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TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #02-2(F)

DIGEST

Amends 312 IAC 3-1 that governs adjudicatory procedures by the natural resources commission and its division of hearings. The amendments would incorporate and coordinate responsibilities of the division of hearings with respect to its responsibilities to the Indiana board of registration for soil scientists. Makes technical changes. Effective 30 days after filing with the secretary of state.

312 IAC 3-1-1	312 IAC 3-1-8
312 IAC 3-1-2	312 IAC 3-1-14
312 IAC 3-1-3	312 IAC 3-1-18

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

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; ~~or~~
- (6) the **Indiana** board of ~~certification~~ **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*)

SECTION 2. 312 IAC 3-1-2, AS AMENDED AT 25 IR 1543, SECTION 2, IS AMENDED TO READ AS FOLLOWS:

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)

SECTION 3. 312 IAC 3-1-3, AS AMENDED AT 25 IR 1543, SECTION 3, IS AMENDED TO READ AS FOLLOWS:

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)*

SECTION 4. 312 IAC 3-1-8 IS AMENDED TO READ AS FOLLOWS:

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; ~~or~~

(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)

SECTION 5. 312 IAC 3-1-14, AS AMENDED AT 25 IR 1543, SECTION 4, IS AMENDED TO READ AS FOLLOWS:

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)*

SECTION 6. 312 IAC 3-1-18, AS AMENDED AT 25 IR 1544, SECTION 5, IS AMENDED TO READ AS FOLLOWS:

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.**

(~~e~~) (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*)

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