior to mining.
  - (C) If baseline data is unavailable concerning the quality of drainage before mining, it is shown to be of the approximate quality of drainage from similar areas of unmined land.

In no case shall the structure be removed sooner than two (2) years after the last augmented seeding.

- (6) When the siltation structure is removed, the land on which it is located shall be regraded and revegetated in accordance with the reclamation plan and sections 54 through 61 of this rule. Siltation structures approved by the director for retention as permanent impoundments shall meet all the requirements for permanent impoundments of sections 20 through 27 of this rule.
- (7) Any point source discharge of water from underground workings to surface waters that does not meet the effluent limitations of section 77 of this rule shall be passed through a siltation structure before leaving the permit area.
- (b) Siltation structures, where utilized individually or in series, shall be as follows:
  - (1) Located as near as possible to the disturbed area and out of perennial streams unless approved by the director.
  - (2) Designed, constructed, and maintained to achieve each of the following:
    - (A) Provide adequate sediment storage volume.
    - (B) Provide adequate detention time to allow the effluent from the ponds to meet Indiana and federal effluent limitations.
    - (C) Contain or treat the ten (10) year, twenty-four (24) hour precipitation event (design event) unless a lesser design event is approved by the director based on terrain, climate, other site-specific conditions, and on a demonstration by the operator that the effluent limitations of section 13 of this rule will be met.
    - (D) Provide a nonclogging dewatering device adequate to maintain the detention time required under clause (B).

- (E) Minimize, to the extent possible, short circuiting.
- (F) Provide periodic sediment removal sufficient to maintain adequate volume for the design event.
- (G) Ensure against excessive settlement.
- (H) Be free of sod, large roots, frozen soil, and acid-forming or toxic-forming coal processing waste.
- (I) Be compacted properly.
- (J) For impoundments with embankments, achieve a minimum of two (2) feet of freeboard above pool stage and one (1) foot of freeboard above the design peak discharge elevation which is in response to the design storm specified in subsection (d)(2), or greater amount of freeboard as specified by the director.

(c) The design, construction, and maintenance of a siltation structure or other sediment control measures under this section do not relieve the permittee from compliance with applicable effluent limitations as contained in section 13 of this rule.

(d) A siltation structure shall include either a combination of principal and emergency spillways or a single spillway configured as specified in subdivision (1), designed and constructed to safely pass the applicable design precipitation event specified in subdivision (2), except as set forth in subdivision (3). Spillway construction shall be as follows:

- (1) The director may approve a single open channel spillway that is:
  - (A) of nonerodible construction and designed to carry sustained flows; or
  - (B) earth-lined or grass-lined and designed to carry short term, infrequent flows at nonerosive velocities where sustained flows are not expected.
- (2) Except as specified in subdivision (3), the required design precipitation event for a sedimentation pond meeting the spillway requirements of this section is as follows:
  - (A) For a sedimentation pond meeting the size or other criteria of 30 CFR 77.216(a), a one hundred (100) year, six (6) hour event, or greater event as specified by the director.
  - (B) For a sedimentation pond not meeting the size or other criteria of 30 CFR 77.216(a), a twenty-five (25) year, six (6) hour event, or greater event as specified by the director.

(3) In lieu of meeting the requirements in subdivision (1), the director may approve a sedimentation pond that relies primarily on storage to control the run-off from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer that the siltation structure will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent engineering practices. Such a sedimentation pond shall be located where failure would not be expected to cause loss of life or serious property damage, except where:

- (A) in the case of a sedimentation pond meeting the size or other criteria of 30 CFR 77.216(a), it is designed to control the precipitation of the probable maximum precipitation of a six (6) hour event, or greater event as specified by the director; or
- (B) in the case of a sedimentation pond not meeting the size or other criteria of 30 CFR 77.216(a), it is designed to control the precipitation of a one hundred (100) year, six (6) hour event, or greater event as specified by the director.

(e) Other treatment facilities shall be designed as follows:

(1) To treat the ten (10) year, twenty-four (24) hour precipitation event unless a lesser design event is approved by the director based on terrain, climate, other site-specific conditions, and a demonstration by the operator that the effluent limitations of section 13 of this rule will be met.

(2) Designed in accordance with the applicable requirements of subsection (b).

*(Natural Resources Commission; 312 IAC 25-6-17; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3515, eff Dec 1, 2001)*

### **312 IAC 25-6-17 Surface mining; hydrologic balance; siltation structures Version b**

Authority: IC 14-34-2-1

Affected: IC 14-34; IC 25-31

*NOTE: This version of section effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register. See also preceding version of this section, effective until superseded by this version of section.*

Sec. 17. (a) Siltation structures shall be constructed according to the following:

- (1) Additional contributions of suspended solids sediment to stream flow or run-off outside the permit area shall be prevented to the extent possible using the best technology currently available.



(2) All surface drainage from the disturbed area shall be passed through a siltation structure before leaving the permit area except as provided in subdivision (5) or section 13 of this rule.

(3) Siltation structures for an area shall be constructed before beginning any surface mining activities in that area and, upon construction, shall be certified by a qualified registered professional engineer to be constructed as designed and as approved in the reclamation plan.

(4) Any siltation structure that impounds water shall be designed, constructed, and maintained in accordance with section 20 of this rule.

(5) Siltation structures shall be maintained until removal is authorized by the director and the disturbed area has been stabilized and revegetated in accordance with the reclamation plan and sections 48 through 61 of this rule so that the following requirements are met:

(A) Removal of the structure will not result in violations of applicable water quality standards in the receiving stream.

(B) Postmining drainage is shown to be of the approximate quality of the drainage from the area prior to mining.

(C) If baseline data is unavailable concerning the quality of drainage before mining, it is shown to be of the approximate quality of drainage from similar areas of unmined land.

In no case shall the structure be removed sooner than two (2) years after the last augmented seeding.

(6) When the siltation structure is removed, the land on which it is located shall be regraded and revegetated in accordance with the reclamation plan and sections 54 through 61 of this rule. Siltation structures approved by the director for retention as permanent impoundments shall meet all the requirements for permanent impoundments of sections 20 through 27 of this rule.

(7) Any point source discharge of water from underground workings to surface waters that does not meet the effluent limitations of section 77 of this rule shall be passed through a siltation structure before leaving the permit area.

(b) Siltation structures, where utilized individually or in series, shall be as follows:

(1) Located as near as possible to the disturbed area and out of perennial streams unless approved by the director.

(2) Designed, constructed, and maintained to achieve each of the following:

(A) Provide adequate sediment storage volume.

(B) Provide adequate detention time to allow the effluent from the ponds to meet Indiana and federal effluent limitations.

(C) Contain or treat the ten (10) year, twenty-four (24) hour precipitation event (design event) unless a lesser design event is approved by the director based on terrain, climate, other site-specific conditions, and on a demonstration by the operator that the effluent limitations of section 13 of this rule will be met.

(D) Provide a nonclogging dewatering device adequate to maintain the detention time required under clause (B).

(E) Minimize, to the extent possible, short circuiting.

(F) Provide periodic sediment removal sufficient to maintain adequate volume for the design event.

(G) Ensure against excessive settlement.

(H) Be free of sod, large roots, frozen soil, and acid-forming or toxic-forming coal processing waste.

(I) Be compacted properly.

(J) For impoundments with embankments, achieve a minimum of two (2) feet of freeboard above pool stage and one

(1) foot of freeboard above the design peak discharge elevation that is in response to the design storm specified in subsection (d)(2), or greater amount of freeboard as specified by the director.

(c) The design, construction, and maintenance of a siltation structure or other sediment control measures under this section do not relieve the permittee from compliance with applicable effluent limitations as contained in section 13 of this rule.

(d) A siltation structure shall include either a combination of principal and emergency spillways or a single spillway configured as specified in subdivision (1), designed and constructed to safely pass the applicable design precipitation event specified in subdivision (2), except as set forth in subdivision (3). Spillway construction shall be as follows:

(1) The director may approve a single open channel spillway that is:

(A) of nonerodible construction and designed to carry sustained flows; or

(B) earth-lined or grass-lined and designed to carry short term, infrequent flows at nonerosive velocities where sustained flows are not expected.

(2) Except as specified in subdivision (3), the required design precipitation event for a siltation structure meeting the spillway requirements of this section is as follows:

(A) For a siltation structure meeting the size or other criteria of 30 CFR 77.216(a), a one hundred (100) year, six (6) hour event, or greater event as specified by the director.

(B) For a siltation structure meeting the Class B or C criteria for dams in TR-60, the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60, or greater event as specified by the director.

(C) For a siltation structure not meeting the size or other criteria of 30 CFR 77.216(a), or not meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60), a twenty-five (25) year, six (6) hour event, or greater event as specified by the director.

(3) In lieu of meeting the requirements in subdivision (1), the director may approve a siltation structure that relies primarily on storage to control the run-off from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer that the siltation structure will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent engineering practices. Such a siltation structure shall be located where failure would not be expected to cause loss of life or serious property damage, except where:

(A) in the case of a siltation structure meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or meeting the size or other criteria of 30 CFR 77.216(a), it is designed to control the precipitation of the probable maximum precipitation of a six (6) hour event, or greater event as specified by the director; or

(B) in the case of a siltation structure not meeting the size or other criteria of 30 CFR 77.216(a) or not meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60), it is designed to control the precipitation of a one hundred (100) year, six (6) hour event, or greater event as specified by the director.

(e) Other treatment facilities shall be designed as follows:

(1) To treat the ten (10) year, twenty-four (24) hour precipitation event unless a lesser design event is approved by the director based on terrain, climate, other site-specific conditions, and a demonstration by the operator that the effluent limitations of section 13 of this rule will be met.

(2) Designed in accordance with the applicable requirements of subsection (b).

*(Natural Resources Commission; 312 IAC 25-6-17; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3515, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2457, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register)*

### **312 IAC 25-6-18 Hydrologic balance; discharge structures**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 18. Discharge from siltation structures, permanent and temporary impoundments, coal processing waste dams and embankments, and diversions shall be controlled, by energy dissipators, riprap channels, and other devices, where necessary, to do the following:

(1) Reduce erosion.

(2) Prevent deepening or enlargement of stream channels.

(3) Minimize disturbance of the hydrologic balance.

Discharge structures shall be designed according to standard engineering design procedures. *(Natural Resources Commission; 312 IAC 25-6-18; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3517, eff Dec 1, 2001)*

### **312 IAC 25-6-19 Hydrologic balance; acid-forming and toxic-forming spoil**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 19. Drainage from acid-forming and toxic-forming spoil into ground and surface water shall be avoided by doing the following:

(1) Identifying, burying, and treating where necessary, spoil that in the judgment of the director, may be detrimental to vegetation or may adversely affect water quality if not treated or buried.

(2) Preventing water from coming into contact with acid-forming and toxic-forming spoil in accordance with section 50 of this rule.

(3) Burying or treating all acid-forming or toxic-forming spoil within a reasonable period of time. If the director determines that such spoil is detrimental to the offsite hydrologic balance, the permittee shall bury or treat the acid-forming or toxic-forming spoil within thirty (30) days.

*(Natural Resources Commission; 312 IAC 25-6-19; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3517, eff Dec 1, 2001)*

**312 IAC 25-6-20 Surface mining; hydrologic balance; permanent and temporary impoundments Version a**

Authority: IC 14-34-2-1

Affected: IC 14-34

*NOTE: This version of section effective until superseded by the following version of this section, which is effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register.*

Sec. 20. (a) This section applies to both temporary and permanent impoundments and must satisfy the following conditions:

(1) An impoundment meeting the size or other criteria of 30 CFR 77.216(a) shall comply with the requirements of 30 CFR 77.216 and this section.

(2) The design of impoundments shall be certified in accordance with 312 IAC 25-4-49 as designed to meet the requirements of this rule using current, prudent engineering practices and any design criteria established by the director. The qualified registered professional engineer shall be experienced in the design and construction of impoundments.

(3) Impoundments must meet the following criteria for stability:

(A) An impoundment meeting the size or other criteria of 30 CFR 77.216(a) located where failure would be expected to cause loss of life or serious property damage or impounding coal mine waste shall have a minimum static safety factor of one and five-tenths (1.5) for a normal pool with steady state seepage saturation conditions and a seismic safety factor of at least one and two-tenths (1.2).

(B) Impoundments not meeting the size or other criteria of 30 CFR 77.216(a) and located where failure would not be expected to cause loss of life or serious property damage shall have a minimum static safety factor of one and three-tenths (1.3) for a normal pool with steady state seepage saturation conditions.

(C) In lieu of meeting the static safety factor requirements of clause (B), the applicant may elect, in order to ensure stability for temporary impoundments not meeting the size or other criteria of 30 CFR 77.216(a) and located where failure would not be expected to cause loss of life or serious property damage, to grade as follows:

(i) The side slopes of the settled embankments shall not be steeper than two (2) horizontal to one (1) vertical on the upstream slopes.

(ii) The downstream slopes shall not be steeper than three (3) horizontal to one (1) vertical. An impoundment constructed within these guidelines shall not be approved for permanent postmining land use until the criteria for permanent impoundments of this section have been satisfied.

(4) The size and configuration of the impoundment shall be adequate for its intended purposes. Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume.

(5) Foundations and abutments for an impounding structure shall be stable during all phases of construction and operation and shall be designed based on adequate and accurate information on the foundation conditions. For an impoundment meeting the size or other criteria of 30 CFR 77.216(a), foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability. All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed, if necessary, to ensure stability.

(6) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

(7) An impoundment shall include either a combination of principal and emergency spillways or a single spillway configured as specified in clause (A), designed and constructed to safely pass the applicable design precipitation event specified in clause (B), except as set forth in subsection (c)(1).

(A) The director may approve a single open channel spillway that is:

(i) of nonerodible construction and designed to carry sustained flows; or

- (ii) earth-lined or grass-lined and designed to carry short term, infrequent flows at nonerosive velocities where sustained flows are not expected.
- (B) Except as specified in subsection (c)(1), the required design precipitation event for an impoundment meeting the spillway requirements of this section is as follows:
  - (i) For an impoundment meeting the size or other criteria of 30 CFR 77.216(a), a one hundred (100) year, six (6) hour event, or greater event as specified by the director.
  - (ii) For an impoundment not meeting the size or other criteria of 30 CFR 77.216(a), a twenty-five (25) year, six (6) hour event, or greater event as specified by the director.
- (8) The vertical portion of any remaining highwall must be located far enough below the low water line, along the extent of the highwall, to provide adequate safety and access for proposed water users. If surface run-off enters the impoundment, the side slope must be protected to prevent erosion.
- (9) A qualified registered professional engineer or other qualified professional specialist under the direction of a professional engineer, either of whom shall be experienced in the construction of impoundments, shall inspect each impoundment according to the following provisions:
  - (A) Inspections shall be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.
  - (B) The qualified registered professional engineer or qualified registered professional land surveyor shall, within thirty (30) days after each inspection required in clause (A), provide to the director a certified report that the impoundment has been constructed and/or maintained as designed and in accordance with the approved plan and this article. The report shall include discussion of the following:
    - (i) Any appearance of instability, structural weakness, or other hazardous condition.
    - (ii) Depth and elevation of any impounded waters.
    - (iii) Existing storage capacity.
    - (iv) Any existing or required monitoring procedures and instrumentation.
    - (v) Any other aspects of the structure affecting stability.
  - (C) A copy of the report shall be retained at or near the mine site.
  - (D) Impoundments subject to 30 CFR 77.216 must be examined in accordance with 30 CFR 77.216-3.
  - (E) Impoundments that do not meet the size or other criteria of 30 CFR 77.216(a) shall be examined at least quarterly by a qualified person designated by the permittee for appearances of instability, structural weakness, or other hazardous conditions. At least one (1) of the quarterly examinations conducted during the calendar year shall be certified by a qualified registered professional engineer or qualified registered professional land surveyor and shall include a discussion of any appearances of instability, structural weakness, or other hazardous conditions, and any other aspects of the structure affecting stability, and a statement indicating the pond has been maintained in accordance with the approved plan and this section. This examination shall be conducted during the period of October 1 through December 31 of each calendar year. The certified examination report shall be submitted to the director within thirty (30) days of the examination. Impoundment examinations shall be conducted until the impoundment has been removed or until final bond release in accordance with 312 IAC 25-5-16. If the operator can demonstrate that failure of the structure would not create a potential threat to public health and safety or threaten significant environmental harm, the following impoundments shall be exempt from the examination requirements of this subsection, following approval by the director:
    - (i) Impoundments that are completely incised.
    - (ii) Water impounding structures that impound water to a design elevation no more than five (5) feet above the upstream toe of the structure and that can have a storage volume of not more than twenty (20) acre-feet; provided the exemption request is accompanied by a report sealed by a qualified registered professional engineer licensed in the state of Indiana, accurately describing the hazard potential of the structure. Hazard potential must be such that failure of the structure would not create a potential threat to public health and safety or threaten significant environmental harm. The report shall be field verified by the director prior to approval and periodically thereafter. The director may terminate the exemption if so warranted by changes in the area downstream of the structure or in the structure itself.
    - (iii) Impoundments that do not facilitate mining or reclamation, including, but not limited to, the following:

- (AA) Sewage lagoons.
- (BB) Landscaping ponds.
- (CC) Pools or wetlands in replaced stream channels.
- (DD) Existing impoundments not yet used to facilitate mining.
- (EE) Ephemeral water bodies.
- (FF) Active mining pits.
- (GG) Differential settlement pools.

(10) If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall promptly inform the director of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the director shall be notified immediately. The director shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(b) Permanent impoundments of water may be authorized by the director upon the basis of the following demonstration:

(1) The quality of the impounded water shall be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable Indiana and federal water quality standards, and discharge of water from the impoundments will meet applicable effluent limitations and shall not degrade the quality of receiving waters to less than the water quality standards established under applicable Indiana and federal laws.

(2) The level of water shall be sufficiently stable to support the intended use.

(3) Water impoundments shall not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(4) The size and configuration of the impoundment are adequate for the intended purposes. The impoundment has an adequate freeboard to resist overtopping by waves and by sudden increases in storage volume.

(5) The impoundments will be suitable for the approved postmining land use.

(6) The design, construction, and maintenance of structures shall achieve the minimum design requirements applicable to structures constructed and maintained under the Watershed Protection and Flood Prevention Act, P.L.83-566 (16 U.S.C. 1006).

(7) Final grading will provide for adequate safety and access for proposed water users.

(8) For final cut and permanent incised impoundments, final graded slopes down to the water level shall not exceed in grade thirty-three and one-third percent (33⅓%) or the lesser slope needed to do the following:

(A) Protect the public health and safety.

(B) Enable the permittee to place topsoil on the slope under section 11 of this rule and to revegetate the slope under sections 54 through 61 of this rule.

(c) The director may authorize the construction of temporary impoundments as part of a surface coal mining operation. In lieu of meeting the requirements in subsection (a)(7)(A), the director may approve an impoundment that relies primarily on storage to control the run-off from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer that the impoundment will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent engineering practices. Such an impoundment shall be located where failure would not be expected to cause loss of life or serious property damage, except where in the case of an impoundment:

(1) meeting the size or other criteria of 30 CFR 77.216(a), it is designed to control the precipitation of the probable maximum precipitation of a six (6) hour event, or greater event as specified by the director; or

(2) not meeting the size or other criteria of 30 CFR 77.216(a), it is designed to control the precipitation of a one hundred (100) year, six (6) hour event, or greater event as specified by the director.

(d) All embankments of temporary and permanent impoundments and surrounding areas and diversion ditches disturbed or created by construction shall be graded, fertilized, seeded, and mulched under sections 54 through 61 of this rule after the embankment is completed. The active upstream face of the embankment where water is impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated under sections 51 and 54 through 61 of this rule.

(e) Plans for any enlargement, reduction in size, reconstruction, or other modification of dams or impoundments shall be submitted to the director and shall comply with the requirements of this section. Except where a modification is required to eliminate an emergency condition constituting a hazard to public health, safety, or the environment, the director shall approve the plans before modification begins. (*Natural Resources Commission; 312 IAC 25-6-20; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3517, eff Dec 1, 2001*)

**312 IAC 25-6-20 Surface mining; hydrologic balance; permanent and temporary impoundments Version b**

Authority: IC 14-34-2-1

Affected: IC 14-34

*NOTE: This version of section effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register. See also preceding version of this section, effective until superseded by this version of section.*

Sec. 20. (a) This section applies to both temporary and permanent impoundments and must satisfy the following conditions:

(1) An impoundment meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or an impoundment meeting the size or other criteria of 30 CFR 77.216(a) shall comply with the requirements of 30 CFR 77.216 and this rule.

(2) The design of impoundments shall be certified in accordance with 312 IAC 25-4-49 as designed to meet the requirements of this rule using current, prudent engineering practices and any design criteria established by the director. The qualified registered professional engineer shall be experienced in the design and construction of impoundments.

(3) Impoundments must meet the following criteria for stability:

(A) An impoundment meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or an impoundment meeting the size or other criteria of 30 CFR 77.216(a) shall have a minimum static safety factor of one and five-tenths (1.5) for a normal pool with steady state seepage saturation conditions and a seismic safety factor of at least one and two-tenths (1.2).

(B) Impoundments not meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or not meeting the size or other criteria of 30 CFR 77.216(a), except for a coal mine waste impounding structure, and located where failure would not be expected to cause loss of life or serious property damage shall have a minimum static safety factor of one and three-tenths (1.3) for a normal pool with steady state seepage saturation conditions.

(C) In lieu of meeting the static safety factor requirements of clause (B), the applicant may elect, in order to ensure stability for temporary impoundments not meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or not meeting the size or other criteria of 30 CFR 77.216(a) to grade as follows:

(i) The side slopes of the settled embankments shall not be steeper than two (2) horizontal to one (1) vertical on the upstream slopes.

(ii) The downstream slopes shall not be steeper than three (3) horizontal to one (1) vertical. An impoundment constructed within these guidelines shall not be approved for permanent postmining land use until the criteria for permanent impoundments of this section have been satisfied.

(4) The size and configuration of the impoundment shall be adequate for its intended purposes. Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. Impoundments meeting the Class B or C criteria for dams in TR-60 shall comply with the freeboard hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60.

(5) Foundations and abutments for an impounding structure shall be stable during all phases of construction and operation and shall be designed based on adequate and accurate information on the foundation conditions. For an impoundment meeting the size or other criteria of 30 CFR 77.216(a) or the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60), foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability. All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed, if necessary, to ensure stability.

(6) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

(7) An impoundment shall include either a combination of principal and emergency spillways or a single spillway configured as specified in clause (A), designed and constructed to safely pass the applicable design precipitation event specified in clause (B), except as set forth in subsection (c)(1).

(A) The director may approve a single open channel spillway that is:

(i) of nonerodible construction and designed to carry sustained flows; or

(ii) earth-lined or grass-lined and designed to carry short term, infrequent flows at nonerosive velocities where sustained flows are not expected.

(B) Except as specified in subsection (c)(1), the required design precipitation event for an impoundment meeting the spillway requirements of this section is as follows:

- (i) For an impoundment meeting the size or other criteria of 30 CFR 77.216(a), a one hundred (100) year, six (6) hour event, or greater event as specified by the director.
- (ii) For an impoundment meeting the Class B or C criteria for dams in TR-60, the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60, or greater event as specified by the director.
- (iii) For an impoundment not meeting the size or other criteria of 30 CFR 77.216(a) or not meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60), a twenty-five (25) year, six (6) hour event, or greater event as specified by the director.

(8) The vertical portion of any remaining highwall must be located far enough below the low water line, along the extent of the highwall, to provide adequate safety and access for proposed water users. If surface run-off enters the impoundment, the side slope must be protected to prevent erosion.

(9) A qualified registered professional engineer or other qualified professional specialist under the direction of a professional engineer, either of whom shall be experienced in the construction of impoundments, shall inspect each impoundment according to the following provisions:

- (A) Inspections shall be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.
- (B) The qualified registered professional engineer shall, within thirty (30) days after each inspection required in clause (A), provide to the director a certified report that the impoundment has been constructed or maintained, or both, as designed and in accordance with the approved plan and this article. The report shall include discussion of the following:
  - (i) Any appearance of instability, structural weakness, or other hazardous condition.
  - (ii) Depth and elevation of any impounded waters.
  - (iii) Existing storage capacity.
  - (iv) Any existing or required monitoring procedures and instrumentation.
  - (v) Any other aspects of the structure affecting stability.

(C) A copy of the report shall be retained at or near the mine site.

(D) Impoundments subject to 30 CFR 77.216 or meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) must be examined in accordance with 30 CFR 77.216-3.

(E) Impoundments that do not meet the size or other criteria of 30 CFR 77.216(a) or do not meet the Class B or C criteria for dams in the NRCS publication Technical Release No. (TR-60) shall be examined at least quarterly by a qualified person designated by the permittee for appearances of instability, structural weakness, or other hazardous conditions. At least one (1) of the quarterly examinations conducted during the calendar year shall be certified by a qualified registered professional engineer and shall include a discussion of any appearances of instability, structural weakness, or other hazardous conditions, and any other aspects of the structure affecting stability, and a statement indicating the pond has been maintained in accordance with the approved plan and this section. This examination shall be conducted during the period of October 1 through December 31 of each calendar year. The certified examination report shall be submitted to the director within thirty (30) days of the examination. Impoundment examinations shall be conducted until the impoundment has been removed or until final bond release in accordance with 312 IAC 25-5-16. If the operator can demonstrate that failure of the structure would not create a potential threat to public health and safety or threaten significant environmental harm, the following impoundments shall be exempt from the examination requirements of this clause following approval by the director:

- (i) Impoundments that are completely incised.
- (ii) Water impounding structures that impound water to a design elevation no more than five (5) feet above the upstream toe of the structure and that can have a storage volume of not more than twenty (20) acre-feet; provided the exemption request is accompanied by a report sealed by a qualified registered professional engineer licensed in the state, accurately describing the hazard potential of the structure. Hazard potential must be such that failure of the structure would not create a potential threat to public health and safety or threaten significant environmental harm. The report shall be field verified by the director prior to approval and periodically thereafter. The director may terminate the exemption if so warranted by changes in the area downstream of the structure or

in the structure itself.

(iii) Impoundments that do not facilitate mining or reclamation, including, but not limited to, the following:

- (AA) Sewage lagoons.
- (BB) Landscaping ponds.
- (CC) Pools or wetlands in replaced stream channels.
- (DD) Existing impoundments not yet used to facilitate mining.
- (EE) Ephemeral water bodies.
- (FF) Active mining pits.
- (GG) Differential settlement pools.

(10) If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall promptly inform the director of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the director shall be notified immediately. The director shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(b) Permanent impoundments of water may be authorized by the director upon the basis of the following demonstration:

(1) The quality of the impounded water shall be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable Indiana and federal water quality standards, and discharge of water from the impoundments will meet applicable effluent limitations and shall not degrade the quality of receiving waters to less than the water quality standards established under applicable Indiana and federal laws.

(2) The level of water shall be sufficiently stable to support the intended use.

(3) Water impoundments shall not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(4) The size and configuration of the impoundment are adequate for the intended purposes. The impoundment has an adequate freeboard to resist overtopping by waves and by sudden increases in storage volume.

(5) The impoundments will be suitable for the approved postmining land use.

(6) The design, construction, and maintenance of structures shall achieve the minimum design requirements applicable to structures constructed and maintained under the Watershed Protection and Flood Prevention Act, P.L.83-566 (16 U.S.C. 1006).

(7) Final grading will provide for adequate safety and access for proposed water users.

(8) For final cut and permanent incised impoundments, final graded slopes down to the water level shall not exceed in grade thirty-three and one-third percent (33⅓%) or the lesser slope needed to do the following:

(A) Protect the public health and safety.

(B) Enable the permittee to place topsoil on the slope under section 11 of this rule and to revegetate the slope under sections 54 through 61 of this rule.

(c) The director may authorize the construction of temporary impoundments as part of a surface coal mining operation. In lieu of meeting the requirements in subsection (a)(7)(A), the director may approve an impoundment that relies primarily on storage to control the run-off from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer that the impoundment will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent engineering practices. Such an impoundment shall be located where failure would not be expected to cause loss of life or serious property damage, except where in the case of an impoundment:

(1) meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or meeting the size or other criteria of 30 CFR 77.216(a), it is designed to control the precipitation of the probable maximum precipitation of a six (6) hour event, or greater event as specified by the director; or

(2) not meeting the size or other criteria of 30 CFR 77.216(a) or not meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60), it is designed to control the precipitation of a one hundred (100) year, six (6) hour event, or greater event as specified by the director.

(d) All embankments of temporary and permanent impoundments and surrounding areas and diversion ditches disturbed or created by construction shall be graded, fertilized, seeded, and mulched under sections 54 through 61 of this rule after the embankment is completed. The active upstream face of the embankment where water is impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated under sections 51 and 54 through 61 of this rule.



(e) Plans for any enlargement, reduction in size, reconstruction, or other modification of dams or impoundments shall be submitted to the director and shall comply with the requirements of this section. Except where a modification is required to eliminate an emergency condition constituting a hazard to public health, safety, or the environment, the director shall approve the plans before modification begins. *(Natural Resources Commission; 312 IAC 25-6-20; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3517, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2458, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register)*

**312 IAC 25-6-21 Hydrologic balance; ground water protection**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 21. (a) Backfilled materials shall be placed so as to do the following:

- (1) To minimize contamination of ground water systems with acid, toxic, or otherwise harmful mine drainage.
- (2) To minimize adverse effects of mining on ground water systems outside the permit area.
- (3) To support approved postmining land uses.

(b) To control the effects of mine drainage, pits, cuts, and other mine excavation or disturbances shall be located, designed, constructed, and utilized in such manner as to prevent or control discharge of acid, toxic, or otherwise harmful mine drainage waters into ground water systems and to prevent adverse impacts on such ground water systems or on approved postmining land uses. *(Natural Resources Commission; 312 IAC 25-6-21; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3520, eff Dec 1, 2001)*

**312 IAC 25-6-22 Hydrologic balance; ground water recharge capacity protection**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 22. (a) Surface mining activities shall be conducted in a manner that facilitates reclamation that will restore approximate premining recharge capacity through restoration of the capability of the reclaimed areas as a whole, excluding coal processing waste and underground development waste disposal areas and fills, to transmit water to the ground water system. The recharge capacity shall be restored to a condition that:

- (1) supports the approved postmining land use;
- (2) minimizes disturbances to the prevailing hydrologic balance in the permit area and adjacent areas; and
- (3) restores the recharge capacity of the mined area to approximate premining condition.

(b) If the director determines that monitoring is not required under section 23(a) of this rule, the director shall waive this section. *(Natural Resources Commission; 312 IAC 25-6-22; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3520, eff Dec 1, 2001)*

**312 IAC 25-6-23 Surface mining; hydrologic balance; surface and ground water monitoring Version a**

Authority: IC 14-34-2-1

Affected: IC 14-34

*NOTE: This version of section effective until superseded by the following version of this section, which is effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register.*

Sec. 23. (a) This subsection establishes standards for maintaining the hydrologic balance of ground water as follows:

- (1) Ground water levels and the quality of ground water shall be monitored, through bond release, in a manner approved by the director according to the requirements of 312 IAC 25-4-31 to determine the effects of surface mining activities on the recharge capacity of reclaimed lands and on the quantity and quality of water in ground water systems in the permit and adjacent areas.
- (2) When surface mining activities may affect the ground water systems which serve as aquifers that significantly ensure the hydrologic balance of water use on or off the permit area, ground water levels and ground water quality shall be periodically monitored according to the requirements of 312 IAC 25-4-31. Monitoring shall include measurements from a sufficient

number of wells and the mineralogical and chemical analyses of aquifer, overburden, and spoil that are adequate to reflect changes in ground water quantity and quality resulting from those activities. Monitoring shall be adequate to plan for modification of surface mining activities, if necessary, to minimize disturbance of the prevailing hydrologic balance.

(3) The director may require additional tests and shall require the reporting of the results of these tests to demonstrate compliance with sections 21 through 22 of this rule and this section.

(4) If the analysis of a ground water sample indicates noncompliance with a permit condition, the permittee must do the following:

(A) Promptly notify the director.

(B) Immediately take any action required by the reclamation plan or by a permit condition.

(b) This subsection establishes standards for maintaining the hydrologic balance of surface water as follows:

(1) Surface water monitoring, reporting, and record keeping shall be conducted through bond release, in accordance with the provisions of 312 IAC 25-4-32 and as specified in the effective National Pollutant Discharge Elimination System (NPDES) permit.

(2) Copies of the monitoring reports and any noncompliance notifications shall be provided to the director concurrently with the submissions to the NPDES permit authority.

(3) If the analysis of a surface water sample indicates noncompliance with any permit terms or conditions, the permittee must do the following:

(A) Promptly notify the director.

(B) Immediately take any action required by the reclamation plan or by a permit condition.

(4) Equipment, structures, and other devices necessary to measure and sample accurately the quality and quantity of surface water discharges from the disturbed area shall be properly installed, maintained, and operated and shall be removed when no longer required.

(5) In order to protect the hydrologic balance, surface mining activities shall be conducted according to the plan approved under 312 IAC 25-4-47(b) and the following:

(A) Surface water quality shall be protected by handling earth materials, ground water discharges, and run-off in a manner that accomplishes the following:

(i) Minimizes the formation of acid or toxic drainage.

(ii) Prevents, to the extent possible using the best technology currently available, additional contribution of suspended solids to stream flow outside the permit area.

(iii) Otherwise prevents water pollution.

(B) If drainage control, restabilization and revegetation of disturbed areas, diversion of run-off, mulching, or other reclamation and remedial practices are not adequate to meet the requirements of this section and section 13 of this rule, the operator shall use and maintain the necessary water treatment facilities or water quality controls.

(6) Surface water quality and flow rates shall be protected by handling earth materials and run-off in accordance with the steps outlined in the plan approved under 312 IAC 25-4-47(b).

(c) Water quality analysis and sampling shall be conducted according to the methodology in the latest edition of Standard Methods for the Examination of Water and Wastewater. (*Natural Resources Commission; 312 IAC 25-6-23; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3520, eff Dec 1, 2001*)

### **312 IAC 25-6-23 Surface mining; hydrologic balance; surface and ground water monitoring Version b**

Authority: IC 14-34-2-1

Affected: IC 14-34

*NOTE: This version of section effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register. See also preceding version of this section, effective until superseded by this version of section.*

Sec. 23. (a) This subsection establishes standards for maintaining the hydrologic balance of ground water as follows:

(1) Ground water levels and the quality of ground water shall be monitored, through bond release, in a manner approved by the director according to the requirements of 312 IAC 25-4-31 to determine the effects of surface mining activities on the recharge capacity of reclaimed lands and on the quantity and quality of water in ground water systems in the permit and

adjacent areas.

(2) When surface mining activities may affect the ground water systems that serve as aquifers that significantly ensure the hydrologic balance of water use on or off the permit area, ground water levels and ground water quality shall be periodically monitored according to the requirements of 312 IAC 25-4-31. Monitoring shall include measurements from a sufficient number of wells and the mineralogical and chemical analyses of aquifer, overburden, and spoil that are adequate to reflect changes in ground water quantity and quality resulting from those activities. Monitoring shall be adequate to plan for modification of surface mining activities, if necessary, to minimize disturbance of the prevailing hydrologic balance.

(3) The director may require additional tests and shall require the reporting of the results of these tests to demonstrate compliance with sections 21 through 22 of this rule and this section.

(4) If the analysis of a ground water sample indicates noncompliance with a permit condition, the permittee must do the following:

(A) Promptly notify the director.

(B) Immediately take any action required by the reclamation plan or by a permit condition.

(C) Minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit to include, but not be limited to:

(i) accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance;

(ii) immediate implementation of measures necessary to mitigate the noncompliance; and

(iii) as soon as practicable issue warning to any person whose health and safety is in imminent danger due to the noncompliance.

(b) This subsection establishes standards for maintaining the hydrologic balance of surface water as follows:

(1) Surface water monitoring, reporting, and record keeping shall be conducted through bond release, in accordance with the provisions of 312 IAC 25-4-32 and as specified in the effective National Pollutant Discharge Elimination System (NPDES) permit.

(2) Copies of the monitoring reports and any noncompliance notifications shall be provided to the director concurrently with the submissions to the NPDES permit authority.

(3) If the analysis of a surface water sample indicates noncompliance with any permit terms or conditions, the permittee must do the following:

(A) Promptly notify the director.

(B) Immediately take any action required by the reclamation plan or by a permit condition.

(4) Equipment, structures, and other devices necessary to measure and sample accurately the quality and quantity of surface water discharges from the disturbed area shall be properly installed, maintained, and operated and shall be removed when no longer required.

(5) In order to protect the hydrologic balance, surface mining activities shall be conducted according to the plan approved under 312 IAC 25-4-47(b) and the following:

(A) Surface water quality shall be protected by handling earth materials, ground water discharges, and run-off in a manner that accomplishes the following:

(i) Minimizes the formation of acid or toxic drainage.

(ii) Prevents, to the extent possible using the best technology currently available, additional contribution of suspended solids to stream flow outside the permit area.

(iii) Otherwise prevents water pollution.

(B) If drainage control, restabilization and revegetation of disturbed areas, diversion of run-off, mulching, or other reclamation and remedial practices are not adequate to meet the requirements of this section and section 13 of this rule, the operator shall use and maintain the necessary water treatment facilities or water quality controls.

(6) Surface water quality and flow rates shall be protected by handling earth materials and run-off in accordance with the steps outlined in the plan approved under 312 IAC 25-4-47(b).

(c) Water quality analysis and sampling shall be conducted according to the methodology in the latest edition of Standard Methods for the Examination of Water and Wastewater. (*Natural Resources Commission; 312 IAC 25-6-23; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3520, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2461, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice*

*of that approval being published in the Indiana Register)*

**312 IAC 25-6-24 Hydrologic balance; transfer of wells**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 24. (a) An exploratory or monitoring well may only be transferred by the person who conducts surface mining activities for further use as a permanent water well with the prior approval of the director. That person and the surface owner of the lands where the well is located shall jointly submit a written request to the director for that approval.

(b) Upon an approved transfer of a well, the transferee shall:

(1) assume primary liability for damages to persons or property from the well;

(2) plug the well when necessary, but in no case later than abandonment of the well; and

(3) assume primary responsibility for compliance with sections 8 through 10 of this rule with respect to the well.

(c) Upon an approved transfer of a well, the transferor shall be secondarily liable for compliance with sections 8 through 10 of this rule until release of the bond or other equivalent guarantee required by 312 IAC 25-5 for the area in which the well is located. *(Natural Resources Commission; 312 IAC 25-6-24; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3521, eff Dec 1, 2001)*

**312 IAC 25-6-25 Hydrologic balance; water rights and replacement Version a**

Authority: IC 14-34-2-1

Affected: IC 14-25-4; IC 14-34-3

*NOTE: This version of section effective until superseded by the following version of this section, which is effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register.*

Sec. 25. A person who conducts surface mining activities shall, pursuant to a lawful order of an agency or court under IC 14-25-4 or another state water rights law, replace the water supply of an owner of interest in real property who obtains all or part of that supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source, where the water supply has been affected by contamination, diminution, or interruption proximately resulting from the surface mining activities. Water replacement rights are not determined by this article. *(Natural Resources Commission; 312 IAC 25-6-25; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3521, eff Dec 1, 2001)*

**312 IAC 25-6-25 Hydrologic balance; water rights and replacement Version b**

Authority: IC 14-34-2-1

Affected: IC 14-25-4; IC 14-34-3

*NOTE: This version of section effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register. See also preceding version of this section, effective until superseded by this version of section.*

Sec. 25. A person who conducts surface mining activities shall replace the water supply of an owner of interest in real property who obtains all or part of that supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source, where the water supply has been affected by contamination, diminution, or interruption proximately resulting from the surface mining activities. Baseline hydrologic information required in 312 IAC 25-4-28 and 312 IAC 25-4-30 through 312 IAC 25-4-32 shall be used to determine the extent of the impact of mining upon ground water and surface water and other relevant information. *(Natural Resources Commission; 312 IAC 25-6-25; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3521, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2462, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register)*

**312 IAC 25-6-26 Hydrologic balance; water discharge into underground mine**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 26. Surface water shall not be diverted or otherwise discharged into underground mine workings, unless the person who conducts the surface mining activities demonstrates to the director that this diversion or discharge will:

- (1) abate water pollution or otherwise eliminate public hazards resulting from surface mining activities;
- (2) be discharged as a controlled flow, meeting the effluent limitations of section 13 of this rule for pH and total suspended solids, except as provided in this subdivision and the director may approve that the limitation on total suspended solids be exceeded for:
  - (A) coal processing waste;
  - (B) fly ash from a coal-fired facility;
  - (C) sludge from an acid mine drainage treatment facility;
  - (D) flue gas desulfurization sludge;
  - (E) inert materials used for stabilizing underground mines; or
  - (F) underground mine development wastes;
- (3) not result in a discharge from an underground mine to surface waters that causes, results in, or contributes to a violation of applicable water quality standards or effluent limitations; and
- (4) minimize disturbance to the hydrologic balance on the permit area, prevent material damage outside the permit area, and otherwise eliminate public hazards resulting from surface mining activities.

(Natural Resources Commission; 312 IAC 25-6-26; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3521, eff Dec 1, 2001)

**312 IAC 25-6-27 Surface mining; hydrologic balance; siltation structures postmining rehabilitation; diversions, impoundments, and treatment facilities**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 27. Before abandoning a permit area or seeking bond release, the person who conducts the surface mining activities shall ensure that all temporary structures are removed and reclaimed, and that all permanent sedimentation ponds, diversions, impoundments, and treatment facilities meet the requirements of this article for permanent structures, and have been maintained properly and meet the requirements of the approved reclamation plan for permanent structures and impoundments. The person who conducts the underground mining activities shall renovate such structures if necessary to meet the requirements of this article and to conform to the approved reclamation plan. (Natural Resources Commission; 312 IAC 25-6-27; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3522, eff Dec 1, 2001)

**312 IAC 25-6-28 Surface mining; hydrologic balance; stream buffer zone**

Authority: IC 14-34-2-1

Affected: IC 14-34; 30 CFR 816.57

Sec. 28. (a) No land within one hundred (100) feet of a perennial stream or an intermittent stream shall be disturbed by surface mining activities unless the director specifically authorizes surface mining activities closer to or through such a stream. The director may authorize such activities only upon finding that:

- (1) surface mining activities will not cause or contribute to the violation of applicable state or federal water quality standards, and will not adversely affect the water quantity and quality or other environmental resources of the stream; and
  - (2) if there will be a temporary or permanent stream-channel diversion, it will comply with sections 14 through 15 of this rule.
- (b) The area not to be disturbed shall be designated as a buffer zone, and the operator shall mark it as specified in section 6 of this rule. (Natural Resources Commission; 312 IAC 25-6-28; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3522, eff Dec 1, 2001)

**312 IAC 25-6-29 Surface mining; explosives; general requirements**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 29. (a) Each permittee shall comply with all applicable Indiana and federal laws and regulations in the use of explosives.

(b) Blasts that use more than five (5) pounds of explosive or blasting agent shall be conducted according to the schedule required by section 31 of this rule.

(c) No later than twelve (12) months after the implementation of the blaster certification program as required by 312 IAC 25-9-1 through 312 IAC 25-9-9, all blasting operations shall be conducted under the direct supervision of a certified blaster. Before that time all blasting operations shall be conducted by experienced and competent persons who understand the hazards involved.

(d) After implementation of the blasting certification program, the provisions of subsections (e) through (h) apply.

(e) Blast design requirements are as follows:

(1) An anticipated blast design shall be submitted if blasting operations will be conducted within:

(A) one thousand (1,000) feet of any building used as a dwelling, not owned by the permittee, public building, school, church, or community or institutional building; or

(B) five hundred (500) feet of an active or abandoned underground mine.

(2) The blast design may be presented as part of a permit application or at a time, prior to the blast, approved by the director.

(3) The blast design shall contain sketches of the typical drill patterns, delay periods, and decking and shall indicate the type and amount of explosives to be used, critical dimensions, and the location and general description of the structures to be protected, as well as a discussion of design factors to be used, that protect the public and meet the applicable airblast, ground-vibration, and flyrock standards of section 32 of this rule.

(4) The blast design shall be prepared and signed by a certified blaster.

(5) The director may require changes to the design submitted if necessary to protect public safety or prevent damage to structures in subdivision (1).

(f) The certified blaster and at least one (1) other person shall be present at the firing of a blast. The certified blaster shall either physically detonate the charge or give the order to detonate the charge.

(g) Persons responsible for blasting operations at a blasting site shall be familiar with the approved blasting plan, and site-specific performance standards.

(h) Each person responsible for blasting operations shall possess a valid certification as required by 312 IAC 25-9-1 through 312 IAC 25-9-9. All decisions concerning:

(1) blast hole size, spacing, or depth;

(2) quantity of explosives in each hole;

(3) total quantity of explosives to be detonated; and

(4) delay periods to be used;

shall be made by a certified blaster. (*Natural Resources Commission; 312 IAC 25-6-29; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3522, eff Dec 1, 2001*)

**312 IAC 25-6-30 Surface mining; explosives; preblasting survey**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 30. (a) At least thirty (30) days before initiation of blasting, the permittees shall notify, in writing, all residents or owners of dwellings or other structures located within one-half ( $\frac{1}{2}$ ) mile of the permit area how to request a preblasting survey.

(b) The applicant or permittee shall notify the public, by publication at least once a week for four consecutive weeks in a local newspaper of general circulation in the county in which the blasting will occur, that they will conduct a preblasting survey upon the request by a resident or owner of a man made dwelling or structure within one (1) mile of any portion of the permit area. A copy of the public notice and publisher's affidavit or other proof of publication shall be filed with the director not later than four (4) weeks after the last date of publication.

(c) On the written request to the director or the permittee by a resident or owner of a dwelling or structure that is located within one (1) mile of any part of the permit area, the permittee shall promptly conduct a survey of the dwelling or structure and promptly

submit a report of the survey to the director and to the person requesting the survey. If a structure is renovated or added to, subsequent to a survey, then upon request by the resident or owner a survey of such additions and renovations shall be performed by the permittee in accordance with this section.

(d) The survey shall determine the condition of the dwelling or structure and document any preblasting damage and other physical factors that could reasonably be affected by the blasting. Assessments of structures such as pipelines, cables, transmission lines, and cisterns, wells, and other water systems warrant special attention. Assessment of these structures may be limited to surface condition and other readily available data.

(e) A written report of the survey shall be prepared and signed by the person who conducted the survey. Copies of the report shall be promptly provided to the person requesting the survey and to the director. If a preblasting survey is conducted by a permittee upon its own initiative as part of a voluntary program to encourage all dwelling owners to have preblasting surveys, where no request has been made to the director or the permittee, the survey need not be submitted to the director. If the person requesting the survey disagrees with the result of the survey, he or she may notify, in writing, both the permittee and the director of the specific areas of disagreement.

(f) All survey requests received by the operator more than ten (10) days before the planned initiation of blasting shall be completed by the permittee before the initiation of blasting. A request received less than ten (10) days before the initiation of blasting shall be completed promptly, but need not be completed prior to initiation of blasting. (*Natural Resources Commission; 312 IAC 25-6-30; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3523, eff Dec 1, 2001*)

### **312 IAC 25-6-31 Surface mining; explosives; publication of blasting schedule Version a**

Authority: IC 14-34-2-1

Affected: IC 14-34

*NOTE: This version of section effective until superseded by the following version of this section, which is effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register.*

Sec. 31. (a) Blasting schedule publication and distribution requirements are as follows:

(1) Each permittee shall publish a blasting schedule at least ten (10) days, but not more than thirty (30) days before beginning a blasting program in which blasts that use more than five (5) pounds of explosive or blasting agent are detonated. The blasting schedule shall be published in a newspaper of general circulation in the locality of the blasting site.

(2) Copies of the schedule shall be distributed to local governments and public utilities and by mail to each residence within one-half (½) mile of the proposed blasting area described in the schedule.

(3) The permittee shall republish and redistribute the schedule pursuant to subdivisions (1) and (2) at least every twelve (12) months.

(b) Blasting schedule contents. The blasting schedule shall contain, at a minimum, the following:

(1) Identification of the specific areas in which blasting will take place.

(2) Days and time periods when explosives are to be detonated.

(3) Methods to be used to control access to the blasting area.

(4) Types and patterns of audible warning and all-clear signals to be used before and after blasting.

(5) Name, address, and telephone number of the permittee.

(c) Before blasting in areas or at times not in a previous blasting schedule, the permittee shall prepare a revised blasting schedule and shall publish and distribute the revised schedule according to the procedures in subsections (a) and (b). The revised blasting schedule shall be approved by the director before publication and distribution.

(d) A copy of the public notice and publisher's affidavit or other proof of publication of the public notice required by subsections (a) and (c) shall be filed with the director not later than four (4) weeks after the last date of publication. (*Natural Resources Commission; 312 IAC 25-6-31; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3523, eff Dec 1, 2001*)

### **312 IAC 25-6-31 Surface mining; explosives; publication of blasting schedule Version b**

Authority: IC 14-34-2-1

Affected: IC 14-34

*NOTE: This version of section effective upon the Department of Natural Resources receiving notice of approval from the*

*Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register. See also preceding version of this section, effective until superseded by this version of section.*

Sec. 31. (a) Blasting schedule publication and distribution requirements are as follows:

(1) Each permittee shall publish a blasting schedule at least ten (10) days, but not more than thirty (30) days before beginning a blasting program in which blasts that use more than five (5) pounds of explosive or blasting agent are detonated. The blasting schedule shall be published in a newspaper of general circulation in the locality of the blasting site.

(2) Copies of the schedule shall be distributed to local governments and public utilities and by mail to each residence within one-half (½) mile of the proposed blasting area described in the schedule.

(3) The permittee shall republish and redistribute the schedule under subdivisions (1) and (2) at least every twelve (12) months.

(b) The blasting schedule shall contain, at a minimum, the following:

(1) Identification of the specific areas in which blasting will take place.

(2) Days and time periods when explosives are to be detonated.

(3) Methods to be used to control access to the blasting area.

(4) Types and patterns of audible warning and all-clear signals to be used before and after blasting.

(5) Name, address, and telephone number of the permittee.

(c) Before blasting in areas or at times not in a previous blasting schedule, the permittee shall prepare a revised blasting schedule and shall publish and distribute the revised schedule according to the procedures in subsections (a) and (b).

(d) A copy of the public notice and publisher's affidavit or other proof of publication of the public notice required by subsections (a) and (c) shall be filed with the director not later than four (4) weeks after the last date of publication. (*Natural Resources Commission; 312 IAC 25-6-31; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3523, eff Dec 1, 2001; filed Apr 23, 2004, 10:45 a.m.: 27 IR 2713, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register*)

### **312 IAC 25-6-32 Surface mining; explosives; blasting operations**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 32. (a) Blasting operations shall be conducted at times approved by the director and announced in the blasting schedule. The permittee shall submit the blasting schedule required by section 31 of this rule to the director for approval sixty (60) days prior to the date of publication specified in section 31(a) of this rule. All blasting shall be conducted between sunrise and sunset, unless nighttime blasting is approved by the director upon showing that the public will be protected from adverse noise and other impacts. The director may limit the area covered by a blasting schedule or specify more restrictive time periods if necessary to protect the public health and safety or welfare.

(b) Unscheduled blasting operations may be conducted only when operator or public health and safety require unscheduled detonation. When the permittee conducts unscheduled blasting operations, the permittee shall do the following:

(1) Notify persons within one-half (½) mile of the blasting site using audible warning signals.

(2) Document the reason for the unscheduled blast, including the following:

(A) Why the blast could not be held over to the next day.

(B) When the blast was actually conducted.

(C) The warning signals given in accordance with section 33(17) of this rule.

The director may require any permittee to submit a report of unscheduled blasts if needed to respond to citizen complaints concerning blasting.

(3) Where the unscheduled blast is an unapproved nighttime blast, take sufficient measures to ensure the public will be protected from adverse noise and other impacts.

(c) Warning and all-clear signals of different character or pattern that are audible within a range of one-half (½) mile from the point of the blast shall be given. Each person within the permit area and each person who resides or regularly works within one-half (½) mile of the permit area shall be communicated this information through the public notice of the blasting schedule.

(d) Access to an area possibly subject to flyrock from blasting shall be regulated to protect the public and livestock. Access



to the blasting area shall be controlled to prevent the presence of livestock or unauthorized personnel during blasting and until an authorized representative of the permittee has reasonably determined that:

- (1) no unusual circumstances, such as imminent slides or undetonated charges, exist; and
- (2) access to and travel in or through the area can be safely resumed.

(e) Airblast requirements are as follows:

(1) Airblast shall be controlled so that it does not exceed the maximum limits specified below at any dwelling, public building, school, church, or community or institutional building unless such building is owned by the permittee and is not leased to any other person. If a building owned by the permittee is leased to another person, the lessee may sign a waiver relieving the permittee from meeting the airblast limitations of this subdivision. The written waiver shall be submitted to the director before blasting commences.

Lower frequency limits of measuring system, Hz ( $\pm$ 3dB)	Maximum level in dB
0.1 Hz or lower-flat response .....	134 peak.
2 Hz or lower-flat response .....	133 peak.
6 Hz or lower-flat response .....	129 peak.
C-weighted, slow response .....	105 peak dBC.

(2) All measuring systems used shall have a flat frequency response of at least two hundred (200) hertz at the upper end.

(3) The permittee may satisfy the provisions of this section by meeting any of the four (4) specifications in the chart in subdivision (1) provided, however, the one-tenth (0.1) hertz or lower-flat response or C-weighted slow response can only be used if approved by the director.

(4) The director may require airblast measurements of any or all blasts and may specify the location of such measurements. If necessary to prevent damage, the director shall specify lower maximum allowable airblast levels than those of subdivision

(1) for use in the vicinity of a specific blasting operation.

(5) The permittee shall conduct periodic monitoring to ensure compliance with the airblast standards of subdivision (1).

(f) Flyrock, including material traveling along the ground, shall not be cast from the blasting site more than one-half ( $\frac{1}{2}$ ) the distance to the nearest dwelling or other occupied structure, beyond the boundary of the bonded area, or beyond the area of regulated access required under subsection (d).

(g) Blasting shall be conducted to prevent injury to persons, damage to public or private property, adverse impacts on any underground mine, and change in the course, channel, or availability of ground or surface waters outside the permit area.

(h) Requirements for maximum ground vibrations are as follows:

(1) In all blasting operations, except as otherwise authorized in this section, the maximum ground vibration shall not exceed the limits approved in the blasting plan required by 312 IAC 25-4-42. The maximum ground vibration at the location of any dwelling, public building, school, church, or community or institutional building shall be established in accordance with either:

- (A) the maximum peak particle-velocity limits of subdivision (2);
- (B) the scaled-distance equation of subdivision (3);
- (C) the blasting-level chart of subdivision (4); or
- (D) by the director under subdivision (5).

All structures in the vicinity of the blasting area, not listed in this subdivision, including, but not limited to, water towers, pipelines, and other utilities, tunnels, dams, impoundments, and underground mines, shall be protected from damage by establishment of a maximum allowable limit on the ground vibration, submitted by the permittee in the blasting plan and approved by the director. Provided, however, abandoned underground workings that are within the permit boundary and are to be mined through according to approved mining plans are not subject to a ground vibration limitation.

(2) Maximum peak particle velocity requirements as follows:

(A) The maximum ground vibration, measured as peak particle velocity, shall not exceed the following limits at the location of any dwelling, public building, school, church, or community or institutional building:

Distance (D) from the blasting site (feet)	Maximum allowable peak particle velocity (V <sub>max</sub> ) for ground vibration (inch/second)	Scaled-distance factor (Ds) to be applied without seismic monitoring <sup>1</sup>
0 to 300	1.25	50
301 to 5,000	1.00	55

<sup>1</sup>Applicable to the scaled distance equation of subdivision (3)(A).

(B) A seismographic record shall be obtained for each blast. The results of the record shall be made a part of the blasting record required by section 33 of this rule. Particle velocity shall be measured in three (3) mutually perpendicular directions. The maximum allowable peak particle velocity shall apply to each of the three (3) measurements.

(3) Scaled-distance equation as follows:

(A) A permittee may use the scaled-distance equation:

$$W = (D/D_s)^2$$

to determine the allowable charge-weight of explosives to be detonated in any 8-millisecond period, without seismic monitoring.

Where: W = Maximum weight of explosives, in pounds,  
that can be detonated in any 8-millisecond  
period.

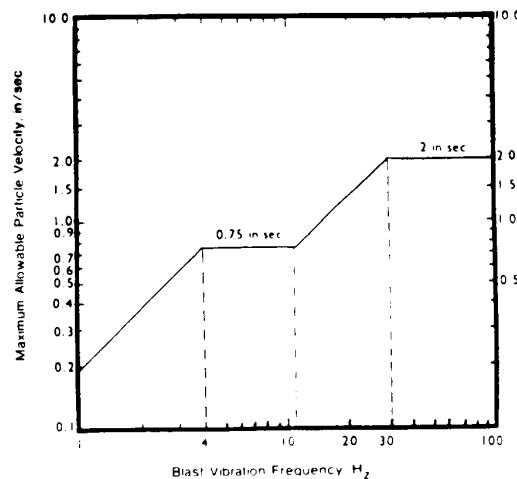
D = Distance, in feet, from the blasting site to  
the nearest protected structure.

D<sub>s</sub> = Scaled-distance factor.

that may initially be approved by the director using the values for scaled-distance factor listed in subdivision (2)(A).

(B) The development of a modified scaled-distance factor may be authorized by the director on receipt of a written request by the permittee, supported by seismographic records of blasting at the mine site. The modified scaled-distance factor shall be determined such that the particle velocity of the predicted ground vibration will not exceed the prescribed maximum allowable peak particle velocity of subdivision (2)(A) at a ninety-five percent (95%) confidence level.

(4) A permittee may use the ground vibration limits found in the following chart to determine the maximum allowable ground vibration:



If the chart limits are used, a seismographic record including both particle-velocity and vibration-frequency levels shall be obtained for each blast. The method for the analysis of the predominant frequency contained in the blasting records shall be approved by the director before application of this alternative blasting criterion.

(5) The maximum allowable ground vibration shall be reduced by the director beyond the limits otherwise provided by this section, if determined necessary to provide damage protection.

(6) The director may require a permittee to conduct seismic monitoring of any or all blasts and may specify the location at which the measurements are taken and the degree of detail necessary in the measurement.

(i) The maximum airblast and ground vibration limitations of subsections (e) and (h) shall not apply at the following locations:

- (1) At structures owned by the permittee and not leased to another party.
- (2) At structures owned by the permittee, and leased to another party if a written waiver by the lessee is submitted to the director prior to blasting.

*(Natural Resources Commission; 312 IAC 25-6-32; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3524, eff Dec 1, 2001; errata filed Aug 17, 2001, 1:50 p.m.: 25 IR 106)*

### **312 IAC 25-6-33 Surface mining; explosives; records of blasting operations**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 33. A record of each blast, including seismograph records when obtained, shall be retained by the permittee for at least three (3) years and shall be made available for inspection by the director and the public on request. The record shall contain the following data:

- (1) Name of the operator conducting the blast.
- (2) Location, date, and time of blast.
- (3) Name, certification number, and signature of the certified blaster conducting the blast.
- (4) Direction and distance, in feet, to the nearest dwelling, school, church, or community or institutional building that is not owned or leased by the permittee.
- (5) Weather conditions that may cause possible adverse blasting effects, including temperature, wind direction, and approximate velocity.
- (6) Type of material blasted.
- (7) Sketches of the blast pattern, including the following:
  - (A) Number of holes.
  - (B) Burden.
  - (C) Spacing.
  - (D) Decks.
  - (E) Delay pattern.
- (8) Diameter and depth of holes.
- (9) Types of explosives used.
- (10) Total weight of explosives used per hole.
- (11) Maximum weight of explosives detonated within any 8-millisecond period.
- (12) Initiation system.
- (13) Type and length of stemming.
- (14) Mats or other protections used.
- (15) Type of delay detonator and delay periods used.
- (16) Seismographic and airblast records, when obtained, shall include the following:
  - (A) Exact location of instrument and the date, time, and its distance from the blast.
  - (B) Type of instrument, sensitivity, and calibration signal or certification of annual calibration.
  - (C) Name of the person and firm taking the seismograph reading.
  - (D) Name of the person and firm analyzing the seismographic record.
  - (E) The ground vibration and/or airblast level recorded.
- (17) Reasons and conditions for each unscheduled blast.

*(Natural Resources Commission; 312 IAC 25-6-33; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3526, eff Dec 1, 2001)*

### **312 IAC 25-6-34 Surface mining; disposal of excess spoil**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 34. (a) All excess spoil material resulting from mining and reclamation activities must be placed as follows:

- (1) Spoil shall be transported and placed in a controlled manner in a position for concurrent compaction, and to:

- (A) assure stability;
  - (B) prevent mass movement; and
  - (C) ensure a long term static safety factor of one and five-tenths (1.5).
- (2) The areas of disposal shall be within the bonded permit areas, and all organic matter shall be removed immediately before spoil placement.
- (3) Sufficient surface and internal drainage systems and diversion ditches shall be used to prevent spoil erosion and movement.
- (4) The disposal area shall not contain springs, natural water courses, or wet weather seeps unless lateral drains are constructed from the wet areas to the main underdrains to prevent the infiltration of the water into the spoil pile.
- (5) If placed on a slope, the spoil shall be placed upon the most moderate slope available that the director determines will ensure compliance with IC 14-34. If possible, the spoil shall be placed upon or above a natural terrace, bench, or berm if this placement will provide additional stability and prevent mass movement.
- (6) Where the toe of the spoil rests on a downslope, a rock toe buttress of sufficient size to prevent mass movement shall be constructed.
- (7) The final configuration shall be compatible with the natural drainage pattern and surroundings and suitable for intended uses. Terraces may be constructed on the outslope if required for stability, control of erosion, conservation of soil moisture, or facilitation of the approved postmining land use. The grade of the outslope between terrace benches shall not be steeper than fifty percent (50%), 2h:1v.
- (8) The spoil disposal area shall be designed and inspected during construction under the supervision of, and certified after construction by, a qualified registered professional engineer.
- (9) The foundation and abutments of the fill shall be stable under all conditions of construction and operation. Sufficient foundation investigation and laboratory testing of foundation materials shall be performed to determine the design requirements for stability of the foundation. Analyses of foundation conditions shall include the effect of underground mine workings upon the stability of the structure.
- (10) Spoil shall be placed in horizontal lifts not exceeding four (4) feet thick, except where the director approves a greater thickness based upon:
- (A) a certification by a qualified registered professional engineer that the design ensures the stability of the fill; and
  - (B) a demonstration by the permittee that all other requirements of this section are satisfied.
- (11) No permanent impoundments shall be allowed on the completed fill. Small depressions may be allowed by the director if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation, and if they are not incompatible with stability of the fill.
- (b) All box cut spoil that is demonstrated to be excess spoil under section 50 of this rule must conform to the following:
- (1) Topsoil shall be removed from the area upon which the box cut spoil will be placed.
  - (2) The topsoil shall be handled consistently with the topsoil storage and replacement requirements of this article.
  - (3) If placed on a slope, the box cut spoil shall be placed upon the most moderate slope available which the director determines will ensure compliance with IC 14-34 and which will prevent mass movement.
  - (4) The final graded slope of box cut spoil areas shall not exceed thirty-three and one-third percent (33⅓%) or any lesser slope approved by the director based upon a consideration of soil, climate, land use, or other characteristics of the surrounding area.
  - (5) The final surface configuration shall be compatible with the natural drainage pattern and surroundings, and the reclamation of the box cut spoil shall achieve an ecologically sound land use compatible with existing land use policies and plans.
- (c) Excess spoil areas, including box cut spoil approved as excess as outlined under subsection (b), shall be inspected by a qualified registered professional engineer or another qualified specialist under the direction of a qualified registered professional engineer, who shall periodically inspect the fill during construction. The professional engineer or specialist must be experienced in the construction of earth and rock fills.
- (d) The inspections required under subsection (c) must be made at least quarterly throughout construction and during critical construction periods. Critical construction periods include the following:
- (1) Foundation preparation including the removal of organic material and topsoil.
  - (2) The placement of underdrains and protective filter systems.
  - (3) The installation of final surface drainage systems.
  - (4) The placement and compaction of fill materials.

(5) The establishment of final graded and revegetated fill.

(e) The registered professional engineer shall provide a report to the director promptly after each inspection performed under subsection (c) that certifies that any fill has been constructed and maintained as designed and under the approved reclamation plan and this article. The report shall identify any appearance of instability, structural weakness, or other hazardous condition. A report on any drainage system or protective filter shall include color photographs taken during and after construction (but before an underdrain is covered with excess spoil). If an underdrain system is constructed in phases, each phase shall be certified separately.

(f) A copy of each inspection report shall be retained at or near the mine site. (*Natural Resources Commission; 312 IAC 25-6-34; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3526, eff Dec 1, 2001*)

### **312 IAC 25-6-35 Surface mining; protection of underground mines**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 35. No surface coal mining activities shall be conducted closer than five hundred (500) feet to any point of either an active or abandoned underground mine, except to the extent that:

(1) the nature, timing, and sequence of the operations that propose to mine closer than five hundred (500) feet of an active underground mine are jointly approved by the department, the Mine Safety and Health Administration, and the Indiana Bureau of Mines and Mining; and

(2) the activities result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public.

(*Natural Resources Commission; 312 IAC 25-6-35; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3528, eff Dec 1, 2001*)

### **312 IAC 25-6-36 Surface mining; coal mine waste; general requirements**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 36. (a) All coal mine waste disposed of in an area other than the mine workings or excavations shall be hauled or conveyed and placed in new or existing disposal areas within a permit area. The disposal area shall be designed, constructed, and maintained in accordance with section 34 of this rule, this section, and sections 37 through 41 of this rule.

(b) Coal mine waste materials from activities located outside a permit area, such as those activities at other mines or abandoned mine waste piles, may be disposed of in the permit area, only if approved by the director.

(c) Approval for the disposal of waste from subsection (a) or (b) shall be based on a showing by the person who conducts surface mining activities in the permit area, using hydrologic, geologic, geotechnical, physical, and chemical analyses, that disposal of such materials:

(1) minimizes adverse effects of leachate and surface water run-off on surface and ground water quality and quantity;

(2) does not create public health hazards;

(3) ensures mass stability and prevents mass movement during and after construction;

(4) ensures that the final disposal facility is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use by covering with a four (4) foot layer of the best available, nontoxic, noncombustible material. The director may allow less than four (4) feet of cover based upon physical and chemical analyses which show that the requirements of this section and sections 37 through 41 of this rule are met; and

(5) prevents combustion.

(d) Design certification requirements are as follows:

(1) The disposal facility shall be designed using current, prudent engineering practices and shall meet any design criteria established by the director. A qualified registered professional engineer, experienced in the design of similar earth and waste structures, shall certify the design of the disposal facility.

(2) The disposal facility shall be designed to attain a minimum long term static safety factor of one and five-tenths (1.5). The foundation and abutments must be stable under all conditions of construction.

(e) Sufficient foundation investigations, as well as any necessary laboratory testing of foundation material, shall be performed in order to determine the design requirements for foundation stability. The analyses of the foundation conditions shall take into

consideration the effect of underground mine workings, if any, upon the stability of the disposal facility.

(f) If any examination or inspection discloses that a potential hazard exists, the director shall be informed promptly of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the director shall be notified immediately. The director shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(g) Coal mine waste may be disposed of in underground mine workings, but only in accordance with a plan approved by the director and the Mine Safety and Health Administration under section 41 of this rule. (*Natural Resources Commission; 312 IAC 25-6-36; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3528, eff Dec 1, 2001*)

### **312 IAC 25-6-37 Surface mining; coal mine waste; refuse piles; site inspection**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 37. (a) All refuse piles shall be inspected, on behalf of the person conducting surface mining activities, by a qualified registered engineer, or a Mine Safety and Health Administration certified inspector or another qualified person either of whom shall conduct their inspection under the direction of a qualified registered professional engineer. The professional engineer or specialist shall be experienced in the construction of similar earth and waste structures.

(b) The inspection required under subsection (a) shall occur at least quarterly throughout construction and during critical construction periods. Examples of critical construction periods include the following:

- (1) Foundation preparation, including the removal of organic material and topsoil.
- (2) The placement of underdrains and protective filter systems.
- (3) The installation of final surface drainage systems.
- (4) The establishment of the final graded and revegetated facility.

(c) In addition to the inspections required under subsection (b), regular inspections by a qualified registered professional engineer; or a Mine Safety and Health Administration certified inspector or other qualified person either of whom shall conduct their inspection under the direction of a qualified registered professional engineer, must also be conducted during the placement and compaction of coal mine waste materials. The director shall require more frequent inspection under this subsection and subsection (b) based upon a finding of the potential danger to the health or safety of the public and the potential harm to land, air, and water resources. Inspections may terminate when the refuse pile has been adequately reclaimed.

(d) A person who conducts an inspection under this section shall consider the following:

- (1) The steepness of slopes, seepage, and other visible factors which could indicate potential failure.
- (2) The results of failure with respect to the threat to human life and property.

(e) A person who conducts an inspection under this section must provide a certified copy of the inspection report to the director promptly after each inspection. The report shall state whether the refuse pile is constructed and maintained as designed and in accordance with the approved reclamation plan.

(f) The permittee shall maintain copies of the inspection findings at or near the mine site.

(g) An inspection shall include observations and tests required to ensure that all organic material and topsoil have been removed to the extent necessary to evaluate the potential hazard to human life and property.

(h) If any inspection discloses that a hazard exists, the director shall be informed promptly of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the director shall be notified immediately, and the director shall notify the appropriate agencies that other emergency procedures are required to protect the public from the coal processing waste area.

(i) A certified report on a drainage system and protective filters required by subsections (b) and (e) must include color photographs taken during and after construction but before underdrains are covered with coal mine waste. If the underdrain system is constructed in phases, each phase shall be certified separately. The photographs accompanying each certified report shall be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site. (*Natural Resources Commission; 312 IAC 25-6-37; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3529, eff Dec 1, 2001*)

**312 IAC 25-6-38 Coal processing waste; refuse piles; water control measures**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 38. Refuse piles shall meet the requirements of section 36 of this rule, 30 CFR 77.214, 30 CFR 77.215, and the following:

(1) Drainage control shall be provided as follows:

(A) If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, the design shall include diversions and underdrains as necessary to control erosion, prevent water infiltration into the disposal facility, and ensure stability.

(B) Uncontrolled surface drainage may not be diverted over the outslope of the refuse piles. Run-off from the areas above the refuse pile and run-off from the surface of the refuse pile shall be diverted into stabilized diversion channels designed to meet the requirements of section 14 of this rule to safely pass the run-off from a one hundred (100) year, six (6) hour precipitation event. Run-off diverted from undisturbed areas need not be commingled with run-off from the surface of the refuse pile.

(C) Underdrains shall comply with the requirements of section 39 of this rule.

(2) Slope protection shall be provided to minimize surface erosion at the site. All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

(3) The following are placement requirements:

(A) All vegetative and organic materials shall be removed from the disposal area prior to placement of coal mine waste. Topsoil shall be removed, segregated and stored, or redistributed in accordance with section 11 of this rule. If approved by the director, organic material may be used as mulch, or may be included in the topsoil to control erosion, promote growth of vegetation, or increase the moisture retention of the soil.

(B) The final configuration of the refuse pile shall be suitable for the approved postmining land use. Terraces may be constructed on the outslope of the refuse pile if required for stability, control of erosion, conservation of soil moisture, or facilitation of the approved postmining land use. The grade of the outslope between terrace benches shall not be steeper than 2h:1v (fifty percent (50%)).

(C) No permanent impoundments shall be allowed on the completed refuse pile. Small depressions may be allowed by the director if they are not incompatible with the stability of the refuse pile and if they are needed to:

- (i) retain moisture;
- (ii) minimize erosion;
- (iii) create and enhance wildlife habitat; or
- (iv) assist revegetation.

(D) Following final grading of the refuse pile, the coal mine waste shall be covered with a minimum of four (4) feet of the best available, nontoxic and noncombustible earthen material, in a manner that does not impede drainage from the underdrains. The director may allow less than four (4) feet of cover material based on physical and chemical analyses which show that the requirements of sections 54 through 61 of this rule will be met.

*(Natural Resources Commission; 312 IAC 25-6-38; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3529, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.; 25 IR 1182)*

**312 IAC 25-6-39 Surface mining; coal mine waste; refuse piles; construction requirements**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 39. (a) Refuse piles shall be designed to conform to applicable Mine Safety and Health Administration standards, section 36 of this rule, and the additional requirements of this section.

(b) Following final grading of the refuse pile, the site shall be covered with the best available nontoxic, noncombustible material, in accordance with sections 50(f) and 11 of this rule, in a manner that does not impede drainage from the underdrains. The refuse pile shall be revegetated in accordance with sections 54 through 61 of this rule.

(c) Underdrains shall consist of durable rock or pipe, be designed and constructed using current, prudent engineering practices, and meet any design criteria established by the director. The underdrain system shall be designed to carry the anticipated seepage

of water due to rainfall away from the excess spoil fill and seeps and springs in the foundation of the disposal area and shall be protected from piping and contamination by an adequate filter. Rock underdrains shall be constructed of durable, nonacid-forming and nontoxic-forming rock, for example:

- (1) natural sand and gravel;
- (2) sandstone;
- (3) limestone; or
- (4) other durable rock;

that does not slake in water or degrade to soil material, and that is free of coal, clay, or other nondurable material. Perforated pipe underdrains shall be corrosion-resistant and shall have characteristics consistent with the long term life of the fill. (*Natural Resources Commission; 312 IAC 25-6-39; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3530, eff Dec 1, 2001*)

### **312 IAC 25-6-40 Coal processing waste; burning**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 40. Coal processing waste fires shall be extinguished by the person who conducts the surface mining activities and in accordance with applicable Mine Safety and Health Administration (MSHA) standards. (*Natural Resources Commission; 312 IAC 25-6-40; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3530, eff Dec 1, 2001*)

### **312 IAC 25-6-41 Coal processing waste; return to underground workings**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 41. Coal processing waste may be returned to underground mine workings only in accordance with the waste disposal program approved by the director under 312 IAC 25-4-96. (*Natural Resources Commission; 312 IAC 25-6-41; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3531, eff Dec 1, 2001*)

### **312 IAC 25-6-42 Disposal of noncoal wastes**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 42. (a) Noncoal wastes, including, but not limited to:

- (1) grease;
- (2) lubricants;
- (3) paints;
- (4) flammable liquids;
- (5) garbage;
- (6) abandoned mining machinery;
- (7) lumber; and
- (8) other combustibles generated during surface mining activities;

shall be placed and stored in a controlled manner in a designated portion of the permit area. Placement and storage shall ensure that leachate and surface run-off do not degrade surface or ground water, fires are prevented, and the area remains stable and suitable for reclamation and revegetation.

(b) Final disposal of noncoal wastes shall be in a designated disposal site in the permit area. Wastes shall be routinely compacted and covered to prevent combustion and wind-borne waste. When the disposal is completed, a minimum of two (2) feet of soil cover shall be placed over the site, slopes stabilized, and revegetation accomplished in accordance with sections 54 through 61 of this rule. Operation of the disposal site shall be conducted in accordance with all local, Indiana, and federal requirements.

(c) At no time shall any solid waste material be deposited at refuse embankments or impoundment sites, nor shall any excavation for solid waste disposal be located within eight (8) feet of any coal outcrop or coal storage area. (*Natural Resources Commission; 312 IAC 25-6-42; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3531, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.:*



25 IR 1182)

**312 IAC 25-6-43 Surface mining; coal mine waste; dams and embankments; general requirements**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 43. (a) A new or existing impounding structure constructed of coal mine waste or intended to impound coal mine waste must comply with sections 34, 36, and 37 of this rule, this section, and sections 44 through 45 of this rule.

(b) Coal mine waste shall not be used for the construction of an impounding structure unless the permittee demonstrates to the director that the stability of the structure achieves each of the following:

(1) Is in conformance with this rule.

(2) The use of coal mine waste will not have a detrimental effect on downstream water quality or the environment due to acid seepage through the impounding structure. The stability of the impounding structure and the potential impact of acid mine seepage through the structure must be discussed in detail in the design plan submitted in the reclamation plan under 312 IAC 25-4-49.

(c) An impounding structure constructed of coal mine waste or intended to impound coal mine waste must be designed, constructed, and maintained under section 20 of this rule. The impounding structure cannot be retained permanently as part of the approved postmining land use.

(d) Each impounding structure constructed of coal mine waste or intended to impound coal mine waste that meets the criteria of 30 CFR 77.216(a) shall have:

(1) sufficient spillway capacity to safely pass;

(2) adequate storage capacity to safely contain; or

(3) a combination of storage capacity and spillway capacity to safely control;

the probable maximum precipitation of a six (6) hour precipitation event or greater event as specified by the director. Spillways and outlet works shall be designed to provide adequate protection against erosion and corrosion. Inlets shall be protected against blockage.

(e) Run-off from areas above the disposal facility or run-off from the surface of the facility that may cause instability or erosion of the impounding structure shall be diverted into stabilized diversion channels designed to satisfy section 15 of this rule and to safely pass run-off from the one hundred (100) year, six (6) hour design precipitation event.

(f) As used in this section, "impounding structure" does not include incised impoundments or impoundments plugged by massive earthen fills, as determined by the Mine Safety and Health Administration, that would be treated as incised impoundments under good engineering practices.

(g) For an impounding structure constructed of coal mine waste or impounding coal mine waste, at least ninety percent (90%) of the water stored during the design precipitation event shall be removed within the ten (10) day period following the design precipitation event. (*Natural Resources Commission; 312 IAC 25-6-43; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3531, eff Dec 1, 2001*)

**312 IAC 25-6-44 Coal processing waste; dams and embankments; site preparation**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 44. The following requirements apply before coal processing waste is placed at a dam or embankment site:

(1) All trees, shrubs, grasses, and other organic material shall be cleared and grubbed from the site, and all combustibles shall be removed and stockpiled in accordance with sections 5 through 43 of this rule, this section, and sections 45 through 68 of this rule.

(2) Surface drainage that may cause erosion to the embankment area or the embankment features, whether during construction or after completion, shall be diverted away from the embankment by diversion ditches that comply with section 14 of this rule. Adequate outlets for discharge from these diversions shall be in accordance with section 18 of this rule. Diversions that are designed to divert drainage from the upstream area away from the impoundment area shall be designed to protect public health and safety and the environment. The diversion shall be maintained to prevent blockage, and the discharge shall be in accordance with section 18 of this rule. Sediment control measures shall be provided at the discharge of each diversion ditch

before entry into natural watercourses in accordance with sections 12 through 17 of this rule.

*(Natural Resources Commission; 312 IAC 25-6-44; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3532, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182)*

**312 IAC 25-6-45 Surface mining; coal mine waste; dams and embankments; design and construction**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 45. (a) The design of each dam and embankment constructed of processing waste shall comply with the applicable requirements of sections 20 and 36 of this rule, modified as follows:

(1) The design freeboard between the lowest point on the embankment crest and the maximum water elevation shall be at least three (3) feet.

(2) The dam and embankment shall have a minimum safety factor of one and five-tenths (1.5) for the partial pool with steady seepage saturation conditions, and the seismic safety factor shall be at least one and two-tenths (1.2).

(3) The dam or embankment foundation and abutments shall be designed to be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed to determine the safety factors of the dam or embankment for all loading conditions appearing in subdivision (2).

(b) Spillways and outlet works shall be designed to provide adequate protection against erosion and corrosion. Inlets shall be protected against blockage.

(c) Impounding structures constructed of or impounding coal mine waste shall be designed so that at least ninety percent (90%) of the water stored during the design precipitation event can be removed within a ten (10) day period. *(Natural Resources Commission; 312 IAC 25-6-45; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3532, eff Dec 1, 2001)*

**312 IAC 25-6-46 Surface mining; protection of fish, wildlife, and related environmental values**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 46. (a) Any person conducting surface mining activities shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the activities on fish, wildlife, and their habitats, and achieve enhancement of those resources where practicable.

(b) No surface mining activity shall be conducted which is likely to jeopardize the continued existence of endangered or threatened species listed by the secretary or which is likely to result in the destruction or adverse modification of designated critical habitats of these species in violation of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.). The permittee shall promptly report to the director any endangered or threatened species that is listed by the state or federal government within the permit area of which the permittee becomes aware. Upon notification, the director shall consult with the United States Fish and Wildlife Service and the division of fish and wildlife of the department. After the consultation, the director shall determine whether, or under what conditions, the permittee may proceed.

(c) A person who conducts surface mining activities shall ensure that the design and construction of electric power lines and other transmission facilities used for or incidental to the surface mining activities on the permit area are in accordance with the guidelines set forth in Environmental Criteria for Electric Transmission System (USDI, USDA, (1970)). Distribution lines shall be designed and constructed in accordance with REA Bulletin 61-10, Powerline Contacts by Eagles and Other Large Birds. For informational purposes, these two (2) documents are available at the OSM Office, United States Department of the Interior, South Interior Building, Washington, D.C., 20240, at each OSM regional office, district office, and field office and at the central and field office of the division of reclamation.

(d) No surface mining activity shall be conducted in a manner that would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs. The permittee shall promptly report to the director any golden or bald eagle nest within the permit area of which the permittee becomes aware. Upon notification, the director shall consult with the United States Fish and Wildlife Service and the division of fish and wildlife of the department. After the consultation, the director shall determine whether, or under what conditions, the permittee may proceed.

(e) Each person who conducts surface mining activities shall, to the extent possible using the best technology currently

available, establish the following:

- (1) Locate and operate haul and access roads so as to avoid or minimize impacts to important fish and wildlife species or other species protected by state or federal law.
- (2) Fence, cover, or use other appropriate methods to exclude wildlife from ponds that contain a hazardous concentration of toxic-forming materials.
- (3) Restore, enhance, where practicable, or avoid disturbance to habitats of unusually high value for fish and wildlife.
- (4) Restore, enhance, where practicable, or maintain natural riparian vegetation on the banks of streams, lakes, and other wetlands areas.
- (5) Afford protection to aquatic communities by avoiding stream channels as required in section 28 of this rule or restoring stream channels as required in section 15 of this rule.
- (6) Not use persistent pesticides on the area during surface mining and reclamation activities unless approved by the director.
- (7) To the extent possible, prevent, control, and suppress range, forest, and coal fires that are not approved by the director as part of a management plan.
- (8) If fish and wildlife habitat is to be a primary or secondary postmining land use, the operator shall, in addition to the requirements of sections 54 through 61 of this rule, establish the following:
  - (A) Select plant species to be used on reclaimed areas, based on the following criteria:
    - (i) Their proven nutritional value for fish and wildlife.
    - (ii) Their uses as cover for fish and wildlife.
    - (iii) Their ability to support and enhance fish and wildlife habitat after release of bonds.
  - (B) Distribute plant groupings to maximize benefit to fish and wildlife. Plants should be grouped and distributed to optimize edge effect, cover, and other benefits for fish and wildlife.
- (9) Where cropland is to be the alternative postmining land use on lands diverted from a fish and wildlife premining land use and where appropriate for wildlife and crop management practices, intersperse the fields with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals. Wetlands shall be preserved or created rather than drained or otherwise permanently abolished.
- (10) Where the primary land use is to be residential, public service, or industrial intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs, and trees useful as food and cover for birds and small animals, unless the greenbelts are inconsistent with the approved postmining land use.

*(Natural Resources Commission; 312 IAC 25-6-46; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3532, eff Dec 1, 2001)*

### **312 IAC 25-6-47 Surface mining; slides and other damage**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 47. (a) An undisturbed natural barrier shall be provided beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for such distance as may be determined by the director as is needed to assure stability. The barrier shall be retained in place to prevent slides and erosion.

(b) At any time a slide occurs which may have a potential adverse effect on public property, health, safety, or the environment, the person who conducts the surface mining activities shall notify the director by the fastest available means and comply with any remedial measures required by the director. *(Natural Resources Commission; 312 IAC 25-6-47; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3533, eff Dec 1, 2001)*

### **312 IAC 25-6-48 Surface mining; contemporaneous reclamation**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 48. Surface mining; reclamation efforts, including, but not limited to:

- (1) backfilling;
- (2) grading;
- (3) topsoil replacement; and

(4) revegetation;  
of all land that is disturbed by surface mining activities shall occur as contemporaneously as practicable with mining operations.  
(*Natural Resources Commission; 312 IAC 25-6-48; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3533, eff Dec 1, 2001*)

**312 IAC 25-6-49 Surface mining; backfilling and grading; timing limitations**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 49. (a) Except as otherwise approved by the director in the approved permit or as provided in subsections (b) and (c), backfilling and grading shall be accomplished as follows:

(1) In mining operations in which overburden removal is accomplished primarily by a dragline, shovel, or similar excavating machine that deposits the overburden into spoil ridges, within one hundred eighty (180) days of deposition, provided that no more than four (4) spoil ridges remain at any one (1) time.

(2) For direct haul-back operations, where spoil is excavated from an advancing pit and hauled back, dumped, and graded into an inactive pit as one (1) operation, rough backfilling and grading shall be carried out continuously behind the pit or pits being worked. At no time shall there be more than four (4) open pits.

(3) For operations that do not use a dragline or shovel for spoil removal and do not employ the direct haul-back method of operation, rough backfilling and grading of spoil shall be completed within one hundred eighty (180) days after it is deposited, and no more than four (4) pits shall be open at any one (1) time.

(4) For all operations, rough backfilling and grading of boxcut or excess spoil shall be completed within one (1) year after it is deposited. The director may grant additional time if the permittee can demonstrate, in writing, that additional time is necessary.

(b) The director may extend the timing limitations of subsection (a) by the duration of any temporary cessation of mining operations for which the permittee files the notice required by section 62(b) of this rule.

(c) The director may grant variances to the limitations of subsection (a) for good cause. (*Natural Resources Commission; 312 IAC 25-6-49; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3534, eff Dec 1, 2001*)

**312 IAC 25-6-50 Surface mining; backfilling and grading; general requirements**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 50. (a) Disturbed areas shall be backfilled and graded to include the following:

(1) Achieve the approximate original contour, except as provided in subsection (k).

(2) Eliminate all highwalls, spoil piles, and depressions, except as provided in subsections (h) and (k)(2).

(3) Achieve a postmining slope that does not exceed 3:1 (h:v) or the lesser slope that is needed to achieve a minimum long term static safety factor of one and three-tenths (1.3) and to prevent slides. This requirement does not apply to ditches, dams, levees, and similar constructed features.

(4) Minimize erosion and water pollution both on and off the site.

(5) Support the approved postmining land use.

(b) Spoil, except excess spoil disposed under subsection (d) or section 34 of this rule, shall be returned to the mined-out area.

(c) Spoil and waste materials shall be compacted where advisable to ensure stability or to prevent leaching of toxic materials.

(d) Spoil may be placed on the bonded, permitted area outside the mined-out area in nonsteep slope areas to restore the approximate original contour by blending the spoil into the surrounding terrain if the following requirements are met:

(1) All vegetative and organic material is removed from the area.

(2) The topsoil on the area is removed, segregated, stored, and redistributed under section 11 of this rule.

(3) The spoil is backfilled and graded on the area under this section.

(e) Disposal of coal processing waste and underground development waste in the mined-out area shall be under sections 36 through 38 of this rule, except that a long term static safety factor of one and three-tenths (1.3) shall be achieved.

(f) Exposed coal seams, acid-and toxic-forming materials, and combustible materials exposed, used, or produced during mining shall be adequately covered with nontoxic and noncombustible earthen material, or treated, to control the impact of surface

and ground water under section 12 of this rule to prevent sustained combustion and to minimize adverse effects on plant growth and the approved postmining land use.

(g) The director may approve as a term of a permit the construction of cut-and-fill terraces if the permittee demonstrates either of the following:

(1) That the terraces are needed to conserve soil moisture, ensure stability, and control erosion on final-graded slopes if the terraces are compatible with the approved postmining land use.

(2) Specialized grading, foundation conditions, or roads are required for the approved postmining land use. Final grading under this subdivision may include a terrace of adequate width to ensure the safety, stability, and erosion control necessary to implement the postmining land-use plan.

(h) Small depressions (which do not interfere with the approved postmining land use) may be constructed if needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation.

(i) Permanent impoundments may remain if authorized by the director under section 20 of this rule.

(j) Preparation of final-graded surfaces shall be conducted to minimize erosion and to provide a surface for replacement of topsoil that will minimize slippage.

(k) The postmining slope may vary from the approximate original contour if:

(1) approval is obtained from the director in the approved permit application for a variance from approximate original contour requirements under 312 IAC 25-4-101;

(2) incomplete elimination of highwalls in previously disturbed areas is approved under subsection (l); or

(3) the standards for thick overburden in section 52 of this rule are met.

(l) If sufficient spoil is not otherwise available to comply with this section, the director may approve as a term of a permit a modification of the requirements of this section under section 144 of this rule for surface mining operations that affect previously mined lands that:

(1) contain a preexisting highwall; and

(2) have not been restored to the standards of this section.

*(Natural Resources Commission; 312 IAC 25-6-50; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3534, eff Dec 1, 2001)*

### **312 IAC 25-6-51 Surface mining; stabilization of surface areas**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 51. (a) All exposed surface areas shall be protected and stabilized to effectively control erosion and air pollution attendant to erosion.

(b) When rills and gullies form in regraded, topsoiled areas and the rills and gullies disrupt the approved postmining land use, disrupt the reestablishment of vegetative cover or cause or contribute to a violation of applicable effluent limitations and the rill or gully is not vegetated or otherwise stabilized, the rill or gully shall be:

(1) filled, regraded, or otherwise stabilized;

(2) topsoil shall be replaced; and

(3) the area shall be reseeded or replanted.

*(Natural Resources Commission; 312 IAC 25-6-51; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3535, eff Dec 1, 2001)*

### **312 IAC 25-6-52 Surface mining; backfilling and grading; thick overburden**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 52. In surface coal mining operations where the thickness of the overburden is large relative to the thickness of the coal deposit and where the permittee demonstrates that the volume of the spoil and other waste materials is more than sufficient to restore the disturbed area to approximate original contour, the permittee shall, at a minimum, after restoring to approximate original contour, do the following:

(1) Use the spoil and waste materials to attain the lowest practicable grade, but not more than 3:1 (h:v) or such lesser slope as may be necessary to obtain a long term minimum static safety factor of 1.3.

(2) Meet the requirements of section 50(a)(2) through 50(j) of this rule.

(3) Dispose of any excess spoil in accordance with section 34 of this rule.

*(Natural Resources Commission; 312 IAC 25-6-52; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3535, eff Dec 1, 2001)*

**312 IAC 25-6-53 Surface mining; backfilling and grading; previously mined areas**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 53. (a) A remining operation on a site that contains a preexisting highwall shall comply with sections 49 through 52 of this rule, except as provided under this section.

(b) Section 50(a)(2) of this rule does not apply to a remining operation if the volume of reasonably available soil is demonstrated in writing to the director to be insufficient to completely backfill the reaffected or enlarged highwall. The highwall must be eliminated to the extent technically practicable as follows:

(1) Spoil generated by the remining operation and any other reasonably available spoil shall be used to backfill the area. Reasonably available spoil in the immediate vicinity of the remining operation shall be included within the permit area.

(2) The backfill shall be graded to a slope that is compatible with the approved postmining land use and provides adequate drainage and long term stability.

(3) A highwall remnant shall be stable and shall not pose a hazard to the public health and safety or to the environment. The operator shall demonstrate to the director that the highwall remnant is stable.

(4) Spoil placed on the outslope during previous mining operations shall not be disturbed if the disturbance will cause instability of the remaining spoil or will otherwise increase hazards to public health, safety, or the environment.

*(Natural Resources Commission; 312 IAC 25-6-53; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3535, eff Dec 1, 2001)*

**312 IAC 25-6-54 Surface mining; revegetation; general requirements**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 54. (a) Each person who conducts surface mining activities shall establish, on all affected land except water areas and surface areas of roads that are approved as a part of the postmining land use, a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area and that supports the approved postmining land use.

(b) All revegetation shall be carried out in a manner that encourages a prompt vegetative cover and recovery of productivity levels compatible with the approved postmining land use, such that:

(1) vegetative cover shall be capable of stabilizing the soil surface from erosion; and

(2) if both the premining and postmining land uses are cropland, planting of the crops normally grown will meet the requirements of subsection (a).

*(Natural Resources Commission; 312 IAC 25-6-54; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3536, eff Dec 1, 2001)*

**312 IAC 25-6-55 Surface mining; revegetation; use of introduced species**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 55. (a) Introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan if approved by the director under the following conditions:

(1) The species are compatible with the plant and animal species of the region.

(2) The species meet the requirements of applicable Indiana seed or introduced species statutes and are not poisonous or noxious.

(b) As used in this section, "native species" means a species previously introduced and adapted to the state in the general vicinity of the coal producing region. *(Natural Resources Commission; 312 IAC 25-6-55; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3536, eff Dec 1, 2001)*

**312 IAC 25-6-56 Surface mining; revegetation; timing**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 56. Seeding and planting of disturbed areas shall be conducted during the first normal period for favorable planting conditions after final soil preparation. The normal period for favorable planting shall be that planting time generally accepted locally for the type of plant materials selected. When necessary to effectively control erosion, any disturbed area shall be seeded and planted, as contemporaneously as practicable with the completion of backfilling and grading, with a temporary cover of small grains, grasses, or legumes until a permanent cover is established. (*Natural Resources Commission; 312 IAC 25-6-56; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3536, eff Dec 1, 2001*)

**312 IAC 25-6-57 Surface mining; revegetation; mulching and other soil stabilizing practices**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 57. (a) Suitable mulch or other necessary soil stabilizing practices shall be used on all regraded and topsoiled areas to do any of the following:

- (1) Control erosion.
- (2) Promote germination of seeds.
- (3) Increase the moisture-retention capacity of the soil.

The director may, on a case-by-case basis, suspend the requirement for mulch if the permittee can demonstrate that alternative procedures will achieve the requirements of sections 59 through 61 of this rule and do not cause or contribute to air or water pollution.

(b) When required by the director, mulches shall be mechanically or chemically anchored to the soil surface to assure effective protection of the soil and vegetation.

(c) Annual grasses and grains may be used alone, as in situ mulch, or in conjunction with another mulch, when the director determines that they will provide adequate soil erosion control and will later be replaced by perennial species approved for the postmining land use.

(d) Chemical soil stabilizers alone, or in combination with appropriate mulches, may be used in conjunction with vegetative covers approved for the postmining land use. (*Natural Resources Commission; 312 IAC 25-6-57; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3536, eff Dec 1, 2001*)

**312 IAC 25-6-58 Surface mining; revegetation; grazing**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 58. When the approved postmining land use is pasture land, the reclaimed land may be used for livestock grazing if approved by the director. (*Natural Resources Commission; 312 IAC 25-6-58; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3537, eff Dec 1, 2001*)

**312 IAC 25-6-59 Surface mining; revegetation; standards for success for nonprime farmland**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 59. (a) Success of revegetation is judged on the following:

- (1) The effectiveness of the vegetation for the approved postmining land use.
- (2) The extent of cover compared to the cover occurring in natural vegetation in the area.
- (3) The general requirements of section 54 of this rule.

(b) Ground cover, production, and stocking are satisfactory if they are not less than ninety percent (90%) of the success standard as determined by the sampling techniques under section 60 of this rule and the statistical methodology under section 61

of this rule.

- (c) Standards for success are applied under the approved postmining land use and must include the following conditions:
  - (1) For a previously mined area that was not reclaimed under sections 1 through 58 of this rule, this section, and sections 60 through 148 of this rule, the ground cover of living plants shall be as follows:
    - (A) Not less than can be supported by the best available topsoil or other suitable material in the reaffected area.
    - (B) Not less than the cover existing before redisturbance.
    - (C) Adequate to control erosion.
  - (2) For an area to be developed for an industrial/commercial or a residential use less than two (2) years after regrading is completed, the ground cover of living plants shall be not less than what is required to control erosion.
  - (3) For pastureland, the ground cover success standard shall be one hundred percent (100%). In addition, the production of living plants on the revegetated area shall be equal to one (1) of the following:
    - (A) An approved reference area.
    - (B) Current Natural Resources Conservation Service predicted yield by soil map unit. If this method is used, the standard for success shall be a weighted average of the predicted yields for each unmined soil type that existed on the permit area at the time the permit was issued.
    - (C) A target yield determined by the following formula:

$$\text{Target Yield} = \text{NRCS Target Yield} \times (\text{CCA}/10 \text{ Year CA})$$

- Where:
- NRCS Target Yield = The average yield per acre, as predicted by the Natural Resources Conservation Service, for the crop and the soil map units being evaluated. The most current yield information at the time of permit issuance shall be used and shall be contained in the appropriate sections of the permit application.
  - CCA = The county average for the crop for the year being evaluated as reported by the United States Department of Agriculture crop reporting service, the Indiana Agricultural Statistics Service.
  - 10 Year CA = The 10 year Indiana Agricultural Statistics Service county average, consisting of the year being evaluated and the 9 preceding years.
  - (D) Other methods approved by the director.
  - (E) The method for establishing the standard, once selected, may not be modified without the approval of the director.
  - (4) For an area to be developed as a shelter belt or for a fish and wildlife habitat, recreation, or forestry land use, the success of vegetation is determined on the basis of tree, shrub, or half-shrub stocking and ground cover. The area seeded to a ground cover is not acceptable unless the director determines the ground cover is adequate to control erosion. Stocking rates are those in the approved permit reclamation plan and are not less than the following:
    - (A) Four hundred fifty (450) plantings per acre for a forestry use.
    - (B) A rate appropriate to support a shelter belt or a land use (other than forestry) described in this subsection. The rate established under this clause may be adjusted for particular areas within a shelter belt or land use in order to support a diverse wildlife habitat if the adjusted rate is approved in the plan of reclamation and will not result in erosion.
  - (5) For an area to be used as cropland, crop production on the revegetated area must be at least equal to one (1) of the following:

- (A) An approved reference area.
- (B) Current Natural Resources Conservation Service predicted yield by soil map unit. If this method is used, the standard for success shall be a weighted average of the predicted yields for each unmined soil type that existed on the permit area at the time the permit was issued.
- (C) A target yield determined by the following formula:

$$\text{Target Yield} = \text{CCA} \times (\text{NRCSP}/\text{NRCSC})$$

- Where:
- CCA = The county average for the crop for the year being evaluated as reported by the United States Department of Agriculture crop reporting service, the Indiana Agricultural Statistics Service.
  - NRCSP = The weighted average of the current Natural Resources Conservation Service predicted yield for each croppable, unmined soil that existed on the permit area



NRCSC = at the time the permit was issued.  
The weighted average of the current Natural Resources Conservation Service predicted yield for each croppable, unmined soil that is shown to exist in the county on the most current county soil survey.

A croppable soil is any soil that the Natural Resources Conservation Service has defined as being in capability Class I, II, III, or IV.

(D) Other methods approved by the director.

(E) The method for establishing the standard, once selected, may not be modified without the approval of the director.

(6) A crop grown to demonstrate satisfaction of the requirements of subdivision (5) must be one (1) or more of the crops listed in 312 IAC 25-1-33 and as specified in the reclamation plan. An adjustment to predicted crop yields may be made according to accepted agronomic practices, after consultation with the Natural Resources Conservation Service or other sources approved by the director for factors, including disease, weather, tillage management, pests, and seed or plant selection.

(7) The aggregate of the barren areas within an area under evaluation must not exceed five percent (5%) of the area. Revegetation is not successful unless each barren area within an area under evaluation is as follows:

(A) Smaller than seven hundred fifty (750) square feet.

(B) Completely surrounded by desirable vegetation.

(C) In compliance with sections 11 and 50 of this rule.

(d) A single reference area may be used for more than one (1) permit area if the requirements of this subsection are met with respect to each permit area. A reference area used to establish success standards under this section must meet the following requirements:

(1) If the area to be represented contains more than fifty (50) acres, the reference area shall contain at least five (5) acres unless the director approves a smaller area. If the area to be represented contains less than fifty (50) acres, the reference area shall be the greater of:

(A) ten percent (10%) of the area to be represented; or

(B) one (1) acre.

(2) Each reference area shall be representative of the geology, soils, slopes, and vegetation of the area to be represented.

(3) Management of the reference area shall be identical to the area to be represented.

(4) Each reference area must be located within twenty (20) miles of the area to be represented.

(5) Right-of-entry on the reference area for the authorized representatives of the director must be secured by written agreement or consent for the entire period in which the reference area will be used.

(e) In determining the period of responsibility under 312 IAC 25-5-7, the director may approve selective husbandry practices (except for augmented seeding, fertilization, or irrigation) without extending the period of responsibility for revegetation success and bond liability if:

(1) the selective husbandry practices can be expected to continue as part of the postmining land use; or

(2) discontinuance of the practices after the liability period will not reduce the probability of permanent revegetation success.

(f) Selective husbandry practices that may be approved under subsection (e) are normal conservation practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area and may include the following:

(1) Disease, pest, and vermin control.

(2) Repair of rills and gullies.

(3) Pruning, reseeding, or transplanting specifically necessitated by these practices.

(g) The success standards identified in subsection (c) shall be met during the growing seasons of any two (2) years of the responsibility period, except the first year, for cropland or pastureland. The success standards for any other land use are measured by the last year of the responsibility period. (*Natural Resources Commission; 312 IAC 25-6-59; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3537, eff Dec 1, 2001; errata filed Aug 17, 2001, 1:50 p.m.: 25 IR 106*)

### **312 IAC 25-6-60 Revegetation; sampling techniques for nonprime farmland**

Authority: IC 14-34-2-1

Affected: IC 14-34

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NATURAL RESOURCES COMMISSION

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Sec. 60. (a) Success of revegetation is evaluated according to the standards as set forth in section 59 of this rule and (if a measurable success standard applies) using sampling techniques set forth in this section or that:

(1) have a ninety percent (90%) statistical confidence interval (in other words, a one (1) sided test with a ten-hundredths (0.10) alpha error); and

(2) are approved by the director.

(b) The following methods may be used to evaluate ground cover:

(1) The percentage of ground cover shall be assessed within one (1) foot square units randomly located in the area under evaluation. Each unit shall be divided into one hundred (100) equal parts to form a grid. The percentage of ground cover within each unit is equal to the number of parts that contain vegetation or litter. The minimum number of observations for the area under evaluation and methods of analysis shall be determined under section 61 of this rule.

(2) The percentage of ground cover shall be assessed by determining the number of points at one (1) foot intervals that intersect ground cover along one hundred (100) foot lines randomly located in the area under evaluation. A point shall be considered as intersecting ground cover when the location immediately under the point contains either the aerial parts of the vegetation or litter that is produced naturally on-site. The percentage of vegetative ground cover assessed for each line is an individual observation. The minimum number of observations for the area under evaluation and the methods of analysis are determined under section 61 of this rule.

(c) The following methods may be used to evaluate the production of living plants on cropland used for hay and on pastureland:

(1) With respect to a whole field harvest, all vegetation under evaluation shall be cut, adequately cured under acceptable agronomic practices, and baled. The total number of bales produced per cutting from the area under evaluation shall be determined. The weight of individual bales randomly selected from the area under evaluation shall be determined. The weight of each bale shall be considered an individual observation for the purposes of section 61 of this rule. The minimum number of bales to be weighed shall be determined using the following table:

Size of Area Under Evaluation (Acres)	Minimum Number of Small Bales (Less than 100 Pounds)	Minimum Number of Large Bales (At Least 100 Pounds)
0-39	10	4
40-279	15	6
280-639	20	10

For areas larger than six hundred forty (640) acres, one (1) additional bale is required for each additional thirty-five (35) acres. The adequacy of the sample and the mean weight of the bales shall be determined using the methods set forth in section 61(c) and 61(e) of this rule. The production of the area under evaluation shall be determined using the following formula:

$$P = (\bar{X} \times N_B) \div (A \times 2,000)$$

Where: P = Production of area (tons per acre).

$\bar{X}$  = Mean weight for weight of bale (pounds per bale).

$N_B$  = Total number of bales produced.

A = Size of area under evaluation (acres).

(2) With respect to a test plot (an area that, due to soils, topography, age, management, locality, and any other factor that affects production, can be expected to produce the same yield as the area being evaluated), the director shall determine whether a test plot is representative of the evaluated area. Test plots collectively shall be at least ten percent (10%) of the area represented unless the director approves a smaller percentage. No test plot shall be less than one (1) acre. The test plot must be harvested independently of the surrounding area or, if harvested at the same time, records must be maintained by the permittee that provide a measurement of the yield of the test plot that is separate and distinct from the surrounding area. The entire area being evaluated must be in permanent vegetative cover equal to the approved success standard as identified in section 59(c)(3) of this rule. The location of a test plot shall be established after consultation with the director.

(3) With respect to yield estimates from clippings, the vegetation growing in one (1) yard squares shall be randomly located in the area under evaluation, clipped, adequately cured under acceptable agronomic practices, and weighed to determine the production from living plants. The vegetation shall be clipped to leave at least one (1) node on the stem to provide for regeneration of foliage. If more than one (1) cutting is necessary to prove the production of the area under evaluation, all additional cuttings must come from the same selected squares unless the entire field is mowed. New squares may be randomly

located each year. The production of the area under evaluation (expressed as tons per acre) shall be extrapolated from the clippings obtained from each individual square. For the purposes of section 61 of this rule, the extrapolated production from each square shall be considered an individual observation. The minimum number of observations for the area under evaluation and methods for analysis shall be determined under section 61 of this rule.

(d) The following methods may be used to evaluate the production of living plants on cropland for crops other than hay:

(1) With respect to a whole field harvest, all vegetation under evaluation shall be harvested and the yield obtained. Each yield shall be adjusted for moisture content and certified as to accuracy. Each yield shall be documented by presenting weigh tickets from a grain elevator or by other means acceptable to the director.

(2) With respect to a test plot (as defined under subsection (c)(2)), the director shall determine whether a test plot is representative of the evaluated area. The yield shall be adjusted for moisture content. Test plots collectively shall be at least ten percent (10%) of the area to be represented, unless the director approves a smaller area, but not less than one (1) acre. The test plot must be harvested independently of the surrounding area or, if harvested at the same time, records must be maintained by the permittee which provide a measurement of the yield of the test plot that is separate and distinct from the surrounding area. The entire area being evaluated must be in permanent vegetation or must be used for crop production as provided in the plan of reclamation. The portion in permanent vegetation must have a ground cover equal to the approved success standard as identified in section 59(c)(3) of this rule. The location of a test plot shall be established after consultation with the director.

(3) Yield estimates for corn and soybean grain counts shall be conducted under methods used by one (1) of the following:

(A) Purdue University.

(B) University of Illinois.

(C) Another institution approved by the director.

(e) This method may be used to evaluate stocking or planting on an area developed as fish and wildlife habitat, recreation, forest, or shelter belt. Each acceptable tree, shrub, and half-shrub shall be counted that is located within a circle formed by a twenty (20) foot radius centered on a randomly selected point. Each area counted is an individual observation for purposes of section 61 of this rule. The sufficiency of the number of observations shall be determined and the statistical analysis of the results shall be performed under section 61 of this rule. A tree, shrub, or half-shrub is counted if the species:

(1) is designated in the approved reclamation plan;

(2) is alive and healthy; and

(3) has been in place for at least two (2) growing seasons (with at least eighty percent (80%) of the species counted having been in place for at least three (3) growing seasons).

*(Natural Resources Commission; 312 IAC 25-6-60; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3539, eff Dec 1, 2001)*

### **312 IAC 25-6-61 Revegetation; statistical methodology**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 61. (a) The methods set forth in this section are used to evaluate the success of revegetation pursuant to section 59 of this rule using the sampling techniques under section 60 of this rule.

(b) The minimum number of observations for the area under evaluation shall be determined as provided under this subsection as follows:

(1) Except as provided in subdivisions (2) through (3), the following table is used to determine the required minimum number of observations:

Size of Area Under Evaluation (In Acres)	Crop	Minimum Number of Observations
	Corn	
0-39		8
40-279		12
280-639		16
640 or more		28
	Soybeans	

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0-39		10
40-279		12
280-639		16
640 or more		26
	Wheat and Oats	
0-39		6
40-279		8
280-639		10
640 or more		14
	Sorghum	
0-39		10
40-279		16
280-639		28
640 or more		40
	Mixed Hay	
0-39		5
40-279		10
280-639		20
640 or more		20 + 1 additional sample for each 35 acres in excess of 640 acres

(2) If any two (2) observations vary by more than fifteen percent (15%), the director may increase the minimum number of observations required by the table in subdivision (1). If additional samples are required, the formula in subsection (e) shall be used to determine that the number of observations evaluated is sufficient.

(3) A statistical analysis of the result obtained from the area under evaluation shall be performed using the method from subsection (c) or (d). If there are apparent discrepancies between the submitted yield derived from random sampling and yield estimates derived by the director, the operator may be required to harvest specific fields in their entirety.

(c) Sampling results shall be analyzed and the following statistical parameters determined:

(1) Sample mean (average):

$$\bar{X} = \frac{\sum X_i}{N}$$

Where:  $\sum X_i$  = The sum of the individual observation values.

$N$  = The number of observations.

(2) Mean deviation squared:

$$M = \sum (X_i - \bar{X})^2$$

(3) Degree of freedom:

$$d = N - 1$$

(4) Sample standard deviation:

$$s = \sqrt{M \div N}$$

(5) t-value:

$$t = \frac{T - \bar{X}}{s \div \sqrt{d}}$$

Where: T = Desired target yield.

The calculated t-value is compared with the value associated with the appropriate degree of freedom (d) in the following table to determine if the standard has been met. The calculated t-value must be less than or equal to the t-value derived from the table to demonstrate that the actual yield has achieved the standard with a ninety percent (90%) or greater statistical

confidence.

<u>Degree of Freedom</u>	<u>t-value</u>
1	3.078
2	1.886
3	1.638
4	1.533
5	1.476
6	1.440
7	1.415
8	1.397
9	1.383
10	1.372
11	1.363
12	1.356
13	1.350
14	1.345
15	1.341
16	1.337
17	1.333
18	1.330
19	1.328
20	1.325
21	1.323
22	1.321
23	1.319
24	1.318
25	1.316
26	1.315
27	1.314
28	1.313
29	1.311
30	1.310
40	1.303
60	1.296
120	1.289
∞	1.282

(d) Other statistical methods may be approved by the director.

(e) To determine if the number of samples is sufficient, the following formula will be used:

Number of samples required:

$$\left( \frac{16.4 \times s}{\bar{X}} \right)^2$$

Where: s = Sample standard deviation.

$\bar{X}$  = Mean.

The formula set forth in this subsection prescribes an interactive method in which the number of required samples is dependent upon the variation between the samples. Once the minimum number of samples is obtained, the appropriate information is substituted into this formula to determine if a sufficient number of samples were evaluated given the variation in the data. The collection of additional random samples, together with reapplication of the formula may, depending upon the overall consistency in observations, change the required number of samples as data collection progresses. In general, fewer samples are required if there is greater consistency among samples. (*Natural Resources Commission; 312 IAC 25-6-61; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3540, eff Dec*

1, 2001)

**312 IAC 25-6-62 Cessation of operations; temporary**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 62. (a) Each person who conducts surface mining activities shall effectively secure surface facilities in areas in which there are no current operations, but in which operations are to be resumed under an approved permit. Temporary abandonment shall not relieve a person of his or her obligation to comply with any provision of the approved permit.

(b) Before temporary cessation of mining and reclamation operations for a period of thirty (30) days or more, or as soon as it is known that a temporary cessation will extend beyond thirty (30) days, persons who conduct surface mining activities shall submit to the director a notice of intention to cease or abandon mining and reclamation operations. This notice shall include a statement of the exact number of acres that have been affected in the permit area, prior to such temporary cessation, the extent and kind of reclamation of those areas that have been accomplished, and identification of the backfilling, regrading, revegetation, environmental monitoring, and water treatment activities that will continue during the temporary cessation. (*Natural Resources Commission; 312 IAC 25-6-62; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3542, eff Dec 1, 2001*)

**312 IAC 25-6-63 Cessation of operations; permanent**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 63. (a) Persons who cease surface mining activities permanently shall close or backfill or otherwise permanently reclaim all affected areas in accordance with this article and the permit approved by the director.

(b) All underground openings, equipment, structures, or other facilities not required for monitoring, unless approved by the director as suitable for the postmining land use or environmental monitoring, shall be removed and the affected lands reclaimed. (*Natural Resources Commission; 312 IAC 25-6-63; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3542, eff Dec 1, 2001*)

**312 IAC 25-6-64 Postmining land use**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 64. (a) All affected areas shall be restored in a timely manner to:

- (1) conditions that are capable of supporting the uses that they were capable of supporting before any mining; or
- (2) higher or better uses achievable under criteria and procedures of this section.

(b) The premining uses of land to which the postmining land use is compared shall be those uses that the land previously supported, if the land had not been previously mined and had been properly managed. Determinations concerning land use may also consider the following:

- (1) The postmining land use for land that has been previously mined and not reclaimed shall be judged on the basis of the highest and best use that can be achieved.
- (2) The postmining land use for land that has received improper management shall be judged on the basis of the premining use of surrounding lands that have received proper management.
- (3) If the premining use of the land was changed within five (5) years of the beginning of mining, the comparison of postmining use to premining use shall include a comparison with the historic use of the land as well as its use immediately preceding mining.

(c) Prior to the release of lands from the permit area in accordance with 312 IAC 25-5-16 the permit area shall be restored, in a timely manner, either to conditions capable of supporting the uses they were capable of supporting before any mining or to conditions capable of supporting approved alternative land uses. Alternative land uses shall be approved by the director after consultation with the landowner or the land management agency having jurisdiction over the lands, if the following criteria are met:

- (1) The proposed postmining land use is compatible with adjacent land use and, where applicable, with existing local, Indiana, or federal (for federally controlled lands) land use policies and plans. A written statement of the views of the authorities with

statutory responsibilities for land use policies and plans shall have been submitted to the director within sixty (60) days of notice by the director and before surface mining activities begin. Any required approval, including any necessary zoning or other changes required for the land use by local, Indiana, or federal (for federally controlled lands) land management agencies, is obtained prior to bond release.

(2) Specific plans are prepared and submitted to the director that show the feasibility of the postmining land use that include a schedule showing how the proposed use will be developed and achieved within a reasonable time after mining and be sustained. The director may require appropriate demonstrations to show that the planned procedures are feasible, reasonable, and integrated with mining and reclamation, and that the plans will result in successful reclamation.

(3) Provision of any necessary public facilities is ensured as evidenced by letters of commitment from parties other than the person who conducts surface mining activities, as appropriate, to provide the public facilities in a manner compatible with the plans submitted under 312 IAC 25-4-48. The letters shall be submitted to the director before the mining activities begin.

(4) Specific and feasible plans are submitted to the director that show that financing, attainment, and maintenance of the postmining land use are feasible.

(5) Plans for the postmining land uses are designed under the general supervision of a registered professional engineer, or other appropriate professionals, who will ensure that the plans conform to applicable accepted standards for adequate land stability, drainage, vegetative cover, and aesthetic design appropriate for the postmining use of the site.

(6) The proposed use or uses will neither present actual or probable hazard to public health or safety nor will they pose any actual or probable threat of water flow diminution or pollution.

(7) The use or uses will not involve unreasonable delays in reclamation.

(8) Necessary approval of measures to prevent or mitigate adverse effects on fish, wildlife, and related environmental values and threatened or endangered plants is obtained from the director and appropriate Indiana and federal fish and wildlife management agencies have been provided a sixty (60) day period in which to review the plan before surface mining activities begin.

(9) Proposals to change premining land uses of fish and wildlife habitat, forest land, hayland, or pasture to a postmining cropland use, where the cropland would require continuous maintenance, such as seeding, plowing, cultivation, fertilization, or other similar practices to be practicable or to comply with applicable federal, Indiana, and local laws, are reviewed by the director to ensure the following:

(A) There is sufficient water available and committed to maintain crop production.

(B) Topsoil quality and depth are sufficient to support the proposed use.

(10) Air and water quality resulting from the alternative postmining land use will not be impacted in a way that will have a greater adverse effect upon the land within the proposed permit area and adjacent areas than if the alternative postmining land use was not approved.

*(Natural Resources Commission; 312 IAC 25-6-64; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3542, eff Dec 1, 2001)*

### **312 IAC 25-6-65 Surface mining; roads**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 65. (a) Each road, as defined in 312 IAC 25-1-126, shall be classified as either a primary road or an ancillary road as follows:

(1) A primary road is any road that is:

(A) used for transporting coal or spoil;

(B) frequently used for access or other purposes for a period in excess of six (6) months; or

(C) to be retained for an approved postmining land use.

(2) An ancillary road is any road not classified as a primary road.

(b) Each road shall be located, designed, constructed, reconstructed, used, maintained, and reclaimed so as to accomplish each of the following:

(1) Control or prevent erosion.

(2) Control or prevent siltation, and the air pollution attendant to erosion, including road dust and dust occurring on other exposed surfaces by measures, such as the following:

- (A) Vegetating.
- (B) Watering.
- (C) Using chemical or other dust suppressants.
- (D) Otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices.
- (3) Control or prevent damage to fish, wildlife, or their habitat and related environmental values.
- (4) Control or prevent additional contributions of suspended solids to stream flow or run-off outside the permit area.
- (5) Neither cause nor contribute to, directly or indirectly, the violation of state or federal water quality standards applicable to receiving waters.
- (6) Refrain from seriously altering the normal flow of water in streambeds or drainage channels.
- (7) Prevent or control damage to public or private property, including the prevention or mitigation of adverse effects on lands within the boundaries of units of:
  - (A) the National Park System;
  - (B) the National Wildlife Refuge System;
  - (C) the National System of Trails;
  - (D) the National Wilderness Preservation System;
  - (E) the Wild and Scenic Rivers System, including designated study rivers; and
  - (F) the National Recreation Areas;as designated by act of Congress.
- (8) Use nonacid-forming and nontoxic-forming substances in road surfacing.
- (c) To ensure environmental protection appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for each of the following in accordance with current, prudent engineering practices and any necessary design criteria established by the director:
  - (1) Grade.
  - (2) Width.
  - (3) Surface materials.
  - (4) Surface drainage control.
  - (5) Culvert placement.
  - (6) Culvert size.
  - (d) Roads shall be located as follows:
    - (1) No part of any road shall be located in the channel of an intermittent stream that drains a watershed of at least one (1) square mile or perennial stream unless specifically approved by the director in accordance with applicable sections 13 through 19 and 28 of this rule.
    - (2) Roads shall be located to minimize downstream sedimentation and flooding.
  - (e) Roads shall be maintained as follows:
    - (1) To meet the performance standards of this rule and any additional criteria specified by the director.
    - (2) Damages caused by a catastrophic event, such as a flood or earthquake, shall be repaired as soon as is practicable after the damage has occurred.
  - (f) All roads, insofar as possible, should be located on ridges or on the available flatter slopes to minimize erosion.
  - (g) Acid-forming and toxic-forming materials encountered in construction of roads approved as a postmining land use shall be handled in accordance with sections 19 and 50 of this rule.
  - (h) A road not to be retained under an approved postmining land use shall be reclaimed, as soon as practicable after it is no longer needed for mining and reclamation operations, in accordance with the approved reclamation plan, including the following conditions:
    - (1) Closing the road to traffic.
    - (2) Removing all bridges and culverts unless approved as part of the postmining land use.
    - (3) Removing or otherwise disposing of road surfacing materials that are incompatible with the postmining land use and revegetation requirements.
    - (4) Reshaping cut and fill slopes as necessary to be compatible with the postmining land use and to complement the natural drainage pattern of the surrounding terrain.
    - (5) Protecting the natural drainage patterns by installing dikes or cross drains as necessary to control surface run-off and



erosion.

(6) Scarifying or ripping the roadbed, replacing topsoil or substitute material, and revegetating disturbed surfaces in accordance with sections 11 and 54 through 61 of this rule.

*(Natural Resources Commission; 312 IAC 25-6-65; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3543, eff Dec 1, 2001)*

**312 IAC 25-6-66 Surface mining; primary roads Version a**

Authority: IC 14-34-2-1

Affected: IC 14-34

*NOTE: This version of section effective until superseded by the following version of this section, which is effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register.*

Sec. 66. Primary roads shall meet the requirements of section 65 of this rule and the following:

(1) The construction or reconstruction of primary roads shall be certified in a report to the director by a qualified registered professional engineer with experience in the design and construction of roads. The report shall indicate that the primary road has been constructed or reconstructed as designed and in accordance with the approved plan.

(2) Each primary road embankment shall meet one (1) of the following:

(A) A minimum static safety factor of one and three-tenths (1.3).

(B) A maximum slope not in excess of 3h:1v (thirty-three and one-third percent (33⅓%).

(C) Be designed in compliance with the following design standards:

(i) The embankment foundation area shall be cleared of all organic material and the entire foundation surface shall be scarified.

(ii) If the natural slope of the foundation as measured at right angles to the roadway center line is steeper than 8h:1v, the embankment shall be benched into the existing slope beginning at the embankment toe and then filled with compacted level lifts.

(iii) The embankment fill material shall be free of sod, large roots, and other large vegetative matter.

(iv) The fill shall be brought up in horizontal layers of such thickness as required to facilitate compaction in accordance with prudent construction standards.

(v) The moisture content of the fill material shall be sufficient to secure proper compaction.

(vi) The side slopes of the embankment shall be no steeper than 2h:1v.

(vii) Maximum fill height shall be twenty-five (25) feet as measured from natural ground at the downstream toe to the top of the embankment.

(viii) Embankments shall have a minimum top width of  $(h + 35)/5$ , where "h" is the embankment height as measured from natural ground at the downstream toe to the top of the embankment, and shall be adequate for the intended use.

(3) The location of primary roads shall be established in accordance with the following provisions:

(A) To minimize erosion, a primary road shall be located, insofar as is practicable, on the most stable available surface.

(B) Fords of perennial or intermittent streams that drain a watershed of at least one (1) square mile by primary roads are prohibited unless they are specifically approved by the director as temporary routes during periods of road construction.

(4) In accordance with the approved plan, drainage shall be controlled as follows:

(A) Each primary road shall be constructed, or reconstructed, and maintained to have adequate drainage control, using structures such as, but not limited to, the following:

(i) Bridges.

(ii) Ditches.

(iii) Cross drains.

(iv) Ditch relief drains.

(B) The drainage control system shall be designed to safely pass the peak run-off from a ten (10) year, six (6) hour precipitation event, or greater event as specified by the director as follows:

(i) Drainage pipes and culverts shall be installed as designed and maintained in a free and operating condition

and to prevent or control erosion at inlets and outlets.

(ii) Drainage ditches shall be constructed and maintained to prevent uncontrolled drainage over the road surface and embankment.

(iii) Culverts shall be installed and maintained to sustain the following:

(AA) The vertical soil pressure.

(BB) The passive resistance of the foundation.

(CC) The weight of vehicles using the road.

(C) Natural stream channels shall not be altered or relocated without the prior approval of the director in accordance with applicable provisions under sections 13 through 19 and 28 of this rule.

(D) Except as provided in subdivision (3)(B), structures for perennial or intermittent stream channel crossings shall be made using bridges, culverts, low water crossings, or other structures designed, constructed, and maintained using current, prudent engineering practices. The director shall ensure that low water crossings are designed, constructed, and maintained to prevent erosion of the structure or streambed and additional contributions of suspended solids to stream flow.

(5) Primary roads shall be surfaced with nontoxic material approved by the director as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road.

*(Natural Resources Commission; 312 IAC 25-6-66; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3544, eff Dec 1, 2001)*

### **312 IAC 25-6-66 Surface mining; primary roads Version b**

Authority: IC 14-34-2-1

Affected: IC 14-34

*NOTE: This version of section effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register. See also preceding version of this section, effective until superseded by this version of section.*

Sec. 66. Primary roads shall meet the requirements of section 65 of this rule and the following:

(1) The construction or reconstruction of primary roads shall be certified in a report to the director by a qualified registered professional engineer with experience in the design and construction of roads. The report shall indicate that the primary road has been constructed or reconstructed as designed and in accordance with the approved plan.

(2) Each primary road embankment shall have a minimum static safety factor of one and three-tenths (1.3) and be designed in compliance with the following design standards:

(A) The embankment foundation area shall be cleared of all organic material, and the entire foundation surface shall be scarified.

(B) If the natural slope of the foundation as measured at right angles to the roadway center line is steeper than 8h:1v, the embankment shall be benched into the existing slope beginning at the embankment toe and then filled with compacted level lifts.

(C) The embankment fill material shall be free of sod, large roots, and other large vegetative matter.

(D) The fill shall be brought up in horizontal layers of such thickness as required to facilitate compaction in accordance with prudent construction standards.

(E) The moisture content of the fill material shall be sufficient to secure proper compaction.

(F) The side slopes of the embankment shall be no steeper than 2h:1v.

(G) Maximum fill height shall be twenty-five (25) feet as measured from natural ground at the downstream toe to the top of the embankment.

(H) Embankments shall have a minimum top width of  $(h + 35)/5$ , where "h" is the embankment height as measured from natural ground at the downstream toe to the top of the embankment, and shall be adequate for the intended use.

(3) The location of primary roads shall be established in accordance with the following provisions:

(A) To minimize erosion, a primary road shall be located, insofar as is practicable, on the most stable available surface.

(B) Fords of perennial or intermittent streams that drain a watershed of at least one (1) square mile by primary roads are prohibited unless they are specifically approved by the director as temporary routes during periods of road construction.

(4) In accordance with the approved plan, drainage shall be controlled as follows:

(A) Each primary road shall be constructed, or reconstructed, and maintained to have adequate drainage control, using structures such as, but not limited to, the following:

- (i) Bridges.
- (ii) Ditches.
- (iii) Cross drains.
- (iv) Ditch relief drains.

(B) The drainage control system shall be designed to safely pass the peak run-off from a ten (10) year, six (6) hour precipitation event, or greater event as specified by the director as follows:

- (i) Drainage pipes and culverts shall be installed as designed and maintained in a free and operating condition and to prevent or control erosion at inlets and outlets.
- (ii) Drainage ditches shall be constructed and maintained to prevent uncontrolled drainage over the road surface and embankment.
- (iii) Culverts shall be installed and maintained to sustain the following:
  - (AA) The vertical soil pressure.
  - (BB) The passive resistance of the foundation.
  - (CC) The weight of vehicles using the road.

(C) Natural stream channels shall not be altered or relocated without the prior approval of the director in accordance with applicable provisions under sections 13 through 19 and 28 of this rule.

(D) Except as provided in subdivision (3)(B), structures for perennial or intermittent stream channel crossings shall be made using bridges, culverts, low water crossings, or other structures designed, constructed, and maintained using current, prudent engineering practices. The director shall ensure that low water crossings are designed, constructed, and maintained to prevent erosion of the structure or streambed and additional contributions of suspended solids to stream flow.

(5) Primary roads shall be surfaced with nontoxic material approved by the director as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road.

*(Natural Resources Commission; 312 IAC 25-6-66; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3544, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2462, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register)*

### **312 IAC 25-6-67 Surface mining; other transportation facilities**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 67. Railroad loops, spurs, sidings, surface conveyor systems, chutes, aerial tramways, or other transportation facilities shall be designed, constructed or reconstructed, maintained, and the area restored to do the following:

(1) Prevent, to the extent possible, using the best technology currently available, the following:

- (A) Damage to fish, wildlife, and related environmental values.
- (B) Additional contributions of suspended solids to stream flow or run-off outside the permit area. Any such contributions shall not be in excess of limitations of Indiana or federal law.

(2) Control and minimize diminution or degradation of water quality and quantity.

(3) Control and minimize erosion and siltation.

(4) Control and minimize air pollution.

(5) Prevent damage to public or private property.

*(Natural Resources Commission; 312 IAC 25-6-67; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3545, eff Dec 1, 2001)*

### **312 IAC 25-6-68 Support facilities and utility installations**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 68. (a) Support facilities required for, or used incidentally to, the operation of the mine, including, but not limited to, mine buildings, coal loading facilities at or near the mine site, coal storage facilities, equipment storage facilities, fan buildings, hoist buildings, preparation plants, shed, shops, and other buildings shall be designed, constructed, and located to prevent or control erosion and siltation, water pollution, and damage to public or private property. Support facilities shall be designed, constructed or reconstructed, maintained, and used in a manner that prevents, to the extent possible using the best technology currently available, the following:

(1) Damage to fish, wildlife, and related environmental values.

(2) Additional contributions of suspended solids to stream flow or run-off outside the permit area. Any such contributions shall not be in excess of limitations of Indiana or federal law.

(b) All surface mining activities shall be conducted in a manner that minimizes damage, destruction, or disruption of services provided by:

(1) oil, gas, and water wells;

(2) oil, gas, and coal slurry pipelines;

(3) railroads;

(4) electric and telephone lines; and

(5) water and sewage lines;

that pass over, under, or through the permit area, unless otherwise approved by the owner of those facilities and the director. (*Natural Resources Commission; 312 IAC 25-6-68; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3545, eff Dec 1, 2001*)

### **312 IAC 25-6-69 Surveyor corner markers; replacement**

Authority: IC 14-34-2-1

Affected: IC 14-34-10; IC 36-2-12-13

Sec. 69. Any person who conducts surface coal mining activities shall, prior to release of any portion of the applicable performance bond, ensure that all surveyor corner markers disturbed by surface mining activities are replaced to the same location as found prior to the surface disturbance. (*Natural Resources Commission; 312 IAC 25-6-69; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3546, eff Dec 1, 2001*)

### **312 IAC 25-6-70 Underground mining; applicability**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 70. This section and sections 71 through 132 of this rule apply to all underground mining activities conducted under IC 14-34. (*Natural Resources Commission; 312 IAC 25-6-70; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3546, eff Dec 1, 2001*)

### **312 IAC 25-6-71 Underground mining; signs and markers**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 71. (a) All signs required to be posted shall be of a standard design that can be seen and read easily and shall be made of durable material. The signs and other markers shall be maintained for the duration of all operations to which they pertain.

(b) Signs identifying the mine area shall be displayed at all points of access to the permit area from public roads and highways. Signs shall show the name, business address, and telephone number of the permittee and identification number of the current mining and reclamation permit or other authorization to operate. Such signs shall not be removed until after release of all bonds.

(c) The perimeter of the permit area shall be clearly marked before the beginning of underground mining activities.

(d) If surface blasting is conducted incident to underground mining activities, the permittee shall do the following:

(1) Conspicuously display signs reading "Blasting Area" along the edge of any blasting area that comes within one hundred (100) feet of any public road right-of-way and at the point where any other road provides access to the blasting area.

(2) Conspicuously flag or post within the blasting area, the immediate vicinity of charged holes.

(3) Place at all entrances to the permit area from public roads or highways conspicuous signs that:

- (A) state "Warning! Explosives in Use";
- (B) clearly explain the blast warning and all clear signals that are in use; and
- (C) explain the marking of blast areas and charged holes within the permit area.

(e) Where topsoil or other vegetation-supporting material is segregated and stockpiled as required under section 75 of this rule, the stockpiled material shall be clearly marked. However, the permittee may remove the markers while reworking or removing the stockpiles.

(f) Buffer zones shall be marked along their boundaries as required under section 91 of this rule. (*Natural Resources Commission; 312 IAC 25-6-71; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3546, eff Dec 1, 2001; errata filed Aug 17, 2001, 1:50 p.m.: 25 IR 106*)

### **312 IAC 25-6-72 Underground mining; casing and sealing exposed underground openings; general requirements**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 72. Each drilled hole, shaft, well, or other exposed underground opening shall be cased, sealed, or managed to:

- (1) prevent acid or toxic water drainage from entering ground or surface waters; and
- (2) minimize disturbance to the prevailing hydrologic balance.

Each drill hole or well that is uncovered or exposed by mining activities within the permit area shall be sealed in a manner to prevent exposure by any mining activity. Use of a drilled hole, shaft, or monitoring well as a water well must meet section 87 of this rule. This section does not apply to holes drilled and used for blasting in the area affected by surface operations. (*Natural Resources Commission; 312 IAC 25-6-72; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3546, eff Dec 1, 2001*)

### **312 IAC 25-6-73 Underground mining; casing and sealing exposed underground openings; temporary**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 73. (a) Each mine entry that is temporarily inactive, but has a further projected useful service under the approved permit application, shall be protected by barricades or other covering devices, fenced, and posted with signs, to prevent access into the entry and to identify the hazardous nature of the opening. These devices shall be periodically inspected and maintained in good operating condition by the person who conducts the underground mining activities.

(b) Each drilled hole, shaft, well, and other exposed underground opening identified in the approved permit application for use:

- (1) to return underground development waste, coal processing waste, or water to underground workings; or
- (2) to be used to monitor ground water conditions;

shall be temporarily sealed until actual use and shall be protected during use by barricades, fences, or other protective devices. (*Natural Resources Commission; 312 IAC 25-6-73; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3547, eff Dec 1, 2001*)

### **312 IAC 25-6-74 Underground mining; casing and sealing exposed underground openings; permanent**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 74. Each drilled hole, shaft, well, drift, adit, tunnel, entryway, or other opening to the surface from underground when no longer in use, unless approved for transfer as a water well under section 87 of this rule, shall be capped, sealed, backfilled, or otherwise properly managed in accordance with sections 72 and 85 of this rule to prevent acid or other toxic surface drainage from entering ground and surface water. Permanent closure measures shall be designed to prevent access to the mine workings by people, livestock, fish and wildlife, and machinery. (*Natural Resources Commission; 312 IAC 25-6-74; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3547, eff Dec 1, 2001*)

**312 IAC 25-6-75 Underground mining; topsoil and subsoil**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 75. (a) All topsoil shall be removed as a separate layer from the area to be disturbed and segregated.

(1) Where the topsoil is of insufficient quantity or of poor quality to sustain vegetation, the material approved by the director as a topsoil substitute or supplement in accordance with subsection (c) shall be removed separately from the area to be disturbed and segregated.

(2) If the topsoil is less than six (6) inches thick, the permittee may remove the topsoil and the unconsolidated materials immediately below the topsoil to a total depth of six (6) inches and treat the mixture as topsoil.

(3) Topsoil need not be removed:

(A) at sites disturbed only by power poles, signs, fence posts, electrical substations, transformers and switchboxes, explosives magazines, temporary building on skids, topsoil stockpiles, culvert installations, cable routes, cable storage areas, powerline cable suspension towers or "horses", pumps, pump hoses, and pipelines; and

(B) with the director's approval, for minor disturbances that will not permanently destroy the existing vegetation and will not cause erosion.

(b) All material to be removed under this rule shall be removed after the vegetative cover that would interfere with its removal and use is cleared from the area to be disturbed, but before any drilling, blasting, mining, or other disturbance, except those disturbances described in subsection (a), takes place.

(c) Selected overburden materials may be substituted for, or used as a supplement to, topsoil if the permittee demonstrates to the director in the permit application that the resulting soil medium is equal to or more suitable for sustaining vegetation than the existing topsoil.

(d) Storage requirements are as follows:

(1) Materials removed under subsections (a) and (f) shall be segregated and stockpiled when it is impractical to redistribute such materials promptly on regraded areas within the permit area, or within other permit areas of the same permittee within the same mining operation.

(2) Stockpiled materials shall:

(A) be selectively placed on stable sites within the permit area or within other permit areas of the same permittee within the same mining operation;

(B) be protected from contamination and unnecessary compaction that would interfere with revegetation;

(C) be protected from wind and water erosion through prompt establishment and maintenance of an effective, quick growing nonnoxious vegetative cover, or through other measures approved by the director in the permit application; and

(D) not be moved until required for redistribution unless approved by the director in the permit application.

(3) Where long term surface disturbances will result from facilities, such as support facilities and preparation plants and where stockpiling of materials removed under subsection (a) would be detrimental to the quality or quantity of those materials, the director may, in the permit application, approve the temporary distribution of the soil materials so removed to an approved site within the permit area or another permit area of the same permittee to enhance the current use of that site until needed for later reclamation, provided that:

(A) such action will not permanently diminish the capability of the topsoil of the host site; and

(B) the material will be retained in a condition more suitable for redistribution than if stockpiled.

(e) Redistribution requirements are as follows:

(1) Topsoil materials removed under subsections (a) and (f) shall be redistributed in a manner that:

(A) achieves an approximately uniform, stable thickness consistent with the approved postmining land use, contours, and surface-water drainage systems;

(B) prevents excess compaction of the materials; and

(C) protects the materials from wind and water erosion before and after seeding and planting.

(2) Before redistribution of the material removed under subsection (a) the regraded land shall be treated if necessary to reduce potential slippage of the redistributed material and to promote root penetration. If no harm will be caused to the redistributed material and reestablished revegetation, such treatment may be conducted after such material is replaced.

(3) Redistribution of topsoil or topsoil substitutes on the approved postmining embankments of permanent impoundments or of roads shall not be required if the permittee demonstrates that:

(A) placement of such material on the embankments is inconsistent with the requirement to use the best technology currently available to prevent sedimentation; and

(B) the embankments will be otherwise stable or stabilized.

(4) Nutrients and soil amendments shall be applied, in amounts determined by soil tests using standard agronomic laboratory procedures, to the initially redistributed material when necessary to establish the vegetative cover.

(f) The director may require that portions of the subsoil be removed and segregated, stockpiled, and redistributed as subsoil in accordance with the requirements of subsections (d) and (e) if the director finds that such subsoil layers are necessary to comply with the revegetation requirements of this rule. (*Natural Resources Commission; 312 IAC 25-6-75; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3547, eff Dec 1, 2001*)

### **312 IAC 25-6-76 Underground mining; hydrologic balance; general requirements**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 76. (a) Underground mining activities shall be planned and conducted to minimize changes to the prevailing hydrologic balance in both the permit area and adjacent areas, to prevent material damage to the hydrologic balance outside the permit area, in order to prevent long term adverse changes in that balance that could result from those activities.

(b) Changes in water quality and quantity, in the depth of ground water, and in the location of surface water drainage channels shall be minimized so that the approved postmining land use of the permit is not adversely affected.

(c) In no case shall federal and Indiana water quality statutes, regulations, rules, standards, or effluent limitations be violated.

(d) Operations shall be conducted to minimize water pollution. If necessary, treatment methods shall be used to control water pollution.

(e) Each person who conducts surface mining activities shall emphasize mining and reclamation practices that prevent or minimize water pollution. Changes in flow or drainage shall be used in preference to the use of water treatment facilities.

(f) Acceptable practices to control and minimize water pollution include the following:

(1) Stabilizing disturbed areas through land shaping.

(2) Diverting run-off.

(3) Achieving quickly germinating and growing stands of temporary vegetation.

(4) Regulating channel velocity of water.

(5) Lining drainage channels with rock or vegetation.

(6) Mulching.

(7) Selectively placing and sealing acid-forming and toxic-forming materials.

(8) Designing mines to prevent gravity drainage of acid waters.

(9) Sealing.

(10) Controlling subsidence.

(11) Preventing acid mine drainage.

(g) If the practices listed in subsection (f) are not adequate to meet the requirements of sections 70 through 75 of this rule, this section, and sections 77 through 132 of this rule, the person who conducts underground mining activities shall operate and maintain the necessary water treatment facilities for as long as treatment is required under sections 70 through 75 of this rule, this section, and sections 77 through 132 of this rule. (*Natural Resources Commission; 312 IAC 25-6-76; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3548, eff Dec 1, 2001*)

**312 IAC 25-6-76.5      Underground mining; hydrologic balance; application of ground water quality standards at underground coal mining and reclamation operations permitted under IC 14-34 on which coal extraction, coal processing, coal processing waste disposal, or underground development waste and spoil deposition occurs after the effective date of this section, or on which disposal activity subject to IC 13-19-3-3 has occurred and the area is not fully released from the performance bond required by IC 14-34-6**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 76.5. (a) Ground water is classified under 327 IAC 2-11 to determine appropriate criteria that shall be applied to ground water.

(b) Underground coal mining and reclamation operations must be planned and conducted to prevent violations of ground water quality standards under 327 IAC 2-11.

(c) Underground coal mining and reclamation operations must be planned and conducted to prevent impacts to the ground water in a drinking water well or a nondrinking water supply well, including an industrial, commercial, or agricultural supply well, that result in a contaminant concentration that, based on best scientific information, renders the well unusable for its current use. If a drinking water well or a nondrinking water supply well is affected by contamination, diminution, or interruption proximately resulting from surface mining activities, 312 IAC 25-4-74 and 312 IAC 25-6-88 govern water replacement.

(d) The ground water management zone described in 327 IAC 2-11-9 must be established as follows:

(1) At each drinking water well that is within three hundred (300) feet from the edge of any of the following:

(A) A coal mine processing waste disposal site.

(B) A location at which coal is crushed, washed, screened, stored, and loaded at or near the mine site.

(C) An underground development waste and spoil deposition area.

(2) Within three hundred (300) feet from the edge of an area or site described in subdivision (1) where there is no drinking water well that is within three hundred (300) feet from the edge of an area or site described in subdivision (1). If the property boundary or permit boundary is located within three hundred (300) feet from the edge of an area or site described in subdivision (1), the director shall require that a monitoring well be placed at a location approved by the director between the property boundary or permit boundary and the edge of an area or site described in subdivision (1). If a standard listed in 327 IAC 2-11 is exceeded at a monitoring well described in subdivision (2) that the director determines was caused by an activity under subdivision (1), the permittee must submit to the director a plan describing, in detail, the steps to be taken to prevent material damage to the hydrologic balance beyond the permit boundary and a timetable for implementation. This plan must be submitted within thirty (30) days of the discovery of an exceedance and include information relative to access, additional monitoring, and any measures to be taken to minimize changes to the prevailing hydrologic balance and to prevent material damage to the hydrologic balance beyond the permit boundary.

(3) If a drinking water well is located within three hundred (300) feet of an area or site described in subdivision (1) and it is determined that there is a substantial likelihood of impact, the director may require that a monitoring well be placed at a location approved by the director between the drinking water well and the edge of an area or site described in subdivision (1). If a standard listed in 327 IAC 2-11 is exceeded at a monitoring well described in subdivision (3) that the director determines was caused by an activity under subdivision (1), the permittee shall submit to the director a plan describing, in detail, the steps to be taken and a timetable for taking the action that takes into account site-specific conditions to provide protection for the drinking water well. This plan must be submitted within thirty (30) days of the discovery of an exceedance and include information relative to access, additional monitoring, and any measures to be taken to minimize changes to the prevailing hydrologic balance and to prevent material damage to the hydrologic balance beyond the permit boundary.

(e) The criteria established in subsection (a) must be met at and beyond the boundary of the ground water management zone.

*(Natural Resources Commission; 312 IAC 25-6-76.5; filed Jul 29, 2003, 3:45 p.m.; 26 IR 3865, eff Feb 1, 2004)*

**312 IAC 25-6-77 Underground mining; hydrologic balance; water quality standards and effluent limitations**

Authority: IC 14-34-2-1

Affected: IC 14-34



Sec. 77. (a) All surface drainage from the disturbed area shall be controlled through use of a siltation structure, a series of siltation structures, or such alternative techniques as provided in section 80 of this rule before leaving the permit area. Any discharge of water from underground workings to surface waters that does not meet the effluent limitations of this section shall also be controlled through use of a siltation structure, a series of siltation structures, or such alternative techniques as provided in section 80(b) of this rule before leaving the permit area.

(b) Siltation structures and other approved alternate techniques as provided in section 80 of this rule for surface drainage from the disturbed area shall be operated and maintained to achieve applicable federal and state effluent limitations. Siltation structures and treatment facilities for discharges from underground workings shall also be operated and maintained to achieve applicable federal and state effluent limitations.

(c) For the purposes of this section only, "disturbed area" shall not include those areas affected by surface operations in which only diversion ditches, siltation structures, or roads are installed in accordance with sections 70 through 76 of this rule, this section, and sections 78 through 132 of this rule.

(d) Siltation structures required by this section shall be constructed in accordance with section 81 of this rule, in appropriate locations before beginning any underground mining activities in the drainage area to be affected.

(e) Discharges of water from areas disturbed by underground mining activities shall be made in compliance with each of the following:

- (1) All applicable state and federal water quality laws and regulations.
- (2) Effluent limitations for coal mining promulgated by the United States Environmental Protection Agency as set forth in 40 CFR 434.

*(Natural Resources Commission; 312 IAC 25-6-77; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3549, eff Dec 1, 2001)*

### **312 IAC 25-6-78 Underground mining; hydrologic balance; diversions; general requirements**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 78. (a) Flow may be diverted around disturbed areas through temporary or permanent diversions if approved by the director for:

- (1) mined areas abandoned before May 3, 1978;
- (2) reclaimed areas that meet the criteria of section 81(e) of this rule for siltation structure removal;
- (3) undisturbed areas; or
- (4) active underground coal mining operations after passing through a siltation structure and meeting the applicable effluent limitations.

(b) Diversions shall be designed to:

- (1) minimize adverse impacts to the hydrologic balance within the permit and adjacent areas;
- (2) prevent material damage to public or private property; and
- (3) assure the safety of the public.

(c) Diversions shall not be used to divert water into underground mines without the approval of the director under section 89 of this rule.

(d) A diversion and its appurtenant structures shall be designed, located, constructed, maintained, and used to:

- (1) be stable;
- (2) provide protection against flooding and resultant damage to life and property;
- (3) prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow outside the permit area; and
- (4) comply with all applicable local, state, and federal laws and regulations.

(e) A temporary diversion shall be removed promptly when no longer needed to achieve the purpose for which the temporary diversion was authorized. The land disturbed by the removal process shall be restored in accordance with the approved reclamation plan and sections 70 through 77 of this rule, this section, and sections 79 through 132 of this rule.

(f) Before any diversion is removed, downstream water treatment facilities previously protected by the diversion shall be modified or removed, as necessary, to prevent overtopping or failure of the facilities. This requirement does not relieve the permittee from maintaining water treatment facilities as otherwise required.

(g) A permanent diversion or a stream channel reclaimed after the removal of a temporary diversion shall be designed and constructed to restore or approximate the premining characteristics of the original stream channel, including the natural riparian vegetation, to promote the recovery and the enhancement of the aquatic habitat.

(h) Consideration during design shall be given to:

- (1) the anticipated flow velocity;
- (2) the erosion characteristics of the channel and side slopes;
- (3) the need for adequate freeboard above the design water surface elevation; and
- (4) the need for channel lining or energy dissipaters.

*(Natural Resources Commission; 312 IAC 25-6-78; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3549, eff Dec 1, 2001)*

**312 IAC 25-6-79 Underground mining; hydrologic balance; diversions of perennial streams, intermittent streams with a watershed greater than one square mile, miscellaneous flows; stream channel diversions; supplemental requirements**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 79. (a) This section provides requirements that are supplemental to those contained in section 78 of this rule for:

- (1) diversions of perennial streams;
- (2) intermittent streams with a watershed greater than one (1) square mile; and
- (3) miscellaneous flows.

Subsection (b) governs perennial streams and intermittent streams with a watershed greater than one (1) square mile. Subsection (c) governs miscellaneous flows.

(b) Requirements for temporary and permanent diversions are as follows:

- (1) Diversion of perennial streams and intermittent streams with a watershed greater than one (1) square mile may be approved by the director after making a finding related to stream buffer zones that the diversions will not adversely affect the water quantity and quality and related environmental resources of the stream.
- (2) The design capacity of channels for temporary and permanent stream channel diversions shall be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream from the diversion.
- (3) The requirements of section 78(d)(2) of this rule shall be met when the temporary and permanent diversions for intermittent streams having a watershed greater than one (1) square mile and perennial streams are designed so that the combination of channel, bank, and floodplain configuration is adequate to pass safely the peak run-off of a ten (10) year, six (6) hour precipitation event for a temporary diversion and a one hundred (100) year, six (6) hour precipitation event for a permanent diversion.
- (4) All stream channel diversions subject to this subsection shall be designed under the supervision of a qualified registered professional engineer in accordance with good engineering practices and the requirements of this section and shall be certified after construction by the qualified registered professional engineer as having been constructed in accordance with the approved plans.

(c) Requirements for miscellaneous flows are as follows:

- (1) Miscellaneous flows, which consist of all flows except those specified in subsection (b), may be diverted around disturbed areas if required and approved by the director. Miscellaneous flows include ground water discharges, overland flow, ephemeral streams, and intermittent streams having a watershed not greater than one (1) square mile.
- (2) The design, location, construction, maintenance, and removal of diversion of miscellaneous flows shall meet all the performance standards set forth in section 78 of this rule.
- (3) The requirements of section 78(d)(2) of this rule shall be met when the temporary and permanent diversions for miscellaneous flows are designed so that a combination of channel, bank, and floodplain configuration is adequate to pass safely the peak run-off of a two (2) year, six (6) hour precipitation event for a temporary diversion and a ten (10) year, six (6) hour precipitation event for a permanent diversion.

*(Natural Resources Commission; 312 IAC 25-6-79; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3550, eff Dec 1, 2001)*

**312 IAC 25-6-80 Underground mining; hydrologic balance; sediment control measures**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 80. (a) Appropriate sediment control measures shall be designed, constructed, and maintained using the best technology currently available to do the following:

(1) Prevent, to the extent possible, additional contributions of suspended solids to stream flow or to run-off outside the permit area.

(2) Meet the more stringent of applicable Indiana or federal effluent limitations.

(3) Minimize erosion to the extent possible.

(b) Sediment control measures include practices carried out within and adjacent to the disturbed area. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include, but are not limited to, the following:

(1) Disturbing the smallest practicable area at any one (1) time during the mining operation through progressive backfilling, grading, and prompt revegetation as required in section 115(b) of this rule.

(2) Stabilizing the backfilled material to promote a reduction in the rate and volume of run-off in accordance with requirements of section 112 of this rule.

(3) Retaining sediment within disturbed areas.

(4) Diverting run-off away from disturbed areas.

(5) Diverting run-off using protected channels or pipes through disturbed areas so as not to cause additional erosion.

(6) Using straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce run-off volume, or trap sediment.

(7) Treating with chemicals.

(8) Treating mine drainage in underground sumps.

*(Natural Resources Commission; 312 IAC 25-6-80; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3551, eff Dec 1, 2001)*

**312 IAC 25-6-81 Underground mining; hydrologic balance; siltation structures Version a**

Authority: IC 14-34-2-1

Affected: IC 14-34

*NOTE: This version of section effective until superseded by the following version of this section, which is effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register.*

Sec. 81. (a) Siltation structures shall be constructed according to the following:

(1) Additional contributions of suspended solids sediment to stream flow or run-off outside the permit area shall be prevented to the extent possible using the best technology currently available.

(2) All surface drainage from the disturbed area shall be passed through a siltation structure before leaving the permit area except as provided in subdivision (5) or section 13 of this rule.

(3) Siltation structures for an area shall be constructed before beginning any surface mining activities in that area and, upon construction, shall be certified by a qualified registered professional engineer or qualified professional land surveyor to be constructed as designed and as approved in the reclamation plan.

(4) Any siltation structure that impounds water shall be designed, constructed, and maintained in accordance with section 84 of this rule.

(5) Siltation structures shall be maintained until removal is authorized by the director and the disturbed area has been stabilized and revegetated in accordance with the reclamation plan and sections 111 through 122 of this rule so that the following requirements are met:

(A) Removal of the structure will not result in violations of applicable water quality standards in the receiving stream.

(B) Postmining drainage is shown to be of the approximate quality of the drainage from the area prior to mining.

(C) If baseline data is unavailable concerning the quality of drainage before mining, it is shown to be of the approximate quality of drainage from similar areas of unmined land.

In no case shall the structure be removed sooner than two (2) years after the last augmented seeding.

(6) When the siltation structure is removed, the land on which it was located shall be regraded and revegetated in accordance with the reclamation plan and sections 115 through 122 of this rule. Siltation structures approved by the director for retention as permanent impoundments shall meet all the requirements for permanent impoundments of sections 84 and 90 of this rule.

(7) Any point source discharge of water from underground workings to surface waters that does not meet the effluent limitations of section 77 of this rule shall be passed through a siltation structure before leaving the permit area.

(b) Siltation structures, where utilized individually or in series, shall be as follows:

(1) Located as near as possible to the disturbed area and out of perennial streams unless approved by the director.

(2) Designed, constructed, and maintained to achieve each of the following:

(A) Provide adequate sediment storage volume.

(B) Provide adequate detention time to allow the effluent from the ponds to meet Indiana and federal effluent limitations.

(C) Contain or treat the ten (10) year, twenty-four (24) hour precipitation event (design event) unless a lesser design event is approved by the director based on terrain, climate, other site-specific conditions, and on a demonstration by the operator that the effluent limitations of section 77 of this rule will be met.

(D) Provide a nonclogging dewatering device adequate to maintain the detention time required under clause (B).

(E) Minimize, to the extent possible, short circuiting.

(F) Provide periodic sediment removal sufficient to maintain adequate volume for the design event.

(G) Ensure against excessive settlement.

(H) Be free of sod, large roots, frozen soil, and acid-forming or toxic-forming coal processing waste.

(I) Be compacted properly.

(J) For siltation structures with embankments, achieve a minimum of two (2) feet of freeboard above pool stage and one (1) foot of freeboard above the design peak discharge elevation which is in response to the design storm specified in subsection (d)(2), or greater amount of freeboard as specified by the director.

(c) The design, construction, and maintenance of a siltation structure or other sediment control measures under this section do not relieve the permittee from compliance with applicable effluent limitations as contained in section 77 of this rule.

(d) A siltation structure shall include either a combination of principal and emergency spillways or a single spillway configured as specified in subdivision (1), designed and constructed to safely pass the applicable design precipitation event specified in subdivision (2), except as set forth in subdivision (3). Spillway construction shall be as follows:

(1) The director may approve a single open channel spillway that is:

(A) of nonerodible construction and designed to carry sustained flows; or

(B) earth-lined or grass-lined and designed to carry short term infrequent flows at nonerosive velocities where sustained flows are not expected.

(2) Except as specified in subdivision (3), the required design precipitation event for a sedimentation pond meeting the spillway requirements of this section is as follows:

(A) For a sedimentation pond meeting the size or other criteria of 30 CFR 77.216(a), a one hundred (100) year, six (6) hour event, or greater event as specified by the director.

(B) For a sedimentation pond not meeting the size or other criteria of 30 CFR 77.216(a), a twenty-five (25) year, six (6) hour event, or greater event as specified by the director.

(3) In lieu of meeting the requirements in subdivision (1), the director may approve a sedimentation pond that relies primarily on storage to control the run-off from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer that the siltation structure will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent engineering practices. Such a sedimentation pond shall be located where failure would not be expected to cause loss of life or serious property damage, except where:

(A) in the case of a sedimentation pond meeting the size or other criteria of 30 CFR 77.216(a), it is designed to control the precipitation of the probable maximum precipitation of a six (6) hour event, or greater event as specified by the director; or

(B) in the case of a sedimentation pond not meeting the size or other criteria of 30 CFR 77.216(a), it is designed to control the precipitation of a one hundred (100) year, six (6) hour event, or greater event as specified by the director.

(e) Other treatment facilities shall be designed as follows:

(1) To treat the ten (10) year, twenty-four (24) hour precipitation event unless a lesser design event is approved by the director based on terrain, climate, other site-specific conditions, and a demonstration by the operator that the effluent limitations of section 77 of this rule will be met.

(2) Designed in accordance with the applicable requirements of subsection (b).

*(Natural Resources Commission; 312 IAC 25-6-81; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3551, eff Dec 1, 2001)*

**312 IAC 25-6-81 Underground mining; hydrologic balance; siltation structures Version b**

Authority: IC 14-34-2-1

Affected: IC 14-34

*NOTE: This version of section effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register. See also preceding version of this section, effective until superseded by this version of section.*

Sec. 81. (a) Siltation structures shall be constructed according to the following:

(1) Additional contributions of suspended solids sediment to stream flow or run-off outside the permit area shall be prevented to the extent possible using the best technology currently available.

(2) All surface drainage from the disturbed area shall be passed through a siltation structure before leaving the permit area except as provided in subdivision (5) or section 77 of this rule.

(3) Siltation structures for an area shall be constructed before beginning any surface mining activities in that area and, upon construction, shall be certified by a qualified registered professional engineer to be constructed as designed and as approved in the reclamation plan.

(4) Any siltation structure that impounds water shall be designed, constructed, and maintained in accordance with section 84 of this rule.

(5) Siltation structures shall be maintained until removal is authorized by the director and the disturbed area has been stabilized and revegetated in accordance with the reclamation plan and sections 111 through 122 of this rule so that the following requirements are met:

(A) Removal of the structure will not result in violations of applicable water quality standards in the receiving stream.

(B) Postmining drainage is shown to be of the approximate quality of the drainage from the area prior to mining.

(C) If baseline data is unavailable concerning the quality of drainage before mining, it is shown to be of the approximate quality of drainage from similar areas of unmined land.

In no case shall the structure be removed sooner than two (2) years after the last augmented seeding.

(6) When the siltation structure is removed, the land on which it was located shall be regraded and revegetated in accordance with the reclamation plan and sections 115 through 122 of this rule. Siltation structures approved by the director for retention as permanent impoundments shall meet all the requirements for permanent impoundments of sections 84 and 90 of this rule.

(7) Any point source discharge of water from underground workings to surface waters that does not meet the effluent limitations of section 77 of this rule shall be passed through a siltation structure before leaving the permit area.

(b) Siltation structures, where utilized individually or in series, shall be as follows:

(1) Located as near as possible to the disturbed area and out of perennial streams unless approved by the director.

(2) Designed, constructed, and maintained to achieve each of the following:

(A) Provide adequate sediment storage volume.

(B) Provide adequate detention time to allow the effluent from the ponds to meet Indiana and federal effluent limitations.

(C) Contain or treat the ten (10) year, twenty-four (24) hour precipitation event (design event) unless a lesser design event is approved by the director based on terrain, climate, other site-specific conditions, and on a demonstration by the operator that the effluent limitations of section 77 of this rule will be met.

(D) Provide a nonclogging dewatering device adequate to maintain the detention time required under clause (B).

(E) Minimize, to the extent possible, short circuiting.

(F) Provide periodic sediment removal sufficient to maintain adequate volume for the design event.

(G) Ensure against excessive settlement.

(H) Be free of sod, large roots, frozen soil, and acid-forming or toxic-forming coal processing waste.

(I) Be compacted properly.

(J) For siltation structures with embankments, achieve a minimum of two (2) feet of freeboard above pool stage and one (1) foot of freeboard above the design peak discharge elevation which is in response to the design storm specified in subsection (d)(2), or greater amount of freeboard as specified by the director.

(c) The design, construction, and maintenance of a siltation structure or other sediment control measures under this section do not relieve the permittee from compliance with applicable effluent limitations as contained in section 77 of this rule.

(d) A siltation structure shall include either a combination of principal and emergency spillways or a single spillway configured as specified in subdivision (1), designed and constructed to safely pass the applicable design precipitation event specified in subdivision (2), except as set forth in subdivision (3). Spillway construction shall be as follows:

(1) The director may approve a single open channel spillway that is:

(A) of nonerodible construction and designed to carry sustained flows; or

(B) earth-lined or grass-lined and designed to carry short term infrequent flows at nonerosive velocities where sustained flows are not expected.

(2) Except as specified in subdivision (3), the required design precipitation event for a siltation structure meeting the spillway requirements of this section is as follows:

(A) For a siltation structure meeting the size or other criteria of 30 CFR 77.216(a), a one hundred (100) year, six (6) hour event, or greater event as specified by the director.

(B) For a siltation structure meeting the Class B or C criteria for dams in TR-60, the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60, or greater event as specified by the director.

(C) For a siltation structure not meeting the size or other criteria of 30 CFR 77.216(a) or not meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60), a twenty-five (25) year, six (6) hour event, or greater event as specified by the director.

(3) In lieu of meeting the requirements in subdivision (1), the director may approve a siltation structure that relies primarily on storage to control the run-off from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer that the siltation structure will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent engineering practices. Such a siltation structure shall be located where failure would not be expected to cause loss of life or serious property damage, except where:

(A) in the case of a siltation structure meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or meeting the size or other criteria of 30 CFR 77.216(a), it is designed to control the precipitation of the probable maximum precipitation of a six (6) hour event, or greater event as specified by the director; or

(B) in the case of a siltation structure not meeting the size or other criteria of 30 CFR 77.216(a) or not meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60), it is designed to control the precipitation of a one hundred (100) year, six (6) hour event, or greater event as specified by the director.

(e) Other treatment facilities shall be designed as follows:

(1) To treat the ten (10) year, twenty-four (24) hour precipitation event unless a lesser design event is approved by the director based on terrain, climate, other site-specific conditions, and a demonstration by the operator that the effluent limitations of section 77 of this rule will be met.

(2) Designed in accordance with the applicable requirements of subsection (b).

*(Natural Resources Commission; 312 IAC 25-6-81; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3551, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2463, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register)*

### **312 IAC 25-6-82 Underground mining; hydrologic balance; discharge structures**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 82. Discharge from siltation structures, permanent and temporary impoundments, coal processing waste dams and embankments, and diversions shall be controlled by energy dissipators, riprap channels, and other devices, where necessary, to do

the following:

- (1) Reduce erosion.
- (2) Prevent deepening or enlargement of stream channels.
- (3) Minimize disturbance of the hydrologic balance.

Discharge structures shall be designed according to standard engineering design procedures. (*Natural Resources Commission; 312 IAC 25-6-82; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3552, eff Dec 1, 2001*)

### **312 IAC 25-6-83 Underground mining; hydrologic balance; acid-forming and toxic-forming materials**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 83. Drainage from acid-forming and toxic-forming underground development waste and spoil, if any, into ground and surface water shall be avoided by doing the following:

- (1) Identifying, burying, and treating, where necessary, waste and spoil that, in the judgment of the director, may be detrimental to vegetation, or may adversely affect water quality, if not treated or buried.
- (2) Preventing water from coming into contact with acid-forming and toxic-forming materials in accordance with section 112 of this rule.
- (3) Burying or treating all acid-forming or toxic-forming spoil within a reasonable period of time. If the director determines that such spoil is detrimental to the offsite hydrologic balance, the operator shall bury or treat the acid-forming or toxic-forming spoil within thirty (30) days.

(*Natural Resources Commission; 312 IAC 25-6-83; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3553, eff Dec 1, 2001*)

### **312 IAC 25-6-84 Underground mining; hydrologic balance; permanent and temporary impoundments Version a**

Authority: IC 14-34-2-1

Affected: IC 14-34

*NOTE: This version of section effective until superseded by the following version of this section, which is effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register.*

Sec. 84. (a) This section applies to both temporary and permanent impoundments and must satisfy the following conditions:

- (1) An impoundment meeting the size or other criteria of 30 CFR 77.216(a) shall comply with the requirements of 30 CFR 77.216 and this rule.
- (2) The design of impoundments shall be certified in accordance with 312 IAC 25-4-87 as designed to meet the requirement of his rule using current, prudent engineering practices and any design criteria established by the director. The qualified registered professional engineer shall be experienced in the design and construction of impoundments.
- (3) Impoundments must meet the following criteria for stability:

(A) An impoundment meeting the size or other criteria of 30 CFR 77.216(a) located where failure would be expected to cause loss of life or serious property damage, or impounding coal mine waste shall have a minimum static safety factor of one and five-tenths (1.5) for a normal pool with steady state seepage saturation conditions and a seismic safety factor of at least one and two-tenths (1.2).

(B) Impoundments not meeting the size or other criteria of 30 CFR 77.216(a) and located where failure would not be expected to cause loss of life or serious property damage shall have a minimum static safety factor of one and three-tenths (1.3) for a normal pool with steady state seepage saturation conditions.

(C) In lieu of meeting the static safety factor requirements of clause (B), the applicant may elect, in order to ensure stability for temporary impoundments not meeting the size or other criteria of 30 CFR 77.216(a) and located where failure would not be expected to cause loss of life or serious property damage, to grade as follows:

(i) The side slopes of the settled embankments shall not be steeper than two (2) horizontal to one (1) vertical on the upstream slopes.

(ii) The downstream slopes shall not be steeper than three (3) horizontal to one (1) vertical. An impoundment constructed within these guidelines shall not be approved for permanent postmining land use until the criteria

for permanent impoundments of this section have been satisfied.

(4) The size and configuration of the impoundment shall be adequate for its intended purposes. Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume.

(5) Foundations and abutments for an impounding structure shall be stable during all phases of construction and operation and shall be designed based on adequate and accurate information on the foundation conditions. For an impoundment meeting the size or other criteria of 30 CFR 77.216(a), foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability. All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed, if necessary, to ensure stability.

(6) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

(7) An impoundment shall include either a combination of principal and emergency spillways or a single spillway configured as specified in clause (A), designed and constructed to safely pass the applicable design precipitation event specified in clause (B), except as set forth in subsection (c)(1).

(A) The director may approve a single open channel spillway that is:

- (i) of nonerodible construction and designed to carry sustained flows; or
- (ii) earth-lined or grass-lined and designed to carry short term, infrequent flows at nonerosive velocities where sustained flows are not expected.

(B) Except as specified in subsection (c)(1), the required design precipitation event for an impoundment meeting the spillway requirements of this section is as follows:

- (i) For an impoundment meeting the size or other criteria of 30 CFR 77.216(a), a one hundred (100) year, six (6) hour event, or greater event as specified by the director.
- (ii) For an impoundment not meeting the size or other criteria of 30 CFR 77.216(a), a twenty-five (25) year, six (6) hour event, or greater event as specified by the director.

(8) The vertical portion of any remaining highwall must be located far enough below the low water line, along the extent of the highwall, to provide adequate safety and access for proposed water users. If surface run-off enters the impoundment, the side slope must be protected to prevent erosion.

(9) A qualified registered professional engineer or other qualified professional specialist under the direction of a professional engineer, either of whom shall be experienced in the construction of impoundments, shall inspect each impoundment according to the following provisions:

(A) Inspections shall be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.

(B) The qualified registered professional engineer or qualified registered professional land surveyor shall, within thirty (30) days after each inspection required in clause (A), provide to the director a certified report that the impoundment has been constructed and/or maintained as designed and in accordance with the approved plan and this article. The report shall include discussion of the following:

- (i) Any appearance of instability, structural weakness, or other hazardous condition.
- (ii) Depth and elevation of any impounded waters.
- (iii) Existing storage capacity.
- (iv) Any existing or required monitoring procedures and instrumentation.
- (v) Any other aspects of the structure affecting stability.

(C) A copy of the report shall be retained at or near the mine site.

(D) Impoundments subject to 30 CFR 77.216 must be examined in accordance with 30 CFR 77.216-3.

(E) Impoundments that do not meet the size or other criteria of 30 CFR 77.216(a) shall be examined at least quarterly by a qualified person designated by the permittee for appearances of instability, structural weakness, or other hazardous conditions. At least one (1) of the quarterly examinations conducted during the calendar year shall be certified by a qualified registered professional engineer or qualified registered professional land surveyor and shall include a discussion of any appearances of instability, structural weakness, or other hazardous conditions, and any other aspects of the structure affecting stability, and a statement indicating the pond has been maintained in accordance with the approved plan and this section. This examination shall be conducted during the period of October 1 through December 31 of each calendar year. The certified examination report shall be submitted to the director within thirty (30) days of



the examination. Impoundment examinations shall be conducted until the impoundment has been removed or until final bond release in accordance with 312 IAC 25-5-16. If the operator can demonstrate that failure of the structure would not create a potential threat to public health and safety or threaten significant environmental harm, the following impoundments shall be exempt from the examination requirements of this subsection, following approval by the director:

- (i) Impoundments that are completely incised.
- (ii) Water impounding structures that impound water to a design elevation no more than five (5) feet above the upstream toe of the structure and that can have a storage volume of not more than twenty (20) acre-feet; provided the exemption request is accompanied by a report sealed by a qualified registered professional engineer licensed in the state of Indiana, accurately describing the hazard potential of the structure. Hazard potential must be such that failure of the structure would not create a potential threat to public health and safety or threaten significant environmental harm. The report shall be field verified by the director prior to approval and periodically thereafter. The director may terminate the exemption if so warranted by changes in the area downstream of the structure or in the structure itself.
- (iii) Impoundments that do not facilitate mining or reclamation, including, but not limited to, the following:
  - (AA) Sewage lagoons.
  - (BB) Landscaping ponds.
  - (CC) Pools or wetlands in replaced stream channels.
  - (DD) Existing impoundments not yet used to facilitate mining.
  - (EE) Ephemeral water bodies.
  - (FF) Active mining pits.
  - (GG) Differential settlement pools.

(10) If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall promptly inform the director of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the director shall be notified immediately. The director shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(b) Permanent impoundments of water may be authorized by the director upon the basis of the following demonstration:

(1) The quality of the impounded water shall be suitable, on a permanent basis, for its intended use and, after reclamation, will meet applicable Indiana and federal water quality standards, and discharge of water from the impoundment will meet applicable effluent limitations and shall not degrade the quality of receiving waters to less than the water quality standards established under applicable Indiana and federal laws.

(2) The level of water shall be sufficiently stable to support the intended use.

(3) Water impoundments shall not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(4) The size and configuration of the impoundment are adequate for the intended purposes. The impoundment has an adequate freeboard to resist overtopping by waves and by sudden increases in storage volume.

(5) The impoundment will be suitable for the approved postmining land use.

(6) The design, construction, and maintenance of structures shall achieve the minimum design requirements applicable to structures constructed and maintained under the Watershed Protection and Flood Prevention Act, P.L.83-566 (16 U.S.C. 1006).

(7) Final grading will provide for adequate safety and access for proposed water users.

(8) For final cut and permanent incised impoundments, final graded slopes down to the water level shall not exceed in grade thirty-three and one-third percent (33⅓%) or the lesser slope needed to do the following:

(A) Protect the public health and safety.

(B) Enable the permittee to place topsoil on the slope under section 75 of this rule and to revegetate the slope under sections 115 through 122 of this rule.

(c) The director may authorize the construction of temporary impoundments as part of an underground coal mining operation. In lieu of meeting the requirements in subsection (a)(7)(A), the director may approve an impoundment that relies primarily on storage to control the run-off from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer that the impoundment will safely control the design precipitation event, the water from which shall

be safely removed in accordance with current, prudent engineering practices. Such an impoundment shall be located where failure would not be expected to cause loss of life or serious property damage, except where in the case of an impoundment:

- (1) meeting the size or other criteria of 30 CFR 77.216(a), it is designed to control the precipitation of the probable maximum precipitation of a six (6) hour event or greater event as specified by the director; or
- (2) not meeting the size or other criteria of 30 CFR 77.216(a), it is designed to control the precipitation of a one hundred (100) year, six (6) hour event, or greater event as specified by the director.

(d) All embankments of temporary and permanent impoundments, and surrounding areas and diversion ditches disturbed or created by construction, shall be graded, fertilized, seeded, and mulched to comply with the requirements of sections 115 through 122 of this rule after the embankment is completed. The active, upstream face of the embankment where water is impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated to comply with the requirements of sections 115 through 122 of this rule.

(e) Plans for any enlargement, reduction in size, reconstruction, or other modification of dams or impoundments shall be submitted to the director and shall comply with the requirements of this section. Except where a modification is required to eliminate an emergency condition constituting a hazard to public health, safety, or the environment, the director shall approve the plans before modification begins. (*Natural Resources Commission; 312 IAC 25-6-84; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3553, eff Dec 1, 2001*)

### **312 IAC 25-6-84 Underground mining; hydrologic balance; permanent and temporary impoundments Version b**

Authority: IC 14-34-2-1

Affected: IC 14-34

*NOTE: This version of section effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register. See also preceding version of this section, effective until superseded by this version of section.*

Sec. 84. (a) This section applies to both temporary and permanent impoundments and must satisfy the following conditions:

(1) An impoundment meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or an impoundment meeting the size or other criteria of 30 CFR 77.216(a) shall comply with the requirements of 30 CFR 77.216 and this rule.

(2) The design of impoundments shall be certified in accordance with 312 IAC 25-4-87 as designed to meet the requirement of this rule using current, prudent engineering practices and any design criteria established by the director. The qualified registered professional engineer shall be experienced in the design and construction of impoundments.

(3) Impoundments must meet the following criteria for stability:

(A) An impoundment meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or an impoundment meeting the size or other criteria of 30 CFR 77.216(a) shall have a minimum static safety factor of one and five-tenths (1.5) for a normal pool with steady state seepage saturation conditions and a seismic safety factor of at least one and two-tenths (1.2).

(B) Impoundments not meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or not meeting the size or other criteria of 30 CFR 77.216(a), except for a coal mine waste impounding structure, shall have a minimum static safety factor of one and three-tenths (1.3) for a normal pool with steady state seepage saturation conditions.

(C) In lieu of meeting the static safety factor requirements of clause (B), the applicant may elect, in order to ensure stability for temporary impoundments not meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or not meeting the size or other criteria of 30 CFR 77.216(a) to grade as follows:

(i) The side slopes of the settled embankments shall not be steeper than two (2) horizontal to one (1) vertical on the upstream slopes.

(ii) The downstream slopes shall not be steeper than three (3) horizontal to one (1) vertical. An impoundment constructed within these guidelines shall not be approved for permanent postmining land use until the criteria for permanent impoundments of this section have been satisfied.

(4) The size and configuration of the impoundment shall be adequate for its intended purposes. Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. Impoundments meeting the Class B or C criteria for dams in TR-60 shall comply with the freeboard hydrograph criteria in the "Minimum Emergency

Spillway Hydrologic Criteria” table in TR-60.

(5) Foundations and abutments for an impounding structure shall be stable during all phases of construction and operation and shall be designed based on adequate and accurate information on the foundation conditions. For an impoundment meeting the size or other criteria of 30 CFR 77.216(a) or the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60), foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability. All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed, if necessary, to ensure stability.

(6) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

(7) An impoundment shall include either a combination of principal and emergency spillways or a single spillway configured as specified in clause (A), designed and constructed to safely pass the applicable design precipitation event specified in clause (B), except as set forth in subsection (c)(1).

(A) The director may approve a single open channel spillway that is:

(i) of nonerodible construction and designed to carry sustained flows; or

(ii) earth-lined or grass-lined and designed to carry short term, infrequent flows at nonerosive velocities where sustained flows are not expected.

(B) Except as specified in subsection (c)(1), the required design precipitation event for an impoundment meeting the spillway requirements of this section is as follows:

(i) For an impoundment meeting the size or other criteria of 30 CFR 77.216(a), a one hundred (100) year, six (6) hour event, or greater event as specified by the director.

(ii) For an impoundment meeting the Class B or C criteria for dams in TR-60, the emergency spillway hydrograph criteria in the “Minimum Emergency Spillway Hydrologic Criteria” table in TR-60, or greater event as specified by the director.

(iii) For an impoundment not meeting the size or other criteria of 30 CFR 77.216(a) or not meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60), a twenty-five (25) year, six (6) hour event, or greater event as specified by the director.

(8) The vertical portion of any remaining highwall must be located far enough below the low water line, along the extent of the highwall, to provide adequate safety and access for proposed water users. If surface run-off enters the impoundment, the side slope must be protected to prevent erosion.

(9) A qualified registered professional engineer or other qualified professional specialist under the direction of a professional engineer, either of whom shall be experienced in the construction of impoundments, shall inspect each impoundment according to the following provisions:

(A) Inspections shall be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.

(B) The qualified registered professional engineer shall, within thirty (30) days after each inspection required in clause (A), provide to the director a certified report that the impoundment has been constructed or maintained, or both, as designed and in accordance with the approved plan and this article. The report shall include discussion of the following:

(i) Any appearance of instability, structural weakness, or other hazardous condition.

(ii) Depth and elevation of any impounded waters.

(iii) Existing storage capacity.

(iv) Any existing or required monitoring procedures and instrumentation.

(v) Any other aspects of the structure affecting stability.

(C) A copy of the report shall be retained at or near the mine site.

(D) Impoundments subject to 30 CFR 77.216 or meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) must be examined in accordance with 30 CFR 77.216-3.

(E) Impoundments that do not meet the size or other criteria of 30 CFR 77.216(a) or do not meet the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) shall be examined at least quarterly by a qualified person designated by the permittee for appearances of instability, structural weakness, or other hazardous conditions. At least one (1) of the quarterly examinations conducted during the calendar year shall be certified by a qualified registered professional engineer and shall include a discussion of any appearances of instability, structural weakness, or other hazardous conditions, any other aspects of the structure affecting stability, and a statement indicating

the pond has been maintained in accordance with the approved plan and this section. This examination shall be conducted during the period of October 1 through December 31 of each calendar year. The certified examination report shall be submitted to the director within thirty (30) days of the examination. Impoundment examinations shall be conducted until the impoundment has been removed or until final bond release in accordance with 312 IAC 25-5-16. If the operator can demonstrate that failure of the structure would not create a potential threat to public health and safety or threaten significant environmental harm, the following impoundments shall be exempt from the examination requirements of this clause, following approval by the director:

- (i) Impoundments that are completely incised.
- (ii) Water impounding structures that impound water to a design elevation no more than five (5) feet above the upstream toe of the structure and that can have a storage volume of not more than twenty (20) acre-feet; provided the exemption request is accompanied by a report sealed by a qualified registered professional engineer licensed in the state of Indiana, accurately describing the hazard potential of the structure. Hazard potential must be such that failure of the structure would not create a potential threat to public health and safety or threaten significant environmental harm. The report shall be field verified by the director prior to approval and periodically thereafter. The director may terminate the exemption if so warranted by changes in the area downstream of the structure or in the structure itself.
- (iii) Impoundments that do not facilitate mining or reclamation, including, but not limited to, the following:
  - (AA) Sewage lagoons.
  - (BB) Landscaping ponds.
  - (CC) Pools or wetlands in replaced stream channels.
  - (DD) Existing impoundments not yet used to facilitate mining.
  - (EE) Ephemeral waterbodies.
  - (FF) Active mining pits.
  - (GG) Differential settlement pools.

(10) If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall promptly inform the director of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the director shall be notified immediately. The director shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(b) Permanent impoundments of water may be authorized by the director upon the basis of the following demonstration:

(1) The quality of the impounded water shall be suitable, on a permanent basis, for its intended use and, after reclamation, will meet applicable Indiana and federal water quality standards, and discharge of water from the impoundment will meet applicable effluent limitations and shall not degrade the quality of receiving waters to less than the water quality standards established under applicable Indiana and federal laws.

(2) The level of water shall be sufficiently stable to support the intended use.

(3) Water impoundments shall not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(4) The size and configuration of the impoundment are adequate for the intended purposes. The impoundment has an adequate freeboard to resist overtopping by waves and by sudden increases in storage volume.

(5) The impoundment will be suitable for the approved postmining land use.

(6) The design, construction, and maintenance of structures shall achieve the minimum design requirements applicable to structures constructed and maintained under the Watershed Protection and Flood Prevention Act, P.L.83-566 (16 U.S.C. 1006).

(7) Final grading will provide for adequate safety and access for proposed water users.

(8) For final cut and permanent incised impoundments, final graded slopes down to the water level shall not exceed in grade thirty-three and one-third percent (33⅓%) or the lesser slope needed to do the following:

(A) Protect the public health and safety.

(B) Enable the permittee to place topsoil on the slope under section 75 of this rule and to revegetate the slope under sections 115 through 122 of this rule.

(c) The director may authorize the construction of temporary impoundments as part of an underground coal mining operation. In lieu of meeting the requirements in subsection (a)(7)(A), the director may approve an impoundment that relies primarily on storage

to control the run-off from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer that the impoundment will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent engineering practices. Such an impoundment shall be located where failure would not be expected to cause loss of life or serious property damage, except where in the case of an impoundment:

(1) meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60) or meeting the size or other criteria of 30 CFR 77.216(a), it is designed to control the precipitation of the probable maximum precipitation of a six (6) hour event or greater event as specified by the director; or

(2) not meeting the size or other criteria of 30 CFR 77.216(a) or not meeting the Class B or C criteria for dams in the NRCS publication Technical Release No. 60 (TR-60), it is designed to control the precipitation of a one hundred (100) year, six (6) hour event, or greater event as specified by the director.

(d) All embankments of temporary and permanent impoundments, and surrounding areas and diversion ditches disturbed or created by construction, shall be graded, fertilized, seeded, and mulched to comply with the requirements of sections 115 through 122 of this rule after the embankment is completed. The active, upstream face of the embankment where water is impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated to comply with the requirements of sections 115 through 122 of this rule.

(e) Plans for any enlargement, reduction in size, reconstruction, or other modification of dams or impoundments shall be submitted to the director and shall comply with the requirements of this section. Except where a modification is required to eliminate an emergency condition constituting a hazard to public health, safety, or the environment, the director shall approve the plans before modification begins. (*Natural Resources Commission; 312 IAC 25-6-84; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3553, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2465, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register*)

### **312 IAC 25-6-85 Underground mining; hydrologic balance; underground mine entry and access discharges**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 85. (a) Surface entries and access to underground workings, including adits and slopes, shall be located, designed, constructed, and utilized to prevent or control gravity discharge of water from the mine.

(b) Gravity discharge of water from an underground mine, other than a drift mine subject to subsection (c), may be allowed by the director if either of the following is demonstrated:

(1) The discharge:

(A) without treatment, satisfies the water effluent limitations of section 77 of this rule and all applicable Indiana and federal water quality standards; and

(B) will result in changes in the prevailing hydrologic balance that are minimal and approved postmining land uses will not be adversely affected.

(2) The discharge:

(A) is conveyed to a treatment facility in the permit area in accordance with section 77 of this rule;

(B) all water from the underground mine discharged from the treatment facility meets the effluent limitations of section 77 of this rule and all other applicable Indiana and federal statutes and regulations; and

(C) consistent maintenance of the treatment facility will occur throughout the anticipated period of gravity discharge.

(c) Notwithstanding anything to the contrary in subsections (a) and (b), for a drift mine first used after the implementation of this program and located in acid-producing or iron-producing coal seams, surface entries and accesses shall be located in such a manner as to prevent any gravity discharge from the mine unless another location is approved by the director. (*Natural Resources Commission; 312 IAC 25-6-85; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3555, eff Dec 1, 2001*)

### **312 IAC 25-6-86 Underground mining; hydrologic balance; surface and ground water monitoring**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 86. (a) This subsection establishes standards for maintaining the hydrologic balance of ground water as follows:

(1) Ground water levels, and the quality of ground water, shall be monitored through bond release in a manner approved by the director according to the requirements of 312 IAC 25-4-72 to determine the effects of mining activities on the recharge capacity of reclaimed lands and the quantity and quality of water in ground water systems in the permit and adjacent areas.

(2) When mining activities may affect the ground water systems that serve as aquifers which significantly ensure the hydrologic balance of water use on or off the permit area, ground water levels and ground water quality shall be periodically monitored according to the requirements of 312 IAC 25-4-72. Monitoring shall include measurements from a sufficient number of wells and the mineralogical and chemical analyses of aquifer, overburden, and spoil that are adequate to reflect changes in ground water quantity and quality resulting from those activities. Monitoring shall be adequate to plan for modification of mining activities, if necessary, to minimize disturbance of the prevailing hydrologic balance.

(3) The director may require additional tests and shall require the reporting of the results of these tests to demonstrate compliance with section 85 of this rule and this section.

(4) If the analysis of a ground water sample indicates noncompliance with a permit condition, the permittee must do the following:

(A) Promptly notify the director.

(B) Immediately take any action required by the reclamation plan or by a permit condition.

(5) If the director determines that the permit area and adjacent area do not contain significant ground water resources, the director shall waive or otherwise modify the monitoring requirements of this subsection.

(b) This subsection establishes standards for maintaining the hydrologic balance of surface water as follows:

(1) Surface water monitoring, reporting, and record keeping shall be conducted through bond release, in accordance with the provisions of 312 IAC 25-4-73 and as specified in the effective National Pollutant Discharge Elimination System (NPDES) permit.

(2) Copies of the monitoring reports and any noncompliance notifications shall be provided to the director concurrently with the submissions to the NPDES permit authority.

(3) Equipment, structures, and other devices necessary to measure and sample accurately the quality and quantity of surface water discharges from the disturbed area shall be properly installed, maintained, and operated and shall be removed when no longer required.

(4) If the analysis of a surface water sample indicates noncompliance with any permit terms or conditions, the permittee must do the following:

(A) Promptly notify the director.

(B) Immediately take any action required by the reclamation plan or by a permit condition.

(5) In order to protect the hydrologic balance, underground mining activities shall be conducted according to the plan approved under 312 IAC 25-4-85(b) and the following:

(A) Surface water quality shall be protected by handling earth materials, ground water discharges, and run-off in a manner that accomplishes the following:

(i) Minimizes the formation of acid or toxic drainage.

(ii) Prevents, to the extent possible using the best technology currently available, additional contribution of suspended solids to stream flow outside the permit area.

(iii) Otherwise prevents water pollution.

(B) If drainage control, restabilization, and revegetation of disturbed areas, diversion of run-off, mulching, or other reclamation and remedial practices are not adequate to meet the requirements of this section and section 77 of this rule, the operator shall use and maintain the necessary water treatment facilities or water quality controls.

(6) Surface water quality and flow rates shall be protected by handling earth materials and run-off in accordance with the steps outlined in the plan approved under 312 IAC 25-4-85(b).

(c) Water quality analysis and sampling shall be conducted according to the methodology in the latest edition of Standard Methods for the Examination of Water and Wastewater. (*Natural Resources Commission; 312 IAC 25-6-86; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3556, eff Dec 1, 2001*)

**312 IAC 25-6-87 Underground mining; hydrologic balance; transfer of wells**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 87. (a) An exploratory or monitoring well may only be transferred by the person who conducts underground mining activities for further use as a permanent water well with the prior approval of the director. That person and the surface owner of the lands where the well is located shall jointly submit a written request to the director for that approval.

(b) Upon an approved transfer of a well, the transferee shall:

- (1) assume primary liability for damages to persons or property from the well;
- (2) plug the well when necessary, but in no case later than abandonment of the well; and
- (3) assume primary responsibility for compliance with sections 72 through 74 of this rule with respect to the well.

(c) Upon an approved transfer of a well, the transferor shall be secondarily liable for compliance with sections 72 through 74 of this rule until release of the bond or other equivalent guarantee required by 312 IAC 25-5 for the area in which the well is located. (*Natural Resources Commission; 312 IAC 25-6-87; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3557, eff Dec 1, 2001*)

**312 IAC 25-6-88 Underground mining; hydrologic balance; water rights and replacement**

Authority: IC 14-34-2-1

Affected: IC 14-34; 30 CFR 817.41(j)

Sec. 88. The permittee must promptly replace any drinking, domestic, or residential water supply that is contaminated, diminished, or interrupted by underground mining activities if the affected well or spring was in existence before the date the director received the permit application for the activities causing the loss, contamination, or interruption. The baseline hydrologic information required in 312 IAC 25-4-47 and 312 IAC 25-4-85 and the geologic information concerning baseline hydrologic conditions required in 312 IAC 25-4-30 and 312 IAC 25-4-71 will be used to determine the impact of mining activities upon water supply. Water replacement rights are not determined by this article. (*Natural Resources Commission; 312 IAC 25-6-88; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3557, eff Dec 1, 2001*)

**312 IAC 25-6-89 Underground mining; hydrologic balance; discharge of water into underground mine**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 89. Water from the surface or from an underground mine shall not be diverted or otherwise discharged into other underground mine workings unless the person who conducts the underground mining activities demonstrates to the director that this diversion or discharge will:

- (1) abate water pollution or otherwise eliminate public hazards resulting from underground mining activities;
- (2) be discharged as a controlled flow;
- (3) meet the effluent limitations of section 77 of this rule for pH and total suspended solids, except as provided in this subdivision and the director may approve that the limitation on total suspended solids be exceeded for:
  - (A) coal processing waste;
  - (B) underground mine development waste;
  - (C) fly ash from a coal-fired facility;
  - (D) sludge from an acid mine drainage treatment facility;
  - (E) flue gas desulfurization sludge; or
  - (F) inert materials used for stabilizing underground mines.
- (4) continue as a controlled and identifiable flow and is ultimately treated by an existing treatment facility;
- (5) not result in a discharge from an underground mine to surface waters which causes, results in, or contributes to a violation of applicable water quality standards or effluent limitations; and
- (6) minimize disturbance to the hydrologic balance on the permit area, prevent material damage outside the permit area, and otherwise eliminate public hazards resulting from underground mining activities.

(*Natural Resources Commission; 312 IAC 25-6-89; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3557, eff Dec 1, 2001*)

**312 IAC 25-6-90 Underground mining; hydrologic balance; postmining rehabilitation of siltation structures, diversions, impoundments, and treatment facilities**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 90. Before abandoning a permit area or seeking bond release, the person who conducts the underground mining activities shall ensure that:

- (1) all temporary structures are removed and reclaimed; and
- (2) all permanent sedimentation ponds, diversions, impoundments, and treatment facilities:
  - (A) meet the requirements of this article for permanent structures; and
  - (B) have been maintained properly and meet the requirements of the approved reclamation plan for permanent structures and impoundments.

The person who conducts the underground mining activities shall renovate such structures, if necessary, to meet the requirements of this article and to conform to the approved reclamation plan. (*Natural Resources Commission; 312 IAC 25-6-90; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3558, eff Dec 1, 2001*)

**312 IAC 25-6-91 Underground mining; hydrologic balance; stream buffer zones**

Authority: IC 14-34-2-1

Affected: IC 14-34; 30 CFR 817.57

Sec. 91. (a) No land within one hundred (100) feet of a perennial stream or an intermittent stream shall be disturbed by underground mining activities unless the director specifically authorizes underground activities closer to or through such a stream. The director may authorize such activities only upon finding that:

- (1) underground mining activities will not cause or contribute to the violation of applicable state or federal water quality standards and will not adversely affect the water quantity and quality or other environmental resources of the stream; and
- (2) if there will be a temporary or permanent stream-channel diversion, it will comply with sections 78 through 79 of this rule.

(b) The area not to be disturbed shall be designated as a buffer zone, and the operator shall mark it as specified in section 6 of this rule. (*Natural Resources Commission; 312 IAC 25-6-91; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3558, eff Dec 1, 2001*)

**312 IAC 25-6-92 Underground mining; coal recovery**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 92. Underground mining activities shall be conducted so as to maximize the utilization and conservation of the coal, while utilizing the best technology currently available to maintain environmental integrity, so that re-affecting the land in the future through surface coal mining operations is minimized. (*Natural Resources Commission; 312 IAC 25-6-92; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3558, eff Dec 1, 2001*)

**312 IAC 25-6-93 Underground mining; explosives; general requirements**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 93. (a) This section and sections 94 through 97 of this rule apply only to surface blasting activities incident to underground mining, including initial rounds of slopes, shafts, and similar activities.

- (b) Each permittee must comply with Indiana and federal laws that regulate the use of explosives.
- (c) All blasting operations conducted after July 1, 1987, shall be conducted under the direct supervision of a certified blaster.
- (d) A permittee must comply with the following blast design requirements:
  - (1) An anticipated blast design shall be submitted if blasting operations will be conducted within:
    - (A) one thousand (1,000) feet of any building used as a dwelling (not owned by the permittee), public building, school, church, or community or institutional building;



(B) five hundred (500) feet of an active or abandoned underground mine; or

(C) one thousand (1,000) feet of a pipeline.

(2) The blast design may be presented as part of a permit application or at a time, prior to the blast, approved by the director.

(3) The blast design shall contain sketches of the typical drill patterns, delay periods, and decking and shall indicate the type and amount of explosives to be used, critical dimensions, and the location and general description of the structures to be protected, as well as a discussion of design factors to be used, that protect the public and meet the applicable airblast, ground-vibration, and flyrock standards of section 96 of this rule.

(4) The blast design shall be prepared and signed by a certified blaster.

(5) The director may require changes to the design submitted if necessary to protect public safety or prevent damage to structures described in subdivision (1).

(e) The certified blaster and at least one (1) other person shall be present at the firing of a blast. The certified blaster shall either physically detonate the charge or give the order to detonate the charge.

(f) Each person responsible for blasting operations at a blast site shall be familiar with the approved blasting plan and site-specific performance standards.

(g) Each person responsible for blasting operations shall possess a valid certification under 312 IAC 9. A certified blaster must make all decisions concerning the following:

(1) Blast hole size, spacing, or depth.

(2) The quantity of explosives in each hole.

(3) The total quantity of explosives to be detonated.

(4) The delay periods to be used.

*(Natural Resources Commission; 312 IAC 25-6-93; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3558, eff Dec 1, 2001)*

### **312 IAC 25-6-94 Underground mining; explosives; preblasting survey**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 94. (a) At least thirty (30) days before the initiation of blasting, the permittee shall notify in writing all residents, operators of pipeline, or owners of dwellings or other structures located within one-half ( $\frac{1}{2}$ ) mile of the permit area how to request a preblasting survey.

(b) The applicant or permittee shall cause the publication, at least once a week for four (4) consecutive weeks in a local newspaper of general circulation in the county in which the blasting will occur, of a notification that the applicant or permittee will conduct a preblasting survey upon the request by a resident or owner of a manmade dwelling or structure within one (1) mile of any portion of the permit area. A copy of the public notice and publisher's affidavit or other proof of publication shall be filed with the director not later than four (4) weeks after the last date of publication.

(c) On the written request to the director or the permittee by a resident or owner of a dwelling or structure that is located within one (1) mile of any surface blasting activity covered by section 93 of this rule, this section, and sections 96 through 97 of this rule, the permittee shall promptly conduct a survey of the dwelling or structure and promptly submit a report of the survey to the director and to the person requesting the survey. If a structure is renovated or added to subsequent to a survey, upon request by the resident or owner, a survey of the additions or renovations shall be performed by the permittee under this section.

(d) The survey shall determine the condition of the dwelling or structure and shall document any preblasting damage and other physical factors that could reasonably be affected by the blasting. Assessments of cisterns, wells, other water systems, pipelines, cables, transmission lines, and similar structures warrant special attention. Assessment of these structures may be limited to surface condition and other readily available data.

(e) A written report of the survey shall be prepared and signed by the person who conducts the survey. Copies of the report shall be promptly provided to the person requesting the survey and to the director. If a preblasting survey is conducted by a permittee upon its own initiative as part of a voluntary program to encourage all dwelling owners to have preblasting surveys, where no request for a preblasting survey has been made of the director or the permittee, the survey need not be submitted to the director. If the person requesting the survey disagrees with the results of the survey, that person may notify in writing both the permittee and the director of the specific areas of disagreement.

(f) All survey requests received by the permittee more than ten (10) days before the planned initiation of blasting shall be

completed by the permittee before the initiation of blasting. A request received less than ten (10) days before the initiation of blasting shall be completed promptly but need not be completed prior to initiation of blasting. (*Natural Resources Commission; 312 IAC 25-6-94; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3559, eff Dec 1, 2001*)

**312 IAC 25-6-95 Underground mining; explosives; publication of blasting schedule**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 95. (a) Blasting schedule publication and distribution requirements are as follows:

(1) Each permittee shall publish a blasting schedule at least ten (10) days, but not more than thirty (30) days, before beginning a surface blasting program in which blasts that use more than five (5) pounds of explosive or blasting agent are detonated. The blasting schedule shall be published in a newspaper of general circulation in the locality of the blasting site.

(2) Copies of the schedule shall be distributed to local governments and public utilities and by mail to each residence within one-half (½) mile of the proposed blasting area described in the schedule.

(3) The permittee shall republish and redistribute the schedule pursuant to subdivisions (1) and (2) at least every twelve (12) months.

(b) Blasting schedule contents. The blasting schedule shall contain, at a minimum, the following:

(1) Identification of the specific areas in which blasting will take place.

(2) Days and time periods when explosives are to be detonated.

(3) Methods to be used to control access to the blasting area.

(4) Types and patterns of audible warnings and all-clear signals to be used before and after blasting.

(5) Name, address, and telephone number of the permittee.

(c) Before surface blasting in areas or at times not in a previous blasting schedule, the permittee shall prepare a revised blasting schedule and shall publish and distribute the revised schedule according to the procedures in subsections (a) and (b). The revised blasting schedule shall be approved by the director before publication and distribution.

(d) A copy of the public notice and publisher's affidavit or other proof of publication of the public notice required by subsections (a) and (c) shall be filed with the director not later than four (4) weeks after the last date of publication. (*Natural Resources Commission; 312 IAC 25-6-95; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3559, eff Dec 1, 2001*)

**312 IAC 25-6-96 Underground mining; explosives; surface blasting operations**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 96. (a) Surface blasting operations shall be conducted at times approved by the director and announced in the blasting schedule. The permittee shall submit the blasting schedule required by section 95 of this rule to the director for approval sixty (60) days prior to the date of publication specified in section 95(a) of this rule.

(b) All blasting shall be conducted between sunrise and sunset unless nighttime blasting is approved by the director upon a showing that the public will be protected from adverse noise and other impacts.

(1) The director may specify more restrictive time periods, based on public requests or other considerations, including the proximity to residential areas.

(2) Unscheduled blasting operations may be conducted only when operator or public health and safety require unscheduled detonation. When a permittee conducts unscheduled blasting operations, the permittee shall do the following:

(A) Notify persons with one-half (½) mile of the blasting site using audible warning signals.

(B) Take sufficient measures to ensure the public will be protected from adverse noise and other impacts.

(C) Document the reason for the unscheduled blasting including why the blast could not be held over to the next day, when the blast was actually conducted the warning signals given, in accordance with section 97 of this rule. The director may require any permittee to submit a report of unscheduled blasts if needed to respond to citizen complaints concerning blasting.

(c) Warning and all-clear signals of different character or pattern that are audible within a range of one-half (½) mile from the point of the blast shall be given. Each person within the permit area and each person who resides or regularly works within one-

half (½) mile of the permit area shall be notified of the meaning of the signals through the notification required in subsection (a). These instructions shall be clear and communicated in a manner that can reasonably be expected to inform such persons of the meaning of the signals. Each permittee shall maintain signs in accordance with section 71(c) of this rule.

(d) Access to an area possibly subject to flyrock from blasting shall be regulated to protect the public and livestock. Access to the blasting area shall be controlled to prevent the presence of livestock or unauthorized personnel during blasting until an authorized representative of the permittee has reasonably determined that:

- (1) no unusual circumstances, such as imminent slides or undetonated charges, exist; and
- (2) access to and travel in or through the area can be safely resumed.

(e) Airblast requirements are as follows:

(1) Airblast shall be controlled so that it does not exceed the maximum limits specified below at any dwelling, public building, school, church, or community or institutional building unless such structure is owned or leased by the permittee and is not leased to any other person. If a building owned by the permittee is leased to another person, the lessee may sign a waiver relieving the operator from meeting the airblast limitations of this subsection. The written waiver shall be submitted to the director before blasting commences.

Lower Frequency Limit of Measuring System, Hz (±3 dB)	Maximum Level in dB
0.1 Hz or lower-flat response	134 peak.
2 Hz or lower-flat response	133 peak.
6 Hz or lower-flat response	129 peak.
C-weighted, slow response	105 peak dBC.

(2) All measuring systems used shall have a flat frequency response of at least two hundred (200) hertz at the upper end.

(3) The permittee may satisfy the provisions of this section by meeting any one of the four (4) specifications in the chart in subdivision (1), provided, however, the one-tenth (0.1) hertz or lower-flat response or C-weighted slow response can only be used if approved by the director.

(4) The director may require airblast measurements of any or all blasts and may specify the location of such measurements. If necessary to prevent damage, the director shall specify lower maximum airblast levels than those of subdivision (1) for use in the vicinity of a specific blasting operation.

(5) The permittee shall conduct periodic monitoring to ensure compliance with the airblast standards of subdivision (1).

(f) Flyrock, including material traveling along the ground, shall not be cast from the blasting site more than one-half (½) the distance to the nearest dwelling or other occupied structure, beyond the boundary of the bonded area, or beyond the area of regulated access required under subsection (d).

(g) Blasting shall be conducted to prevent injury to persons, damage to public or private property, adverse impacts on any underground mine, and change in the course, channel, or availability of ground or surface waters outside the permit area.

(h) Requirements for maximum ground vibrations are as follows:

(1) In all blasting operations, except as otherwise authorized in this section, the maximum ground vibration shall not exceed the limits approved by the director. The maximum ground vibration at the location of any dwelling, public building, school, church, or community or institutional building shall be established in accordance with either the maximum peak particle-velocity limits of subdivision (2), the scaled-distance equation of subdivision (3), the blasting-level chart of subdivision (4), or by the director under subdivision (5). All structures in the vicinity of the blasting area, not listed in this subdivision, including, but not limited to, water towers, pipelines, and other utilities, tunnels, dams, impoundments, and underground mines, shall be protected from damage by establishment of a maximum allowable limit on the ground vibration, submitted by the permittee and approved by the director before initiation of blasting. Provided, however, abandoned underground workings that are within the permit boundary and are to be mined through according to approved mining plans are not subject to a ground vibration limitation.

(2) Maximum peak particle velocity requirements as follows:

(A) The maximum ground vibration, measured as peak particle velocity, shall not exceed the following limits at the location of any dwelling, public building, school, church, or community or institutional building:

Distance (D) from the blasting site (feet)	Maximum allowable peak particle velocity (Vmax) for ground vibration (inch/second)	Scaled-distance factor (Ds) to be applied without seismic monitoring <sup>1</sup>
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0 to 300	1.25	50
301 to 5,000	1.00	55
5,001 and beyond	0.75	65

<sup>1</sup>Applicable to the scaled distance equation of subdivision (3)(A).

(B) A seismographic record shall be obtained for each blast. The results of the record shall be made a part of the blasting record required by section 97 of this rule. Particle velocity shall be measured in three (3) mutually perpendicular directions. The maximum allowable peak particle velocity shall apply to each of the three (3) measurements.

(3) Scaled-distance equation as follows:

(A) A permittee may use the scaled-distance equation:

$$W = (D/D_s)^2$$

to determine the allowable charge-weight of explosives to be detonated in any 8-millisecond period, without seismic monitoring:

Where: W = The maximum weight of explosives, in pounds, that can be detonated in any 8-millisecond period.

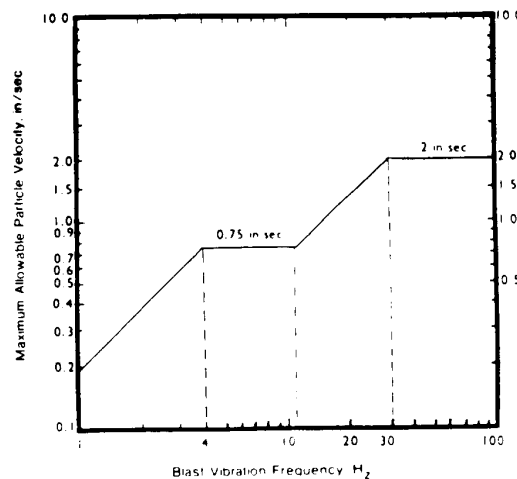
D = The distance, in feet, from the blasting site to the nearest protected structure.

D<sub>s</sub> = The scaled-distance factor.

that may initially be approved by the director using the values for scaled-distance factor listed in subdivision (2)(A).

(B) The development of a modified scaled-distance factor may be authorized by the director on receipt of a written request by the permittee, supported by seismographic records of blasting at the mine site. The modified scaled-distance factor shall be determined such that the particle velocity of the predicted ground vibration will not exceed the prescribed maximum allowable peak particle velocity of subdivision (2)(A) at a ninety-five percent (95%) confidence level.

(4) A permittee may use the ground vibration limits found in the following chart to determine the maximum allowable ground vibration:



If the chart limits are used, a seismographic record including both particle-velocity and vibration-frequency levels shall be obtained for each blast. The method for the analysis of the predominant frequency contained in the blasting records shall be approved by the director before application of this alternative blasting criterion.

(5) The maximum allowable ground vibration shall be reduced by the director beyond the limits otherwise provided by this section, if determined necessary to provide damage protection.

(6) The director may require a permittee to conduct seismic monitoring of any or all blasts and may specify the location at which the measurements are taken and the degree of detail necessary in the measurement.

(i) The maximum airblast and ground vibration limitations of subsections (e) and (h) shall not apply at the following locations:

- (1) At structures owned by the permittee, and not leased to another party.
- (2) At structures owned by the permittee, and leased to another party if a written waiver by the lessee is submitted to the director prior to blasting.

*(Natural Resources Commission; 312 IAC 25-6-96; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3560, eff Dec 1, 2001; errata filed Aug 17, 2001, 1:50 p.m.: 25 IR 106)*

**312 IAC 25-6-97 Underground mining; explosives; records of blasting operations**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 97. A record of each blast, including seismograph records when obtained, shall be retained by the permittee for at least three (3) years and shall be made available for inspection by the director and the public on request. The record shall contain the following data:

- (1) Name of the operator conducting the blast.
- (2) Location, date, and time of blast.
- (3) Name, signature, and certification number of the certified blaster conducting the blast.
- (4) Direction and distance, in feet, to the nearest dwelling, school, church, or community or institutional building that is not owned or leased by the permittee.
- (5) Weather conditions that may cause possible adverse blasting effects, including temperature, wind direction, and approximate velocity.
- (6) Type of material blasted.
- (7) Sketches of the blast pattern, including the following:
  - (A) Number of holes.
  - (B) Burden.
  - (C) Spacing.
  - (D) Decks.
  - (E) Delay pattern.
- (8) Diameter and depth of holes.
- (9) Types of explosives used.
- (10) Total weight of explosives used per hole.
- (11) Maximum weight of explosives detonated within any 8-millisecond period.
- (12) Initiation system.
- (13) Type and length of stemming.
- (14) Mats or other protections used.
- (15) Type of delay detonator and delay periods used.
- (16) Seismographic and airblast records, when obtained, shall include the following:
  - (A) Exact location of instrument and the date, time and distance from the blast.
  - (B) Type of instrument, sensitivity, and calibration signal or certification of annual calibration.
  - (C) Name of the person and firm taking the seismograph reading.
  - (D) Name of the person and firm analyzing the seismograph record.
  - (E) The ground vibration and/or airblast level recorded.
- (17) Reasons and conditions for each unscheduled blast.

*(Natural Resources Commission; 312 IAC 25-6-97; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3562, eff Dec 1, 2001)*

**312 IAC 25-6-98 Underground mining; disposal of underground development waste and excess spoil**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 98. All excess underground development waste and spoil material resulting from coal mining and reclamation activities must be placed as follows:

- (1) Spoil shall be transported and placed in a controlled manner in position for concurrent compaction and to:
  - (A) assure mass stability;
  - (B) prevent mass movement; and
  - (C) ensure a long term static safety factor of one and five-tenths (1.5).
- (2) The areas of disposal shall be within the bonded permit areas, and all organic matter shall be removed immediately before spoil placement.
- (3) Sufficient surface and internal drainage systems and diversion ditches shall be used to prevent spoil erosion and movement.
- (4) The disposal area shall not contain springs, natural water courses, or wet weather seeps unless lateral drains are constructed from the wet areas to the main underdrains to prevent infiltration of the water into the spoil pile.
- (5) If placed on a slope, the spoil shall be placed upon the most moderate slope available that the director determines will ensure compliance with IC 14-34. If possible, the spoil shall be placed upon or above a natural terrace, bench, or berm if this placement will provide additional stability and prevent mass movement.
- (6) Where the toe of the spoil rests on a downslope, a rock toe buttress of sufficient size to prevent mass movement shall be constructed.
- (7) The final configuration shall be compatible with the natural drainage pattern and surroundings and suitable for intended uses. Terraces may be constructed on the outslope of the bank or banks if required for stability, control of erosion, conservation of soil moisture, or facilitation of the approved postmining land use. The grade of the outslope between terrace benches shall not be steeper than fifty percent (50%), 2h:1v.
- (8) The spoil disposal area shall be designed under the supervision of, and certified after construction by, a qualified registered professional engineer as follows:
  - (A) A qualified registered professional engineer, or other qualified professional specialist under the direction of the professional engineer, shall periodically inspect the fill during construction. The professional engineer or specialist must be experienced in the construction of earth and rock fills.
  - (B) The inspections described in clause (A) must be made at least quarterly throughout construction and during critical construction periods. Examples of critical construction periods include the following:
    - (i) Foundation preparation, including the removal of organic material and topsoil.
    - (ii) The placement of underdrains and protective filter systems.
    - (iii) The installation of final surface drainage systems.
    - (iv) The placement and compaction of fill materials.
    - (v) The establishment of the final graded and revegetated fill.
  - (C) The registered professional engineer shall provide a report to the director promptly after each inspection performed under clause (B) that the fill has been constructed and maintained as designed and under the approved plan and this article. The report shall include appearances of instability, structural weakness, and other hazardous conditions. A report on any drainage system or protective filter shall include color photographs taken during and after construction (but before an underdrain is covered with excess spoil). The photographs must be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site. If an underdrain system is constructed in phases, each phase shall be certified separately.
  - (D) A copy of each inspection report shall be retained at or near the mine site.
- (9) The foundation and abutments of the fill shall be stable under all conditions of construction and operation. Sufficient foundation investigation and laboratory testing of foundation materials shall be performed to determine the design requirements for stability of the foundation. Analyses of foundation conditions shall include the effect of underground mine workings upon the stability of the structure.
- (10) Spoil shall be placed in horizontal lifts not exceeding four (4) feet thick, except where the director approves a greater thickness based upon a demonstration by the operator, and certification by a qualified registered professional engineer, that the design will ensure the stability of the fill and will meet all other applicable requirements.
- (11) No permanent impoundments shall be allowed on the completed fill. Small depressions may be allowed by the director if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation, and if they are not incompatible with the stability of the fill.

*(Natural Resources Commission; 312 IAC 25-6-98; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3562, eff Dec 1, 2001)*

**312 IAC 25-6-99 Underground mining; coal mine waste; general requirements**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 99. (a) All coal mine waste disposed of in an area other than the mine workings or excavations shall be hauled or conveyed and placed in new or existing disposal areas within a permit area. The disposal area shall be designed, constructed, and maintained in accordance with section 98 of this rule, this section, and sections 100 through 104 of this rule.

(b) Coal mine waste materials from activities located outside a permit area, such as those activities at other mines or abandoned mine waste piles, may be disposed of in the permit area, only if approved by the director.

(c) Approval for the disposal of waste from subsection (a) or (b) shall be based on a showing by the person who conducts underground mining activities in the permit area, using hydrologic, geologic, geotechnical, physical, and chemical analyses, that disposal of such materials:

- (1) minimizes adverse effects of leachate and surface water run-off on surface water and ground water quality and quantity;
- (2) does not create public health hazards;
- (3) ensures mass stability and prevents mass movement during and after construction;
- (4) ensures that the final disposal facility is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use by covering with a four (4) foot layer of the best available, nontoxic, noncombustible material. The director may allow less than four (4) feet of cover based upon physical and chemical analyses which show that the requirements of this section and sections 100 through 102 are met; and
- (5) prevents combustion.

(d) Design certification requirements are as follows:

(1) The disposal facility shall be designed using current, prudent engineering practices and shall meet any design criteria established by the director. A qualified registered professional engineer, experienced in the design of similar earth and waste structures, shall certify the design of the disposal facility.

(2) The disposal facility shall be designed to attain a minimum long term static safety factor of one and five-tenths (1.5). The foundation and abutments must be stable under all conditions of construction.

(e) Sufficient foundation investigations, as well as any necessary laboratory testing of foundation material, shall be performed in order to determine the design requirements for foundation stability. The analyses of the foundation conditions shall take into consideration the effect of underground mine workings, if any, upon the stability of the disposal facility.

(f) If any examination or inspection discloses that a potential hazard exists, the director shall be informed promptly of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the director shall be notified immediately. The director shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(g) Coal mine waste may be disposed of in underground mine workings, but only in accordance with a plan approved by the director and the Mine Safety and Health Administration under section 104 of this rule. *(Natural Resources Commission; 312 IAC 25-6-99; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3563, eff Dec 1, 2001)*

**312 IAC 25-6-100 Underground mining; coal mine waste; refuse piles; site inspection**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 100. (a) All refuse piles shall be inspected, on behalf of the person conducting underground mining activities, by a qualified registered engineer, or a Mine Safety and Health Administration certified inspector or another qualified person either of whom shall conduct their inspection under the direction of a qualified registered professional engineer. The professional engineer or specialist shall be experienced in the construction of similar earth and waste structures.

(b) The inspection required under subsection (a) shall occur at least quarterly throughout construction and during critical construction periods. Examples of critical construction periods include the following:

- (1) Foundation preparation, including the removal of organic material and topsoil.

(2) The placement of underdrains and protective filter systems.

(3) The installation of final surface drainage systems.

(4) The establishment of the final graded and revegetated facility.

(c) In addition to the inspections required under subsection (b), regular inspections by a qualified registered professional engineer, or a Mine Safety and Health Administration certified inspector or other qualified person either of whom shall conduct their inspection under the direction of a qualified registered professional engineer, must also be conducted during the placement and compaction of coal mine waste materials. The director shall require more frequent inspection under this subsection and subsection (b) based upon a finding of the potential danger to the health or safety of the public and the potential harm to land, air, and water resources. Inspections may terminate when the refuse pile has been adequately reclaimed.

(d) A person who conducts an inspection under this section shall consider the following:

(1) The steepness of slopes, seepage, and other visible factors which could indicate potential failure.

(2) The results of failure with respect to the threat to human life and property.

(e) A person who conducts an inspection under this section must provide a certified copy of the inspection report to the director promptly after each inspection. The report shall state whether the refuse pile is constructed and maintained as designed and in accordance with the approved reclamation plan.

(f) The permittee shall maintain copies of the inspection findings at or near the mine site.

(g) An inspection shall include observations and tests required to ensure that all organic material and topsoil have been removed to the extent necessary to evaluate the potential hazard to human life and property.

(h) If any inspection discloses that a hazard exists, the director shall be informed promptly of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the director shall be notified immediately, and the director shall notify the appropriate agencies that other emergency procedures are required to protect the public from the coal processing waste area.

(i) A certified report on a drainage system and protective filters required by subsections (b) and (e) must include color photographs taken during and after construction but before underdrains are covered with coal mine waste. If the underdrain system is constructed in phases, each phase shall be certified separately. The photographs accompanying each certified report shall be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site. (*Natural Resources Commission; 312 IAC 25-6-100; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3564, eff Dec 1, 2001*)

### **312 IAC 25-6-101      Underground mining; coal mine waste banks; refuse piles; water control measures**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 101. Refuse piles shall meet the requirements of section 99 of this rule, 30 CFR 77.214, 30 CFR 77.215, and the following:

(1) Drainage control shall be provided as follows:

(A) If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, the design shall include diversions and underdrains as necessary to control erosion, prevent water infiltration into the disposal facility, and ensure stability.

(B) Uncontrolled surface drainage may not be diverted over the outslope of the refuse piles. Run-off from the areas above the refuse pile and run-off from the surface of the refuse pile shall be diverted into stabilized diversion channels designed to meet the requirements of section 78 of this rule to safely pass the run-off from a one hundred (100) year, six (6) hour precipitation event. Run-off diverted from undisturbed areas need not be commingled with run-off from the surface of the refuse pile.

(C) Underdrains shall comply with the requirements of section 102 of this rule.

(2) Slope protection shall be provided to minimize surface erosion at the site. All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

(3) The following are placement requirements:

(A) All vegetative and organic materials shall be removed from the disposal area prior to placement of coal mine waste. Topsoil shall be removed, segregated and stored, or redistributed in accordance with section 75 of this rule. If approved



by the director, organic material may be used as mulch, or may be included in the topsoil to control erosion, promote growth of vegetation, or increase the moisture retention of the soil.

(B) The final configuration of the refuse pile shall be suitable for the approved postmining land use. Terraces may be constructed on the outslope of the refuse pile if required for stability, control of erosion, conservation of soil moisture, or facilitation of the approved postmining land use. The grade of the outslope between terrace benches shall not be steeper than 2h:1v (fifty percent (50%)).

(C) No permanent impoundments shall be allowed on the completed refuse pile. Small depressions may be allowed by the director if they are not incompatible with the stability of the refuse pile and if they are needed to:

- (i) retain moisture;
- (ii) minimize erosion;
- (iii) create and enhance wildlife habitat; or
- (iv) assist revegetation.

(D) Following final grading of the refuse pile, the coal mine waste shall be covered with a minimum of four (4) feet of the best available, nontoxic and noncombustible earthen material, in a manner that does not impede drainage from the underdrains. The director may allow less than four (4) feet of cover material based on physical and chemical analyses which show that the requirements of sections 115 through 122 of this rule will be met.

*(Natural Resources Commission; 312 IAC 25-6-101; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3565, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182)*

### **312 IAC 25-6-102      Underground mining; coal mine waste; refuse piles; construction requirements**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 102. (a) Refuse piles shall be designed to conform to applicable Mine Safety and Health Administration standards, section 99 of this rule, and the additional requirements of this section.

(b) Following final grading of the refuse pile, the site shall be covered with the best available nontoxic, noncombustible material, in accordance with sections 75 and 112(f) of this rule, in a manner that does not impede drainage from the underdrains. The refuse pile shall be revegetated in accordance with sections 115 through 122 of this rule.

(c) Underdrains shall consist of durable rock or pipe, be designed and constructed using current, prudent engineering practices, and meet any design criteria established by the director. The underdrain system shall be designed to carry the anticipated seepage of water due to rainfall away from the excess spoil fill and seeps and springs in the foundation of the disposal area and shall be protected from piping and contamination by an adequate filter. Rock underdrains shall be constructed of durable, nonacid-forming and nontoxic-forming rock, for example:

- (1) natural sand and gravel;
- (2) sandstone;
- (3) limestone; or
- (4) other durable rock;

that does not slake in water or degrade to soil material and that is free of coal, clay, or other nondurable material. Perforated pipe underdrains shall be corrosion-resistant and shall have characteristics consistent with the long term life of the fill. *(Natural Resources Commission; 312 IAC 25-6-102; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3566, eff Dec 1, 2001)*

### **312 IAC 25-6-103      Underground mining; coal processing waste; burning**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 103. Coal processing waste fires shall be extinguished by the person who conducts the mining activities, and in accordance with applicable Mine Safety and Health Administration (MSHA) standards. *(Natural Resources Commission; 312 IAC 25-6-103; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3566, eff Dec 1, 2001)*

**312 IAC 25-6-104      Underground mining; coal processing waste; return to underground workings**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 104. Coal processing waste may be returned to underground mine workings only in accordance with the waste disposal program approved by the director under 312 IAC 25-4-90 and 312 IAC 25-4-96. (*Natural Resources Commission; 312 IAC 25-6-104; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3566, eff Dec 1, 2001*)

**312 IAC 25-6-105      Underground mining; disposal of noncoal wastes**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 105. (a) Noncoal wastes, including, but not limited to:

- (1) grease;
- (2) lubricants;
- (3) paints;
- (4) flammable liquids;
- (5) garbage;
- (6) abandoned mining machinery;
- (7) timber; and
- (8) other combustibles generated during underground mining activities;

shall be placed and stored in a controlled manner in a designated portion of the permit area. Placement and storage shall ensure that leachate and surface run-off do not degrade surface or ground water, fires are prevented, and the area remains stable and suitable for reclamation and revegetation.

(b) Final disposal of noncoal wastes shall be in a designated disposal site in the permit area. Wastes shall be routinely compacted and covered to prevent combustion and wind-borne waste. When disposal is completed, a minimum of two (2) feet of soil cover shall be placed over the site, slopes stabilized, and revegetation accomplished in accordance with sections 115 through 122 of this rule. Operation of the disposal site shall be conducted in accordance with all local, Indiana, and federal requirements.

(c) At no time shall any solid waste material be deposited at refuse embankments or impoundment sites, nor shall any excavation for solid waste disposal be located within eight (8) feet of any coal outcrop or coal storage area. (*Natural Resources Commission; 312 IAC 25-6-105; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3566, eff Dec 1, 2001*)

**312 IAC 25-6-106      Underground mining; coal mine waste; refuse piles; dams and embankments; general requirements**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 106. (a) A new or existing impounding structure constructed of coal mine waste or intended to impound coal mine waste must comply with section 99 of this rule, this section, and sections 107 through 108 of this rule.

(b) Coal mine waste shall not be used for construction of impounding structures unless the permittee demonstrates to the director that the stability of such a structure achieves each of the following:

- (1) Conforms to the requirements of this rule.
- (2) The use of coal mine waste will not have a detrimental effect on downstream water quality or the environment due to acid seepage through the impounding structure. The stability of the structure and the potential impact of acid mine seepage through the impounding structure shall be discussed in detail in the design plan submitted in the reclamation plan under 312 IAC 25-4-87.

(c) An impounding structure constructed of coal mine waste or intended to impound coal mine waste must be designed, constructed, and maintained under the applicable portions of section 84 of this rule. The impounding structure cannot be retained permanently as part of the approved postmining land use.

(d) Each impounding structure constructed of coal mine waste or intended to impound coal mine waste that meets the criteria

of 30 CFR 77.216(a) shall have:

- (1) sufficient spillway capacity to safely pass;
- (2) adequate storage capacity to safely contain; or
- (3) a combination of storage capacity and spillway capacity to safely control;

the probable maximum precipitation of a six (6) hour precipitation event or greater event as specified by the director. Spillways and outlet works shall be designed to provide adequate protection against erosion and corrosion. Inlets shall be protected against blockage.

(e) Run-off from areas above the disposal facility or run-off from the surface of the facility that may cause instability or erosion of the impounding structure shall be diverted into stabilized diversion channels designed to satisfy sections 78 and 79 of this rule and to safely pass run-off from the one hundred (100) year, six (6) hour design precipitation event.

(f) As used in this section, "impounding structure" does not include incised impoundments or impoundments plugged by massive earthen fills, as determined by the Mine Safety and Health Administration, that would be treated as incised impoundments under good engineering practices.

(g) For an impounding structure constructed of coal mine waste or impounding coal mine waste, at least ninety percent (90%) of the water stored during the design precipitation event shall be removed within the ten (10) day period following the design precipitation event. (*Natural Resources Commission; 312 IAC 25-6-106; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3567, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182*)

### **312 IAC 25-6-107      Underground mining; coal processing waste; dams and embankments; site preparation**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 107. The following requirements apply before coal processing waste is placed at a dam or embankment site:

(1) All trees, shrubs, grasses, and other organic material shall be cleared and grubbed from the site, and all combustibles shall be removed and stockpiled in accordance with sections 70 through 106 of this rule, this section, and sections 108 through 132 of this rule.

(2) Surface drainage that may cause erosion to the embankment area or the embankment features, whether during construction or after completion, shall be diverted away from the embankment by diversion ditches that comply with section 78 of this rule. Adequate outlets for discharge from these diversions shall be in accordance with section 82 of this rule. Diversions that are designed to divert drainage from the upstream area away from the impoundment area shall be designed to protect public health and safety and the environment. The diversion shall be maintained to prevent blockage, and the discharge shall be in accordance with section 82 of this rule. Sediment control measures shall be provided at the discharge of each diversion ditch before entry into natural watercourses in accordance with sections 76 through 81 of this rule.

(*Natural Resources Commission; 312 IAC 25-6-107; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3567, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182*)

### **312 IAC 25-6-108      Underground mining; coal mine waste; refuse piles; dams and embankments; design and construction**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 108. (a) The design of each dam and embankment constructed of coal mine waste shall comply with the applicable requirements of sections 84 and 99 of this rule, modified as follows:

(1) The design freeboard between the lowest point on the embankment crest and the maximum water elevation shall be at least three (3) feet.

(2) The dam and embankment shall have a minimum safety factor of one and five-tenths (1.5) for the partial pool with steady seepage saturation conditions, and the seismic safety factor shall be at least one and two-tenths (1.2).

(3) The dam or embankment foundation and abutments shall be designed to be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed to determine the safety factors of the dam or embankment for all loading conditions appearing in subdivision (2).

(b) Spillways and outlet works shall be designed to provide adequate protection against erosion and corrosion. Inlets shall be protected against blockage.

(c) Impounding structures constructed of or impounding coal mine waste shall be designed so that at least ninety percent (90%) of the water stored during the design precipitation event can be removed within a ten (10) day period. (*Natural Resources Commission; 312 IAC 25-6-108; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3568, eff Dec 1, 2001*)

**312 IAC 25-6-109      Underground mining; protection of fish, wildlife, and related environmental values**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 109. (a) Any person conducting underground mining activities shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the activities on fish, wildlife, and their habitats and achieve enhancement of those resources where practicable.

(b) No surface mining activity shall be conducted which is likely to jeopardize the continued existence of endangered or threatened species listed by the secretary or which is likely to result in the destruction or adverse modification of designated critical habitats of these species in violation of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.). The permittee shall promptly report to the director any endangered or threatened species which is listed by the state or federal government within the permit area of which the permittee becomes aware. Upon notification, the director shall consult with the United States Fish and Wildlife Service and the division of fish and wildlife of the department. After the consultation, the director shall determine whether, or under what conditions, the permittee may proceed.

(c) A person who conducts surface mining activities shall ensure that the design and construction of electric power lines and other transmission facilities used for or incidental to the surface mining activities on the permit areas are in accordance with the guidelines set forth in Environmental Criteria for Electric Transmission System (USDI, USDA, (1970)). Distribution lines shall be designed and constructed in accordance with REA Bulletin 61-10, Powerline Contacts by Eagles and Other Large Birds. For informational purposes, these two (2) documents are available at the OSM Office, United States Department of the Interior, South Interior Building, Washington, D.C., 20240, at each OSM regional office, district office, and field office, and at the central and field office of the division of reclamation.

(d) No surface mining activity shall be conducted in a manner that would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs. The permittee shall promptly report to the director, any golden or bald eagle nest within the permit area of that the permittee becomes aware. Upon notification, the director shall consult with the United States Fish and Wildlife Service and the division of fish and wildlife of the department. After the consultation, the director shall determine whether, or under what conditions, the permittee may proceed.

(e) Each person who conducts surface mining activities shall, to the extent possible using the best technology currently available, establish the following:

(1) Locate and operate haul and access roads so as to avoid or minimize impacts to important fish and wildlife species or other species protected by state or federal law.

(2) Fence, cover, or use other appropriate methods to exclude wildlife from ponds that contain hazardous concentration of toxic-forming materials.

(3) Restore, enhance, where practicable, or avoid disturbance to habitats of unusually high value for fish and wildlife.

(4) Restore, enhance, where practicable, or maintain natural riparian vegetation on the banks of streams, lakes, and other wetlands areas.

(5) Afford protection to aquatic communities by avoiding stream channels as required in sections 91 and 125 of this rule or restoring stream channels as required in section 79 of this rule.

(6) Not use persistent pesticides on the area during surface mining and reclamation activities, unless approved by the director.

(7) To the extent possible, prevent, control, and suppress range, forest, and coal fires that are not approved by the director as part of a management plan.

(8) If fish and wildlife habitat is to be a primary or secondary postmining land use, the operator shall, in addition to the requirements of sections 115 through 122 of this rule, establish the following:

(A) Select plant species to be used on reclaimed areas, based on the following criteria:

(i) Their proven nutritional value for fish and wildlife.

(ii) Their uses as cover for fish and wildlife.

(iii) Their ability to support and enhance fish and wildlife habitat after release of bonds.

(B) Distribute plant groupings to maximize benefit to fish and wildlife. Plants should be grouped and distributed to optimize edge effect, cover, and other benefits for fish and wildlife.

(9) Where cropland is to be the alternative postmining land use on lands diverted from a fish and wildlife premining land use and where appropriate for wildlife and crop management practices, intersperse the fields with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals. Wetlands shall be preserved or created rather than drained or otherwise permanently abolished.

(10) Where the primary land use is to be residential, public service, or industrial, intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs, and trees useful as food and cover for birds and small animals, unless the greenbelts are inconsistent with the approved postmining land use.

*(Natural Resources Commission; 312 IAC 25-6-109; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3568, eff Dec 1, 2001)*

### **312 IAC 25-6-110      Underground mining; slides and other damage**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 110. At any time a slide occurs that may have a potential adverse effect on public property, health, safety, or the environment, the person who conducts the mining activities shall notify the director by the fastest available means and comply with any remedial measures required by the director. *(Natural Resources Commission; 312 IAC 25-6-110; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3569, eff Dec 1, 2001)*

### **312 IAC 25-6-111      Underground mining; contemporaneous reclamation**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 111. Reclamation efforts, including, but not limited to:

- (1) backfilling;
- (2) grading;
- (3) topsoil replacement; and
- (4) revegetation;

of all areas affected by surface operations shall occur as contemporaneously as practicable with mining operations. *(Natural Resources Commission; 312 IAC 25-6-111; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3569, eff Dec 1, 2001)*

### **312 IAC 25-6-112      Underground mining; backfilling and grading; general requirements**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 112. (a) Disturbed areas shall be backfilled and graded to include the following:

- (1) Achieve approximate original contour, except as provided in subsection (k).
- (2) Eliminate all highwalls, spoil piles, and depressions, except as provided in subsections (h) and (k)(2).
- (3) Achieve a postmining slope that does not exceed 3:1 (h:v) or the lesser slope needed to achieve a minimum long term static safety factor of one and three-tenths (1.3) and to prevent slides.
- (4) Minimize erosion and water pollution both on and off the site.
- (5) Support the approved postmining land use.

(b) Spoil, except excess spoil disposed under subsection (d) or section 98 of this rule, shall be returned to the mined-out surface area.

(c) Spoil and waste materials shall be compacted where advisable to ensure stability or to prevent leaching of toxic materials.

(d) Spoil may be placed on the bonded, permitted area outside the mined-out surface area in nonsteep slope areas to restore the approximate original contour by blending the spoil into the surrounding terrain if the following requirements are met:

- (1) All vegetative and organic material is removed from the area.
- (2) The topsoil on the area is removed, segregated, stored, and redistributed under section 75 of this rule.
- (3) The spoil is backfilled and graded on the area under this section.
- (e) Disposal of coal processing waste and underground development waste in the mined-out surface area shall be under sections 99 and 101 of this rule, except that a long term static safety factor of one and three-tenths (1.3) shall be achieved.
- (f) Exposed coal seams, acid-and toxic-forming materials, and combustible materials exposed, used, or produced during mining shall be adequately covered with nontoxic and noncombustible earthen material, or treated, to control the impact on surface and ground water under section 76 of this rule to prevent sustained combustion and to minimize adverse effects on plant growth and the approved postmining land use.
- (g) The director may approve as a term of a permit the construction of cut-and-fill terraces if the permittee demonstrates:
  - (1) that the terraces are needed to conserve soil moisture, ensure stability, and control erosion on final-graded slopes if the terraces are compatible with the approved postmining land use; or
  - (2) specialized grading, foundation conditions, or roads are required for the approved postmining land use. Final grading under this subdivision may include a terrace of adequate width to ensure the safety, stability, and erosion control necessary to implement the postmining land use plan.
- (h) Small depressions (which do not interfere with the approved postmining land use) may be constructed if needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation.
- (i) Permanent impoundments may remain if authorized by the director under section 84 of this rule.
- (j) Preparation of final-graded surfaces shall be conducted to minimize erosion and to provide a surface for replacement of topsoil that will minimize slippage.
- (k) The postmining slope may vary from the approximate original contour if:
  - (1) approval is obtained from the director in the approved permit application for a variance from approximate original contour requirements under 312 IAC 25-4-101; or
  - (2) incomplete elimination of highwalls in previously disturbed areas is approved under subsection (l).
- (l) If sufficient spoil is not otherwise available to comply with this section, the director may approve as a term of a permit a modification of the requirements of this section under section 144(e) of this rule for underground mining operations that affect previously mined lands that:
  - (1) contain a preexisting highwall; and
  - (2) have not been restored to the standards of this section.

*(Natural Resources Commission; 312 IAC 25-6-112; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3569, eff Dec 1, 2001)*

**312 IAC 25-6-113      Underground mining; stabilization of surface areas**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 113. (a) All exposed surface areas shall be protected and stabilized to effectively control erosion and air pollution attendant to erosion.

(b) When rills and gullies form in regraded, topsoiled areas and the rills and gullies disrupt the approved postmining land use, disrupt the reestablishment of vegetative cover or cause or contribute to a violation of applicable effluent limitations and the rill or gully is not vegetated or otherwise stabilized, the rill or gully shall be:

- (1) filled, regraded, or otherwise stabilized;
- (2) topsoil shall be replaced; and
- (3) the area shall be reseeded or replanted.

*(Natural Resources Commission; 312 IAC 25-6-113; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3570, eff Dec 1, 2001)*

**312 IAC 25-6-114      Underground mining; backfilling and grading; previously mined areas**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 114. (a) A remining operation on a site that contains a preexisting highwall must comply with section 112 of this rule,

except as provided under this section.

(b) Section 112(a)(2) of this rule does not apply to a remining operation if the volume of reasonably available spoil is demonstrated, in writing, to the director to be insufficient to completely backfill the reaffected or enlarged highwall. The highwall must be eliminated to the extent technically practicable as follows:

- (1) Spoil generated by the remining operation and any other reasonably available spoil shall be used to backfill the area. Reasonably available spoil in the immediate vicinity of the remining operation shall be included within the permit area.
- (2) The backfill shall be graded to a slope which is compatible with the approved postmining land use and that provides adequate drainage and long term stability.
- (3) A highwall remnant shall be stable and shall not pose a hazard to the public health and safety or to the environment. The operator shall demonstrate to the director that the highwall remnant is stable.
- (4) Spoil placed on the outslope during previous mining operations shall not be disturbed if the disturbance will cause instability of the remaining spoil or will otherwise increase hazards to public health, safety, or the environment.

*(Natural Resources Commission; 312 IAC 25-6-114; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3570, eff Dec 1, 2001)*

### **312 IAC 25-6-115      Underground mining; revegetation; general requirements**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 115. (a) Each person who conducts underground mining activities shall establish on all areas disturbed by surface operations and facilities a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area that supports the approved postmining land use.

(b) All revegetation shall be carried out in a manner that encourages a prompt vegetative cover and recovery of productivity levels compatible with the approved postmining land use, such that:

- (1) vegetative cover shall be capable of stabilizing the soil surface from erosion; and
- (2) if both the premining and postmining land uses are cropland, planting of the crops normally grown will meet the requirements of subsection (a).

*(Natural Resources Commission; 312 IAC 25-6-115; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3571, eff Dec 1, 2001)*

### **312 IAC 25-6-116      Underground mining; revegetation; use of introduced species**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 116. (a) Introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan if approved by the director under the following conditions:

- (1) The species are compatible with the plant and animal species of the region.
- (2) The species meet the requirements of applicable Indiana seed or introduced species statutes and are not poisonous or noxious.

(b) As used in this section, "native species" means a species previously introduced and adapted to the state in the general vicinity of the coal producing region. *(Natural Resources Commission; 312 IAC 25-6-116; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3571, eff Dec 1, 2001)*

### **312 IAC 25-6-117      Underground mining; revegetation; timing**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 117. Seeding and planting of disturbed areas shall be conducted during the first normal period for favorable planting conditions after final soil preparation. The normal period for favorable planting shall be that planting time generally accepted locally for the type of plant materials selected. When necessary to effectively control erosion, any disturbed area shall be seeded and planted, as contemporaneously as practicable with the completion of backfilling and grading, with a temporary cover of small grains, grasses, or legumes until a permanent cover is established. *(Natural Resources Commission; 312 IAC 25-6-117; filed Jun 21, 2001,*

2:53 p.m.: 24 IR 3571, eff Dec 1, 2001)

**312 IAC 25-6-118      Underground mining; revegetation; mulching and soil stabilizing**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 118. (a) Suitable mulch or other necessary soil stabilizing practices shall be used on all regraded and topsoiled areas to do any of the following:

- (1) Control erosion.
- (2) Promote germination of seeds.
- (3) Increase the moisture retention capacity of the soil.

The director may, on a case-by-case basis, suspend the requirement for mulch if the permittee can demonstrate that alternative procedures will achieve the requirements of sections 120 through 122 of this rule and do not cause or contribute to air or water pollution.

(b) Mulches shall be mechanically or chemically anchored to the soil surface to assure effective protection of the soil and vegetation when required by the director.

(c) Annual grasses and grains may be used alone, as in situ mulch, or in conjunction with another mulch, when the director determines that they will provide adequate soil erosion control and will later be replaced by perennial species approved for the postmining land use.

(d) Chemical soil stabilizers alone, or in combination with appropriate mulches, may be used in conjunction with vegetative covers approved for the postmining land use. (*Natural Resources Commission; 312 IAC 25-6-118; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3571, eff Dec 1, 2001*)

**312 IAC 25-6-119      Underground mining; revegetation; grazing**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 119. When the approved postmining land use is pasture land, the reclaimed land may be used for livestock grazing, if approved by the director. (*Natural Resources Commission; 312 IAC 25-6-119; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3572, eff Dec 1, 2001*)

**312 IAC 25-6-120      Underground mining; revegetation; standards for success for nonprime farmland**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 120. (a) Success of revegetation is judged on the following:

- (1) The effectiveness of the vegetation for the approved postmining land use.
- (2) The extent of cover compared to the cover occurring in natural vegetation in the area.
- (3) The general requirements of section 115 of this rule.

(b) Ground cover, production, and stocking are satisfactory if they are not less than ninety percent (90%) of the success standard as determined by the sampling techniques under section 121 of this rule and the statistical methodology under section 122 of this rule.

(c) Standards for success are applied under the approved postmining land use and must include the following conditions:

(1) For a previously mined area that was not reclaimed under sections 1 through 119 of this rule, this section, and sections 121 through 148 of this rule, the ground cover of living plants shall be as follows:

- (A) Not less than can be supported by the best available topsoil or other suitable material in the reaffected area.
- (B) Not less than the cover existing before redisturbance.
- (C) Adequate to control erosion.

(2) For an area to be developed for an industrial/commercial or a residential use less than two (2) years after regrading is completed, the ground cover of living plants shall not be less than what is required to control erosion.



(3) For pastureland, the ground cover success standard shall be one hundred percent (100%). In addition, the production of living plants on the revegetated area shall be equal to one (1) of the following:

- (A) An approved reference area.
- (B) Current Natural Resources Conservation Service predicted yield by soil map unit. If this method is used, the standard for success shall be a weighted average of the predicted yields for each unmined soil type that existed on the permit area at the time the permit was issued.
- (C) A target yield determined by the following formula:

$$\text{Target Yield} = \text{NRCS Target Yield H (CCA/10 Year CA)}$$

Where: NRCS Target Yield = The average yield per acre, as predicted by the Natural Resources Conservation Service, for the crop and the soil map units being evaluated. The most current yield information at the time of permit issuance shall be used and shall be contained in the appropriate sections of the permit application.

CCA = The county average for the crop for the year being evaluated as reported by the United States Department of Agriculture crop reporting service, the Indiana Agricultural Statistics Service.

10 Year CA = The 10 year Indiana Agricultural Statistics Service county average, consisting of the year being evaluated and the 9 preceding years.

(D) Other methods approved by the director.

(E) The method for establishing the standard, once selected, may not be modified without the approval of the director.

(4) For an area to be developed as a shelter belt or for a fish and wildlife habitat, recreation, or forestry land use, the success of vegetation is determined on the basis of tree, shrub, or half-shrub stocking and ground cover. The area seeded to a ground cover is not acceptable unless the director determines the ground cover is adequate to control erosion. Stocking rates are those in the approved permit reclamation plan and are not less than the following:

- (A) Four hundred fifty (450) plantings per acre for a forestry use.
- (B) A rate appropriate to support a shelter belt or a land use (other than forestry) described in this subsection. The rate established under this clause may be adjusted for particular areas within a shelter belt or other land use in order to support a diverse wildlife habitat if the adjusted rate is approved in the plan of reclamation and will not result in erosion.

(5) For an area to be used as cropland, crop production on the revegetated area must be at least equal to one (1) of the following:

- (A) An approved reference area.
- (B) Current Natural Resources Conservation Service predicted yield by soil map unit. If this method is used, the standard for success shall be a weighted average of the predicted yields for each unmined soil type that existed on the permit area at the time the permit was issued.
- (C) A target yield determined by the following formula:

$$\text{Target Yield} = \text{CCA} \times (\text{NRCSP}/\text{NRCSC})$$

Where: CCA = The county average for the crop for the year being evaluated as reported by the United States Department of Agriculture crop reporting service, the Indiana Agricultural Statistics Service.

NRCSP = The weighted average of the current Natural Resources Conservation Service predicted yield for each croppable, unmined soil that existed on the permit area at the time the permit was issued.

NRCSC = The weighted average of the current Natural Resources Conservation Service predicted yield for each croppable, unmined soil that is shown to exist in the county on the most current county soil survey.

A croppable soil is any soil that the Natural Resources Conservation Service has defined as being in capability Class I, II, III, or IV.

(D) Other methods approved by the director.

(E) The method for establishing the standard, once selected, may not be modified without the approval of the director.

(6) A crop grown to demonstrate satisfaction of the requirements of subdivision (5) must be one (1) or more of the crops listed in 312 IAC 25-1-33 and as specified in the plan of reclamation. An adjustment to predicted crop yields may be made according to accepted agronomic practices, after consultation with the Natural Resources Conservation Service or other sources approved by the director for factors, including disease, weather, tillage management, pests, and seed or plant selection.

(7) The aggregate of the barren areas within an area under evaluation must not exceed five percent (5%) of the area.

Revegetation is not successful unless each barren area within an area under evaluation is as follows:

- (A) Smaller than seven hundred fifty (750) square feet.
- (B) Completely surrounded by desirable vegetation.
- (C) In compliance with sections 75 and 112 of this rule.

(d) A single reference area may be used for more than one (1) permit area if the requirements of this subsection are met with respect to each permit area. A reference area used to establish success standards under this section must meet the following requirements:

(1) If the area to be represented contains more than fifty (50) acres, the reference area shall contain at least five (5) acres unless the director approves a smaller area. If the area to be represented contains less than fifty (50) acres, the reference area shall be the greater of:

- (A) ten percent (10%) of the area to be represented; or
- (B) one (1) acre.

(2) Each reference area shall be representative of the geology, soils, slopes, and vegetation of the area to be represented.

(3) Management of the reference area shall be identical to the area to be represented.

(4) Each reference area must be located within twenty (20) miles of the area to be represented.

(5) Right-of-entry on the reference area for the authorized representatives of the director must be secured by written agreement or consent for the entire period in which the reference area will be used.

(e) In determining the period of responsibility under 310 IAC 12-5-7, the director may approve selective husbandry practices (except for augmented seeding, fertilization, or irrigation) without extending the period of responsibility for revegetation success and bond liability if:

- (1) the selective husbandry practices can be expected to continue as part of the postmining land use; or
- (2) discontinuance of the practices after the liability period will not reduce the probability of permanent revegetation success.

(f) Selective husbandry practices that may be approved under subsection (e) are normal conservation practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area and may include the following:

- (1) Disease, pest, and vermin control.
- (2) Repair of rills and gullies.
- (3) Pruning, reseeding, or transplanting specifically necessitated by these practices.

(g) The success standards identified in subsection (c) shall be met during the growing seasons of any two (2) years of the responsibility period, except the first year, for cropland or pastureland. The success standards for any other land use are measured by the last year of the responsibility period. (*Natural Resources Commission; 312 IAC 25-6-120; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3572, eff Dec 1, 2001*)

### **312 IAC 25-6-121      Underground mining; revegetation; sampling techniques**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 121. (a) Success of revegetation is evaluated according to the standards as set forth in section 120 of this rule and (if a measurable success standard applies) using sampling techniques set forth in this section or that:

(1) have a ninety percent (90%) statistical confidence interval (in other words, a one (1) sided test with a ten-hundredths (0.10) alpha error); and

(2) are approved by the director.

(b) The following methods may be used to evaluate ground cover:

(1) The percentage of ground cover shall be assessed within one (1) square foot units randomly located in the area under evaluation. Each unit shall be divided into one hundred (100) equal parts to form a grid. The percentage of ground cover within each unit is equal to the number of parts that contain vegetation or litter. The minimum number of observations for the area under evaluation and methods of analysis shall be determined under section 122 of this rule.

(2) The percentage of ground cover shall be assessed by determining the number of points at one (1) foot intervals that intersect ground cover along one hundred (100) foot lines randomly located in the area under evaluation. A point shall be considered as intersecting ground cover when the location immediately under the point contains either the aerial parts of the

vegetation or litter that is produced naturally on-site. The percentage of vegetative ground cover assessed for each line is an individual observation. The minimum number of observations for the area under evaluation and the methods of analysis are determined under section 122 of this rule.

(c) The following methods may be used to evaluate the production of living plants on cropland used for hay and on pastureland:

(1) With respect to a whole field harvest, all vegetation under evaluation shall be cut, adequately cured under acceptable agronomic practices, and baled. The total number of bales produced per cutting from the area under evaluation shall be determined. The weight of individual bales randomly selected from the area under evaluation shall be determined. The weight of each bale shall be considered an individual observation for the purposes of section 122 of this rule. The minimum number of bales to be weighed shall be determined using the following table:

Size of Area under Evaluation (Acres)	Minimum Number of Small Bales (Less than 100 pounds)	Minimum Number of Large Bales (At least 100 pounds)
0-39	10	4
40-279	15	6
280-639	20	10

For areas larger than six hundred forty (640) acres, one (1) additional bale is required for each additional thirty-five (35) acres. The adequacy of the sample and the mean weight of the bales shall be determined using the methods set forth in section 122(c) and 122(e) of this rule. The production of the area under evaluation shall be determined using the following formula:

$$P = (X \times N_B) (A \times 2,000)$$

Where: P = Production of area (tons per acre).

X = Mean weight for weight of bale (pounds per bale).

N = Total number of bales produced.

A = Size of area under evaluation (acres).

(2) With respect to a test plot (an area that, due to soils, topography, age, management, locality, and any other factor that affects production, can be expected to produce the same yield as the area being evaluated), the director shall determine whether a test plot is representative of the evaluated area. Test plots collectively shall be at least ten percent (10%) of the area represented, unless the director approves a smaller percentage. No test plot shall be less than one (1) acre. The test plot must be harvested independently of the surrounding area or, if harvested at the same time, records must be maintained by the permittee that provide a measurement of the yield of the test plot that is separate and distinct from the surrounding area. The entire area being evaluated must be in permanent vegetative cover equal to the approved success standard as identified in section 120(c)(3) of this rule. The location of a test plot shall be established after consultation with the director.

(3) With respect to yield estimates from clippings, the vegetation growing in one (1) yard squares shall be randomly located in the area under evaluation, clipped, adequately cured under acceptable agronomic practices, and weighed to determine the production from living plants. The vegetation shall be clipped to leave at least one (1) node on the stem to provide for regeneration of foliage. If more than one (1) cutting is necessary to prove the production of the area under evaluation, all additional cuttings must come from the same selected squares unless the entire field is mowed. New squares may be randomly located each year. The production of the area under evaluation (expressed as tons per acre) shall be extrapolated from the clippings obtained from each individual square. For the purposes of section 122 of this rule, the extrapolated production from each square shall be considered an individual observation. The minimum number of observations for the area under evaluation and methods for analysis shall be determined under section 122 of this rule.

(d) The following methods may be used to evaluate the production of living plants on cropland for crops other than hay:

(1) With respect to a whole field harvest, all vegetation under evaluation shall be harvested and the yield obtained. Each yield shall be adjusted for moisture content and certified as to accuracy. Each yield shall be documented by presenting weigh tickets from a grain elevator or by other means acceptable to the director.

(2) With respect to a test plot, as defined under subsection (c)(2), the director shall determine whether a test plot is representative of the evaluated area. The yield shall be adjusted for moisture content. Test plots collectively shall be at least ten percent (10%) of the area to be represented, unless the director approves a smaller area, but not less than one (1) acre. The test plot must be harvested independently of the surrounding area, or, if harvested at the same time, records must be maintained by the permittee which provide a measurement of the yield of the test plot that is separate and distinct from the surrounding area. The entire area being evaluated must be in permanent vegetation or must be used for crop production as

provided in the plan of reclamation. The portion in permanent vegetation must have a ground cover equal to the approved success standard as identified in section 120(c)(3) of this rule. The location of a test plot shall be established after consultation with the director.

(3) Yield estimates for corn and soybean grain counts shall be counted under methods used by one (1) of the following:

- (A) Purdue University.
- (B) University of Illinois.
- (C) Another institution approved by the director.

(e) This method may be used to evaluate stocking or planting on an area developed as fish and wildlife habitat recreation, forest, or shelter belt. Each acceptable tree, shrub, and half-shrub shall be counted that is located within a circle formed by a twenty (20) foot radius centered on a randomly selected point. Each area counted is an individual observation for purposes of section 122 of this rule. The sufficiency of the number of observations shall be determined, and the statistical analysis of the results shall be performed under section 122 of this rule. A tree, shrub, or half-shrub is counted if the species:

- (1) is designated in the approved reclamation plan;
- (2) is alive and healthy; and
- (3) has been in place for at least two (2) growing seasons, with at least eighty percent (80%) of the species counted having been in place for at least three (3) growing seasons.

*(Natural Resources Commission; 312 IAC 25-6-121; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3574, eff Dec 1, 2001)*

**312 IAC 25-6-122      Underground mining; revegetation; statistical methodology**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 122. (a) The methods set forth in this section are used to evaluate the success of revegetation under section 120 of this rule using the sampling techniques under section 121 of this rule.

(b) The minimum number of observations for the area under evaluation shall be determined as provided under this subsection as follows:

(1) Except as provided in subdivisions (2) through (3), the following table is used to determine the required minimum number of observations:

Size of Area Under Evaluation (In Acres)	Crop	Minimum Number of Observations
	Corn	
0-39		8
40-279		12
280-639		16
640 or more		2
	Soybeans	
0-39		10
40-279		12
280-639		16
640 or more		26
	Wheat and Oats	
0-39		6
40-279		8
280-639		10
640 or more		14
	Sorghum	
0-39		10
40-279		16
280-639		28
640 or more		40

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Mixed Hay	
0–39	5
40–279	10
280–639	20
640 or more	20 + 1 additional sample for each 35 acres in excess of 640 acres

(2) If any two (2) observations vary by more than fifteen percent (15%), the director may increase the minimum number of observations required by the table in subdivision (1). If additional samples are required, the formula in subsection (e) shall be used to determine that the number of observations evaluated is sufficient.

(3) A statistical analysis of the result obtained from the area under evaluation shall be performed using the method from subsection (c) or (d). If there are apparent discrepancies between the submitted yield derived from random sampling and yield estimates derived by the director, the operator may be required to harvest specific fields in their entirety.

(c) Sampling results shall be analyzed and the following statistical parameters determined:

(1) Sample mean (average):

$$\bar{X} = (\sum X_i) \div N$$

Where:  $\sum X_i$  = The sum of the individual observation values.

N = The number of observations.

(2) Mean deviation squared:

$$M = \sum (X_i - \bar{X})^2$$

(3) Degree of freedom:

$$d = N - 1$$

(4) Sample standard deviation:

$$s = \sqrt{M \div N}$$

(5) t-value:

$$t = (T - \bar{X}) \div (s \div \sqrt{d})$$

Where: T = desired target yield.

The calculated t-value is compared with the value associated with the appropriate degree of freedom (d) in the following table to determine if the standard has been met. The calculated t-value must be less than or equal to the t-value derived from the table to demonstrate that the actual yield has achieved the standard with a ninety percent (90%) or greater statistical confidence.

<u>Degree of Freedom</u>	<u>t-value</u>
1	3.078
2	1.886
3	1.638
4	1.533
5	1.476
6	1.440
7	1.415
8	1.397
9	1.383
10	1.372
11	1.363
12	1.356
13	1.350
14	1.345
15	1.341
16	1.337
17	1.333

18	1.330
19	1.328
20	1.325
21	1.323
22	1.321
23	1.319
24	1.318
25	1.316
26	1.315
27	1.314
28	1.313
29	1.311
30	1.310
40	1.303
60	1.296
120	1.289
∞	1.282

(d) Other statistical methods may be approved by the director.

(e) To determine if the number of samples is sufficient, the following formula will be used:

Number of samples required:

$$\left( \frac{16.4 \times s}{\bar{X}} \right)^2$$

Where: s = Sample standard deviation.

$\bar{X}$  = Mean.

The formula set forth in this subsection prescribes an interactive method in which the number of required samples is dependent upon the variation between the samples. Once a minimum number of samples is obtained, the appropriate information is substituted into this formula to determine if a sufficient number of samples were evaluated given the variation in the data. The collection of additional random samples, together with reapplication of the formula may, depending upon the overall consistency in observations, change the required number of samples as data collection progresses. In general, fewer samples are required if there is greater consistency among samples. (*Natural Resources Commission; 312 IAC 25-6-122; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3575, eff Dec 1, 2001*)

### **312 IAC 25-6-123      Underground mining; subsidence control; general requirements**

Authority: IC 14-34-2-1

Affected: IC 14-34-15-6; 30 CFR 817.121

Sec. 123. (a) The permittee must do the following:

(1) Either adopt:

(A) measures consistent with known technology that prevent subsidence from causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of surface lands; or

(B) mining technology that provides for planned subsidence in a predictable and controlled manner.

(2) If a permittee employs mining technology that provides for planned subsidence in a predictable and controlled manner, the permittee must take necessary and prudent measures, consistent with the mining method employed, to minimize material damage to the extent technologically and economically feasible to noncommercial buildings and occupied residential dwellings and structures related thereto except that measures required to minimize material damage to such structures are not required if:

(A) the permittee has the written consent of their owners; or

(B) unless the anticipated damage would constitute a threat to health or safety, the costs of such measures exceed the

anticipated costs of repair.

- (3) Nothing in this subsection prohibits the standard method of room-and-pillar mining.
- (b) The permittee shall comply with all provisions of the approved subsidence control plan prepared under 312 IAC 25-4-91.
- (c) The permittee must do the following:
  - (1) Correct any material damage resulting from subsidence caused to surface lands, to the extent technologically and economically feasible by restoring the land to a condition capable of maintaining the value and reasonably foreseeable uses that it was capable of supporting before subsidence damage.
  - (2) Promptly repair, or compensate the owner for, material resulting from subsidence caused to any noncommercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. If the repair option is selected, the permittee must fully rehabilitate, restore, or replace the damaged structure. If compensation is selected, the permittee must compensate the owner of the damaged structure for the full amount of the decrease in value resulting from the subsidence-related damage. The permittee may provide compensation by the purchase, before mining, of a noncancelable premium-prepaid insurance policy.
  - (3) To the extent required under applicable provisions of Indiana law, either correct material damage resulting from subsidence caused to any structures or facilities not protected by subdivision (2) by repairing the damage or compensating the owner of the structures or facilities for the full amount of the decrease in value resulting from the subsidence. Repair of damage includes rehabilitation, restoration, or replacement of damaged structures or facilities. Compensation may be accomplished by the purchase before mining of a noncancelable premium-prepaid insurance policy.
  - (4) The following with regard to rebuttable presumption:
    - (A) If damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land, a rebuttable presumption exists that the permittee caused the damage. The presumption will normally apply to a thirty (30) degree angle of draw. The director may apply the presumption to a different angle of draw if the director makes a written finding that the different angle has a more reasonable basis than the thirty (30) degree angle of draw, based on geotechnical analysis of the factors affecting potential surface impacts of underground coal mining operations in Indiana.
    - (B) A permittee or permit applicant may request that the presumption apply to an angle of draw different from that established by this section. The director may approve application of the presumption to a site-specific angle of draw different than that contained in this section based on a site-specific analysis submitted by an applicant. To establish a site-specific angle of draw, an applicant must demonstrate and the director must determine in writing that the proposed angle of draw has a more reasonable basis than the standard set forth under this section, based on a site-specific geotechnical analysis of the potential surface impacts of the mining operation.
    - (C) If the permittee was denied access to the land or property for the purpose of conducting the presubsidence survey in accordance with 312 IAC 25-4-91(a), no rebuttable presumption will exist.
    - (D) The presumption will be rebutted if, for example, the evidence establishes that the damage:
      - (i) predated the mining in question;
      - (ii) was proximately caused by some other factor or factors and was not proximately caused by subsidence; or
      - (iii) occurred outside the surface area within which subsidence was actually caused by the mining in question.
    - (E) In any determination of whether damage to protected structures was caused by subsidence from underground mining, all relevant and reasonable available information will be made available to, and be considered by, the director.
- (5) When subsidence-related material damage to land, structures, or facilities protected under subdivisions (1) through (3) occurs, or when contamination, diminution, or interruption to a water supply protected under section 88 of this rule occurs, the director must require the permittee to obtain additional performance bond in the amount of the estimated cost of the repairs if the permittee will be repairing, or in the amount of the decrease in value if the permittee will be compensating the owner, or in the amount of the estimated cost to replace the protected water supply if the permittee will be replacing the water supply, until the repair, compensation, or replacement is completed. If repair, compensation, or replacement is completed within ninety (90) days of the occurrence of damage, no additional bond is required. The director may extend the ninety (90) day time frame, but not to exceed one (1) year, if the permittee demonstrates and the director finds in writing that subsidence is not complete, that not all probable subsidence-related material damage has occurred to lands or protected structures, or that not all reasonably anticipated changes have occurred affecting the protected water supply, and that therefore it would be unreasonable

to complete within ninety (90) days the repair of the subsidence-related material damage to lands or protected structures, or the replacement of protected water supply.

(d) Underground mining activities shall not be conducted beneath or adjacent to:

- (1) public buildings and facilities;
- (2) churches, schools, and hospitals; or
- (3) impoundments with a storage capacity of twenty (20) acre-feet or more, or bodies of water with a volume of twenty (20) acre-feet or more;

unless the subsidence control plan demonstrates that subsidence will not cause material damage to, or reduce the reasonably foreseeable use of, such features or facilities. If the director determines that it is necessary in order to minimize the potential for material damage to the features or facilities described in this subsection or to any aquifer or body of water that serves as a significant water source for any public water supply system, the director may limit the percentage of coal extracted under or adjacent thereto.

(e) If subsidence causes material damage to any of the features or facilities covered by subsection (d), the director may suspend mining under or adjacent to such features or facilities until the subsidence control plan is modified to ensure prevention of further material damage to such features or facilities.

(f) The director shall suspend underground mining activities:

- (1) under urbanized areas, cities, towns, and communities;
- (2) under and adjacent to industrial or commercial buildings, pipelines, major impoundments, or perennial streams; and
- (3) under any other location;

if imminent danger is found to inhabitants of urbanized areas, cities, towns, or communities or whenever required or authorized by IC 14-34-15-6.

(g) Within a schedule approved by the director, the permittee shall submit a detailed report of the underground workings as follows:

(1) The detailed report shall include maps and descriptions, as appropriate, of significant features of the underground mine, including the following:

- (A) The size, configuration, and approximate location of pillars and entries.
- (B) Extraction ratios.
- (C) Measures taken to prevent or minimize subsidence and related damage.
- (D) Areas of full extraction.
- (E) Areas of anticipated coal extraction during the next year.
- (F) Other information required by the director.

(2) Upon request of the operator, information submitted with the detailed report may be held as confidential in accordance with the requirements of 312 IAC 25-4-113.

(3) The map submitted under subdivision (1) shall be planned as a continuous map for use throughout the term of all mining operations conducted under the permit and all subsequent renewals thereof, so that areas mined each year may be added and identified on the map according to the year in which they were mined. The map shall be prepared by, or under the direction of, and certified by a qualified professional engineer or registered land surveyor with assistance from experts in related fields such as land surveying.

*(Natural Resources Commission; 312 IAC 25-6-123; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3577, eff Dec 1, 2001)*

### **312 IAC 25-6-124      Underground mining; subsidence control; public notice**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 124. At least six (6) months prior to mining, or within that period if approved by the director, the underground mine permittee shall mail a notification to all owners and occupants of surface property and structures above the underground workings, including operators of a pipeline. Copies of the notices shall be maintained at the mine office, or other location approved by the director, and shall be available for inspection by the director. The notification shall include, at a minimum, the following:

- (1) An identification of specific areas in which mining will take place.
- (2) Anticipated dates that specific areas will be undermined.
- (3) The location or locations where the permittee's subsidence control plan may be examined.



*(Natural Resources Commission; 312 IAC 25-6-124; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3578, eff Dec 1, 2001)*

**312 IAC 25-6-125      Underground mining; subsidence control; buffer zones**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 125. (a) Underground mining activities shall not be conducted beneath or adjacent to any perennial stream or impoundment having a storage volume of twenty (20) acre-feet or more unless the director, on the basis of detailed subsurface information, determines that subsidence will not cause material damage to streams, water bodies, and associated structures. If subsidence causes material damage, measures will be taken to the extent technologically feasible to correct the damage and to prevent additional subsidence from occurring.

(b) Underground mining activities beneath any aquifer that serves as a significant source of water supply to any public water systems shall be conducted so as to avoid disruption of the aquifer and consequent exchange of ground water between the aquifer and other strata. The director may prohibit mining in the vicinity of the aquifer or may limit the percentage of coal extraction to protect the aquifer and water supply.

(c) Underground mining activities may be conducted beneath or in close proximity to:

- (1) a church;
- (2) a school;
- (3) a hospital;
- (4) a courthouse;
- (5) a government office; or
- (6) another public building or facility;

only upon a finding by the director (made on the basis of detailed subsurface information contained in the approved permit) that the activities will not cause material damage to, or reduce the reasonable foreseeable use of, the public buildings or facilities.

(d) The director shall suspend underground coal mining under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, pipelines, major impoundments, or permanent streams if imminent danger is found to inhabitants of the urbanized areas, cities, towns, or communities.

(e) If subsidence causes material damage to a public building or facility described in subsection (c), the director may suspend mining under or adjacent to the public building or facility until the subsidence control plan is modified to ensure prevention of further material damage to the public building or facility.

(f) Within a schedule approved by the director in the approved permit, a permittee shall submit a detailed plan of the underground workings. The detailed plan shall include maps and descriptions, as appropriate, of significant features of the underground mine. The detailed plan shall include the size, configuration, and approximate location of pillars and entries, extraction ratios, measures taken to prevent or minimize subsidence and related damage, and areas of full extraction. Upon the request of the permittee, information submitted with the detailed plan shall be held as confidential. *(Natural Resources Commission; 312 IAC 25-6-125; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3579, eff Dec 1, 2001)*

**312 IAC 25-6-126      Underground mining; cessation of operation; temporary**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 126. (a) Each person who conducts underground mining activities shall effectively support and maintain all surface access openings to underground operations and secure surface facilities in areas in which there are no current operations, but in which operations are to be resumed under an approved permit. Temporary abandonment shall not relieve a person of his or her obligation to comply with any provision of the approved permit.

(b) Before temporary cessation of mining and reclamation operations for a period of thirty (30) days or more, or as soon as it is known that a temporary cessation will extend beyond thirty (30) days, persons who conduct underground mining activities shall submit to the director a notice of intention to cease or abandon mining and reclamation operations. This notice shall include a statement of the exact number of surface acres and the horizontal and vertical extent of subsurface strata which have been in the permit area prior to cessation or abandonment, the extent and kind of reclamation of surface area which have been accomplished,

and identification of the backfilling, regrading, revegetation, environmental monitoring, underground opening closures, and water treatment activities that will continue during the temporary cessation. (*Natural Resources Commission; 312 IAC 25-6-126; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3579, eff Dec 1, 2001*)

**312 IAC 25-6-127      Underground mining; cessation of operation; permanent**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 127. (a) Persons who cease underground mining activities permanently shall close or backfill or otherwise permanently reclaim all affected areas in accordance with this article and according to the permit approved by the director.

(b) All surface equipment, structures, or other facilities not required for continued underground mining activities and monitoring, unless approved by the director as suitable for the postmining land use or environmental monitoring, shall be removed and the affected lands reclaimed. (*Natural Resources Commission; 312 IAC 25-6-127; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3580, eff Dec 1, 2001*)

**312 IAC 25-6-128      Underground mining; postmining land use**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 128. (a) All affected areas shall be restored in a timely manner to:

- (1) conditions that are capable of supporting the uses which they were capable of supporting before any mining; or
- (2) higher or better uses achievable under criteria and procedures of this section.

(b) The premining uses of land to which the postmining land use is compared shall be those uses that the land previously supported, if the land had not been previously mined and had been properly managed. Determinations concerning land use may also consider the following:

- (1) The postmining land use for land that has been previously mined and not reclaimed shall be judged on the basis of the highest and best use that can be achieved.
- (2) The postmining land use for land that has received improper management shall be judged on the basis of the premining use of surrounding lands that have received proper management.
- (3) If the premining use of the land was changed within five (5) years of the beginning of mining, the comparison of postmining use to premining use shall include a comparison with the historic use of the land as well as its use immediately preceding mining.

(c) Prior to the release of lands from the permit area in accordance with 312 IAC 25-5-16 the permit area shall be restored, in a timely manner, either to conditions capable of supporting the uses they were capable of supporting before any mining or to conditions capable of supporting approved alternative land uses. Alternative land uses shall be approved by the director after consultation with the landowner or the land management agency having jurisdiction over the lands, if the following criteria are met:

- (1) The proposed postmining land use is compatible, with adjacent land use and where applicable, with existing local, Indiana, or federal (for federally controlled lands) land use policies and plans, a written statement of the views of the authorities with statutory responsibilities for land use policies and plans shall have been submitted to the director within sixty (60) days of notice by the director and before underground mining activities begin. Any required approval, including any necessary zoning or other changes required for the land use by local, Indiana, or federal (for federally controlled lands) land management agencies, is obtained prior to bond release.
- (2) Specific plans are prepared and submitted to the director that show the feasibility of the postmining land use that include a schedule showing how the proposed use will be developed and achieved within a reasonable time after mining and be sustained. The director may require appropriate demonstrations to show that the planned procedures are feasible, reasonable, and integrated with mining and reclamation, and that the plans will result in successful reclamation.
- (3) Provision of any necessary public facilities is ensured as evidenced by letters of commitment from parties other than the person who conducts underground mining activities, as appropriate, to provide the public facilities in a manner compatible with the plans submitted under 312 IAC 25-4-86. The letters shall be submitted to the director before underground mining activities begin.

(4) Specific and feasible plans are submitted to the director that show that financing and attainment and maintenance of the postmining land use are feasible.

(5) Plans for the postmining land uses are designed under the general supervision of a registered professional engineer, or other appropriate professionals, who will ensure that the plans conform to applicable accepted standards for adequate land stability, drainage, vegetative cover, and aesthetic design appropriate for the postmining use of the site.

(6) The proposed use or uses will neither present actual or probable hazard to public health or safety nor will they pose any actual or probable threat of water flow diminution or pollution.

(7) The use or uses will not involve unreasonable delays in reclamation.

(8) Necessary approval of measures to prevent or mitigate adverse effects on fish, wildlife, and related environmental values and threatened or endangered plants is obtained from the director and appropriate Indiana and federal fish and wildlife management agencies have been provided a sixty (60) day period in which to review the plan before mining activities begin.

(9) Proposals to change premining land uses of fish and wildlife habitat, forest land, hayland, or pasture to a postmining cropland use, where the cropland would require continuous maintenance, such as seeding, plowing, cultivation, fertilization, or other similar practices to be practicable or to comply with applicable federal, Indiana, and local laws, are reviewed by the director to ensure the following:

(A) There is sufficient water available and committed to maintain crop production.

(B) Topsoil quality and depth are sufficient to support the proposed use.

(10) Air and water quality resulting from the alternative postmining land use will not be impacted in a way that will have a greater adverse effect upon the land within the proposed permit area and adjacent areas than if the alternative postmining land use was not approved.

(d) The requirements of subsection (c) concerning plans and demonstrations to be made prior to the commencement of underground mining activities for alternate postmining land uses are not applicable if the demonstration under 312 IAC 25-4-86(c) is approved by the department. (*Natural Resources Commission; 312 IAC 25-6-128; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3580, eff Dec 1, 2001*)

### **312 IAC 25-6-129      Underground mining; roads**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 129. (a) Each road, as defined in 312 IAC 25-1-126, shall be classified as either a primary road or an ancillary road as follows:

(1) A primary road is any road that is:

(A) used for transporting coal or spoil;

(B) frequently used for access or other purposes for a period in excess of six (6) months; or

(C) to be retained for an approved postmining land use.

(2) An ancillary road is any road not classified as a primary road.

(b) Each road shall be located, designed, constructed, reconstructed, used, maintained, and reclaimed so as to accomplish each of the following:

(1) Control or prevent erosion.

(2) Control or prevent siltation, and the air pollution attendant to erosion, including road dust and dust occurring on other exposed surfaces by measures, such as the following:

(A) Vegetating.

(B) Watering.

(C) Using chemical or other dust suppressants.

(D) Otherwise stabilize all exposed surfaces in accordance with current, prudent engineering practices.

(3) Control or prevent damage to fish, wildlife, or their habitat and related environmental values.

(4) Control or prevent additional contributions of suspended solids to stream flow or run-off outside the permit area.

(5) Neither cause nor contribute to, directly or indirectly, the violation of Indiana or federal water quality standards applicable to receiving waters.

(6) Refrain from seriously altering the normal flow of water in streambeds or drainage channels.

(7) Prevent or control damage to public or private property, including the prevention or mitigation of adverse effects on lands within the boundaries of units of:

- (A) the National Park System;
- (B) the National Wildlife Refuge System;
- (C) the National System of Trails;
- (D) the National Wilderness Preservation System;
- (E) the Wild and Scenic Rivers System, including designated study rivers; and
- (F) the National Recreation Areas;

as designated by act of Congress.

(8) Use nonacid-forming and nontoxic-forming substances in road surfacing.

(c) To ensure environmental protection appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for each of the following in accordance with current, prudent engineering practices and any necessary design criteria established by the director:

- (1) Grade.
- (2) Width.
- (3) Surface materials.
- (4) Surface drainage control.
- (5) Culvert placement.
- (6) Culvert size.

(d) Roads shall be located as follows:

(1) No part of any road shall be located in the channel of an intermittent stream that drains a watershed of at least one (1) square mile or perennial stream unless specifically approved by the director in accordance with the applicable portions of sections 77 through 83 and 91 of this rule.

(2) Roads shall be located to minimize downstream sedimentation and flooding.

(e) Roads shall be maintained as follows:

(1) To meet the performance standards of this rule and any additional criteria specified by the director.

(2) Damages caused by a catastrophic event, such as a flood or earthquake, shall be repaired as soon as is practicable after the damage has occurred.

(f) All roads, insofar as possible, should be located on ridges or on the available flatter slopes to minimize erosion.

(g) Acid-forming and toxic-forming materials encountered in construction of roads approved as a postmining land use shall be handled in accordance with sections 83 and 112 of this rule.

(h) A road not to be retained under an approved postmining land use shall be reclaimed, as soon as practicable after it is no longer needed for mining and reclamation operations, in accordance with the approved reclamation plan, including the following conditions:

- (1) Closing the road to traffic.
- (2) Removing all bridges and culverts unless approved as part of the postmining land use.
- (3) Removing or otherwise disposing of road surfacing materials that are incompatible with the postmining land use and revegetation requirements.
- (4) Reshaping cut and fill slopes as necessary to be compatible with the postmining land use and to complement the natural drainage pattern of the surrounding terrain.
- (5) Protecting the natural drainage patterns by installing dikes or cross drains as necessary to control surface run-off and erosion.
- (6) Scarifying or ripping the roadbed, replacing topsoil or substitute material, and revegetating disturbed surfaces in accordance with sections 75 and 115 through 122 of this rule.

*(Natural Resources Commission; 312 IAC 25-6-129; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3581, eff Dec 1, 2001)*

### **312 IAC 25-6-130      Underground mining; primary roads Version a**

Authority: IC 14-34-2-1

Affected: IC 14-34

*NOTE: This version of section effective until superseded by the following version of this section, which is effective upon the*

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NATURAL RESOURCES COMMISSION

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*Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register.*

Sec. 130. Primary roads shall meet the requirements of section 129 of this rule and the additional requirements of this section as follows:

- (1) The construction or reconstruction of primary roads shall be certified in a report to the director by a qualified registered professional engineer with experience in the design and construction of roads. The report shall indicate that the primary road has been constructed or reconstructed as designed and in accordance with the approved plan.
- (2) Each primary road embankment shall have a minimum static factor of one and three-tenths (1.3) or a maximum slope not in excess of 3h:1v (thirty-three and one-third percent (33⅓%)).
- (3) The location of primary roads shall be established in accordance with the following provisions:
  - (A) To minimize erosion, a primary road shall be located, insofar as is practicable, on the most stable available surface.
  - (B) Fords of intermittent streams that drain a watershed of at least one (1) square mile or perennial streams by primary roads are prohibited unless they are specifically approved by the director as temporary routes during periods of road construction.
- (4) In accordance with the approved plan, drainage shall be controlled as follows:
  - (A) Each primary road shall be constructed or reconstructed, and maintained to have adequate drainage control, using structures such as, but not limited to, the following:
    - (i) Bridges.
    - (ii) Ditches.
    - (iii) Cross drains.
    - (iv) Ditch relief drains.
  - (B) The drainage control system shall be designed to safely pass the peak run-off from a ten (10) year, six (6) hour precipitation event, or greater event as specified by the director as follows:
    - (i) Drainage pipes and culverts shall be installed as designed and maintained in a free and operating condition and to prevent or control erosion at inlets and outlets.
    - (ii) Drainage ditches shall be constructed and maintained to prevent uncontrolled drainage over the road surface and embankment.
    - (iii) Culverts shall be installed and maintained to sustain each of the following:
      - (AA) Vertical soil pressure.
      - (BB) Passive resistance of the foundation.
      - (CC) The weight of vehicles using the road.
  - (C) Natural stream channels shall not be altered or relocated without the prior approval of the director in accordance with the applicable portions of sections 77 through 83 and 91 of this rule.
  - (D) Except as provided in subdivision (3)(B), structures for perennial or intermittent stream channel crossings shall be made using bridges, culverts, low water crossings, or other structures designed, constructed, and maintained using current, prudent engineering practices. The director shall ensure that low water crossings are designed, constructed, and maintained to prevent erosion of the structure or streambed and additional contributions of suspended solids to stream flow.
  - (E) Primary roads shall be surfaced with material approved by the director as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road.

*(Natural Resources Commission; 312 IAC 25-6-130; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3582, eff Dec 1, 2001)*

**312 IAC 25-6-130      Underground mining; primary roads Version b**

Authority: IC 14-34-2-1

Affected: IC 14-34

*NOTE: This version of section effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register. See also preceding version of this section, effective until superseded by this version of section.*

Sec. 130. Primary roads shall meet the requirements of section 129 of this rule and the additional requirements of this section as follows:

- (1) The construction or reconstruction of primary roads shall be certified in a report to the director by a qualified registered professional engineer with experience in the design and construction of roads. The report shall indicate that the primary road has been constructed or reconstructed as designed and in accordance with the approved plan.
- (2) Each primary road embankment shall be shown to have a minimum static factor of one and three-tenths (1.3) or shall be designed in compliance with the following design standards:
  - (A) The embankment foundation area shall be cleared of all organic material and the entire foundation surface shall be scarified.
  - (B) If the natural slope of the foundation as measured at a right angle to the roadway center line is steeper than 8h:1v, the embankment shall be benched into the existing slope beginning at the embankment toe and then filled with compacted level lifts.
  - (C) The embankment fill material shall be free of sod, large roots, and other large vegetative matter.
  - (D) The fill shall be brought up in horizontal layers of such thickness as required to facilitate compaction in accordance with prudent construction standards.
  - (E) The moisture content of the embankment shall be sufficient to secure proper compaction.
  - (F) The side slope of the embankment shall be no steeper than 2h:v1.
  - (G) Maximum fill height shall be twenty-five (25) feet as measured from the natural ground at the downstream toe to the top of the embankment.
  - (H) The embankment shall have a minimum top width of  $(h + 35)/5$ , where "h" is the embankment height as measured from natural ground at the downstream toe to the top of the embankment and shall be adequate for the intended use.
- (3) The location of primary roads shall be established in accordance with the following provisions:
  - (A) To minimize erosion, a primary road shall be located, insofar as is practicable, on the most stable available surface.
  - (B) Fords of intermittent streams that drain a watershed of at least one (1) square mile or perennial streams by primary roads are prohibited unless they are specifically approved by the director as temporary routes during periods of road construction.
- (4) In accordance with the approved plan, drainage shall be controlled as follows:
  - (A) Each primary road shall be constructed or reconstructed, and maintained to have adequate drainage control, using structures such as, but not limited to, the following:
    - (i) Bridges.
    - (ii) Ditches.
    - (iii) Cross drains.
    - (iv) Ditch relief drains.
  - (B) The drainage control system shall be designed to safely pass the peak run-off from a ten (10) year, six (6) hour precipitation event, or greater event as specified by the director as follows:
    - (i) Drainage pipes and culverts shall be installed as designed and maintained in a free and operating condition and to prevent or control erosion at inlets and outlets.
    - (ii) Drainage ditches shall be constructed and maintained to prevent uncontrolled drainage over the road surface and embankment.
    - (iii) Culverts shall be installed and maintained to sustain each of the following:
      - (AA) Vertical soil pressure.
      - (BB) Passive resistance of the foundation.
      - (CC) The weight of vehicles using the road.
  - (C) Natural stream channels shall not be altered or relocated without the prior approval of the director in accordance with the applicable portions of sections 77 through 83 and 91 of this rule.
  - (D) Except as provided in subdivision (3)(B), structures for perennial or intermittent stream channel crossings shall be made using bridges, culverts, low water crossings, or other structures designed, constructed, and maintained using current, prudent engineering practices. The director shall ensure that low water crossings are designed, constructed, and maintained to prevent erosion of the structure or streambed and additional contributions of suspended solids to stream flow.

(5) Primary roads shall be surfaced with material approved by the director as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road.

*(Natural Resources Commission; 312 IAC 25-6-130; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3582, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2467, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register)*

**312 IAC 25-6-131      Underground mining; other transportation facilities**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 131. Railroad loops, spurs, sidings, surface conveyor systems, chutes, aerial tramways, or other transport facilities shall be designed, constructed or reconstructed, maintained, and the area restored to do the following:

(1) Prevent, to the extent possible using the best technology currently available, the following:

(A) Damage to fish, wildlife, and related environmental values.

(B) Additional contributions of suspended solids to stream flow or run-off outside the permit area. Any such contributions shall not be in excess of limitations of Indiana or federal law.

(2) Control and minimize diminution or degradation of water quality and quantity.

(3) Control and minimize erosion and siltation.

(4) Control and minimize air pollution.

(5) Prevent damage to public or private property.

*(Natural Resources Commission; 312 IAC 25-6-131; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3583, eff Dec 1, 2001)*

**312 IAC 25-6-132      Underground mining; support facilities and utility installations**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 132. (a) Support facilities required for, or used incidentally to, the operation of the underground mine, including, but not limited to, mine buildings, coal loading facilities at or near the mine site, coal storage facilities, equipment storage facilities, fan buildings, hoist buildings, preparation plants, sheds, shops, and other buildings shall be designed, constructed or reconstructed, and located to prevent or control erosion and siltation, water pollution, and damage to public or private property. Support facilities shall be designed, constructed or reconstructed, maintained, and used in a manner that prevents, to the extent possible using the best technology currently available, the following:

(1) Damage to fish, wildlife, and related environmental values.

(2) Additional contributions of suspended solids to stream flow or run-off outside the permit area. Any such contributions shall not be in excess of limitations of Indiana or federal law.

(b) All underground mining activities shall be conducted in a manner that minimizes damage, destruction, or disruption of services provided by:

(1) oil, gas, and water wells;

(2) oil, gas, and coal slurry pipelines;

(3) railroads;

(4) electric and telephone lines; and

(5) water and sewage lines;

that pass over, under, or through the permit area, unless otherwise approved by the owner of those facilities and the director. *(Natural Resources Commission; 312 IAC 25-6-132; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3583, eff Dec 1, 2001)*

**312 IAC 25-6-133      Underground mining; surveyor corner markers; replacement**

Authority: IC 14-34-2-1

Affected: IC 14-34-10; IC 36-2-12-13

Sec. 133. Any person who conducts underground mining activities shall, prior to release of any portion of the applicable

performance bond, ensure that all surveyor corner markers disturbed by the underground mining activities are replaced to the same location as found prior to the surface disturbance. (*Natural Resources Commission; 312 IAC 25-6-133; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3583, eff Dec 1, 2001*)

**312 IAC 25-6-134      Concurrent surface and underground mining; applicability**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 134. A variance under this section and sections 135 and 136 of this rule applies only to those specific areas within the permit area that the person conducting combined surface and underground mining activities has shown to be necessary for implementing the proposed concurrent operations and that the director has approved in the permit under 312 IAC 25-4-103. The variance is effective for any particular portion of the permit area only for the time necessary to facilitate the authorized underground mining activities. (*Natural Resources Commission; 312 IAC 25-6-134; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3583, eff Dec 1, 2001*)

**312 IAC 25-6-135      Concurrent surface and underground mining; compliance with variance terms**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 135. (a) Each person who conducts operations under a variance issued under 312 IAC 25-4-103 shall comply with all applicable requirements of this rule and the regulatory program, except to the extent that:

- (1) a delay in compliance with this rule is specifically authorized by the variance issued under the permit; and
- (2) the delay in compliance is necessary to achieve the purposes for which the variance was granted.

(b) Each person who conducts activities under a variance issued under 312 IAC 25-4-103 shall comply with each requirement of the variance as set forth in the permit. (*Natural Resources Commission; 312 IAC 25-6-135; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3584, eff Dec 1, 2001*)

**312 IAC 25-6-136      Concurrent surface and underground mining; additional performance standards**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 136. In addition to sections 5 through 133 of this rule, each person who conducts combined surface and underground mining activities shall comply with the following:

- (1) A five hundred (500) foot barrier pillar of coal shall be maintained between the surface and underground mining activities in any one (1) seam. The director may, after consultation with the Mine Safety and Health Administration and the Indiana bureau of mines, approve a lesser distance after a finding by the director that mining at a lesser distance will result in:

- (A) improved coal resources recovery;
- (B) abatement of water pollution; or
- (C) elimination of hazards to the health and safety of the public.

- (2) The vertical distance between combined surface and underground mining activities working separate seams shall be sufficient to provide for the health and safety of the workers and to prevent surface water from entering the underground workings.

- (3) No combined activities shall reduce the protection provided public health and safety below the level of protection required for those activities if conducted without a variance.

(*Natural Resources Commission; 312 IAC 25-6-136; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3584, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182*)

**312 IAC 25-6-137      Auger mining; special standards; applicability**

Authority: IC 14-34-2-1

Affected: IC 14-34



Sec. 137. This section and section 138 of this rule apply to all surface mining activities involving auger mining. This section and section 138 of this rule are in addition to those in sections 5 through 69 of this rule. (*Natural Resources Commission; 312 IAC 25-6-137; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3584, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182*)

**312 IAC 25-6-138 Auger mining; special standards; additional performance standards**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 138. (a) Auger mining associated with surface mining activities shall be conducted to maximize recoverability of mineral reserves remaining after the mining activities are completed. Each person who conducts auger mining operations shall leave areas of the undisturbed coal to provide access for removal of those reserves by future underground mining activities, unless the director determines that the coal reserves have been depleted or are limited in thickness or extent to the point that it will not be practicable to recover the remaining coal reserves. The director shall make this determination only upon presentation of appropriate technical evidence by the operator. Undisturbed areas of coal shall be left in unmined sections that satisfy each of the following:

- (1) Are a minimum of two hundred fifty (250) feet wide at any point between each group of auger openings to the full depth of the auger hole.
- (2) Are no more than two thousand five hundred (2,500) feet apart, measured from the center of one (1) section to the center of the next section, unless a greater distance is set forth in the permit application under 312 IAC 25-4-104 and approved by the director.
- (3) For multiple seam mining, have a width of at least two hundred fifty (250) feet plus fifty (50) feet for each subjacent workable coal seam. The centers of all unmined sections shall be aligned vertically.

(b) No auger hole shall be made closer than five hundred (500) feet in horizontal distance to any abandoned or active underground mine workings, except as approved under section 35 of this rule.

(c) Except as provided in subsection (d), to prevent the pollution of surface and ground water and to reduce fire hazards, each auger hole shall be plugged to prohibit the discharge of water from the hole and access of air to the coal as follows:

- (1) Each auger hole that discharges water containing toxic-forming or acid-forming material shall be sealed within seventy-two (72) hours after completion with noncombustible and impervious material. If sealing within seventy-two (72) hours is not possible, the discharge shall be treated within seventy-two (72) hours after completion to meet applicable effluent limitations and water quality standards until the hole is sealed.
- (2) Each auger hole that does not discharge water containing toxic-forming or acid-forming material shall be sealed under subdivision (1) to close the opening as contemporaneously as practicable with the auguring operation in accordance with a schedule approved by the director in the approved permit.

(d) An auger hole need not be plugged if the director finds the following:

- (1) The impoundment of water that would result from plugging the hole may create a hazard to the environment or to public health or safety.
- (2) The drainage from the auger hole will achieve each of the following:
  - (A) It will not pose a threat of pollution to surface water.
  - (B) It will comply with the requirements of sections 12 and 13 of this rule.

(e) The director shall prohibit auger mining if it is determined that any of the following may occur:

- (1) Adverse water quality impacts cannot be prevented or corrected.
- (2) Fill stability cannot be achieved.
- (3) The prohibition is necessary to maximize the utilization, recoverability, or conservation of the solid fuel resources.
- (4) Subsidence resulting from auger mining may disturb or damage power lines, pipelines, buildings, or other facilities.

(*Natural Resources Commission; 312 IAC 25-6-138; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3584, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182*)

**312 IAC 25-6-139 Prime farmland; special performance standards; scope, purpose, and applicability**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 139. (a) This section and sections 140 through 143 of this rule set forth special performance standards for surface coal mining and reclamation operations on prime farmland.

(b) This section and sections 140 through 143 of this rule do not apply to any of the following:

(1) Coal preparation plants associated with underground mines, support facilities associated with underground mines, and roads associated with underground mines that are actively used over extended periods of time and where such uses affect a minimal amount of land. These uses shall satisfy the following sections of this rule for underground mining activities:

(A) 70 through 74.

(B) 75.

(C) 76 through 96.

(D) 97 through 111.

(E) 112.

(F) 113.

(G) 115 through 133.

(2) Disposal areas containing coal mine waste resulting from underground mines that is not technologically and economically feasible to store in underground mines or on nonprime farmland. The operator shall minimize the area of prime farmland used for these purposes.

(3) Prime farmland that has been excluded under 312 IAC 25-4-102(a).

*(Natural Resources Commission; 312 IAC 25-6-139; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3585, eff Dec 1, 2001)*

**312 IAC 25-6-140 Prime farmland; special performance standards; United States Soil Conservation Service criteria**

Authority: IC 14-34-2-1

Affected: IC 14-34; 30 CFR 823.4

Sec. 140. To carry out his or her responsibilities under 312 IAC 25-4-102 and 312 IAC 25-5, the director shall use any prime farmland soil reconstruction specifications promulgated as rules by the United States Soil Conservation Service for Indiana. *(Natural Resources Commission; 312 IAC 25-6-140; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3585, eff Dec 1, 2001)*

**312 IAC 25-6-141 Prime farmland; special performance standards; soil removal and stockpiling**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 141. (a) Prime farmland soils shall be removed from the areas to be disturbed before drilling, blasting, or mining.

(b) The minimum depth of soil and substitute soil materials to be removed and stored for use in the reconstruction of prime farmland shall be sufficient to meet the requirements of section 142(b) of this rule.

(c) Soil removal and stockpiling operations on prime farmland shall be conducted as follows:

(1) To separately remove the topsoil or remove other suitable soil materials where the other soil materials will create a final soil having a greater productive capacity than that which existed prior to mining. If not utilized immediately, this material shall be placed in stockpiles separate from the spoil and all other excavated materials.

(2) To separately remove the B horizon, C horizon, or other suitable soil material to provide the thickness of suitable soil required by section 142(b) of this rule, except as approved by the director where the B horizon or C horizon would not otherwise be removed and where soil capabilities can be retained. If not utilized immediately, each horizon or other material shall be stockpiled separately from the spoil and all other excavated materials. Where combinations of the soil materials created by mixing have been shown to be equally or more favorable for plant growth than the B horizon, separate handling is not necessary.

(d) Stockpiles shall be placed consistent with section 11(d)(1) through 11(d)(2) or 75(d)(1) through 75(d)(2) of this rule where the stockpiles will not be disturbed or be subject to excessive erosion. If left in place for more than thirty (30) days, stockpiles shall satisfy section 11 or 75 of this rule. *(Natural Resources Commission; 312 IAC 25-6-141; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3586, eff Dec 1, 2001)*

**312 IAC 25-6-142 Prime farmland; special performance standards; soil replacement**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 142. (a) The minimum depth of soil and soil material to be reconstructed for prime farmland shall be sufficient to create in the reconstructed final soil, a root zone of sufficient depth to support the approved postmining land use and, as described in the approved plan submitted under 312 IAC 25-4-102, that will have the capability of achieving levels of yield equal to, or higher than, those of nonmined prime farmland in the surrounding area.

(b) The minimum depth of soil and substitute soil material to be reconstructed shall be forty-eight (48) inches, or a lesser depth equal to the depth to a subsurface horizon in the natural soil that inhibits or prevents root penetration, or a greater depth if determined necessary by the director to restore the original soil productive capacity. A soil horizon inhibits or prevents root penetration if its physical or chemical properties or water supplying capabilities cause the horizon to restrict or prevent penetration by roots of plants common to the vicinity of the permit area and if these properties or capacities have little or no beneficial effect on soil productive capacity.

(c) The operator shall replace and regrade the soil horizons or other root zone material to a uniform depth and in a manner that avoids excessive compaction.

(d) The operator shall replace the B horizon, C horizon, or other suitable material specified in section 141(c)(2) of this rule to the thickness needed to meet the requirements of subsection (b). In an area where the B horizon or C horizon is not removed, but may have been compacted or otherwise damaged during the mining operation, the operator shall engage in deep tilling or other appropriate means to restore premining capabilities.

(e) The operator shall replace the topsoil or other suitable soil materials specified in section 141(c)(2) of this rule as the final surface soil layer. This surface soil layer shall equal or exceed the thickness of the original surface soil layer as determined by the soil survey, and be replaced in a manner that protects the surface layer from wind and water erosion before it is seeded or planted.

(f) The operator shall apply nutrients and soil amendments as needed to quickly establish vegetative growth. (*Natural Resources Commission; 312 IAC 25-6-142; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3586, eff Dec 1, 2001*)

**312 IAC 25-6-143 Prime farmland; special performance standards; revegetation and restoration of soil productivity**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 143. (a) Following prime farmland soil replacement, the soil surface shall be stabilized with a vegetative cover or other means that effectively controls soil loss by wind and water erosion.

(b) Prime farmland soil productivity shall be restored under the following provisions:

(1) Measurement of soil productivity shall be initiated within ten (10) years after completion of the soil replacement.

(2) Soil productivity on the mined and reclaimed prime farmland area shall be measured using one (1) of the following methods:

(A) Growing crops on a representative sample of the area using the test plot standards of section 60 of this rule.

(B) Growing crops on all of the area.

(3) The sampling techniques contained in section 60 of this rule and the statistical methodology contained in section 61 of this rule shall be used to measure soil productivity.

(4) The period for measuring crop production (yield) shall be at least three (3) crop years before the release of the operator's performance bond.

(5) The level of management applied during the measurement period shall be the same as the level of management used for nonmined prime farmland in the surrounding area.

(6) Restoration of soil productivity is achieved when the yield during the measurement period equals or exceeds one hundred percent (100%) of the success standard found at section 59(c) of this rule for any three (3) years of the responsibility period. One hundred percent (100%) of the success standard must be met with a ninety percent (90%) statistical confidence level, in other words, a one (1) sided test with a 0.10 alpha error. Where reference crops are used for demonstrating productivity, the yield comparisons shall be established for the same period for nonmined soils of the same or similar texture or slope phase of the soil series in the surrounding area under equivalent management practices.

(7) The reference crop on which restoration of soil productivity is proven shall be selected from the crops most commonly produced on the surrounding prime farmland. Where row crops are the dominant crops grown on prime farmland in the area, the row crops requiring the greatest rooting depth shall be chosen as one (1) of the reference crops.

(8) The reference crop yield may be adjusted for factors including disease, weather, tillage management, pests, and seed or plant selection specified in section 59(c) of this rule.

(9) In determining the period of responsibility under 312 IAC 25-5-7, the director may approve selective husbandry practices (except for augmented seeding, fertilization, or irrigation) without extending the period of responsibility for revegetation success and bond liability if:

(A) the selective husbandry practices can be expected to continue as part of the postmining land use; or

(B) discontinuance of the practices after the liability period will not reduce the probability of permanent revegetation success.

(10) Selective husbandry practices that may be approved under subdivision (9) are normal conservation practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area and may include the following:

(A) Disease, pest, and vermin control.

(B) Repair of rills and gullies.

(C) Pruning, reseeding, or transplanting specifically necessitated by these practices.

(11) The selection of reference areas shall be guided by section 59 of this rule. The selection of an approved reference area must be accomplished with concurrence by the Soil Conservation Service of the United States Department of Agriculture.

*(Natural Resources Commission; 312 IAC 25-6-143; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3586, eff Dec 1, 2001)*

### **312 IAC 25-6-144 Steep slopes; backfilling and grading**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 144. (a) Surface mining activities or underground mining activities on steep slopes shall be conducted so as to meet the requirements of 312 IAC 25-6-50 and 312 IAC 25-6-112, and the requirements of this rule except where mining is conducted on flat or gently rolling terrain with an occasional steep slope through which the mining proceeds and leaves a plain or predominately flat area.

(b) The following materials shall not be placed on the downslope:

(1) Spoil.

(2) Waste materials of any type.

(3) Debris, including that from clearing and grubbing.

(4) Abandoned or disabled equipment.

(c) Land above the highwall shall not be disturbed unless the director finds that this disturbance will facilitate compliance with the environmental protection standards of this rule and the disturbance is limited to that necessary to facilitate compliance.

(d) Woody material shall not be buried in the backfilled area unless the director determines that the proposed method for placing woody material within the backfill will not deteriorate the stable condition of the backfill area.

(e) The disturbed area shall be backfilled and graded to comply with the provisions of sections 50 and 112 of this rule to return the site to approximate original contour and completely cover the highwall; provided, however, that where mining operations affect previously mined areas that were not reclaimed to the standards of sections 50 and 112 of this rule and the volume of all reasonably available spoil is demonstrated in writing to the director in the approved permit application to be insufficient to completely backfill the highwall, the highwall shall be eliminated to the maximum extent technically practical in accordance with the following criteria:

(1) The permittee shall demonstrate to the director in the approved permit application or to the director that the fill, designed by a qualified registered professional engineer, has a minimum static safety factor for the stability of the backfill of at least one and three-tenths (1.3).

(2) All spoil generated by the mining operation and other reasonably available spoil shall be used to backfill the area. Reasonably available spoil shall include spoil generated by the mining operation and other spoil located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to the public safety or significant damage to the environment.

(3) The backfill shall be graded to a slope that:

(A) is compatible with the approved postmining land use; and

(B) provides adequate drainage and long term stability.

(4) Any remnant of the highwall shall be stable and not pose a hazard to the public health and safety or to the environment.

(5) Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbances will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

*(Natural Resources Commission; 312 IAC 25-6-144; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3587, eff Dec 1, 2001)*

**312 IAC 25-6-145 Coal preparation plants not within permit area for a mine; permits; applicability**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 145. A person who conducts surface coal mining and reclamation operations, which include the operation of a coal preparation plant that is not located within the permit area for a specific mine, shall obtain a permit under 312 IAC 25-4-106 to conduct those operations and must comply with section 146 of this rule. *(Natural Resources Commission; 312 IAC 25-6-145; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3588, eff Dec 1, 2001)*

**312 IAC 25-6-146 Coal preparation plants not within a permit area for a mine; special performance standards**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 146. Construction, operation, maintenance, modification, reclamation, and removal activities under section 145 of this rule and this section shall comply with the following:

(1) Signs and markers for a coal preparation plant shall comply with section 6 of this rule.

(2) Roads, transport facilities, and associated structures shall be constructed, maintained, and reclaimed in accordance with sections 65 through 68 of this rule.

(3) Any stream or channel realignment shall comply with section 15 of this rule.

(4) Any disturbed area related to a coal preparation plant shall have sediment control structures, in compliance with sections 16 and 17 of this rule, and all discharges from these areas must satisfy sections 12 and 13 of this rule and any other applicable Indiana or federal law.

(5) Permanent impoundments associated with coal preparation plants shall satisfy sections 20 and 27 of this rule. Dams constructed of or impounding coal processing waste shall comply with sections 43 through 45 of this rule.

(6) The use of water wells shall comply with section 24 of this rule, and water rights shall be protected under section 25 of this rule.

(7) Disposal of coal processing waste, solid waste, and any excavated materials shall comply with sections 36 through 41, 42, and 34 of this rule, respectively.

(8) Discharge structures for diversions and sediment control structures shall comply with section 18 of this rule.

(9) Air pollution control measures associated with fugitive dust emissions shall comply with section 51(a) of this rule.

(10) Fish, wildlife, and related environmental values shall be protected under section 46 of this rule.

(11) Adverse effects upon or resulting from nearby underground coal mining activities shall be minimized by appropriate measures, including, but not limited to, compliance with sections 26, 35, and 113 of this rule.

(12) Reclamation shall include proper topsoil handling procedures, revegetation, and abandonment under sections 11, 48, 50, 54 through 61, and 62 through 64 of this rule.

(13) Conveyors, buildings, storage bins or stockpiles, water treatment facilities, water storage facilities, and any structure or system constituting part of a coal preparation plant shall comply with sections 5 through 69 of this rule.

(14) A coal preparation plant located on prime farmland must satisfy sections 139 through 142 of this rule.

*(Natural Resources Commission; 312 IAC 25-6-146; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3588, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182)*

**312 IAC 25-6-147      In situ processing; special performance standards**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 147. (a) Any person who conducts in situ processing activities shall comply with sections 70 through 146 of this rule, this section, and section 148 of this rule.

(b) In situ processing activities shall be planned and conducted to minimize disturbance to the prevailing hydrologic balance by:

- (1) avoiding discharge of fluids into holes or wells other than as approved by the director;
- (2) injecting process recovery fluids only into geologic zones or intervals approved as production zones by the director;
- (3) avoiding annular injection between the wall of the drill hole and the casing; and
- (4) preventing discharge of process fluid into surface waters.

(c) Each person who conducts in situ processing activities shall submit for approval as part of the application for a permit under 312 IAC 25-4-105, and follow after approval, a plan that ensures that all acid-forming, toxic-forming, or radioactive gases, solids, or liquids constituting a fire, health, safety, or environmental hazard and caused by the mining and recovery process are promptly treated, confined, or disposed of, in a manner that prevents contamination of ground and surface waters, damage to fish, wildlife, and related environmental values, and threats to the public health and safety.

(d) Each person who conducts in situ processing activities shall prevent the flow of the process recovery fluid:

- (1) horizontally beyond the affected area identified in the permit; and
- (2) vertically into overlying and underlying aquifers.

(e) Each person who conducts in situ processing activities shall restore the quality of affected ground water in the permit and adjacent area, including ground water above and below the production zone, to the approximate premining levels, to ensure that the potential for use of the ground water is not diminished. (*Natural Resources Commission; 312 IAC 25-6-147; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3589, eff Dec 1, 2001*)

**312 IAC 25-6-148      In situ processing; monitoring**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 148. (a) Each person who conducts in situ processing activities shall monitor the quality and quantity of surface and ground water and the subsurface flow and storage characteristics, in a manner approved by the director under section 86 of this rule, to measure changes in the quantity and quality of water in surface and ground water systems in the permit and adjacent areas.

(b) Air and water quality monitoring shall be conducted in accordance with monitoring programs approved by the director as necessary according to appropriate Indiana and federal air and water quality standards. (*Natural Resources Commission; 312 IAC 25-6-148; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3589, eff Dec 1, 2001*)

**312 IAC 25-6-149      Annual report**

Authority: IC 14-34-2-1

Affected: IC 14-34-5-10

Sec. 149. (a) As used in this section, "mined land" means the following:

- (1) Land from which coal has been extracted.
- (2) Land from which overburden has been removed.
- (3) Land upon which overburden or spoil has been deposited to facilitate surface coal mining activities.

Mined land does not include land where only auger mining has occurred as reported in subsection (c)(3)(D).

(b) As used in this section, "surface disturbed land" means land, other than mined land, that is disturbed by surface coal mining and reclamation operations, and includes areas where only topsoil is removed. Examples include, but are not limited to, the following:

- (1) Sediment basins.
- (2) Diversions.

- (3) Haul roads.
- (4) Office areas.
- (5) Preparation plants.
- (6) Soil stockpiles.
- (7) Beltways.
- (8) Support facilities.
- (9) Soil removal areas that will not be reaffected by overburden removal or deposition.

The permittee need not report surface disturbed land in advance of the highwall, when the surface disturbance will be reaffected by future overburden removal or deposition.

(c) For each permit to conduct surface coal mining and reclamation operations, an annual report of affected area shall be submitted to the director no later than ninety (90) days after October 31 of each year. The annual report shall document the acres affected annually as of October 31 of the reporting year and contain the following information:

- (1) The name and address of the permittee and, if different from the permittee, the name and address of the person or persons conducting the mining and reclamation operations under the permit during the period covered by the report.
- (2) The permit number.
- (3) A summary of acres, to the nearest whole acre, mined and disturbed during the period from November 1 through October 31 of the year covered by the report. The acreage summary shall include the following:
  - (A) Acres of mined land.
  - (B) Acres of surface disturbed land.
  - (C) Total permit acres.
  - (D) Acres of coal extraction by surface, auger mining, and highwall mining reported as a separate area from the acres in clauses (A) through (C).

(d) The report shall be accompanied by a dated aerial photograph of the surface coal mining and reclamation operation taken between September 1 and December 31 of the reporting year. The photograph shall be of the same scale as the permit maps and shall show the location of the following areas or features:

- (1) The permit boundary.
- (2) All acres reported under subsection (c)(3).
- (3) Section, township, and range lines with the center of each section numbered.
- (4) All public roads within the permit area that are not permanently closed.
- (5) All areas where coal has been removed identified by surface, auger, or highwall mining methods.
- (6) The highwall face as of November 1 of the reporting year.

The information required by subdivisions (1) through (6) may be provided on a certified map instead of being plotted on the aerial photograph.

(e) When the acres are available on a computer aided design (CAD) or other digital data format, the last report, after the permittee has completed all mining, shall include a summary of premining land use acreage for the mined and surface disturbed area.

(f) Any associated map, whether separate from or created upon a photograph, furnished to satisfy the requirements under subsection (d) shall be:

- (1) prepared by or under the direction of; and
- (2) certified by;

a qualified registered professional engineer or certified professional geologist with assistance from experts in related fields, such as land surveying or landscape architecture.

(g) For permits issued and affected prior to the effective date of this section and for which a Report of Affected Area has not been filed, the initial photograph shall show all areas disturbed since permit issuance, with no distinction between mined land and surface disturbed land being required on the report form, photograph or map. When available, the extend of augered areas shall be shown.

(h) After the initial report is submitted, if no additional acres have been disturbed during the reporting year, no report is necessary. (*Natural Resources Commission; 312 IAC 25-6-149; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3589, eff Dec 1, 2001*)

## **Rule 7. Inspection and Enforcement Procedures**

**312 IAC 25-7-1 Inspections of sites Version a**

Authority: IC 14-34-2-1

Affected: IC 14-34-15; IC 14-34-16

*NOTE: This version of section effective until superseded by the following version of this section, which is effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register.*

Sec. 1. (a) The director shall conduct inspections as follows:

(1) Except as provided in subdivision (2), on an irregular basis averaging not less frequently than the following:

(A) One (1) partial inspection per month and one (1) complete inspection per calendar quarter for each active surface coal mining and reclamation operation.

(B) One (1) partial inspection as frequently as is necessary to ensure effective enforcement and one (1) complete inspection per calendar quarter for each inactive surface coal mining and reclamation operation.

(2) As frequently as necessary to monitor for changes of environmental conditions or operational status on each abandoned site. Before ceasing to perform inspections of an abandoned site as provided in subdivision (1), the director shall complete both of the following:

(A) Evaluate the environmental conditions and operational status of the site.

(B) Document, in writing, the inspection frequency necessary to comply with the requirements of this subdivision. The documentation shall include the reasons for selecting the inspection frequency.

(3) Without notice to the person being inspected or any agents or employees of that person except for necessary on-site meetings.

(4) Include the prompt filing of inspection reports adequate to enforce IC 14-34 and this article.

(b) The director shall conduct any inspections of coal exploration operations that are necessary to ensure compliance with IC 14-34 and this article.

(c) Aerial inspections shall be conducted in a manner that reasonably ensures the identification and documentation of conditions at each surface coal mining and reclamation site inspected.

(d) Any potential violation observed during an aerial inspection shall be investigated on-site upon the occurrence of earlier of the following:

(1) Within three (3) days after the aerial inspection.

(2) Immediately, if there is an indication of a condition, practice, or violation constituting cause for the issuance of a cessation order under IC 14-34-11-6 [*sic.*, IC 14-34-15-6].

(e) An on-site investigation conducted under subsection (d) is not an additional partial inspection nor an additional complete inspection under subsection (a).

(f) As used in this section, the following definitions apply:

(1) "Abandoned site" means a surface coal mining and reclamation operation for which the director has found, in writing, each of the following:

(A) All surface and underground coal mining and reclamation activities at the site have ceased.

(B) The director has issued at least one (1) notice of violation and either:

(i) is unable to serve the notice despite diligent efforts to do so; or

(ii) the notice was served and has progressed to a failure-to-abate cessation order.

(C) The director is taking action:

(i) to ensure that the permittee and operator, and owners and controllers of the permittee and operator, will be precluded from receiving future permits while violations continue at the site; and

(ii) under IC 14-34-16-7, IC 14-34-16-8, IC 14-34-15-7, or IC 14-34-15-11 to ensure that abatement occurs or that there will not be a recurrence of the failure-to-abate, except where after evaluating the circumstances, the director concludes that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs.

(D) If the site is or was permitted or bonded, both of the following are determined:

(i) The permit has expired or been revoked; or permit revocation proceedings have been initiated and are being pursued diligently.



- (ii) The director has initiated and is diligently pursuing forfeiture of (or has forfeited) the performance bond.
- (2) "Complete inspection" means an on-site review of a person's compliance with all permit conditions and requirements imposed under IC 14-34 and this article within the area disturbed or affected by the surface mining and reclamation operation.
- (3) "Inactive surface coal mining and reclamation operation" means a surface coal mining and reclamation operation for which both of the following are satisfied:
  - (A) The reclamation has been completed that is necessary to obtain release of the portion of bond specified in 312 IAC 25-5-16(c)(2).
  - (B) The bond has been released.
- (4) "Partial inspection" means an on-site or aerial review of a person's compliance with some of the permit conditions and requirements imposed under IC 14-34 and this article.

*(Natural Resources Commission; 312 IAC 25-7-1; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3590, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182)*

### **312 IAC 25-7-1 Inspections of sites Version b**

Authority: IC 14-34-2-1

Affected: IC 14-34-15; IC 14-34-16-7; IC 14-34-16-8

*NOTE: This version of section effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register. See also preceding version of this section, effective until superseded by this version of section.*

Sec. 1. (a) The director shall conduct inspections as follows:

- (1) Except as provided in subsection (f), on an irregular basis averaging not less frequently than the following:
  - (A) One (1) partial inspection per month and one (1) complete inspection per calendar quarter for each active surface coal mining and reclamation operation.
  - (B) One (1) partial inspection as frequently as is necessary to ensure effective enforcement and one (1) complete inspection per calendar quarter for each inactive surface coal mining and reclamation operation.
- (2) Without notice to the person being inspected or any agents or employees of that person except for necessary on-site meetings.
- (3) Include the prompt filing of inspection reports adequate to enforce IC 14-34 and this article.

(b) The director shall conduct any inspections of coal exploration operations that are necessary to ensure compliance with IC 14-34 and this article.

(c) Aerial inspections shall be conducted in a manner that reasonably ensures the identification and documentation of conditions at each surface coal mining and reclamation site inspected.

(d) Any potential violation observed during an aerial inspection shall be investigated on-site upon the occurrence of earlier of the following:

- (1) Within three (3) days after the aerial inspection.
- (2) Immediately, if there is an indication of a condition, practice, or violation constituting cause for the issuance of a cessation order under IC 14-34-15-6.

(e) An on-site investigation conducted under subsection (d) is not an additional partial inspection or an additional complete inspection under subsection (a).

(f) In lieu of the inspection frequency established in subsection (a), the regulatory authority shall inspect each abandoned site on a set frequency commensurate with the public health and safety and environmental considerations present at each specific site, but in no case shall the inspection frequency be set at less than one (1) complete inspection per calendar year. In selecting an alternate frequency authorized under this subsection, the regulatory authority shall do the following:

- (1) First conduct a complete inspection of the abandoned site.
- (2) Provide public notice and opportunity to comment under subsection (g).
- (3) Prepare and maintain for public review a written finding justifying the alternative inspection frequency selected. The written finding shall justify the new inspection frequency by affirmatively addressing in detail the following criteria:
  - (A) How the site meets each of the criteria under the definition of an abandoned site in subsection (h) to qualify for a reduction in inspection frequency.

- (B) Whether, and to what extent, there exists on the site an impoundment, an earthen structure, or another condition that poses, or may reasonably be expected to ripen into, imminent dangers to the health or safety of the public or significant environmental harm to land, air, or water resources.
  - (C) The extent to which an existing impoundment or earthen structure was constructed and certified in accordance with prudent engineering designs approved in the permit.
  - (D) The degree to which erosion and sediment control is present and functioning.
  - (E) The extent to which the site is located near or above an urbanized area, a community, an occupied dwelling, a school, and another public or commercial building or facility.
  - (F) The extent of reclamation completed prior to abandonment and the degree of stability of an unreclaimed area, taking into consideration any physical characteristic of the land mined and the extent of settlement or revegetation that has occurred naturally.
  - (G) Based on a review of the complete or partial inspection report record for the site during at least the last two (2) consecutive years, the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate.
- (g) The public notice and opportunity to comment required under subsection (f)(2) shall be provided as follows:
- (1) The regulatory authority shall place a notice in the newspaper with the broadest circulation in the locality of the abandoned site providing the public with a thirty (30) day period in which to submit written comments.
  - (2) The public notice shall contain the following:
    - (A) Name of permittee.
    - (B) Permit number.
    - (C) Precise location of the land affected.
    - (D) Proposed inspection frequency.
    - (E) General reasons for reducing the inspection frequency.
    - (F) Bond status of the permit.
    - (G) Telephone number and address of the regulatory authority where written comments on the reduced inspection frequency may be submitted.
    - (H) Closing date of the comment period.
- (h) As used in this section, the following definitions apply:
- (1) "Abandoned site" means a surface coal mining and reclamation operation for which the director has found, in writing, each of the following:
    - (A) All surface and underground coal mining and reclamation activities at the site have ceased.
    - (B) The director has issued at least one (1) notice of violation and either:
      - (i) is unable to serve the notice despite diligent efforts to do so; or
      - (ii) the notice was served and has progressed to a failure-to-abate cessation order.
    - (C) The director is taking action:
      - (i) to ensure that the permittee and operator, and owners and controllers of the permittee and operator, will be precluded from receiving future permits while violations continue at the site; and
      - (ii) under IC 14-34-16-7, IC 14-34-16-8, IC 14-34-15-7, or IC 14-34-15-11 to ensure that abatement occurs or that there will not be a recurrence of the failure-to-abate, except where, after evaluating the circumstances, the director concludes that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs.
    - (D) If the site is or was permitted or bonded, both of the following are determined:
      - (i) The permit has expired or been revoked, or permit revocation proceedings have been initiated and are being pursued diligently.
      - (ii) The director has initiated and is diligently pursuing forfeiture of (or has forfeited) any available performance bond.
  - (2) "Complete inspection" means an on-site review of a person's compliance with all permit conditions and requirements imposed under IC 14-34 and this article within the area disturbed or affected by the surface mining and reclamation operation.
  - (3) "Inactive surface coal mining and reclamation operation" means a surface coal mining and reclamation operation for which both of the following are satisfied:

(A) The reclamation has been completed that is necessary to obtain release of the portion of bond specified in 312 IAC 25-5-16(c)(2).

(B) The bond has been released.

(4) "Partial inspection" means an on-site or aerial review of a person's compliance with some of the permit conditions and requirements imposed under IC 14-34 and this article.

*(Natural Resources Commission; 312 IAC 25-7-1; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3590, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2468, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register)*

### **312 IAC 25-7-2 Citizen's request for state inspections**

Authority: IC 14-34-2-1

Affected: IC 5-14-3; IC 14-34; 30 CFR 842.12

Sec. 2. (a) Whenever, on the basis of any information available to the director, including receipt of information from any person, the director has reason to believe that an operation is in violation of IC 14-34 and this article, an inspection shall be conducted. Such inspection shall be conducted within ten (10) days of receipt of the notification.

(b) The notification shall consist of a signed, written statement (or an oral report followed by a signed, written statement) giving the director reason to believe that a violation, a condition, or a practice referred to in subsection (a) exists and setting forth a phone number and address where the citizen can be contacted.

(c) If the inspection results from information provided by any person, that person may accompany the director or the director's authorized representative on the inspection.

(d) Copies of inspection reports, violation notices, and cessation orders, written as a result of a citizen's request, will be given to the person who caused the inspection to be made and to the permittee alleged to be in violation.

(e) The identity of any person supplying information to the director relating to a possible violation or imminent danger or harm shall remain confidential with the director, if requested by that person, unless:

(1) that person elects to accompany the inspector on the inspection; or

(2) disclosure is required under IC 5-14-3.

*(Natural Resources Commission; 312 IAC 25-7-2; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3591, eff Dec 1, 2001)*

### **312 IAC 25-7-3 Review of adequacy and completeness of inspections**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 3. Any person who is or may be adversely affected by a surface coal mining operation may notify the director, in writing, of any alleged failure on the part of the director to make adequate and complete inspections. The notification shall include sufficient information to create a reasonable belief that adequate and complete inspections are not being made and that the person is or may be adversely affected by such a failure to inspect. The director shall, within fifteen (15) days of receipt of the notification, determine whether adequate and complete inspections have been made. The fifteen (15) day period may be extended because of factors beyond the control of the director. The director shall also furnish the complainant with a written statement of the reasons for the director's determination that adequate and complete inspections have or have not been conducted. If the director determines that an adequate and complete inspection has not been made, he shall order an inspection. Any person who is or may be adversely affected by a decision not to inspect may request, in writing, the director to review informally an authorized representative's decision not to inspect or to take required enforcement action. The request shall include a statement of how the person is or may be adversely affected and why the decision merits review. The director shall conduct the review and inform the person, in writing, of the results of the review within thirty (30) days of the receipt of the request. *(Natural Resources Commission; 312 IAC 25-7-3; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3592, eff Dec 1, 2001)*

**312 IAC 25-7-4 Availability of records**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 4. A copy of any record, report, inspection material, or any other information obtained under sections 1 through 3 of this rule, this section, and sections 5 through 10 of this rule other than material designated as confidential, shall be available to the public at the department and at the office of the county recorder in the appropriate county or counties, for the period of time commencing upon issuance until five (5) years after all bonds have been released for the related permitted operation. (*Natural Resources Commission; 312 IAC 25-7-4; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3592, eff Dec 1, 2001*)

**312 IAC 25-7-5 State enforcement; cessation orders**

Authority: IC 14-34-2-1

Affected: IC 14-34-3-1; IC 14-34-10-2; IC 14-34-15-6

Sec. 5. (a) An authorized representative of the director, when conducting an inspection, shall immediately order a cessation of the portion of the surface coal mining and reclamation operation relevant to the condition, practice, or violation if he finds any condition or practice, or any violation of IC 14-34-10-2, or any condition of a permit required by IC 14-34-3-1, or any condition of an exploration approval which condition, practice, or violation:

- (1) creates an imminent danger to the health or safety of the public; or
- (2) is causing, or can reasonably be expected to cause, significant imminent environmental harm to land, air, or water resources.

(b) An authorized representative of the director shall immediately issue a cessation order to any person who does not hold a valid permit to conduct those operations.

(c) Where the director or the director's authorized representative finds that the ordered cessation of surface coal mining operation, or any portion thereof, will not completely abate the imminent danger to health or safety of the public or the significant imminent environmental harm to land, air, or water resources in the most expeditious manner physically possible, the director shall, in addition to the cessation order, impose affirmative obligations on the permittee requiring him to take whatever steps the director deems necessary to abate the imminent danger or the significant environmental harm. The order shall specify the time by which abatement shall be accomplished.

(d) When, on the basis of an inspection, an authorized representative of the director, for good cause shown and upon written findings, finds that a notice of violation has been issued under section 6(a) of this rule and the person to whom it was issued fails to abate the violation within the abatement period fixed or subsequently extended by the authorized representative, he or she shall immediately order a cessation of coal exploration or that portion of the surface mining and reclamation operations relevant to the violation.

(e) A cessation order issued under this section shall require the person to whom it is issued to take the steps necessary to abate the violations covered by the order in the most expeditious manner physically possible.

(f) A cessation order issued under this section shall be in writing, signed by the authorized representative who issues it, and shall set forth with reasonable specificity:

- (1) the nature of the condition, practice, or violation;
- (2) the remedial action or affirmative obligation required, if any, including interim steps, if appropriate;
- (3) the time established for abatement, if appropriate, including the time for meeting any interim steps; and
- (4) a reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies.

(g) An authorized representative of the director may modify, terminate, or vacate a cessation order for good cause and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the person to whom it was issued.

(h) An authorized representative of the director shall terminate a cessation order by written notice to the person to whom the order was issued:

- (1) for a cessation order under subsection (a) or (b), when the authorized representative of the director determines that the condition or practice resulting in the issuance of the cessation order has been abated; or

(2) for a cessation order under subsection (d), when steps necessary to abate the violations covered by the order have been completed.

(i) Termination of a cessation order shall not prohibit the director from assessing civil penalties for those violations under sections 13 through 21 of this rule.

(j) The order shall remain in effect until the condition or practice resulting in the issuance of the cessation order has been abated or until vacated, modified, or terminated in writing by an authorized representative of the director or until the order expires under IC 14-34-15-6(d).

(k) Within thirty (30) days after a cessation order is issued under this section or under 30 CFR 843.11 (except where a stay of the cessation order is in effect), the permittee shall provide the director with written documentation to establish one (1) of the following:

(1) There has been no change since the immediately proceeding submittal of information under 312 IAC 25-4-17.

(2) The information required from a permit application by 312 IAC 25-4-17, if not previously submitted.

(3) The information needed to correct or update (to the date of the cessation order) information previously submitted and corrections or updates as needed.

(l) The director, within sixty (60) days after issuing a cessation order, shall notify, in writing, any person who has been identified under subsection (k) and 312 IAC 25-4-17 as owning or controlling the permittee, that the cessation order was issued and that the person has been identified as an owner or controller. (*Natural Resources Commission; 312 IAC 25-7-5; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3592, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.; 25 IR 1182*)

### **312 IAC 25-7-6 State enforcement; notices of violation**

Authority: IC 14-34-2-1

Affected: IC 4-21.5; IC 14-34-1; IC 14-34-3-1

Sec. 6. (a) An authorized representative of the director shall issue a notice of violation if, on the basis of an inspection, he finds a violation of IC 14-34-1, this article, or any condition of a permit issued under IC 14-34-3-1 that does not create an imminent danger or harm for which a cessation order must be issued under section 5 of this rule.

(b) A notice of violation issued under this section shall be in writing, signed by the director or inspector who issues it, and shall set forth with particularity the following:

(1) The nature of the violation.

(2) The remedial action required, that may include interim steps.

(3) A reasonable time for abatement.

(4) A reasonable description of the portion of the surface coal mining and reclamation operation to which it applies.

(c) An authorized representative of the director may extend the time set for abatement if the failure to meet the time previously set was not caused by lack of diligence on the part of the person to whom it was issued. The total time for abatement under a notice of violation, including all extensions, shall not exceed ninety (90) days from the date of issuance, except upon a showing by the permittee that, despite extraordinary efforts by the permittee, it is not possible to abate the violation within ninety (90) calendar days due to one (1) or more of the circumstances in subsection (f). An extended abatement date under this section shall not be granted when the permittee's failure or inability to abate within ninety (90) days has been caused by a lack of diligence or intentional delay by the person in completing the remedial action required.

(d) If the person to whom the notice was issued fails to meet the time set for abatement, or for accomplishment of an interim step, the authorized representative shall issue a cessation order under section 5(b) of this rule.

(e) An authorized representative of the director shall terminate each part of a notice of violation by written notice to the person to whom it was issued when he determines that such part of the violation listed in the notice of violation has been abated. This determination may be made by conducting an investigation to confirm the abatement or by accepting the information obtained from an appropriate governmental agency that the violation has been abated. Termination shall not affect the right of the director to assess civil penalties for those violations under sections 13 through 21 of this rule, concerning civil penalties.

(f) Circumstances that may qualify a surface coal mining operation for an abatement period of more than ninety (90) days are as follows:

(1) Where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans, but such permit or approval has not been or will not be issued within ninety (90)

days after a valid permit expires or is required for reasons not within the control of the person issued the notice of violation.

(2) Where there is a valid judicial or administrative order precluding abatement within ninety (90) days as to which the permittee has diligently pursued all rights of appeal and as to which he or she has no other effective legal remedy.

(3) Where the permittee cannot abate within ninety (90) days due to a labor strike.

(4) Where climate conditions preclude abatement within ninety (90) days, or where, due to climate conditions, abatement within ninety (90) days clearly:

(A) would cause more environmental harm than it would prevent; or

(B) requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act.

(g) Whenever an abatement time in excess of ninety (90) days is permitted, interim abatement measures may be imposed to the extent necessary to minimize harm to the public or the environment.

(h) If any of the conditions in subsection (f) exist, the permittee may request the authorized representative to grant an abatement period exceeding ninety (90) days. The authorized representative shall not grant such an abatement period without the concurrence of the director or his or her designee, and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The permittee shall have the burden of establishing by clear and convincing proof that he or she is entitled to an extension under the provisions of subsections (c) and (f). In determining whether or not to grant an abatement period exceeding ninety (90) days, the authorized representative may consider any relevant written or oral information from the permittee or any other source. The authorized representative shall promptly and fully document in the file his or her reasons for granting or denying the request. The inspector's immediate supervisor shall review that document before concurring in or disapproving the extended abatement date and shall promptly and fully document the reasons for his or her concurrence or disapproval in the file.

(i) Any determinations made under subsection (h) shall be in writing and shall contain a right of appeal under IC 4-21.5.

(j) No extension granted under subsection (h) may exceed ninety (90) days in length. Where the condition or circumstance that prevented abatement within ninety (90) days exists at the expiration of any such extension, the permittee may request a further extension in accordance with subsection (h). (*Natural Resources Commission; 312 IAC 25-7-6; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3593, eff Dec 1, 2001*)

### **312 IAC 25-7-7 Suspension or revocation of permits**

Authority: IC 14-34-2-1

Affected: IC 4-21.5; IC 14-34-15-7

Sec. 7. (a) Except as provided in subsection (d), when the director determines that a pattern of violations of any requirements of IC 14-34, this article, or any permit conditions required by IC 14-34 exists or has existed, and that the violations were caused by the permittee willfully, or through unwarranted failure to comply with those requirements or conditions, the director shall issue an order to the permittee requiring the permittee to show cause why the permit and a right to mine under IC 14-34 should not be suspended or revoked and provide an opportunity for a public hearing under IC 4-21.5 and 312 IAC 3. Willful violation means an act or omission that violates IC 14-34, this article, or any permit condition required by IC 14-34 committed by a person who intends the result that actually occurs. Unwarranted failure to comply means the failure of the permittee to prevent the occurrence of any violation of the permit or any requirement of IC 14-34 or this article, due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or IC 14-34, due to indifference, lack of diligence, or lack of reasonable care. Violations by any person conducting surface coal mining operations on behalf of the permittee shall be attributed to the permittee unless the permittee establishes that they were acts of deliberate sabotage.

(b) The director may determine that a pattern of violations exists or has existed based on two (2) or more inspections of the permit area within any twelve (12) month period after considering the circumstances, including the following:

(1) The number of violations, cited on more than one (1) occasion of the same or related requirements of IC 14-34, this article, or the permit.

(2) The number of violations, cited on more than one (1) occasion, of different requirements of IC 14-34, this article, or the permit.

(3) The extent to which the violations were isolated departures from lawful conduct.

(c) The director shall promptly review the history of violations of any permittee who has been cited for violations of the same or related requirements of IC 14-34, this article, or the permit during three (3) or more inspections of the permit area within any

twelve (12) month period. If, after such review, the director determines that a pattern of violations exists or has existed, the director shall issue a show cause order as provided in 312 IAC 3-1-5(b).

(d) The director may decline to issue a show cause order or may dismiss an outstanding order if the director finds that, taking into account exceptional factors present in the particular case, it would be demonstrably unjust to issue or to fail to dismiss the show cause order. The basis for this finding shall be fully explained and documented in the records of the case.

(e) If a hearing is requested on a show cause order under 312 IAC 3-1-5(d) through 312 IAC 3-1-5(h), the director shall give thirty (30) days written notice of the date, time, and place of the hearing to all interested persons and shall post the notice in the Indianapolis office and the field office of the division of reclamation. If practicable, the director shall also publish the notice, including a brief statement of the procedure for intervention, in a newspaper of general circulation published in the county in which the surface coal mining and reclamation operation is located. As used in this section, "published" refers to the process of composing, issuing, and distributing the newspaper to the public and does not refer only to the mechanical work of printing. If the operation lies within more than one (1) county, the advertisement shall be placed in one (1) newspaper in each county where the operation lies.

(f) If the commission suspends or revokes a permit, the permittee shall immediately cease surface coal mining operations on the permit area and shall do either of the following:

(1) If the permit and the right to mine under IC 14-34 are suspended, complete all affirmative obligations to abate all conditions, practices, or violations as specified in the order.

(2) If the permit and the right to mine under IC 14-34 are revoked, complete reclamation within the time specified in the order. If reclamation is not completed within that time period, the permittee forfeits the applicable bond.

(g) Whenever a permittee fails to abate a violation contained in a notice of violation or cessation order within the abatement period set in the notice or order or as subsequently extended, the director shall review the permittee's history of violations to determine whether a pattern of violations exists pursuant to this section and shall issue an order to show cause as appropriate. *(Natural Resources Commission; 312 IAC 25-7-7; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3594, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182)*

### **312 IAC 25-7-8 State enforcement; service on permittee**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 8. (a) Any document issued under sections 5 through 7 of this rule, this section, and sections 9 through 12 of this rule shall be served on the permittee, the permittee's designated agent, or the individual who, based upon reasonable inquiry by the director or the director's authorized representative, appears to be in charge of the coal exploration or surface coal mining and reclamation operation referred to in the document, promptly after issuance, as follows:

(1) By tendering a copy at the mine office of the surface coal mining and reclamation operation to the permittee or the permittee's designated agent. Service shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept.

(2) As an alternative to subdivision (1), service may be made by sending a copy of the notice or order by certified mail to the permittee or the permittee's designated agent. Service shall be complete upon receipt of the mail and shall not be deemed incomplete because of refusal to accept.

(b) Designation by any permittee of an agent for service of notices and orders shall be made in writing to the director, and the name and usual location of the designated agent shall be posted on a bulletin board designated for that purpose at the mine office or site. *(Natural Resources Commission; 312 IAC 25-7-8; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3595, eff Dec 1, 2001)*

### **312 IAC 25-7-9 State enforcement; informal public hearing**

Authority: IC 14-34-2-1

Affected: IC 4-21.5; IC 14-34

Sec. 9. (a) Except as provided in subsections (b) through (c), a notice of violation or cessation order that requires cessation of all or any portion of the surface coal mining operation expressly or by necessary implication shall expire within thirty (30) days after it is served unless an informal public hearing has been held within that time. The hearing shall be held at or reasonably close to the mine site so that it may be viewed during the hearing or at any other location acceptable to the director and the person to whom

the notice or order was issued. Expiration of a notice or order shall not affect the director's right to assess civil penalties for the violations mentioned in the notice or order under sections 13 through 21 of this rule (civil penalties).

(b) A notice of violation or cessation order shall not expire as provided in subsection (a), if the condition, practice, or violation in question has been abated or if the informal public hearing has been waived.

(c) The director shall give as much advance notice as is practicable of the time, place, and subject matter of the informal public hearing to:

- (1) the person to whom the notice or order was issued; and
- (2) any person who filed a report which led to that notice or order.

(d) The director shall also post notice of the hearing at the offices of the division of reclamation and publish it, where practicable, in a newspaper of general circulation in the area of the mine.

(e) An informal public hearing held under this section shall be conducted by a representative of the director who may accept oral or written arguments or any other relevant information. IC 4-21.5 does not apply to an informal public hearing held under this section.

(f) Within five (5) days after the close of an informal public hearing, the director shall affirm, modify, or vacate the notice or order in writing. The decision shall be sent to:

- (1) the person to whom the notice or order was issued; and
- (2) any person who filed a report that led to the notice or order.

(g) The granting or waiver of an informal public hearing under this section does not affect the right of any person to administrative review under IC 4-21.5 and IC 14-34. (*Natural Resources Commission; 312 IAC 25-7-9; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3595, eff Dec 1, 2001*)

### **312 IAC 25-7-10 State enforcement; formal review of citations**

Authority: IC 14-34-2-1

Affected: IC 4-21.5; IC 14-34-15-9

Sec. 10. (a) A person issued a notice of violation or cessation order under sections 5 through 6 of this rule, or a person having an interest that is or may be adversely affected by the issuance, modification, vacation, or termination of a notice or order, may request in writing, a review of that action and request a hearing under IC 4-21.5 within thirty (30) days of issuance of that notice or order or of its modification, vacation, or termination. The filing of an application for review and request for a hearing shall not operate as a stay of any notice or order, or of any modification, termination, or vacation of the notice or order. The director may consolidate this hearing with a hearing requested pursuant to section 20 of this rule.

(b) Pending completion of the hearing, the operator may file with the director a written request for temporary relief pursuant to IC 14-34-15-9(e). (*Natural Resources Commission; 312 IAC 25-7-10; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3596, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182*)

### **312 IAC 25-7-11 State enforcement; inability to comply**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 11. (a) No cessation order or notice of violation issued under section 5 or 6 of this rule may be vacated because of inability to comply.

(b) Inability to comply may not be considered in determining whether a pattern of violation exists.

(c) Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty under sections 13 through 21 of this rule and of the duration of the suspension of a permit under section 7 of this rule. (*Natural Resources Commission; 312 IAC 25-7-11; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3596, eff Dec 1, 2001*)

### **312 IAC 25-7-12 State enforcement; injunctive relief**

Authority: IC 14-34-2-1

Affected: IC 14-34



Sec. 12. The director may request the attorney general to institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate relief from a court of competent jurisdiction whenever that person or his or her agent:

- (1) violates fails, or refuses to comply with any order or decision of the commission, department, or director under IC 14-34;
- (2) interferes with, hinders, or delays the director or an authorized representative of the director in carrying out the director's duties under IC 14-34;
- (3) refuses to admit an authorized representative of the director to a mine;
- (4) refuses to permit inspection of a mine by an authorized representative of the director;
- (5) refuses to furnish any information or report required to be furnished by IC 14-34 or this article;
- (6) refuses to permit access to or copying of any required records; or
- (7) refuses to permit inspection of monitoring equipment.

*(Natural Resources Commission; 312 IAC 25-7-12; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3596, eff Dec 1, 2001)*

**312 IAC 25-7-13 Civil penalties; when assessed**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 13. (a) The director shall assess a penalty for a violation that leads to the issuance of a cessation order.

(b) The director shall assess a penalty for each notice of violation, if the violation is assigned thirty-one (31) points or more under the point system described in section 15 of this rule.

(c) The director may assess a penalty for each notice of violation assigned thirty (30) points or less under the point system described in section 15 of this rule. In determining whether to assess a penalty, the director shall consider the factors listed in section 14 of this rule.

(d) The director shall assess a penalty of five thousand dollars (\$5,000) for each day a person conducts a surface coal mining operation for which no permit has been approved by the director. Provided, however, where a permit has been approved by the director but surface coal mining operations are conducted beyond the permit boundary, or in portions of the permit area as to which permit conditions remain to be satisfied, the penalty shall be determined as provided in subsections (a) through (c). *(Natural Resources Commission; 312 IAC 25-7-13; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3597, eff Dec 1, 2001)*

**312 IAC 25-7-14 Civil penalties; penalty determinations**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 14. The director shall determine the amount of penalty, if any, to be assessed by considering the following factors, and assigning points to each factor as follows:

(1) The director shall assign up to thirty (30) points based on the permittee's history of previous violations at the particular coal exploration or surface coal mining operation during the preceding twelve (12) months. One (1) point shall be assigned for each past violation contained in a notice of violation. Five (5) points shall be assigned for each violation contained in a cessation order. Points shall be assigned as follows:

(A) A violation shall not be counted, if the notice or order is the subject of pending administrative or judicial review or if the time to request such review or to appeal any administrative or judicial decision has not expired.

(B) No violation for which the notice or order has been vacated shall be counted.

(C) Each violation shall be counted without regard to whether it led to a civil penalty assessment.

(2) The director shall consider the seriousness of a violation, including any irreparable harm to the environment and hazard to the health or safety of the public, and shall assign up to thirty (30) points based on the seriousness of the violation as follows:

(A) The director shall assign up to fifteen (15) points based on the probability of the occurrence of the event that a violated standard is designed to prevent. Points shall be assessed according to the following schedule:

Probability of Occurrence	Points
none	0

insignificant	1 to 4
unlikely	5 to 9
likely	10 to 14
occurred	15

(B) The director shall assign up to fifteen (15) points, based on the extent of the potential or actual damage, in terms of area and impact on the public or environment, as follows:

- (i) If the damage or impact that the violated standard is designed to prevent would remain within the coal exploration or permit area, the director shall assign zero (0) to seven (7) points, depending on the duration and extent of the damage or impact.
- (ii) If the damage or impact that the violated standard is designed to prevent would extend outside the coal exploration or permit area, the director shall assign eight (8) to fifteen (15) points, depending on the duration and extent of the damage or impact.

(C) In the case of a violation of an administrative requirement, the director shall in lieu of subdivisions (A) and (B), assign up to fifteen (15) points for seriousness based upon the extent to which enforcement is obstructed by the violation.

(3) Negligence requirements are as follows:

(A) The director shall assign up to twenty-five (25) points based on the permittee's degree of fault in the occurrence of or failure to correct a violation. Points shall be assigned as follows:

- (i) A violation that occurs through no fault shall be assigned zero (0) points.
- (ii) A violation that is caused by negligence shall be assigned twelve (12) points or less depending on the degree of fault.
- (iii) A violation that occurs through recklessness shall be assigned thirteen (13) to nineteen (19) points, depending on the degree of fault.
- (iv) A violation that is caused by knowing or intentional conduct shall be assigned twenty (20) to twenty-five (25) points depending on the degree of fault.

(B) In determining the degree of fault involved in a violation and the number of points to be assigned, the following definitions apply:

- (i) "Knowing or intentional conduct" means conduct engaged in either with the conscious objective of causing the harm that results from the conduct or with the awareness that such harm will very probably be caused by that conduct.
- (ii) "No fault" means an inadvertent violation that was unavoidable by the exercise of reasonable care.
- (iii) "Negligence" means the failure of a permittee to prevent the occurrence of any violation due to indifference, lack of diligence, or lack of reasonable care or the failure to abate any violation due to indifference, lack of diligence or lack of reasonable care.
- (iv) "Recklessness" means evidence of a plain, conscious, and unjustifiable disregard of harm that might result from the conduct.

(C) In calculating points to be assigned for negligence, the acts of all persons working on the coal exploration or surface coal mining and reclamation site shall be attributed to the permittee to whom the notice or order was issued unless the permittee establishes that they were acts of deliberate sabotage.

(4) The director shall assign up to negative thirty (-30) points reducing any assessment of a violation if the permittee achieves rapid compliance after notification of violation, or if the permittee uses extraordinary measures in abating the violation. Points shall be assigned as follows:

(A) Rapid compliance as follows:

- (i) If the violation is abated immediately or within up to thirty percent (30%) of the time set for abatement, including extensions of time for abatement, the director shall assign negative twenty-one (-21) points.
- (ii) If the violation is abated within thirty-one percent (31%) to forty percent (40%) of the time set for abatement, the director shall assign negative eighteen (-18) points.
- (iii) If the violation is abated within forty-one percent (41%) to fifty percent (50%) of the time set for abatement, the director shall assign negative fifteen (-15) points.
- (iv) If the violation is abated within fifty-one percent (51%) to sixty percent (60%) of the time set for abatement,

the director shall assign negative twelve (-12) points.

(v) If the violation is abated within sixty-one percent (61%) to seventy percent (70%) of the time set for abatement, the director shall assign negative nine (-9) points.

(vi) If the violation is abated within seventy-one percent (71%) to eighty percent (80%) of the time set for abatement, the director shall assign negative six (-6) points.

(vii) If the violation is abated within eighty-one percent (81%) to ninety percent (90%) of the time set for abatement, the director shall assign negative three (-3) points.

(viii) If the violation is abated within ninety-one percent (91%) to one hundred percent (100%) of the time set for abatement, the director shall assign zero (0) points.

(ix) If the permittee demonstrates that the time set for abatement, including extensions of time for abatement, is less than the time reasonably required under all of the circumstances, then the percentages set forth in items (i) through (viii) shall be applied to the time reasonably required for abatement of the violation rather than the time set for abatement in the notice or order.

(B) Extraordinary measures as follows:

(i) If the permittee uses additional equipment, or pulls equipment off production, or uses additional person hours, and interrupts normal operations, the director shall assign negative nine (-9) points.

(ii) If the permittee uses additional equipment, or pulls equipment off production, or uses additional person hours, but normal coal production operations are not interrupted, the director shall assign negative six (-6) points.

(iii) If the permittee does not use extraordinary abatement measures, the director shall assign zero (0) points.

(iv) If the permittee performs more extensive abatement measures than those specified in the notice or order and if those measures result in an increased level of environmental protection or restoration, the director shall assign, in addition to any negative points assigned under clause (A) and items (i) through (iii) from negative one (-1) to negative ten (-10) points; provided that the total number of points deducted for good faith shall not be greater than thirty (30).

*(Natural Resources Commission; 312 IAC 25-7-14; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3597, eff Dec 1, 2001)*

**312 IAC 25-7-15 Civil penalties; penalty determination; point system**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 15. Except as provided in sections 13(d) and 16(b) of this rule, the director shall determine the amount of civil penalty, by converting the total number of points assigned under section 14 of this rule to a dollar amount, according to the following schedule:

Points	Dollars
1	20
2	40
3	60
4	80
5	100
6	120
7	140
8	160
9	180
10	200
11	220
12	240
13	260
14	280
15	300
16	320

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NATURAL RESOURCES COMMISSION

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17	340
18	360
19	380
20	400
21	420
22	440
23	460
24	480
25	500
26	600
27	700
28	800
29	900
30	1,000
31	1,100
32	1,200
33	1,300
34	1,400
35	1,500
36	1,600
37	1,700
38	1,800
39	1,900
40	2,000
41	2,100
42	2,200
43	2,300
44	2,400
45	2,500
46	2,600
47	2,700
48	2,800
49	2,900
50	3,000
51	3,100
52	3,200
53	3,300
54	3,400
55	3,500
56	3,600
57	3,700
58	3,800
59	3,900
60	4,000
61	4,100
62	4,200
63	4,300
64	4,400
65	4,500
66	4,600

67	4,700
68	4,800
69	4,900
70	5,000

and above

*(Natural Resources Commission; 312 IAC 25-7-15; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3599, eff Dec 1, 2001)*

### **312 IAC 25-7-16 Civil penalties; assessment of separate violations**

Authority: IC 14-34-2-1

Affected: IC 14-34-15-9; IC 14-34-17-1

Sec. 16. (a) The director may assess separately a civil penalty for each day from the date of issuance of the notice of violation or cessation order to the date set for abatement of the violation. In determining whether to make such an assessment, the director shall consider the factors listed in section 14 of this rule and may consider the extent to which the operator gained any economic benefit as a result of a failure to comply.

(b) Whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order, a civil penalty of not less than seven hundred fifty dollars (\$750) shall be assessed for each day during which such failure continues, for a maximum of thirty (30) days except that, if the operator initiates review proceedings with respect to the violation, the abatement period shall be extended as follows:

(1) If suspension of the abatement requirements of the notice or order is ordered in a temporary relief proceeding under IC 14-34-15-9(e) after a determination that the operator will suffer irreparable loss or damage from the application of the requirements, the period permitted for abatement shall not end until the date on which the administrative law judge issues a final order with respect to the violation in question.

(2) If the operator initiates review proceedings under IC 14-34-17-1 with respect to the violation in which the obligations to abate are suspended by the court, the daily assessment of a penalty shall not be made for any period before entry of a final order by the court.

*(Natural Resources Commission; 312 IAC 25-7-16; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3599, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182)*

### **312 IAC 25-7-17 Civil penalties; waiver**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 17. The director, upon the director's own initiative or upon written request, may waive the civil penalty for a notice of violation, in whole or in part, if he or she determines that, taking into account exceptional factors present in the particular case, the penalty would be demonstrably unjust. However, the director shall not waive the penalty on the basis of an argument that a reduction in the proposed penalty could be used to abate violations of IC 14-34, this article, or any condition of a permit or exploration approval. The basis for every waiver shall be fully explained and documented in the records of the case. *(Natural Resources Commission; 312 IAC 25-7-17; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3600, eff Dec 1, 2001)*

### **312 IAC 25-7-18 Civil penalties; procedures for assessment**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 18. (a) If the operator believes there are special circumstances surrounding a violation for which a notice of violation or cessation order has been issued, and the operator wants the director to consider this information before making an initial determination of the amount of civil penalty as provided in subsection (b), the operator may, within fifteen (15) days of service of the notice or order, submit written information about the violation to the director and to the inspector who issued the notice of violation or cessation order. This information should relate to the four (4) factors set forth in section 14 of this rule. The director shall consider any information so submitted in determining the amount of the penalty. Whether or not the operator submits

information under this subsection, the operator may, pursuant to section 19 of this rule, request an assessment conference to review the assessment that the director will serve under subsection (b).

(b) The director shall serve a copy of the proposed assessment and a statement of the basis for the proposed penalty, including an evaluation of the four (4) factors set forth in section 14 of this rule, on the operator by certified mail within thirty (30) days of the issuance of the notice or order.

(1) If the mail is offered at the address of the person set forth in the entrance sign, or at any address at which that person is in fact located, and if he or she refuses to accept delivery of or to collect such mail, the requirements of this subsection shall be deemed to have been complied with upon such tender.

(2) Failure by the director to serve any proposed assessment within thirty (30) days shall not be grounds for dismissal of all or part of such assessment unless the person against whom the proposed penalty has been assessed does the following:

(A) Proves actual prejudice as a result of the delay.

(B) Makes a timely objection to the delay. An objection shall be timely only if made in the normal course of administrative review.

(c) Unless an assessment conference according to section 19 of this rule has been requested, the director shall review and reassess any penalty if necessary to consider facts that were not reasonably available on the date of issuance of the proposed assessment. The director shall serve a copy of any such reassessment and a statement of the basis for the reassessment in the manner provided in subsection (b) within thirty (30) days after the date the violation is abated. (*Natural Resources Commission; 312 IAC 25-7-18; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3600, eff Dec 1, 2001*)

### **312 IAC 25-7-19 Civil penalties; procedures for assessment conference**

Authority: IC 14-34-2-1

Affected: IC 4-21.5; IC 14-34

Sec. 19. (a) The director shall arrange for a conference to review the proposed assessment or reassessment, upon written request of the operator, if the request is mailed within fifteen (15) days from the date the proposed assessment or reassessment is received.

(b) Requirements for an assessment conference are as follows:

(1) The director shall assign a conference officer to hold the assessment conference. The assessment conference shall be held within sixty (60) days from the date of issuance of the provided assessment or the end of the abatement period, whichever is later. Failure by the director to hold an assessment conference within sixty (60) days is not a basis for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed proves actual prejudice as a result of the delay. An assessment conference is not governed by IC 4-21.5.

(2) The director shall post notice of the time and place of the conference at the office closest to the mine at least five (5) days prior to the conference. Any person shall have the right to attend and participate in the conference.

(3) The conference officer shall consider all information relevant to the violation. Within thirty (30) days after the conference is held, the conference officer shall either:

(A) settle the issues, in which case a settlement agreement shall be prepared and signed by the conference officer on behalf of the director and by the operator; or

(B) affirm, raise, lower, or vacate the penalty.

(4) An increase or reduction of a proposed penalty assessment of more than twenty-five percent (25%) and more than five hundred dollars (\$500) shall not be final and binding on the director until approved by the director or a designee of the director.

(c) The conference officer shall promptly serve the operator with a notice of an action under this section as provided in section 18(b) of this rule. The reasons for the conference officer's action shall be:

(1) fully documented in the file; and

(2) mailed to the operator.

(d) Requirements for settlement agreements are as follows:

(1) If a settlement agreement is entered, the operator waives all rights to further review of the violation or penalty in question, except as otherwise expressly provided in the settlement agreement. The settlement agreement shall contain a clause to this effect.

(2) If full payment of the amount specified in the settlement agreement is not received by the director within thirty (30) days after the date of signing, the director may enforce the agreement or rescind it and proceed according to subsection (b)(3)(B) within thirty (30) days from the date of the rescission.

*(Natural Resources Commission; 312 IAC 25-7-19; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3600, eff Dec 1, 2001)*

**312 IAC 25-7-20 Civil penalties; hearing request Version a**

Authority: IC 14-34-2-1

Affected: IC 14-34

*NOTE: This version of section effective until superseded by the following version of this section, which is effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register.*

Sec. 20. The person charged with the violation may contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty or, if a conference has been held, the reassessed or affirmed penalty to the director or the director's authorized delegate (to be held in escrow as provided in section 21(b) of this rule) within thirty (30) days from receipt of the proposed assessment or reassessment or fifteen (15) days from the date of service of the conference officer's action. The director, or the director's authorized delegate, shall hold the payment in escrow pending completion of the administrative and judicial review process. The fact of the violation may not be contested if it has been decided in a review proceeding commenced under section 10 of this rule. *(Natural Resources Commission; 312 IAC 25-7-20; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3601, eff Dec 1, 2001)*

**312 IAC 25-7-20 Civil penalties; hearing request Version b**

Authority: IC 14-34-2-1

Affected: IC 14-34

*NOTE: This version of section effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register. See also preceding version of this section, effective until superseded by this version of section.*

Sec. 20. The person charged with the violation may contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty or, if a conference has been held, the reassessed or affirmed penalty to the director or the director's authorized delegate (to be held in escrow as provided in section 21(b) of this rule) within thirty (30) days from receipt of the proposed assessment, reassessment, or the conference officer's action. The director, or the director's authorized delegate, shall hold the payment in escrow pending completion of the administrative and judicial review process. The fact of the violation may not be contested if it has been decided in a review proceeding commenced under section 10 of this rule. *(Natural Resources Commission; 312 IAC 25-7-20; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3601, eff Dec 1, 2001; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2470, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register)*

**312 IAC 25-7-21 Civil penalties; final assessment and payment**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 21. (a) If the operator fails to request a hearing as provided in section 20 of this rule, the proposed assessment shall become a final order of the director and the penalty assessed shall become due and payable upon expiration of the time allowed to request a hearing.

(b) If any party requests judicial review of a final order of the director, the proposed penalty shall continue to be held in escrow until completion of the review. Otherwise, subject to subsection (c), the escrow funds shall be transferred to the director in payment of the penalty and the escrow shall end.

(c) If the final decision in the administrative and judicial review results in an order reducing or eliminating the proposed penalty assessed under sections 13 through 20 of this rule and this section, the director shall, within thirty (30) days of receipt of

the order, refund to the person assessed all or part of the escrowed amount, with interest from the date of payment into escrow to the date of the refund at the rate of six percent (6%), or at the prevailing United States Department of the Treasury rate, whichever is greater.

(d) Where final review results in an order increasing the penalty, the operator shall pay the difference to the director within thirty (30) days after the order is mailed to such operator. (*Natural Resources Commission; 312 IAC 25-7-21; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3601, eff Dec 1, 2001*)

### **312 IAC 25-7-22 Termination of jurisdiction**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 22. (a) The director may terminate jurisdiction over the reclaimed site of a completed surface coal mining and reclamation operation, or increment thereof, when the director determines, in writing, that, under the:

(1) interim program, all requirements imposed under 30 CFR Subchapter B, pursuant to IC 14-34, have been successfully completed; or

(2) permanent program, all requirements imposed under this article have been successfully completed or, where a performance bond was required, the director has made a final decision in accordance with 312 IAC 25-5-16 to release the performance bond fully.

(b) Following a termination of jurisdiction under subsection (a), the director shall reassert jurisdiction under the applicable regulatory program over a site if it is demonstrated that the bond release or written determination referred to in subsection (a) was based upon fraud, collusion, or misrepresentation of a material fact. (*Natural Resources Commission; 312 IAC 25-7-22; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3602, eff Dec 1, 2001*)

### **312 IAC 25-7-23 Individual civil penalties; definitions**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 23. (a) The definitions in this section apply to sections 24 through 27 of this rule.

(b) "Knowingly" means that an individual knew or had reason to know in authorizing, ordering, or carrying out an act or omission on the part of a corporate permittee that such act or omission constituted a violation, failure, or refusal.

(c) "Violation, failure, or refusal" means either of the following:

(1) A violation of a condition of a permit issued under IC 14-34 or this article.

(2) A failure or refusal to comply with any order issued under IC 14-34 or this article, or any order incorporated in a final decision issued by the department under IC 14-34 or this article, except an order incorporated in a decision issued under IC 14-34 or this article.

(d) "Willfully" means that an individual acted in both of the following manners:

(1) Intentionally, voluntarily, or consciously.

(2) With intentional disregard or plain indifference to legal requirements in authorizing, ordering, or carrying out a corporate permittee's action omission that constituted a violation, failure, or refusal.

(*Natural Resources Commission; 312 IAC 25-7-23; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3602, eff Dec 1, 2001*)

### **312 IAC 25-7-24 Individual civil penalties; timing for assessment**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 24. (a) Except as provided in subsection (b), the director may assess an individual civil penalty against any corporate director, officer, or agent of a corporate permittee who knowingly and willfully authorized, ordered, or carried out a violation, failure, or refusal as defined in section 23(c) of this rule.

(b) The director shall not assess an individual civil penalty in situations resulting from a permit violation by a corporate permittee until a cessation order has been issued to the corporate permittee for the violation, and the cessation order has remained



unabated for thirty (30) days. (*Natural Resources Commission; 312 IAC 25-7-24; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3602, eff Dec 1, 2001*)

**312 IAC 25-7-25 Individual civil penalties; amount**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 25. (a) When determining the amount of an individual civil penalty assessed under section 24 of this rule, the director shall consider the criteria specified in IC 14-34, including each of the following:

(1) The individual's history of authorizing, ordering, or carrying out previous violations, failures, or refusals, as defined in section 23(c) of this rule, at the particular surface coal mining operation.

(2) The seriousness of the violation, failure, or refusal as defined in section 23(c) of this rule (as indicated by the extent of damage and the cost of reclamation), including any irreparable harm to the environment and any hazard to the health or safety of the public.

(3) The individual charged makes an affirmative demonstration of good faith in attempting to achieve rapid compliance after notice of the violation, failure, or refusal as defined in section 23(c) of this rule.

(b) The penalty shall not exceed five thousand dollars (\$5,000) for each violation. Each day of a continuing violation may be deemed a separate violation, and the director may assess a separate individual civil penalty for each day the violation, failure, or refusal, as defined under section 23(c) of this rule, continues, from the date of service of the underlying notice of violation, cessation order, or other order incorporated in a final decision issued by the director, until abatement or compliance is achieved. (*Natural Resources Commission; 312 IAC 25-7-25; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3602, eff Dec 1, 2001*)

**312 IAC 25-7-26 Individual civil penalties; procedure for assessment**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 26. (a) The director shall serve on each individual to be assessed an individual civil penalty a notice of proposed individual civil penalty assessment which shall include each of the following:

(1) A narrative explanation of the reasons for the penalty.

(2) The amount to be assessed.

(3) A copy of any underlying notice of violation and cessation order.

(b) The notice of proposed individual civil penalty assessment shall become a final order of the director thirty (30) days after service upon the individual unless the individual completes one (1) of the following:

(1) The individual files within thirty (30) days of service of the notice of proposed individual civil penalty assessment a petition for review with the Indiana Natural Resources Commission, Division of Hearings, Indiana Government Center-South, 402 West Washington Street, Room W272, Indianapolis, Indiana 46204, (Phone: 317-232-4699).

(2) The director and the individual or responsible corporate permittee agree within thirty (30) days of service of the notice of proposed individual civil penalty assessment to a schedule or plan for the abatement or correction of the violation, failure, or refusal.

(c) For purposes of this section, service is sufficient if it would satisfy the requirements of sections 8 through 18 of this rule.

(*Natural Resources Commission; 312 IAC 25-7-26; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3603, eff Dec 1, 2001*)

**312 IAC 25-7-27 Individual civil penalties; payment of penalty**

Authority: IC 14-34-2-1

Affected: IC 14-34

Sec. 27. (a) If a notice of proposed individual civil penalty assessment becomes a final order in the absence of a petition for review or abatement agreement, the penalty shall be due upon issuance of the final order.

(b) If an individual named in a notice of proposed individual civil penalty assessment files a petition for review in accordance with section 26 of this rule, the penalty shall be due upon issuance of a final administrative order affirming, increasing, or decreasing

the proposed penalty.

(c) Where the director and the corporate permittee or individual have agreed in writing on a plan for the abatement of or compliance with the unabated order, an individual named in a notice of proposed individual civil penalty assessment may postpone payment until receiving either a final order from the director stating that the penalty is due on the date of such final order, or written notice that abatement or compliance is satisfactory and the penalty has been withdrawn. (*Natural Resources Commission; 312 IAC 25-7-27; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3603, eff Dec 1, 2001*)

## **Rule 8. Restriction on Financial Interest of State Employees**

### **312 IAC 25-8-1 Responsibility of director**

Authority: IC 14-34-1-3

Affected: IC 14-34-2-6

Sec. 1. (a) The director shall do the following:

- (1) Provide advice, assistance, and guidance to all employees required to file statements pursuant to section 4(a) of this rule.
  - (2) Review, within required time limits, the statement of employment and financial interests and supplements filed by each employee to determine if the employee has correctly identified those listed employment and financial interests that constitute a direct or indirect financial interest in an underground or surface coal mining operation.
  - (3) Resolve prohibited financial interest situations by ordering or initiating remedial action or by reporting the violations to the director of the Office of Surface Mining (OSM) who is responsible for initiating action to impose the penalties of IC 14-34.
  - (4) Certify on each Statement of Employment and Financial Interests that:
    - (A) a review has been made;
    - (B) prohibited financial interests have been resolved; and
    - (C) no other prohibited interests have been identified from the statement.
  - (5) Submit to the director of OSM such data that may be requested to enable preparation of the required annual report to Congress.
  - (6) Submit to the director of OSM the listings of positions as required by section 4(b)(1) and 4(b)(3) of this rule.
  - (7) Furnish a blank statement forty-five (45) days in advance of the filing date established by 30 CFR 705.13(a) to each employee required to file a statement.
  - (8) Inform annually each employee required to file a statement of the name, address, and telephone number of the person whom they may contact for advice and counseling.
- (b) Employees performing any duty or function under IC 14-34 shall:
- (1) have no direct or indirect financial interest in coal mining operations;
  - (2) file a fully completed Statement of Employment and Financial Interest upon entrance to duty and annually thereafter on the specified filing date; and
  - (3) comply with all directives issued by the director who is responsible for approving the statement.

(c) Commission members and advisory council members shall abstain from voting in decision-making functions that directly affect a company in which that member has a direct or indirect financial interest. (*Natural Resources Commission; 312 IAC 25-8-1; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3603, eff Dec 1, 2001*)

### **312 IAC 25-8-2 Definitions**

Authority: IC 14-34-1-3

Affected: IC 14-34-2-6

Sec. 2. The following definitions apply throughout this rule:

- (1) "Act" means IC 14-34.
- (2) "Coal mining operation" means the business of:
  - (A) developing, producing, preparing, or loading bituminous coal, subbituminous coal, anthracite, or lignite; or
  - (B) reclaiming the areas upon which such activities occur.

(3) "Direct financial interest" means:

- (A) ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings; and
- (B) any other arrangement where the employee may benefit from his or her holding in or salary from coal mining operations.

Direct financial interests include employment, pensions, creditor, real property and other financial relationships.

(4) "Employee" means any person employed by the department or the commission who performs any function or duty under IC 14-34.

(5) "Indirect financial interest" means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests, including interests held by his or her spouse, minor child, and other relatives, including inlaws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining operation in which the spouse, minor children, or other resident relatives hold a financial interest.

(6) "Office" means the Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior.

(7) "Performing any function or duty under IC 14-34" means those decisions or actions, which, if performed or not performed by an employee, affect the programs under IC 14-34.

(8) "Prohibited financial interests" means any direct or indirect financial interest in any coal mining operation.

*(Natural Resources Commission; 312 IAC 25-8-2; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3604, eff Dec 1, 2001)*

### **312 IAC 25-8-3 Penalties**

Authority: IC 14-34-1-3

Affected: IC 14-34-2-6

Sec. 3. (a) Any person who knowingly violates IC 14-34-2-6 commits a Class A misdemeanor.

(b) Any person who knowingly violates IC 14-34-2-6 may also be punished under Section 417(g) of the Surface Mining Control and Reclamation Act of 1977, Public Law 95-87.

(c) IC 14-34-2-6 makes compliance with the financial interest requirements a condition of employment for employees of the department who perform any functions or duties under IC 14-34.

(d) An employee who fails to file the required statement will be considered in violation of the intended employment provisions of IC 14-34-2-6 and will be subject to removal from his or her position. *(Natural Resources Commission; 312 IAC 25-8-3; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3604, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182)*

### **312 IAC 25-8-4 Filing requirements**

Authority: IC 14-34-1-3

Affected: IC 14-34-2-6

Sec. 4. (a) Any employee who performs any function or duty under IC 14-34 or this article is required to file a statement of employment and financial interests. Members of a board (including the commission or advisory board) established under Indiana statute or rule to represent multiple interests, who perform a function or duty under IC 14-34 or this article, must file a statement of employment and financial interests.

(b) An employee who occupies a position that has been determined by the director not to involve performance of any function or duty under IC 14-34 or this article is not required to file a statement. The director shall:

- (1) prepare a list of those positions within the department's division of reclamation that do not involve performance of any functions or duties under IC 14-34 or this article;
- (2) prepare a list of the divisions within the department that have no employees performing functions or duties under IC 14-34 or this article; and
- (3) for divisions within the department that have some employees performing functions or duties under IC 14-34 or this article, prepare a list of those positions required to file a statement of employment and financial interests.

(c) For subsection (b)(1) and (b)(2), only those employees who are employed in a listed organizational unit or who occupy a listed position will be exempted from the filing requirements of IC 14-34-2-6 or this section.

(d) For subsection (b)(3), only those employees who are employed in a listed organizational unit or who occupy a listed position will be required to file the statement of employment and financial interests.

(e) The director shall annually review and update these listings.

(f) The director shall submit the lists required in subsection (b) (or a certification that a revision is not required) to the director of the Office of Surface Mining (OSM) by no later than September 30 of each year. Each annual updated listing must be submitted to the director of OSM and must contain a written justification for inclusion of the positions listed in subsection (b)(1) and (b)(2) and exclusion of the positions not listed in subsection (b)(3).

(g) The director may revise these listings at any time if it is determined such revision is required to carry out the purpose of the law or the regulations. Revisions are effective upon notification to the incumbent of an affected position. (*Natural Resources Commission; 312 IAC 25-8-4; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3605, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1183*)

### **312 IAC 25-8-5 Filing dates**

Authority: IC 14-34-1-3

Affected: IC 14-34-2-6

Sec. 5. (a) Employees and members of a board (including the commission or advisory board) representing multiple interests performing functions or duties under IC 14-34 shall file annually on February 1 of each year or at such other dates as may be agreed to by the director of the Office of Surface Mining.

(b) New employees and new members of a board (including the commission or advisory board) representing multiple interests hired, appointed, or transferred to perform functions or duties under IC 14-34 or this article will be required to file at the time of entrance to duty.

(c) New employees and new members of a board (including the commission or advisory board) representing multiple interests are not required to file an annual statement on the subsequent annual filing date if this date occurs within two (2) months after their initial statement was filed. (*Natural Resources Commission; 312 IAC 25-8-5; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3605, eff Dec 1, 2001*)

### **312 IAC 25-8-6 Filing locations**

Authority: IC 14-34-1-3

Affected: IC 14-34-2-6

Sec. 6. (a) The annual statement required of the director shall be filed with the director of the Office of Surface Mining.

(b) All other employees and members of a board (including the commission or advisory board) representing multiple interests as provided in section 4(a) of this rule shall file their statement with the director. (*Natural Resources Commission; 312 IAC 25-8-6; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3605, eff Dec 1, 2001*)

### **312 IAC 25-8-7 Reporting requirements**

Authority: IC 14-34-1-3

Affected: IC 14-34-2-6

Sec. 7. (a) Each employee shall report all information required on the statement of employment and financial interests of the employee, his or her spouse, minor children, or other relatives who are full-time residents of the employee's home. The report shall be on OSM Form 705-1 as provided by the office.

(b) The statement will set forth the following information regarding any financial interest:

(1) Any continuing financial interests in business entities and nonprofit organizations through a pension or retirement plan, shared income, salary, or other income arrangement as a result of prior or current employment. The employee, his or her spouse, or other resident relative is not required to report a retirement plan from which he or she will receive a guaranteed income. A guaranteed income is one that is unlikely to be changed as a result of action taken by the commission.

(2) Any financial interest in business entities and nonprofit organizations through ownership of stock, stock options, bonds, securities, or other arrangements, including trusts. An employee is not required to report mutual funds, investment clubs, or

regulated investment companies not specializing in underground and surface coal mining operations.

(3) Ownership, lease, royalty, or other interests or rights in lands or minerals. Employees are not required to report lands developed and occupied for a personal residence.

(4) Debts owed to business entities and nonprofit organizations. Employees are not required to report debts owed to financial institutions (banks, savings and loan associations, credit unions) which are chartered to provide commercial or personal credit. Also excluded are charge accounts and similar short term debts for current and ordinary household and living expenses.

(c) Requirements for employee certification, and, if applicable, a listing of exceptions are as follows:

(1) The statement will provide for a signed certification by the employee that to the best of his or her knowledge:

(A) none of the listed financial interests represent an interest in an underground or surface coal mining operation, except as specifically identified and described as exceptions by the employee as part of the certificate; and

(B) the information shown on the statement is true, correct, and complete.

(2) An employee is expected to:

(A) have complete knowledge of his or her personal involvement in business enterprises, such as a sole proprietorship and partnership, his or her outside employment, and the outside employment of the spouse and other covered relatives; and

(B) be aware of the information contained in the annual financial statement or other corporate or business reports routinely circulated to investors or routinely made available to the public.

(3) The exceptions shown in the employee certification of the form must provide enough information for the director to determine the existence of a direct or indirect financial interest. Accordingly, the exceptions should:

(A) list the financial interest;

(B) show the number of shares, estimated value, or annual income of the financial interests; and

(C) include any other information that the employee believes should be considered in determining whether or not the interest represents a prohibited interest.

(4) Employees are cautioned to give serious consideration to their direct and indirect financial interests before signing the statement of certification. Signing the certification without listing known prohibited financial interests may be cause for imposing the penalties prescribed in section 3 of this rule, and Section 417(g) of the Surface Mining Control and Reclamation Act of 1977, Public Law 95-87.

*(Natural Resources Commission; 312 IAC 25-8-7; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3606, eff Dec 1, 2001)*

### **312 IAC 25-8-8 Resolving prohibited interests; actions by the director**

Authority: IC 14-34-1-3

Affected: IC 14-34-2-6

Sec. 8. (a) If an employee has a prohibited financial interest, the director shall promptly advise the employee that remedial action that will resolve the prohibited interest is required within ninety (90) days.

(b) Remedial action may include:

(1) reassignment of the employee to a position that performs no function or duty under IC 14-34;

(2) divestiture of the prohibited financial interest; or

(3) other appropriate action that either eliminates the prohibited interest or eliminates the situation that creates the conflict.

(c) If, ninety (90) days after an employee is notified to take remedial action, that employee is not in compliance with the requirements of IC 14-34 and this article, the director shall report the facts of the situation to the director of the Office of Surface Mining who shall determine whether action to impose the penalties prescribed by IC 14-34 should be initiated. The report to the director of the Office of Surface Mining shall include the original or a certified true copy of the employee's statement and any other information pertinent to the state director of the Office of Surface Mining's determination, including a statement of actions being taken at the time the report is made. *(Natural Resources Commission; 312 IAC 25-8-8; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3606, eff Dec 1, 2001)*

### **312 IAC 25-8-9 Gifts and gratuities**

Authority: IC 14-34-1-3

Affected: IC 14-34-2-6

Sec. 9. (a) Except as provided in subsection (b), employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a coal company that:

- (1) conducts or is seeking to conduct, operations or activities that are regulated by the department; or
- (2) has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.

(b) The prohibitions in subsection (a) do not apply in the context of obvious family or personal relationships, such as those between the parents, children, or spouse of the employee and the employee, when the circumstances make it clear that it is those relationships rather than the business of the persons concerned that are the motivating factors. An employee may accept:

- (1) food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon, dinner, or other meeting where an employee may properly be in attendance; and
- (2) unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal value.

(c) Employees found guilty of violating the provisions of this section will be subject to administrative remedies in accordance with existing or adopted state policies. (*Natural Resources Commission; 312 IAC 25-8-9; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3607, eff Dec 1, 2001*)

## **Rule 9. Training, Examination, and Certification of Blasters**

### **312 IAC 25-9-1 Applicability**

Authority: IC 14-34-2-1; IC 14-34-12-2

Affected: IC 14-34-12-1

Sec. 1. This rule establishes the requirements and procedures for the training, examination, and certification of a person engaging in or directly responsible for the use of explosives in surface coal mining and reclamation operations. (*Natural Resources Commission; 312 IAC 25-9-1; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3607, eff Dec 1, 2001*)

### **312 IAC 25-9-2 Purpose**

Authority: IC 14-34-2-1; IC 14-34-12-2

Affected: IC 14-34-12-1

Sec. 2. The objective of this rule is to establish a training and certification program that ensures that all blasts detonated in surface coal mining and reclamation operations are designed, prepared, supervised, and detonated by trained and competent persons who meet the requirements of this article as they relate to blasting in surface coal mining and reclamation operations. (*Natural Resources Commission; 312 IAC 25-9-2; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3607, eff Dec 1, 2001*)

### **312 IAC 25-9-3 Training**

Authority: IC 14-34-2-1; IC 14-34-12-2

Affected: IC 14-34-12-1

Sec. 3. (a) A person seeking to become a certified blaster shall receive the training specified in subsection (c).

(b) A person who is not seeking certification and is assigned to a blasting crew or assists in the use of explosives must receive direction and on-the-job training from a certified blaster.

(c) The director will approve qualified persons or institutions who will be responsible for conducting the department's approved course to train a person seeking to become a certified blaster. A person assigned to a blasting crew or assists in the use of explosives may attend the training courses for certified blasters. The training course for certified blasters shall provide for training and discuss practical applications of the following:

- (1) Explosives, including the following:

- (A) Selection of the type of explosive to be used.

- (B) Determination of the properties of explosives that will produce desired results at an acceptable level of risk.

- (C) Handling, transportation, and storage.

- (2) Blast designs, including the following:

- (A) Geologic and topographic considerations.
  - (B) Design of a blast hole, with critical dimensions.
  - (C) Pattern design, field layout, and timing of blast holes.
  - (D) Field applications.
  - (3) Loading blast holes, including priming and boosting.
  - (4) Initiation systems and blasting machines.
  - (5) Blasting vibrations, airblast, and flyrock, including the following:
    - (A) Monitoring techniques.
    - (B) Methods to control adverse effects.
  - (6) Secondary blasting applications.
  - (7) Current federal and state rules applicable to the use of explosives.
  - (8) Blast records.
  - (9) Schedules.
  - (10) Preblasting surveys, including the following:
    - (A) Availability.
    - (B) Coverage.
    - (C) Use of in blast design.
  - (11) Blast-plan requirements.
  - (12) Certification and training.
  - (13) Signs, warning signals, and site control.
  - (14) Unpredictable hazards, including the following:
    - (A) Lightning.
    - (B) Stray currents.
    - (C) Radio waves.
    - (D) Misfires.
  - (15) Any other subjects the director may from time to time require.
  - (d) A person who is not seeking certification, but is assigned to a blasting crew or assists in the use of explosives, shall either attend the training courses approved by the director or shall receive on the job training from his or her employer or the permittee.
  - (1) A person assigned to a blasting crew or who assists in the use of explosives shall receive training in the following topics:
    - (A) Handling, transportation, and storage of explosives.
    - (B) Loading of blast holes.
    - (C) Signs, warning signals, and site access control.
  - (2) Documentation of a person's training shall be maintained at the mine site and made available to the director or the director's authorized representative upon request.
- (Natural Resources Commission; 312 IAC 25-9-3; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3607, eff Dec 1, 2001)*

### **312 IAC 25-9-4 Application for certification**

Authority: IC 14-34-2-1; IC 14-34-12-2

Affected: IC 14-34-12-1

- Sec. 4. (a) An application for certification as a certified blaster shall be submitted to the department.
- (b) An application for certification shall be, in writing, on forms furnished by the department.
- (c) An application shall be completed in accordance with the instructions provided with the application.
- (d) An application form is incomplete if the form does not contain all required information or if the form contains incorrect information. The applicant will be given notice of the deficiencies, and, if the required information is not provided by the applicant within thirty (30) days of the notice, the application will be terminated.
- (e) The director or an authorized representative may verify the information shown on the application directly with educational institutions, other certification boards, and personal references, and may verify the work experience with the employer.
- (f) If an application has been terminated, the person will not be considered for certification. A new application may be submitted at any time by complying with subsections (b) and (c). *(Natural Resources Commission; 312 IAC 25-9-4; filed Jun 21,*

2001, 2:53 p.m.: 24 IR 3608, eff Dec 1, 2001)

**312 IAC 25-9-5 Examinations Version a**

Authority: IC 14-34-2-1; IC 14-34-12-2

Affected: IC 14-34-12-1

*NOTE: This version of section effective until superseded by the following version of this section, which is effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register.*

Sec. 5. (a) The competence of an applicant for certification as a certified blaster will be evaluated by reviewing and verifying the following:

(1) The ability of the applicant to be directly responsible for the use of explosives in surface coal mining and reclamation operations through a written examination in the technical aspects of blasting and applicable Indiana and federal laws and regulations governing the storage, use, and transportation of explosives.

(2) The practical field experience specified in subsection (c).

(b) An applicant for registration as a certified blaster shall be examined, in the topics set forth in section 3(c) of this rule.

(c) Admission to examination will be denied or deferred if the applicant lacks the necessary training required by section 3 of this rule or a minimum of one (1) year practical field experience. Applicants denied or deferred admission will be so notified, in writing, stating the reason or reasons for such denial or deferral.

(d) An examination notice will be sent to all applicants admitted for examination approximately six (6) weeks in advance of the regularly scheduled examination. This notice will establish the time and place of the examination and other instructions pertinent to the examination. Failure to appear for an examination will result in termination of the application unless the director, for good reason, extends the time for appearing.

(e) Only pass-fail grades will be issued. A passing grade will be issued to applicants who correctly respond to at least seventy percent (70%) of the questions contained on the written examination.

(f) Any applicant may review his or her examination answer sheets in the department's Jasonville office at any time during normal working hours after the applicant has received notice of the examination results. The answer sheets will be retained in the department's office for a period of one (1) year after the examination date after which time they will be destroyed.

(g) An applicant failing an examination may retake the examination without reapplying. Applicants must notify the director, in writing, within sixty (60) days from the date of notice of failing, of their intention to retake the examination. The applicant will be scheduled for reexamination at the next scheduled examination. Failure to notify the director will cause the application to be terminated, and the applicant must reapply for examination pursuant to section 4 of this rule. (*Natural Resources Commission; 312 IAC 25-9-5; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3608, eff Dec 1, 2001*)

**312 IAC 25-9-5 Examinations Version b**

Authority: IC 14-34-2-1; IC 14-34-12-2

Affected: IC 14-34-12-1

*NOTE: This version of section effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register. See also preceding version of this section, effective until superseded by this version of section.*

Sec. 5. (a) The competence of an applicant for certification as a certified blaster will be evaluated by reviewing and verifying the following:

(1) The ability of the applicant to be directly responsible for the use of explosives in surface coal mining and reclamation operations through a written examination in the technical aspects of blasting and applicable Indiana and federal laws and regulations governing the storage, use, and transportation of explosives.

(2) The practical field experience specified in subsection (c).

(b) An applicant for registration as a certified blaster shall be examined in the topics set forth in section 3(c) of this rule.

(c) Admission to examination will be denied or deferred if the applicant lacks the necessary training required by section 3 of this rule or a minimum of one (1) year practical field experience. An applicant denied or deferred admission will be so notified, in



writing, stating any reason for such denial or deferral.

(d) An examination notice will be sent to all applicants admitted for examination approximately six (6) weeks in advance of the regularly scheduled examination. This notice will establish the time and place of the examination and other instructions pertinent to the examination. Failure to appear for an examination will result in termination of the application unless the director, for good reason, extends the time for appearing.

(e) Only pass-fail grades will be issued. A passing grade will be issued to applicants who correctly respond to at least seventy percent (70%) of the questions contained on the written examination.

(f) Any applicant may review his or her examination answer sheets in the department's Jasonville office at any time during normal working hours after the applicant has received notice of the examination results. The answer sheets will be retained in the department's office for a period of one (1) year after the examination date after which time they will be destroyed.

(g) An applicant failing an examination may retake the examination two (2) times without reapplying. An applicant failing the examination three (3) times must retake the certified blaster training course. An applicant must notify the director, in writing, within sixty (60) days from the date of notice of failing of their intention to retake the examination. The applicant will be scheduled for reexamination at the next scheduled examination. Failure to notify the director will cause the application to be terminated, and the applicant must reapply for examination under section 4 of this rule. (*Natural Resources Commission; 312 IAC 25-9-5; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3608, eff Dec 1, 2001; filed Apr 23, 2004, 10:45 a.m.: 27 IR 2714, eff upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register*)

### **312 IAC 25-9-6 Comity registration**

Authority: IC 14-34-2-1; IC 14-34-12-2

Affected: IC 14-34-12-1

Sec. 6. (a) Any person who holds a valid certificate of registration as a certified blaster in another state may be granted certification as a certified blaster without examination as specified in section 5 of this rule, if:

(1) the director finds that the standard for certification in the other state at the time such certificate was issued was in accordance with a blaster certification program approved pursuant to 30 U.S.C. 1253 and 30 CFR 732.13, and such standard is not lower than the standard required by this article;

(2) reciprocal certification privileges are granted to certified blasters registered in Indiana; and

(3) the person has made application for certification on forms furnished by the department.

(b) When the director finds that the basis for certification in the other state of registration was at a standard lower than the standard required by this article, the applicant will be required to take the training and examination as specified in sections 3 and 5 of this rule, respectively. (*Natural Resources Commission; 312 IAC 25-9-6; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3609, eff Dec 1, 2001*)

### **312 IAC 25-9-7 Certification**

Authority: IC 14-34-2-1; IC 14-34-12-2

Affected: IC 14-34-12-1

Sec. 7. (a) When an applicant is accepted for certification, either by passing the examination or by comity, the department will provide notice to the applicant of the director's action. The certification will be valid for three (3) years.

(b) The director will assign a certification number to the registrant, and establish the date of certification that will appear on the certificate. As soon as practicable thereafter, the director will issue a certificate.

(c) The director is authorized to issue, upon request of a registrant a duplicate or replacement certificate. Such new certificate shall be assigned the original certificate number with the word "duplicate" inserted above the number.

(d) Certified blasters shall take every reasonable precaution to protect their certificate from loss, theft, or unauthorized duplication. Any such occurrence shall be immediately reported to the department.

(e) Certified blasters shall maintain their certificate at the mine site and shall immediately exhibit the certificate to any authorized representative of the director upon request.

(f) Certification as required by this article shall not be assigned or transferred to any other individual.

(g) A certified blaster shall not delegate their responsibility to any individual who is not a certified blaster. (*Natural Resources Commission; 312 IAC 25-9-7; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3609, eff Dec 1, 2001*)

**312 IAC 25-9-8 Renewal Version a**

Authority: IC 14-34-2-1; IC 14-34-12-2

Affected: IC 14-34-12-1

*NOTE: This version of section effective until superseded by the following version of this section, which is effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register.*

Sec. 8. (a) A certified blaster must obtain renewal of the certification every three (3) years. A request for renewal of the certification shall be, in writing, on a form furnished by the department. The request for renewal must be received by the department not later than thirty (30) days prior to expiration of the certificate.

(b) The renewal will be approved if the certified blaster has worked at least twelve (12) months of the preceding thirty-six (36) months as a certified blaster and the certified blaster is not in violation of section 9 of this rule.

(c) When the certification is not renewed for more than one (1) year after expiration, the certification will not be renewable. An application shall be submitted to the department in the event that the individual desires to again be certified, and the individual shall be considered as a new applicant.

(d) A renewal notice will be sent to each registrant not less than two (2) months prior to the expiration date of the certification.

(e) All renewal notices and other communications will be sent to the last address given by the registrant to the department. A failure of the certified blaster to receive a renewal notice under this subsection does not relieve the certified blaster of the obligation to obtain a renewal of the certification as required under subsection (a). (*Natural Resources Commission; 312 IAC 25-9-8; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3610, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1183*)

**312 IAC 25-9-8 Renewal Version b**

Authority: IC 14-34-2-1; IC 14-34-12-2

Affected: IC 14-34-12-1

*NOTE: This version of section effective upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register. See also preceding version of this section, effective until superseded by this version of section.*

Sec. 8. (a) A certified blaster must obtain renewal of the certification every three (3) years. A request for renewal of the certification shall be in writing on a form furnished by the department. The request for renewal must be received by the department not later than thirty (30) days prior to expiration of the certificate.

(b) The renewal will be approved if the certified blaster:

(1) has worked at least twelve (12) months of the preceding thirty-six (36) months as a certified blaster;

(2) is not in violation of section 9 of this rule; and

(3) has obtained a minimum of fifteen (15) hours of additional training in the topics found in section 3 of this rule. Each certified blaster must provide documentation that fifteen (15) hours of additional training has been achieved. The training must be approved by the department.

(c) When the certification is not renewed for more than one (1) year after expiration, the blaster must retake the examination under section 5 of this rule and demonstrate completion of fifteen (15) hours of additional training in the previous thirty-six (36) months. When the certification is not renewed for five (5) years after expiration, the certification will not be renewable. An application shall be submitted to the department in the event that the individual desires to again be certified, and the individual shall be considered as a new applicant.

(d) A renewal notice will be sent to each registrant not less than two (2) months prior to the expiration date of the certification.

(e) All renewal notices and other communications will be sent to the last address given by the registrant to the department. A failure of the certified blaster to receive a renewal notice under this subsection does not relieve the certified blaster of the obligation to obtain a renewal of the certification as required under subsection (a). (*Natural Resources Commission; 312 IAC 25-9-8; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3610, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1183; filed Apr 23, 2004,*

10:45 a.m.: 27 IR 2714, *eff* upon the Department of Natural Resources receiving notice of approval from the Office of Surface Mining and Reclamation of the U.S. Department of the Interior and notice of that approval being published in the Indiana Register)

**312 IAC 25-9-9 Suspension or revocation of certification**

Authority: IC 14-34-2-1; IC 14-34-12-2

Affected: IC 4-21.5; IC 14-34-12-1

Sec. 9. (a) The commission, following written notice and opportunity for a hearing, may, and upon a finding of willful conduct, shall, suspend or revoke the certification of a blaster for any of the following reasons:

- (1) Noncompliance with any lawful order of the director or the commission.
- (2) Unlawful use in the work place of, or current addiction to, alcohol, narcotics, or other dangerous drugs.
- (3) Violation of any provision of the Indiana or federal laws or regulations dealing with the acquisition, transportation, storage, or use of explosives.
- (4) Providing false information or a misrepresentation to obtain certification.
- (5) Violation of section 7(d), 7(e), 7(f), or 7(g) of this rule.
- (b) Upon notice of a revocation, the certified blaster shall immediately surrender the revoked certificate to the commission.
- (c) All hearings conducted by the commission concerning suspension or revocation of certification must be held under IC 4-

21.5.

(d) The commission, for good and sufficient reasons, may reissue a certificate to any person whose certification has been revoked. The person must apply for certification pursuant to section 4 of this rule for reinstatement. (*Natural Resources Commission; 312 IAC 25-9-9; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3610, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1183*)

**Rule 10. Reclamation Division Fund; Reclamation Fee**

**312 IAC 25-10-1 Scope**

Authority: IC 14-34-2-1

Affected: IC 14-34-13

Sec. 1. This rule sets forth the requirements for payment of the reclamation fee under IC 14-34-13. (*Natural Resources Commission; 312 IAC 25-10-1; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3610, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1183*)

**312 IAC 25-10-2 Reclamation fee**

Authority: IC 14-34-2-1

Affected: IC 14-34-13

Sec. 2. (a) Until July 1, 1995, all operators of coal mining operations subject to IC 14-34 and this article shall pay to the department for deposit in the natural resources reclamation division fund a reclamation fee of five and one-half cents (\$0.055) on each ton of coal produced for sale, transfer, or use.

(b) Until July 1, 1995, all operators of underground coal mining operations with no support facilities located within Indiana, but producing coal from reserves located within Indiana, shall pay to the department for deposit in the natural resources reclamation division fund a reclamation fee of one cent (\$0.01) per ton of coal produced from Indiana.

(c) The fee shall be determined based upon the weight of the coal at the time of initial bona fide sale, transfer of ownership, or use by the operator. The initial bona fide sale and the weight of the coal shall be determined as follows:

- (1) The initial bona fide sale, transfer of ownership, or use shall be determined by the first transaction or use of the coal by the operator immediately after it is severed or removed from a reclaimed coal refuse deposit.
- (2) The weight of each ton of coal shall be determined by the actual gross weight of the coal and the following:
  - (A) Impurities that have not been removed prior to the time of initial bona fide sale, transfer of ownership, or use by the operator (excluding excess moisture for which a reduction has been taken under subsection (d)) shall not be

deducted from the gross weight.

(B) Operators selling coal on a clean coal basis shall retain records that show run-of-mine tonnage and the basis for the clean coal transaction.

(C) Insufficient records shall subject the operator to fees based on raw tonnage data.

(d) The operator may take a calculated weight reduction to allow for the weight of excess moisture in the coal subject to the following requirements:

(1) The operator shall demonstrate through competent evidence that there is a reasonable basis for determining the existence and amount of excess moisture. Documentation shall be updated as necessary to establish the continuing validity of the excess moisture content allowance taken by the operator.

(2) Inherent and total moisture shall be tested using standard laboratory analyses.

(3) The operator shall test for variations in inherent moisture amounts for different seams of coal produced that are blended prior to the initial bona fide sale, transfer of ownership, or use of the coal by the operator.

(4) The operator shall retain the results of all laboratory analyses and all other relevant documentation (including the operator's books and records) for not less than six (6) years after the date of each analysis.

(5) If the director disallows all or part of the moisture allowance, the operator shall submit the additional fee.

*(Natural Resources Commission; 312 IAC 25-10-2; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3610, eff Dec 1, 2001)*

### **312 IAC 25-10-3 Fee payment**

Authority: IC 14-34-2-1

Affected: IC 14-34-13

Sec. 3. (a) Each operator shall pay the reclamation fee concurrently with the federal reclamation fee under the Federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232) and not later than thirty (30) days after the end of each calendar quarter beginning with the third calendar quarter of 1991.

(b) Each operator shall use a coal production and reclamation fee report form (Form DOR-1), as set out in the Division of Reclamation, Reclamation Fee Handbook, revised August 1991, developed by the director to report the tonnage of coal produced and to calculate the reclamation fee due during the applicable calendar quarter.

(c) Each quarterly report of coal production shall be accompanied by a copy of OSM-1 and a check or money order made payable to the department in the amount of the reclamation fee owed for that quarter. Payments shall be made in person or mailed to the Jasonville office of the division of reclamation. Wire transfer, if available, can be used for payment of the reclamation fee, and the operator shall submit a copy of Form DOR-1 within five (5) days of the transfer.

(d) Operators failing to submit the required report or to make reclamation fee payments by the thirtieth day after the end of the calendar quarter will be subject to a notice of violation and civil penalty assessments. Failure to comply with the terms of the notice of violation will result in the issuance of a cessation order for the failure to abate the notice of violation and an order to show cause why the permit should not be suspended or revoked. Delinquent payments made shall be credited against the civil penalty first, if assessed, and the reclamation fee second. Daily civil penalty amounts may be assessed. *(Natural Resources Commission; 312 IAC 25-10-3; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3611, eff Dec 1, 2001)*

### **312 IAC 25-10-4 Production records**

Authority: IC 14-34-2-1

Affected: IC 5-14-3-4; IC 14-34-13

Sec. 4. (a) Any person engaging in or conducting a coal mining operation shall maintain, on a current basis, records that contain at least the following information:

(1) The tons of coal produced, bought, sold, or transferred.

(2) The amount received per ton.

(3) The name of the person to whom the coal was sold or transferred.

(4) The date of each sale or transfer.

(5) The tons of coal used by the operator and the date of consumption.

(6) The tons of coal stockpiled or inventoried that are not classified as sold for federal reclamation fee purposes under 30 CFR

870.

(b) Authorized representatives of the director shall have access to records of any coal mining operation for the purpose of determining compliance of that or any other operation with this rule.

(c) Any person engaging in or conducting a coal mining operation shall make available any book or record necessary to substantiate the accuracy of reclamation fee reports and payments at reasonable times for inspection and copying by authorized representatives of the director. The director may use audit information collected by the federal Office of Surface Mining for the same reporting period in lieu of a department audit of records. All information, including copies of any records, shall be deemed confidential and not available for public inspection or review unless specifically required by a state or federal statute or ordered by a court under the rules of discovery if that information is excepted from public disclosure under the provisions of IC 5-14-3-4 or IC 14-34; however, such information may be made available to the federal Office of Surface Mining.

(d) Any persons engaging in or conducting a coal mining operation shall maintain books and records for a period of six (6) years from the end of the calendar quarter in which the fee was due or paid, whichever is later.

(e) If an operator of a coal mining operation fails to maintain or make available the records as required in this rule, the director shall make an estimate of fee liability under this rule through the use of average production figures based upon the nature and acreage of the coal mining operation in question, then assess the fee at the amount estimated to be due. Following a director's estimate of fee liability, an operator may request the director to revise the estimate based upon information provided by the operator. The operator has the burden of demonstrating that the estimate is incorrect by providing documentation acceptable to the director and comparable to the information required under subsection (a). (*Natural Resources Commission; 312 IAC 25-10-4; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3611, eff Dec 1, 2001*)

## ARTICLE 26. GRANT PROGRAMS

### Rule 1. Definitions

#### 312 IAC 26-1-1 Applicability

Authority: IC 14-12-3-12; IC 14-12-3-13

Affected: IC 14-12-3-8

Sec. 1. The definitions in this rule apply throughout this article and are supplemental to those set forth in 312 IAC 1. (*Natural Resources Commission; 312 IAC 26-1-1; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1275*)

#### 312 IAC 26-1-2 "Acquisition" defined

Authority: IC 14-12-3-12; IC 14-12-3-13

Affected: IC 14-12-3-8

Sec. 2. "Acquisition" means to obtain fee title or another interest in real property (including development rights or a remainder interest). (*Natural Resources Commission; 312 IAC 26-1-2; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1275*)

#### 312 IAC 26-1-3 "Community park" or "recreation area" defined

Authority: IC 14-12-3-12; IC 14-12-3-13

Affected: IC 14-12-3-8

Sec. 3. "Community park" or "recreation area" means a park or recreation site that primarily provides public recreation for a municipality, township, or county but may also serve a larger area. (*Natural Resources Commission; 312 IAC 26-1-3; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1275*)

#### 312 IAC 26-1-4 "Corporation" defined

Authority: IC 14-12-3-12; IC 14-12-3-13

Affected: IC 14-12-3-8

Sec. 4. "Corporation" means a not-for-profit corporation formed under IC 23-7-1.1 [IC 23-7-1.1 was repealed by P.L.179-1991, SECTION 34, effective August 1, 1991.]. (Natural Resources Commission; 312 IAC 26-1-4; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1275)

**312 IAC 26-1-5 "Hometown Indiana Grant Program" defined**

Authority: IC 14-12-3-12; IC 14-12-3-13

Affected: IC 14-12-3-5; IC 14-12-3-8

Sec. 5. "Hometown Indiana grant program" refers to the grant program established by IC 14-12-3-5. (Natural Resources Commission; 312 IAC 26-1-5; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1275)

**312 IAC 26-1-6 "Municipal corporation" defined**

Authority: IC 14-12-3-12; IC 14-12-3-13

Affected: IC 14-12-3-8; IC 36-1-2-10

Sec. 6. "Municipal corporation" has the meaning set forth in IC 36-1-2-10. (Natural Resources Commission; 312 IAC 26-1-6; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1275)

**312 IAC 26-1-7 "Preservation" defined**

Authority: IC 14-12-3-12; IC 14-12-3-13

Affected: IC 14-12-3-8

Sec. 7. "Preservation" means to apply measures to sustain the existing form, integrity, and material of a building or structure and the existing form and vegetative cover of a site. (Natural Resources Commission; 312 IAC 26-1-7; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1275)

**312 IAC 26-1-8 "Program" defined**

Authority: IC 14-12-3-12; IC 14-12-3-13

Affected: IC 14-12-3-5; IC 14-12-3-8

Sec. 8. "Program" refers to the hometown Indiana grant program established in IC 14-6-35-7 [IC 14-6 was repealed by P.L.1-1995, SECTION 91, effective July 1, 1995.]. (Natural Resources Commission; 312 IAC 26-1-8; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1275)

**312 IAC 26-1-9 "Property" defined**

Authority: IC 14-12-3-12; IC 14-12-3-13

Affected: IC 14-12-3-8

Sec. 9. "Property" means the real estate, or any improvement to the real estate, that is the subject of an application made under this article. (Natural Resources Commission; 312 IAC 26-1-9; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1275)

**312 IAC 26-1-10 "Protection" defined**

Authority: IC 14-12-3-12; IC 14-12-3-13

Affected: IC 14-12-3-8

Sec. 10. (a) "Protection" means to affect the physical condition of a property:

(1) by defending or guarding the property from deterioration, loss, or attack; or

(2) by covering or shielding the property from danger of injury.

(b) With respect to historic buildings and structures, protection is generally temporary and anticipates future historic preservation treatment. With respect to archaeological sites, protection may be temporary or permanent. (Natural Resources

*Commission; 312 IAC 26-1-10; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1275)*

**312 IAC 26-1-11 “Rehabilitation” defined**

Authority: IC 14-12-3-12; IC 14-12-3-13

Affected: IC 14-12-3-8

Sec. 11. “Rehabilitation” means to return a property to a state of utility through repair or alteration that makes possible an efficient contemporary usage while causing the preservation of those portions or features that are significant to the historical, architectural, or cultural values of the property. *(Natural Resources Commission; 312 IAC 26-1-11; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1276)*

**312 IAC 26-1-12 “Restoration” defined**

Authority: IC 14-12-3-12; IC 14-12-3-13

Affected: IC 14-12-3-8

Sec. 12. “Restoration” means to recover accurately the form and details of a property and its setting as the property appeared during a particular period of time by removing the later work or replacing a missing earlier work. *(Natural Resources Commission; 312 IAC 26-1-12; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1276)*

**312 IAC 26-1-13 “SCORP” defined**

Authority: IC 14-12-3-12; IC 14-12-3-13

Affected: IC 14-12-3-8

Sec. 13. “SCORP” means “SCORP 2000-2004: A New Millennium, A New Tradition”. *(Natural Resources Commission; 312 IAC 26-1-13; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1276; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1547)*

**312 IAC 26-1-14 “Stabilization” defined**

Authority: IC 14-12-3-12; IC 14-12-3-13

Affected: IC 14-12-3-8

Sec. 14. “Stabilization” means to apply measures to reestablish a weather resistant enclosure and the structural stability of an unsafe or deteriorated property while maintaining its essential present form. *(Natural Resources Commission; 312 IAC 26-1-14; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1276)*

**Rule 2. Program Administration**

**312 IAC 26-2-1 Application**

Authority: IC 14-10-2-4; IC 14-12-3-13

Affected: IC 14-12-3-8

Sec. 1. (a) This rule establishes standards, requirements, and procedures applicable to a grant for a project that is subject to this article.

(b) For a grant under the Hometown Indiana Grant Program, reference must also be made to any of the following:

(1) 312 IAC 26-3 with respect to a grant for a project involving a community park or recreation area.

(2) 312 IAC 26-4 with respect to a grant for a project involving the historic preservation of real property.

(3) 312 IAC 26-5 with respect to a grant for a project involving community forestry.

*(Natural Resources Commission; 312 IAC 26-2-1; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1276)*

**312 IAC 26-2-2 Program administration**

Authority: IC 14-10-2-4; IC 14-12-3-13

Affected: IC 4-21.5; IC 14-12-3-6

Sec. 2. (a) This article is administered by the department.

(b) The commission is the ultimate authority for the department under IC 4-21.5 with respect to this article.

(c) Responsibility for the administration of grant projects for the Hometown Indiana Grant Program is delegated by the commission as provided in 312 IAC 26-3 through 312 IAC 26-5.

(d) Unless the terms of an appropriation provide otherwise, the SCORP shall be considered in developing priorities for the following programs:

(1) For a grant under the Hometown Indiana Grant Program subject to 312 IAC 26-3.

(2) For a grant derived from the Federal Land and Water Conservation Fund (16 U.S.C. 4601-5).

(3) For a grant under the Recreational Trails Program.

(4) For a grant under the Wabash River Heritage Corridor Fund.

*(Natural Resources Commission; 312 IAC 26-2-2; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1276)*

**312 IAC 26-2-3 Project assurances**

Authority: IC 14-12-3-13

Affected: IC 14-12-3-8

Sec. 3. (a) An applicant for a grant must provide project proposal assurances as set forth in this section.

(b) A project assurance must include the following:

(1) A definition of abbreviated terms used in the provision assurances.

(2) Assurances that the acquisition, development, and maintenance of projects will be performed under lawful departmental standards. These assurances must set forth:

(A) accommodation for handicapped persons as otherwise provided by law;

(B) conformance with state bidding and contract requirements, including a nondiscrimination clause;

(C) project processing;

(D) record maintenance, including a financial management system;

(E) terms for maintenance of a site after the completion of a project; and

(F) a demonstration the project is compatible with existing site conditions, including sewers and utility facilities.

*(Natural Resources Commission; 312 IAC 26-2-3; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1276; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1548; errata filed Mar 13, 2002, 11:51 a.m.: 25 IR 2521)*

**312 IAC 26-2-4 Project agreements**

Authority: IC 14-12-3-13

Affected: IC 14-12-3-8

Sec. 4. (a) An applicant who is selected under this article to receive a grant must enter a project agreement with the department before the applicant is eligible to receive grant reimbursement.

(b) The project agreement must include the following:

(1) The name and address of the applicant.

(2) The project number as designated by the department.

(3) The project title as designated by the department.

(4) The date the director signed the project agreement; a statement that work begun before this date does not qualify for reimbursement, except as specified in the project agreement.

(5) The expiration date when work must be completed in order to qualify for reimbursement.

(6) The scope of the project that is eligible for reimbursement as determined by the commission.

(7) Project costs that identify the sponsor's share and the grant share provided under the program.

(8) Terms needed to assure compliance with:



- (A) the standards and requirements of this article and any other applicable law;
- (B) project assurances under section 3 of this rule and other promises or representations made in the grant application; and
- (C) other requirements determined necessary by the department to address items that are unique to the project.

(9) Standards for the maintenance of temporary construction signs on the property during the effective period of a grant under this article. These signs shall identify the nature and extent of participation in the project by the state.

(10) Signatures needed to bind the department and the applicant to the terms of the project agreement.

*(Natural Resources Commission; 312 IAC 26-2-4; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1277)*

### **312 IAC 26-2-5 Grant distributions**

Authority: IC 14-12-3-12; IC 14-12-3-13

Affected: IC 14-12-3-8

Sec. 5. (a) Unless the terms of an appropriation provide otherwise or would make application of this section impracticable, the standards set forth in this section apply to the distribution of grants under the program.

(b) The percentage of an appropriation allotted to each of the three (3) types of grants is determined by the commission.

(c) The minimum grant application amounts (exclusive of local matches) are as follows:

(1) Ten thousand dollars (\$10,000) for a community park or recreation area grant under 312 IAC 26-3.

(2) Four thousand dollars (\$4,000) for a historic preservation grant under 312 IAC 26-4.

(3) Two thousand five hundred dollars (\$2,500) for a community forestry grant under 312 IAC 26-5.

(d) Ten percent (10%) of any appropriation received to fund this article is allocated to fund programs for applicants who serve a population of less than seven thousand (7,000). A program funded under this subsection is rated in each of the three (3) categories of grants under the criteria established in 312 IAC 26-3-5, 312 IAC 26-4-12, and 312 IAC 26-5-5. An applicant who qualifies under this subsection and does not receive a grant for the full amount of its application can also compete with other applicants of the same type for funding not controlled by this subsection. If the ten percent (10%) allocation described in this subsection is not exhausted, the amount remaining is allocated to fund the balance of applications for that type of grant.

(e) If any of the allotments described in subsection (b) are not exhausted, the amounts remaining are allocated by the commission.

(f) Except as provided in subsection (e), a grant recipient shall not receive in a fiscal year more than ten percent (10%) of the allotment made to the type of grant for which the application was made. *(Natural Resources Commission; 312 IAC 26-2-5; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1277)*

## **Rule 3. Community Park or Recreation Area Grants**

### **312 IAC 26-3-1 Administration of community park or recreation area grants**

Authority: IC 14-12-3-13

Affected: IC 14-12-3-8

Sec. 1. (a) This rule governs a grant for any project involving a community park or recreation area.

(b) This rule is administered by the division of outdoor recreation of the department. *(Natural Resources Commission; 312 IAC 26-3-1; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1277)*

### **312 IAC 26-3-2 General eligibility**

Authority: IC 14-12-3-13

Affected: IC 14-12-3-8

Sec. 2. To be eligible to receive a grant for a project involving a community park or recreation area, the following conditions must be met:

(1) The applicant must be a municipal corporation that is authorized to acquire, develop, operate, and maintain a community park or recreation area.

(2) An applicant who is a park and recreation board must have a current five (5) year park and recreation master plan approved by the department. Any other applicant must have an approved comprehensive plan developed by the applicant (or another municipal corporation within the jurisdiction of the applicant) who meets the same standards as are applicable to a park and recreation board.

(3) The grant must be used to acquire, develop, or renovate a community park or recreation area.

(4) A community park or recreation area must be on land that will be owned or controlled by the applicant upon performance of the project.

(5) A community park or recreation area, purchased with grant funds or donated as a local match for grant funds, must be operated and maintained in perpetuity for public recreation. If grant funds were used to develop or renovate a facility, the facility must be operated and maintained for public recreation for the useful life of the facility as determined by the department.

(6) The applicant must demonstrate the ability of the municipal corporation to operate and maintain the community park or recreation area after its completion.

(7) The applicant must satisfy this article.

*(Natural Resources Commission; 312 IAC 26-3-2; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1278)*

### **312 IAC 26-3-3 Eligibility requirements pertaining to usage for public recreation**

Authority: IC 14-12-3-13

Affected: IC 14-12-3-8

Sec. 3. (a) Types of acquisition, development, and renovation that are eligible for assistance under the program (as constituting public recreation) include the following:

(1) Water-oriented recreation activities.

(2) Natural and scenic areas.

(3) Community parks.

(4) Regional parks.

(5) Linear parks.

(6) Interpretative facilities.

(7) Recreation sites that have historical significance.

(8) Areas for use at least fifty percent (50%) by the general public and the balance for public school use.

(9) Recreation sport facilities.

(10) Related indoor facilities.

As used in this subsection, "interpretative facilities" includes farms, zoos, arboretums, nature centers, and similar facilities.

(b) Types of acquisition, development, and renovation that are not eligible for assistance include the following:

(1) Land and facilities to meet minimum school requirements.

(2) Facilities used solely for semiprofessional or professional art or athletics.

(3) Farmland.

(4) Sites used for animal refuges or fish production that are not open for public recreation.

(5) Railroad facilities used in the commercial operation of trains.

(6) Mobile recreation equipment.

(7) Amusement or theme parks.

(8) Convention centers.

(9) Employee residences.

(10) Inns.

(11) Roads and utilities serving ineligible facilities.

(12) Historic structures.

(c) A site that qualified under subsection (a) is not made ineligible for a grant because a purpose described under subsection

(b) is also served as a secondary and incidental result of the development or acquisition. *(Natural Resources Commission; 312 IAC 26-3-3; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1278)*

**312 IAC 26-3-4 Grant application for a community park or recreation area**

Authority: IC 14-12-3-13

Affected: IC 14-12-3-8

Sec. 4. A municipal corporation that seeks a grant under this rule must complete a written application in a narrative form that includes the following:

- (1) An application completed on a department form.
- (2) A project description that specifies:
  - (A) how the property will be acquired;
  - (B) the type of development proposed;
  - (C) the type of park, for example, neighborhood, community, or block; and
  - (D) the users expected, for example, inner city, weekend, youth, family, or senior citizens.
- (3) A cost breakdown of the amount of the proposed project and assurances that at least fifty percent (50%) of the cost of the proposed project will be satisfied through public or private funds, labor, or property provided by the project sponsor.
- (4) Identification of expenses and donations of property incurred before the date of the application. The responsibility established by this subdivision is a continuing responsibility that requires the applicant to update the following information submitted to the department to include expenses incurred after the date of an application but before the application is approved:
  - (A) The name, address, and telephone number of the person performing the work.
  - (B) The expenses paid or incurred by the applicant.
  - (C) For property donations, evidence of the donor's gift, the date given, and the value of the contribution.
- (5) A description of grant assistance received from a source other than a grant under this article that has been received or is anticipated for use at the property.
- (6) A description of how the project will be adapted for use by handicapped persons.
- (7) A description of how the applicant will remove or otherwise address overhead wires and other environmental intrusions on the property.
- (8) A description of how the applicant provided for public participation on the proposed project. Public participation must include a public meeting that was advertised and conducted for the purpose of considering the proposed project. Where negative comments were received with respect to the proposed project, the application must specify how the subject of those comments was mitigated or why mitigation was impracticable.
- (9) A summary of the natural, historical, archaeological, architectural, cultural, economic, community development, or other significance of the site. The archaeological review process must comply with 312 IAC 21 and 312 IAC 22.
- (10) An environmental assessment checklist.
- (11) An analysis of each item set forth in section 5 of this rule with respect to the ratings of applications.
- (12) An authenticated copy of a resolution by the applicant that authorizes the filing of the application and designates an individual to act on behalf of the applicant relative to the application.
- (13) Maps that identify the following:
  - (A) The location and exterior boundaries of the property.
  - (B) All:
    - (i) leases;
    - (ii) permanent or temporary easements for access;
    - (iii) streets;
    - (iv) utility rights-of-way;
    - (v) scenic preservation easements; or
    - (vi) other encumbrances on the property.Documentation to evidence the encumbrance should also be included.
  - (C) Any area to be acquired or developed. A development project must be properly labeled, color coded, or keyed to a legend. A deed, lease, or contract to evidence the acquisition or development should also be included, as well as any escrow agreement.
- (14) Photographs of existing buildings, recreational facilities, and natural site features.

(15) A preliminary design and floor plan for each building, shelter, and other structure. The plan must be drawn to scale and show how the facility will be constructed to accommodate handicapped persons.

(16) A copy of any deed, lease, or easement for the parcels to be acquired or developed.

(17) A copy of any construction permit required by a governmental agency to implement the plans.

*(Natural Resources Commission; 312 IAC 26-3-4; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1278; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1548)*

### **312 IAC 26-3-5 Ratings of applications**

Authority: IC 14-12-3-12; IC 14-12-3-13

Affected: IC 14-12-3-8; IC 36-10-3; IC 36-10-4

Sec. 5. (a) An application for a grant made under this rule is evaluated according to ratings established by this section using the SCORP.

(b) The project application ratings criteria set forth in this subsection apply. The rating given to each project is determined by the extent to which the project accomplishes the purposes set forth in these criteria. A project receives a higher rating to the extent the project would as follows:

(1) Protect the state's natural heritage and important cultural and historic resources.

(2) Provide or expand interpretive facilities that develop greater awareness and appreciation of Indiana's natural and cultural resources, the environment, and their proper use and management.

(3) Expand recreational opportunities by more effective and efficient use of existing resources.

(4) Provide more land for public recreation or natural resource conservation.

(5) Prevent the loss of land to nonrecreational conservation use if funds are not obtained.

(6) Acquire wetlands.

(7) Enhance resources such as fish and wildlife habitat and plant communities.

(8) Enhance direct access to the state's lake and nonintermittent streams.

(9) Provide trail opportunities.

(10) Improve and expand cooperation, coordination, and planning within and between governmental entities and the private sector.

(11) Meet local recreation needs as described in a park and recreation master plan.

(12) Add diversity of local recreation opportunities.

(13) Project energy saving alternatives.

(14) If competing applications otherwise rate equally under this subsection, and if the last available funding is at issue, provide assistance to the applicant who has previously received the lower (or lowest) per capita assistance under this rule.

(c) The assignment of funds to applicants will be made as far as funds are available in order of highest to lowest rank under the ratings criteria. *(Natural Resources Commission; 312 IAC 26-3-5; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1279)*

## **Rule 4. Historic Preservation Grants**

### **312 IAC 26-4-1 Administration of historic preservation grants**

Authority: IC 14-12-3-13

Affected: IC 14-12-3-8

Sec. 1. (a) This rule governs a grant for any project involving the historic preservation of real property.

(b) This rule is administered by the division of historic preservation and archeology of the department. *(Natural Resources Commission; 312 IAC 26-4-1; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1280)*

### **312 IAC 26-4-2 General eligibility requirements**

Authority: IC 14-12-3-13

Affected: IC 14-12-3-8

Sec. 2. To be eligible to receive a grant for a project involving the historic preservation of real property, the following conditions must be met:

- (1) The applicant must be a municipal corporation or a corporation that has no affiliation with religion.
- (2) The property must be listed in the Indiana State Register of Historic Sites and Structures.
- (3) The project must meet the professional standards in architecture, history, and archaeology established in section 4 of this rule.
- (4) The project must provide for the acquisition, protection, stabilization, preservation, rehabilitation, restoration, or archaeological investigation of the property.
- (5) The applicant must demonstrate that there are adequate provisions, including sufficient identified sources of funds, to ensure that the property will be adequately operated and maintained.
- (6) A portion of the facilities on the property to be maintained must be open to the public or maintained for public benefit.
- (7) The property must be owned or controlled by the applicant upon performance of the project.
- (8) The applicant must satisfy this article.

*(Natural Resources Commission; 312 IAC 26-4-2; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1280)*

### **312 IAC 26-4-3 Projects ineligible for grants**

Authority: IC 14-12-3-13

Affected: IC 14-12-3-8

Sec. 3. (a) A project that might otherwise meet the general eligibility requirements under section 2 of this rule is ineligible under this article for a grant if listed under subsection (b).

- (b) A project is ineligible that proposes to use funds to:
- (1) construct new buildings or facilities;
  - (2) reconstruct historic structures no longer extant;
  - (3) provide or install landscape elements not historically documented;
  - (4) purchase or conserve furnishings or historic artifacts; or
  - (5) do a project on real estate owned by the state or the federal government.

*(Natural Resources Commission; 312 IAC 26-4-3; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1280)*

### **312 IAC 26-4-4 General professional standards for historic preservation projects**

Authority: IC 14-12-3-13

Affected: IC 14-12-3-8; IC 14-21-1

Sec. 4. The following standards apply to any project under this rule:

- (1) A reasonable effort must be made by the applicant to provide a compatible use for a property that requires minimal alteration of the building structure or site and its environment or to use a property for the purpose originally intended.
- (2) The distinguishing original quality or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural feature should be avoided if possible.
- (3) A building, structure, or site is a product of its own time. To the extent feasible, an alteration should demonstrate a historical basis that is appropriate to that time.
- (4) A change that takes place in the course of time evidences the history and development of a building, structure, or site and its environment. The change may have acquired significance in itself, and this significance shall be recognized and respected.
- (5) A distinctive stylistic feature or example of skilled craftsmanship that characterizes a building, structure, or site shall be treated with sensitivity.
- (6) A deteriorated architectural feature shall be repaired, if practicable, rather than replaced. If replacement is necessary, any new material should match what is being replaced with respect to composition, design, color, texture, and other visual qualities. The repair or replacement of a missing architectural feature shall duplicate a feature as substantiated by historical, physical, or pictorial evidence, rather than as determined from a conjectural design or the availability of a different architectural element from another building or structure.
- (7) Cleaning the surface of a structure shall be performed with the gentlest means possible. Sandblasting or another cleaning

method that will damage the historic building material shall not be used.

(8) Every reasonable effort shall be made to protect and preserve archaeological resources that may be affected by a project.  
(*Natural Resources Commission; 312 IAC 26-4-4; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1280*)

**312 IAC 26-4-5 Professional standards for historic preservation projects involving acquisitions**

Authority: IC 14-12-3-13

Affected: IC 14-12-3-8; IC 14-21-1

Sec. 5. The following standards apply if a project under this rule involves land acquisition:

- (1) Careful consideration shall be given to the type and extent of property rights that are required to assure the preservation of the historic resource. The preservation objective shall determine the exact property rights to be acquired.
- (2) A property shall be acquired in fee simple when absolute ownership is required to ensure its preservation.
- (3) Every reasonable effort shall be made to acquire sufficient property with the historic resource to protect its historical, archaeological, architectural, or cultural significance.

(*Natural Resources Commission; 312 IAC 26-4-5; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1281; filed Dec 26, 2001, 2:42 p.m.: 25 IR 1549*)

**312 IAC 26-4-6 Professional standards for historic preservation projects involving protection**

Authority: IC 14-12-3-13

Affected: IC 14-12-3-8; IC 14-21-1

Sec. 6. The following standards apply if a project under this rule involves the protection of a property:

- (1) An analysis of the actual or anticipated threat to the property must be made before applying a protection measure that is generally temporary and implies future historic preservation work.
- (2) The protection shall safeguard the physical condition or environment of a property from further deterioration or damage caused by animal, human, or natural intrusions (including those related to the weather).
- (3) A historical or architectural feature that is removed shall be properly recorded, and, if practicable, stored for future study and use.

(*Natural Resources Commission; 312 IAC 26-4-6; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1281*)

**312 IAC 26-4-7 Professional standards for historic preservation projects involving stabilization**

Authority: IC 14-12-3-13

Affected: IC 14-12-3-8; IC 14-21-1

Sec. 7. The following standards apply if a project under this rule involves stabilization:

- (1) The structural stability of a property shall be reestablished through:
  - (A) the reinforcement of load bearing members or by arresting material deterioration leading to structural failure; and
  - (B) the return of weather-resistant conditions on the property.
- (2) Stabilization shall be accomplished with as little detraction as possible from the appearance of the property. Reinforcement facilities shall be designed and placed, if practicable, so as not to intrude upon or detract from the aesthetic and historical quality of the property.

(*Natural Resources Commission; 312 IAC 26-4-7; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1281*)

**312 IAC 26-4-8 Professional standards for historic preservation projects involving preservation**

Authority: IC 14-12-3-13

Affected: IC 14-12-3-8; IC 14-21-1

Sec. 8. The following standards apply if a project under this rule involves preservation:

- (1) Preservation shall maintain the existing form, integrity, and materials of a building, structure, or site. Substantial reconstruction or restoration of lost features generally is not included in a preservation undertaking.

(2) Preservation shall include techniques of arresting or retarding the deterioration of a property through a program of continuing maintenance.

*(Natural Resources Commission; 312 IAC 26-4-8; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1281)*

**312 IAC 26-4-9 Professional standards for historic preservation projects involving rehabilitation**

Authority: IC 14-12-3-13

Affected: IC 14-12-3-8; IC 14-21-1

Sec. 9. The following standards apply if a project under this rule involves rehabilitation:

- (1) A contemporary design for an alteration or addition to a property is acceptable unless the alteration or addition would:
  - (A) destroy significant historic, architectural, or cultural material; or
  - (B) be incompatible with the size, scale, color, material, or character of the property, neighborhood, or environment.
- (2) An alteration or addition to a structure shall be done, if practicable, so that the essential form and integrity of the structure would be unimpaired if the alteration or addition were removed in the future.

*(Natural Resources Commission; 312 IAC 26-4-9; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1281)*

**312 IAC 26-4-10 Professional standards for historic preservation projects involving restoration**

Authority: IC 14-12-3-13

Affected: IC 14-12-3-8; IC 14-21-1

Sec. 10. The following standards apply if a project under this rule involves restoration:

- (1) Every reasonable effort shall be made to use a property for its originally intended purpose or to provide a compatible use that will require minimum alteration to the property and its environment.
- (2) Reinforcement required for structural stability or the installation of protective or mechanical systems shall be designed and placed, if practicable, so as not to intrude upon or detract from the aesthetic and historical quality of the property.
- (3) If archaeological resources are disturbed during restoration, the recovery of archaeological material shall be undertaken in conformance with current professional practices.

*(Natural Resources Commission; 312 IAC 26-4-10; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1282)*

**312 IAC 26-4-11 Grant application for historic preservation**

Authority: IC 14-12-3-13

Affected: IC 14-12-3-8

Sec. 11. A municipal corporation or corporation that has no affiliation with religion must complete a written application in a narrative form that includes the following:

- (1) An application completed on a form approved by the commission.
- (2) A project description that sets forth the following:
  - (A) A description of the type of project that is proposed.
  - (B) The specific work items that are proposed and a brief explanation how each will be accomplished.
  - (C) A discussion of the current use of the property and how the property will be used after completion of the project.
- (3) Photographs developed to illustrate the need for the project.
- (4) The amount of the proposed project with a statement that shows all major expense categories. The documentation should indicate the amount of the grant request plus the matching share.
- (5) A description of the source, type, and amount of the matching share contributions. This description must contain assurances that at least fifty percent (50%) of the cost of the proposed project will be satisfied through public or private funds, labor, or property provided through the applicant.
- (6) An analysis of each item set forth in section 12 of this rule with respect to the ratings of applications.
- (7) Completion of a statement of assurances as set forth in 312 IAC 26-2-3(b).

*(Natural Resources Commission; 312 IAC 26-4-11; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1282)*

**312 IAC 26-4-12 Ratings of applications**

Authority: IC 14-12-3-12; IC 14-12-3-13

Affected: IC 14-12-3-8

Sec. 12. (a) An application for a grant made under this rule is evaluated according to ratings established by this section.

(b) The project application ratings criteria set forth in this subsection apply. The rating given to each project is determined by the extent to which the project accomplishes the purposes set forth in these criteria. A project receives a higher rating to the extent the project fulfills one (1) or more of the following:

- (1) Demonstrate feasibility in technological and practical terms.
- (2) Preserve a property that is currently endangered.
- (3) Preserve a property that is currently vacant or partially vacant.
- (4) Preserve a property that has extraordinary architectural or historical significance.
- (5) Assist local community revitalization efforts.
- (6) Benefit minorities.
- (7) Provide access for handicapped persons.
- (8) Provide training in an unusual skill or craft often needed in preservation projects.
- (9) Not cause the relocation of people.
- (10) Implement a project for which there is significant local support.
- (11) Implement a project for which architectural plans, that meet preservation standards, are already completed.
- (12) Implement a project that the applicant has demonstrated a sufficient financial capability to complete.
- (13) Be administered by an applicant who has a staff person (either paid or volunteer) who works at least twenty (20) hours per week for the applicant.
- (14) Be administered by an applicant who has successfully completed an historic preservation project within the last three (3) years.
- (15) Include less than twenty percent (20%) of the local match through volunteer labor.
- (16) Be administered by an applicant who has not previously received a grant through the division of historic preservation and archeology of the department.
- (17) Apply to a property that has not previously benefited from a grant through the division of historic preservation and archeology.
- (18) Apply to a project to the extent that more than fifty percent (50%) of the costs are provided by the applicant.
- (19) Result in the distribution of funds under this rule throughout the state.

*(Natural Resources Commission; 312 IAC 26-4-12; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1282)*

**Rule 5. Community Forestry Grants**

**312 IAC 26-5-1 Administration of community forestry grants**

Authority: IC 14-12-3-13

Affected: IC 14-12-3-8

Sec. 1. (a) This rule governs the grant of any project involving community forestry.

(b) This rule is administered by the division of forestry of the department. *(Natural Resources Commission; 312 IAC 26-5-1; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1283)*

**312 IAC 26-5-2 General eligibility requirements**

Authority: IC 14-12-3-13

Affected: IC 14-12-3-8

Sec. 2. To be eligible to receive a grant for a project involving community forestry, the following conditions must be met:

- (1) The applicant must be a municipal corporation or a corporation that has no affiliation with religion.
- (2) The land involved in the project must be on land owned or controlled by the municipal corporation.



(3) The applicant must demonstrate that there are adequate provisions to maintain the completed project.

(4) The applicant must satisfy this article.

*(Natural Resources Commission; 312 IAC 26-5-2; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1283)*

### **312 IAC 26-5-3 Priority of project types eligible for community forestry grants**

Authority: IC 14-12-3-12; IC 14-12-3-13

Affected: IC 14-12-3-8

Sec. 3. (a) Project types that meet the eligibility requirements for a community forestry grant as set forth in section 2 of this rule are given funding priorities as set forth in this section.

(b) An applicant may propose a project or combination of projects to enhance the urban forest in a community or on a statewide basis. Priority is placed on projects that emphasize the development of a long term comprehensive, community forest program.

(c) The following projects are priority projects, listed in descending order from highest to least priority, to suggest what activities have priority for a community forestry program grant under this rule:

- (1) Organize and fund an urban forestry committee or board.
- (2) Develop informational events or publications to raise public awareness.
- (3) Sponsor education and training programs.
- (4) Undertake a sample or detailed tree inventory.
- (5) Draft a public tree ordinance.
- (6) Prepare a community forest management plan.
- (7) Prepare guidelines for tree planting, maintenance, and removal.
- (8) Planting trees on public lands.
- (9) Employ or contract with an urban forester or other consultant to assist with urban forest management projects.
- (10) Promote ways to manage and protect urban natural resources, including wildlife, soils, and water.
- (11) Develop plans for urban wood waste recycling programs.
- (12) Implement another project that improves planting, protection, and care of urban trees.
- (13) Maintaining trees on public lands. The cost of maintenance cannot exceed twenty-five percent (25%) of the grant amount.

*(Natural Resources Commission; 312 IAC 26-5-3; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1283)*

### **312 IAC 26-5-4 Projects ineligible for community forestry grants**

Authority: IC 14-12-3-13

Affected: IC 14-12-3-8

Sec. 4. (a) A project that might otherwise meet the general eligibility requirements under section 2 of this rule is ineligible under this rule for a grant if listed under subsection (b).

(b) A project is ineligible that proposes to use funds for the following:

- (1) Street tree maintenance, except as authorized in section 3 of this rule.
- (2) Street tree removal, except as an incidental function of a project listed in section 3 of this rule.
- (3) Purchasing equipment that exceeds one hundred fifty dollars (\$150) for each item. This equipment must be set aside for use on the community forestry program.
- (4) Equipment maintenance.
- (5) Administration, operation, and maintenance that is not directly related to and caused by the grant project.
- (6) Land acquisition.
- (7) A planting project in a public park, except where the planting will enhance walkways, roads, or other public lands.

*(Natural Resources Commission; 312 IAC 26-5-4; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1283)*

### **312 IAC 26-5-5 Rating applications for community forestry grants**

Authority: IC 14-12-3-12; IC 14-12-3-13

Affected: IC 14-12-3-8

Sec. 5. (a) Grant applications are evaluated by the division of forestry with reference to the factors set forth in subsection (b).

(b) The following factors are considered in rating grant applications for community forestry:

- (1) The priority given to the project type under section 3(c) of this rule.
- (2) The need for the project in the area served, including economic benefits.
- (3) The extent of public support for the project, as evidenced by public meetings, surveys, and correspondence.
- (4) The compatibility of the project with other facilities. Items considered within this subdivision include the locations of existing and planned:
  - (A) roads;
  - (B) utility lines;
  - (C) pipelines;
  - (D) sidewalks; and
  - (E) buildings.
- (5) Whether the applicant has received previous grants under this article or another law providing similar benefits. An applicant who has not previously received funding receives a higher priority than an applicant who has.
- (6) Whether the project will benefit a large number of individuals as opposed to a small number of individuals.
- (7) The history of an applicant in processing prior grants. Consideration is given to whether or not previous grants have been administered effectively, efficiently, and according to standards established by the entity providing the grant.
- (8) The likely duration of benefits derived from the project.
- (9) Whether the project is well-planned.
- (10) Whether the budget is well-planned and cost-effective.
- (11) Whether the applicant is providing cash as part of the match.
- (12) Whether the applicant has the experience and resources needed to efficiently complete the project.

*(Natural Resources Commission; 312 IAC 26-5-5; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1283)*

### **312 IAC 26-5-6 Grant application for community forestry**

Authority: IC 14-12-3-13

Affected: IC 14-12-3-8

Sec. 6. A municipal corporation or a corporation that has no affiliation with religion that seeks a grant under this rule must complete a written application in a narrative form that includes the following:

- (1) An application completed on a form approved by the commission.
- (2) A project description that addresses each item listed in section 5(b) of this rule.
- (3) The amount of the proposed project and assurances that at least fifty percent (50%) of the cost of the proposed project will be satisfied through public or private funds, labor, or property. Documentation should be included that shows the estimated costs for each part of the project and a written proposal for any work to be performed by a contractor.
- (4) A statement from an authorized official, representing the applicant, that certifies the availability of local funding for the project.
- (5) With respect to a project that involves the purchase or planting of nursery stock that exceeds the value of two hundred dollars (\$200), the application must include the following:
  - (A) Documentation showing control of the property through public ownership or an easement. Control of the property must extend through the life of the planting as predicted by the division of forestry of the department.
  - (B) The plan must be prepared by a qualified professional, such as a landscape architect, forester, or horticulturist.
  - (C) A public tree ordinance or a written tree care guideline manual that covers the tree planting area and is authorized by the governing body of the applicant. The ordinance or manual should specify who is responsible for the planting and maintenance of public trees and provide standards for tree planting, protection, and maintenance.

*(Natural Resources Commission; 312 IAC 26-5-6; filed Dec 3, 1997, 3:45 p.m.: 21 IR 1284)*

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