

BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA

IN THE MATTER OF:

LAUGHERY CREEK IDLE ZONE) Administrative Cause
) Number 07-216L
) (LSA Document # 08-775(F))

**REPORT OF PUBLIC HEARING AND COMMENTS,
AND RECOMMENDATION REGARDING FINAL ADOPTION**

1. RULE PROCESSING

The rule proposed in this package resulted from the Department’s consideration of a Petition for Rule Change that was filed by Grover Sefton on November 7, 2007. Mr. Sefton’s Petition sought the extension of an existing idle zone on Laughery Creek to address what he characterized as safety concerns and “severe stream bank erosion”. Mr. Sefton’s Petition was processed in accordance with the Natural Resources Commission’s Information Bulletin #7 (Second Amendment) (*hereinafter referred to as “IB 7”*) posted to the Indiana Register database website, as 20080206-IR-312080059NRA, on February 6, 2008. In accordance with IB 7, the Department Director, Robert E. Carter, Jr., appointed a committee, comprised of Major Felix Hensley, Law Enforcement Division, Brian Schoenung, Division of Fish and Wildlife and James Hebenstreit, Division of Water, to evaluate the merits of the Petition. Major Hensley served as the committee’s chairperson.

On June 4, 2008, Major Hensley submitted the committee’s report, attached as Exhibit B, to Director Carter. The committee determined that “312 IAC 5-7-10 establishes two idle zones on Laughery Creek upstream from the confluence with the Ohio River. Mr. Sefton owns property that borders Laughery Creek between the two idle zones.” Major Hensley, along with Corporal Steve Kinne toured the area by boat comparing the erosion between the two existing idle zones to erosion occurring upstream of that area. A “drastic increase of the erosion damage” was noted by the officers “with the shoreline

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falling in and trees uprooted very frequently.” Major Hensley and Corp. Kinne also observed the wakes caused by passing high speed boat traffic. Furthermore, Major Hensley noted “tree stumps above the surface of the water in the middle of the waterway” that the committee concluded “could be devastating if hit by a skier or tuber.”

Following its consideration of Mr. Sefton’s Petition, the committee recommended that the two individual idle zones presently created by 312 IAC 5-7-10 be combined into one idle zone “beginning at the confluence of Laughery Creek and the Ohio River and continuing upstream for a distance of 16,500 feet.” The committee concluded that the creation of one, longer idle zone would only increase watercraft travel time by approximately fifteen (15) minutes but will “help preserve the property owner’s shoreline and create a safer environment for recreational boaters and sportsmen.”

Director Carter approved the committee’s report and recommendation on June 4, 2008.

The Natural Resources Commission (*NRC*) gave preliminary adoption to the rule package on September 16, 2008.

A “Notice of Intent” to adopt the proposed rule amendment was posted to the INDIANA REGISTER database website as 20081015-IR-312080775NIA on October 15, 2008. The notice identified Major Felix Hensley, Department of Natural Resources, Division of Law Enforcement, as the “small business regulatory coordinator” for purposes of Indiana Code § 4-22-2-28.1.

A fiscal analysis was prepared in association with the proposed rule package. The Department determined that the proposed amendment to 312 IAC 5-7-10 would eliminate the need to set bouys marking two (2) idle zones and that the number of buoys needed to mark only one idle zone would require “half as many buoys.” Consequently, the proposed rule will result in a savings to government of approximately \$392.48. The Department determined that the proposed amendments will impose no costs or requirements upon any business, including those qualifying as “small businesses” pursuant to Indiana Code § 4-22-2.1 et seq. The fiscal analyses, a copy of the proposed

rule language and a copy of the posted Notice of Intent were submitted to the Office of Management and Budget on October 24, 2008. In a letter dated January 29, 2009 Christopher A. Ruhl, Director, Office of Management and Budget, recommended that the proposed rule amendments be approved.

The NRC Division of Hearings submitted the rule proposal to the Legislative Services Agency (*LSA*) along with the “Statement Concerning Rules Affecting Small Business” on February 24, 2009. The Notice of Public Hearing was submitted to LSA on February 26, 2009. The Notice of Public Hearing, along with the Economic Impact Statement and the text of the proposed rule was posted to the INDIANA REGISTER database website on March 11, 2009. Following receipt of an “Authorization to Proceed” from LSA on March 11, 2009, the NRC Division of Hearings also caused a Notice of Public Hearing to be published by the Indianapolis Newspapers, a newspaper of general circulation in Marion County Indiana, on March 13, 2009 and in the Rising Sun Recorder, a newspaper of general circulation in Rising Sun, Indiana, on March 15, 2009. In addition, notice of the public hearing and a summary of the proposed rule changes were published on the Commission’s web-based electronic calendar.

2. REPORT OF PUBLIC HEARING AND COMMENTS

a) Public Hearing Comments

A public hearing was scheduled for April 3, 2009 at 11:00 a.m. at the Ohio County Emergency Services Building, 121 High Street, Rising Sun, Indiana. Jennifer Kane attended on behalf of the assigned hearing officer. No member of the public appeared to offer comments.

b) Comments Received Outside Public Hearing

No comments have been received from the public.

c) Response by the Department of Natural Resources

No comments were received from the public and no response from the Department was necessary.

3. RECOMMENDATION

The investigation of the Department's committee, chaired by Major Hensley, concluded that the proposed rule will serve to increase the safety of recreational users of Laughery Creek, sportsmen and adjacent landowners alike. The committee also concluded that the shoreline along the section of Laughery Creek, located between the two existing idle zones, will be preserved as a result of the adoption of this proposed rule.

Based upon the information available, the hearing officer would recommend that the Commission proceed with the final adoption of the proposed amendments to 312 IAC 5-7-10, attached as Exhibit A, which will create one idle zone on Laughery Creek beginning at the confluence with the Ohio River and continuing upstream for a distance of 16,500 feet.

Dated: April 28, 2009

Sandra L. Jensen
Hearing Officer

“Exhibit A”

TITLE 312 NATURAL RESOURCES COMMISSION

Final Rule

LSA Document #08-775(F)

DIGEST

Amends [312 IAC 5-7-10](#) to establish a revised idle zone on Laughery Creek in Dearborn and Ohio counties. Effective 30 days after filing with the Publisher.

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: zone (1) beginning at Old State Road 56 then downstream to the confluence of the Ohio River and Laughery Creek~~ **and continuing upstream for a distance of (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.~~ **to a point at UTM Northing 43203227 and UTM Easting 680037.**

(Natural Resources Commission; [312 IAC 5-7-10](#); filed Mar 23, 2001, 2:50 p.m.: 24 IR 2376, eff Jan 1, 2002; readopted filed May 29, 2008, 1:53 p.m.: [20080625-IR-312080057RFA](#))

“Exhibit B”

**INDIANA DEPARTMENT OF NATURAL RESOURCES
LAW ENFORCEMENT DIVISION**

MEMORANDUM

DATE: 5-30-08

TO: Director Carter

FROM: Major Felix Hensley

SUBJECT: Recommendation on Laughery Creek Petition 07-216L

APPROVED BY: _____

The Division of Hearings received a “Citizens Request for Rule Change” dated 9-28-07 from Mr. Grover Sefton of 9608 Holmes Hill Road, Aurora Indiana. Mr. Sefton expressed his concern on what he felt were hazardous conditions on a portion of Laughery Creek. Mr. Sefton stated boating safety and hazardous watercraft operations and serious shoreline erosion as the motivating factors of the petition. He was seeking to amend 312 IAC 5-7-10 to alleviate the problems he described in his petition.

Currently, 312 IAC 5-7-10 establishes two idle zones on Laughery Creek upstream from the confluence with the Ohio River. Mr. Sefton owns property that borders Laughery Creek between the two idle zones. There is no speed limit or water skiing prohibition for the section of waterway between the idle zones.

Mr. Sefton states he has personally observed fast moving boats pulling skiers nearly collide with anchored fishing boats or slower moving boats on the waterway. He further states that on occasion people have almost been ejected from their boats due to the high rolling wakes created by some of the ski boats.

Mr. Sefton states the landowners along this portion of Laughery Creek have been forced to pay a terrible price for this high speed boat operation due to excessive shoreline erosion. Mr Sefton advised he had lost several feet of his property and trees to severe erosion caused by high speed boat operation and skiing on the narrow waterway.

On 1-23-08 Jim Hebenstreit, with the Division of Water, Brian Schoenung, with Division of Fish and Wildlife along with Major Felix Hensley of the Law Enforcement Division were appointed by the Department of Natural Resources Director to a committee to

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review the facts of the petition and make a recommendation as to whether approval or denial of the petition should be made. Major Hensley was named as chairman of the committee.

Major Hensley contacted Mr. Sefton and made arrangements to meet with him to observe the property damage and tour Laughery Creek as soon as the weather was suitable for boat travel. On 5-1-08 Major Hensley met Corporal Steve Kinne, with plans to tour the area by boat and photograph areas affected by excessive erosion.

Officers launched the boat a few miles upstream of the area described in the petition. Major Hensley wanted to compare the erosion upstream to the erosion in the area between the current idle zones, where the petitioner's property is located.

The officers noticed what they felt was normal shoreline erosion for a tributary to the Ohio River as they headed downstream from their launching point. The first idle zone officers came to was located approx. 16,500 feet upstream from the confluence of Laughery Creek and the Ohio River at Holiday Hills Marina. Officers observed Mr. Terry Ware of 3800 Woodbine, Cincinnati Ohio working on a shelter house just downstream from the idle zone in the high speed area described in the petition. Major Hensley explained why officers were in the area and asked Mr. Ware what his observations were as far as hazardous boat operation and excessive erosion. He advised he had witnessed boaters pulling skiers near docks and dangerously close to the shoreline. Mr. Ware stated that he could not believe someone had not been killed or injured yet as there are numerous tree stumps and other debris in the water. He stated it was not uncommon at all for boats to pull skiers just a few feet from the shoreline in shallow water causing tremendous damage to the shoreline.

As officers traveled downstream in the area described in the petition between the two idle zones, Major Hensley photographed some of the erosion damage. Both, Major Hensley and Corporal Steve Kinne noticed a drastic increase of the erosion damage with the shoreline falling in and trees uprooted very frequently. Officers also had several opportunities to observe the wakes created by fishing boats as they traveled through the area at higher speeds. Officers noticed and photographed tree stumps above the surface of the water in the middle of the waterway as well as they continued downstream.

Major Hensley and Corporal Kinne timed the travel time from the downstream idle zone located at Lighthouse Marina to the second idle zone located upstream at Holiday Hills Marina. The travel time in a johnboat took officers approx. 15 minutes at idle speed.

On 5-2-08 at approx. 8am Major Hensley met with Mr. Sefton and went to his property located at 3604 Hartford Pike Aurora In. 47001. This is the property along Laughery Creek located between the two idle zones. Mr. Sefton showed Major Hensley numerous areas on his property where the shoreline had cut several feet inland from the waterway. He also pointed out numerous trees that were ready to be uprooted and fall into the creek.

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Mr Sefton relayed several stories of asking boaters to slow down and being cursed at as a result. He stated that on any given weekend anyone could stand on his property and observe boats pulling skiers within just a few feet of the shoreline in very shallow water. Major Hensley advised Mr. Sefton that he agreed there was a problem and he (Hensley) would speak with the area commanders and try to help resolve the issue.

Major Hensley has spoken with Lt. Tony Stoll and Corporal Steve Kinne about possible resolutions to this problem and all three are in agreement, there is a problem, property owners between the idle zones are suffering undo loss.

The committee consisting of Brian Schoenung, Jim Hebenstreit and Major Hensley have reviewed the information and facts pertaining to the petition. They offer the following as a recommendation to remedy the issues described in the petition; Administrative Cause 07-216L.

Amend 312-5-7-10 to state:

Sec. 10. A person must not operate a watercraft in excess of idle speed on Laughery Creek in Dearborn and Ohio County within the following zone;

1. Beginning at the confluence of Laughery Creek and the Ohio River and continuing upstream for a distance of 16,500 feet to a point at UTM Northing 43203227 and UTM Easting 680037.

Creating one idle zone will only increase the time boaters spend traversing the area approx. 15 minutes, but will help preserve the property owner's shoreline and create a safer environment for recreational boaters and sportsmen.

The statements made by the petitioner regarding the safety hazards of skiing in the area have validity. Major Hensley observed numerous stumps along with other debris under the surface of the water that could be devastating if hit by a skier or tuber.

Included with this recommendation are photos of the area.

Respectfully Submitted,

Major Felix Hensley

TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule
LSA Document #08-

DIGEST

Amends 312 IAC 5-7-10 to establish a revised idle zone on Laughery Creek in Dearborn and Ohio Counties. Effective 30 days after filing with the Publisher.

312 IAC 5-7-10

SECTION 1. 312 IAC 5-7-10 IS AMENDED TO READ AS FOLLOWS:

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 **and continuing upstream for a distance of 16,500 feet to a point at UTM Northing 43203227 and UTM Easting 680037.**

~~(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; readopted filed May 29, 2008, 1:53 p.m.: 20080625-IR-312080057RFA)