

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #03-30(F)

DIGEST

Amends 312 IAC 11-5, governing exceptions to licensing standards for nonconforming uses with respect to construction along and within public freshwater lakes, by recognizing a new exception in 312 IAC 11-5-1 where needed for construction by a governmental entity in order to comply with the federal Americans with Disabilities Act. Effective 30 days after filing with the secretary of state.

312 IAC 11-5-1

SECTION 1. 312 IAC 11-5-1 IS AMENDED TO READ AS FOLLOWS:

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:

- (1) **(A)** Include new technology or material not previously or commonly used for the purpose sought.
- (2) **(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)

LSA Document #03-30(F)

Notice of Intent Published: 26 IR 1963

Proposed Rule Published: May 1, 2003; 26 IR 2661

Hearing Held: May 28, 2003

Approved by Attorney General: August 22, 2003

Approved by Governor: September 5, 2003

Filed with Secretary of State: September 9, 2003, 9:32 a.m.

Incorporated Documents Filed with Secretary of State: None