

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:) **Administrative Cause**
) **Number: 23-WA-002**
READOPTION OF 312 IAC 11.5)
GOVERNING SURFACE WATER)
EMERGENCIES ON LAKES)
) **(LSA Document #23-67 (F))**

RECOMMENDATION FOR FINAL ACTION ON READOPTION OF RULES

A. INTRODUCTION

For consideration is the readoption of 312 IAC 11.5 in its entirety, and without amendment. This article provides standards for the protection for owners along lakes ten acres or larger where the lakes are adversely impacted by the operation of a significant water withdrawal facility (a facility capable of withdrawing at least 100,000 gallons of water daily). 312 IAC 11.5 can be accessed through the Indiana General Assembly’s website at:

<http://www.in.gov/legislative/iac/T03120/A00115.PDF>.

If rules are readopted in their current form without amendments, 312 IAC 2-2-4(b) authorizes the Director of the Division of Hearings to approve preliminary adoption. The Commission retains authority to take final action on readoptions. The Director of the Division of Hearings approved preliminary adoption on January 3, 2023. The standard practice is to readopt rules by article, and 312 IAC 11.5 is now submitted for consideration as to final action.

B. READOPTION ANALYSIS REQUIRED UNDER IC 4-22-2.5-3.1 AND IC 4-22-2.1-5

Executive Order 13-03 requires agencies to “suspend rulemaking action on any proposed rules”. The Director of the Office of Management and Budget (OMB) has determined the moratorium set forth in Executive Order 13-03 was not applicable to readoptions.¹

The OMB determined that the fiscal analyses, as specified in Financial Management Circulars 2010-4, are not required to be submitted to the OMB for State Budget Agency’s approval if those analyses have been submitted to the OMB in a previous rule adoption or amendment.²

Mark Basch, Section Head (*Basch*) with the Department of Natural Resources, Division of Water, was appointed Small Business Regulatory Coordinator for this rule readoption. Basch provided the Hearing Officer with the analyses as required for the proposed readoption of 312 IAC 11.5.

1. Review under IC 4-22-2.5-3.1(c)

The continued need for the rule.

The Department of Natural Resources, Division of Water administers and coordinates the professional and technical functions of the Department of Natural Resources (DNR) under IC 14-25-5. IC 14-25-5 is infrequently applied, but important protection for owners along lakes ten acres or larger where the lakes are adversely impacted by the operation of a significant water withdrawal facility (one capable of withdrawing at least 100,000 gallons of water daily). 312 IAC 11.5 provides definitions and evaluation criteria necessary for implementation and enforcement of IC 14-25-5.

The nature of any complaints or comments received from the public, including small businesses, concerning the rule or the rule's implementation by the agency.

No complaints have been received by DNR from the public or small business regarding the implementation of 312 IAC 11.5.

The complexity of the rule, including any difficulties encountered by:

(A) the agency in administering the rule; or

(B) small businesses in complying with the rule.

No difficulty has occurred with the administration of 312 IAC 11.5 by DNR or compliance with the rule by small business.

The extent to which the rule overlaps, duplicates, or conflicts with other federal, state, or local laws, rules, regulations, or ordinances.

¹ Indiana State Budget Agency email dated May 2, 2013, to heads of state agencies. OMB’s determination caused Financial Management Circular 2015-1 to be equally inapplicable to readoptions.

² OMB emails dated March 16 and March 24, 2017. OMB’s determination effectively renders Executive Order 2-89 inapplicable to readoptions.

312 IAC 11.5 is not believed to overlap, duplicate or conflict with other federal, state, or local laws, rules, regulations or ordinances.

The length of time since the rule was last reviewed under this section or otherwise evaluated by the agency, and the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule since that time.

312 IAC 11.5 was readopted in 2017 as LSA Document #17-131(F). No significant changes in technology, economic conditions or other factors in the area affected by the rule have occurred since that time.

On February 9, 2023, the analyses required under IC 4-22-2.5-3.1 were forwarded to the Legislative Council as required by IC 4-22-2-28(i).

C. NOTICE OF INTENT TO READOPT AND RECOMMENDATION FOR FINAL ACTION

On February 8, 2023, the Notice of Intent to Readopt 312 IAC 11.5 was posted to the *Indiana Register* at 20230208-IR-312230067RNA as anticipated by IC 4-22-2.5-4. The notice indicated the intention to readopt the entirety of 312 IAC 11.5 without changes. The notice also provided that a person had 30 days to submit a written request to the Commission, through the Small Business Regulatory Coordinator, seeking to have a particular section of the rule readopted separately. If a request had been made, the Commission would have been required to complete the full rule adoption process for the section requested to be readopted separately. No request was made.

The hearing officer recommends the Commission approve the readoption of 312 IAC 11.5, in its entirety and without amendment, for subsequent filing with the Publisher under IC 4-22-2-35 as authorized at IC 4-22-2.5-4(c)(1).

Dated: March 11, 2023


Billie Franklin
Hearing Officer