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 propriety 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) No person shall operate a marina unless the person 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. *(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)*

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)*

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