

CHANGE RECOMMENDATIONS FROM 5/27/08 ILMWG , SUB-GROUP MEETING ARE IN RED

TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule LSA Document #08-

DIGEST

Amends 312 IAC 11 governing the placement of structures on public freshwater lakes to provide new standards pertaining to the placement of group piers. Incorporates by reference a nonrule policy document, assisting with the identification of riparian zones, for use as guidance in performing the functions of IC 14-26-2 (sometimes called the "Lakes Preservation Act"). Requires written approval, and not mere acquiescence, of from a riparian owner for a person who is not a riparian owner to place a structure. Authorizes parties to elect during a prehearing conference or similar stage of a proceeding to opt out of mediation. Makes technical changes. Effective 30 days after filing with the Publisher.

312 IAC 11-2-11.5 "Group pier" defined

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-2-23

Affected: IC 14-15; IC 14-26-2

Sec. 11.5. "Group pier" means a pier that provides docking space for any of the following:

- (1) At least five (5) separate property owners.
- (2) At least five (5) rental units.
- (3) An association.
- (4) A condominium, cooperative, or other form of horizontal property.
- (5) A subdivision or an addition.
- (6) A conservancy district.
- (7) A campground.
- (8) A mobile home park.
- (9) A ~~yacht~~ **boat** club.

(10) A commercial business or public facility that provides docking space for 5 or more boats

(Natural Resources Commission; 312 IAC 11-2-11.5; filed Jan 7, 2005, 2:10 p.m.: 28 IR 1681; readopted filed Aug 4, 2005, 6:00 p.m.: 28 IR 3661)

312 IAC 11-1-4 Determination of Riparian Zones

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-2-23

Affected: IC 14-15; IC 14-26-2

Sec. 4. If a determination of riparian boundaries is reasonably required for the performance of functions under IC 14-26-2 and this article, the department (or the commission on administrative review) shall consider as guidance “Riparian Zones within Public Freshwater Lakes and Navigable Waters” as published by the Legislative Services Agency at DIN: 20080116-IR-312080013NRA (January 16, 2008). (Natural Resources Commission; 312 IAC 11-1-4)

312 IAC 11-3-1 General licenses for qualified temporary structures; dry hydrants; glacial stone refaces

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-2-23

Affected: IC 14-15; IC 14-26-2

Sec. 1. (a) The placement and maintenance of a:

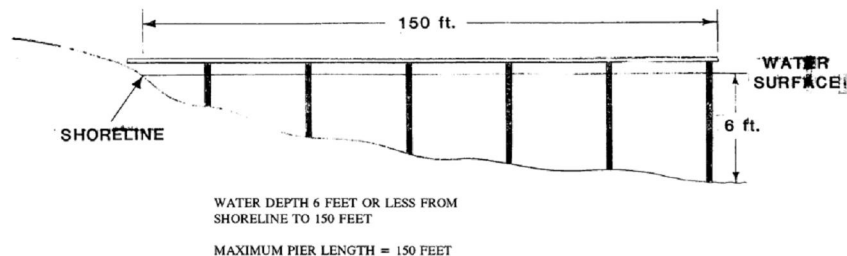
- (1) temporary structure;
- (2) dry hydrant; or
- (3) glacial stone reface;

is authorized without a written license issued by the department under IC 14-26-2 and this rule if the temporary structure, dry hydrant, or glacial stone reface qualifies under this section.

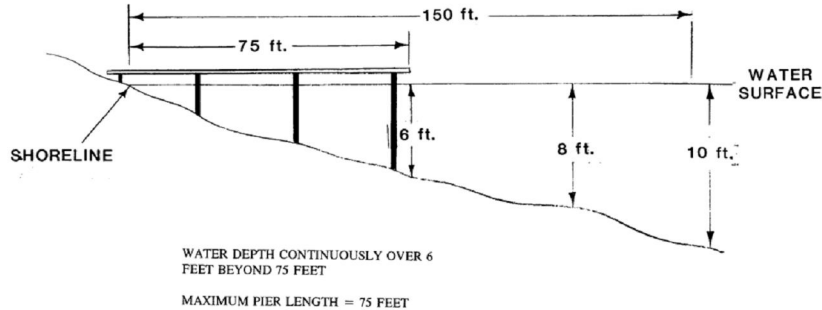
(b) In order for a temporary structure to qualify, the structure must satisfy each of the following:

- (1) Be easily removable.
- (2) Not infringe on the access of an adjacent landowner to the public freshwater lake.
- (3) Not unduly restrict navigation.
- (4) Not be unusually wide or long relative to similar structures within the vicinity on the same public freshwater lake.
- (5) Not extend more than one hundred fifty (150) feet from the ~~legally established or average normal waterline or shoreline or water line.~~
- (6) If a pier, not extend over water that is continuously more than six (6) feet deep to a distance of one hundred fifty (150) feet from the ~~legally established or average normal waterline or shoreline or water line.~~
- (7) Not be a marina.
- (8) Not be a group pier.
- (9) **Be placed by a riparian owner, holder of riparian rights, or with the acquiescence written approval of a riparian owner.**

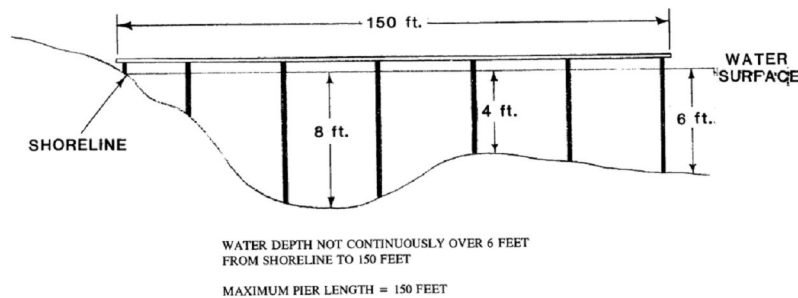
(c) Illustrations of maximum lengths for a pier or similar structure that may qualify under subsection (b) are as follows:



Where the water depth is six (6) feet or less from the shoreline to one hundred fifty (150) feet from the shoreline, the maximum pier length is one hundred fifty (150) feet.



Where the maximum water depth is continuously more than six (6) feet beyond seventy-five (75) feet from the shoreline, the maximum pier length is seventy-five (75) feet.



Where the maximum water depth is not continuously over six (6) feet from the shoreline, the maximum pier length is one hundred fifty (150) feet.

(d) In order for the placement, maintenance, and operation of a dry hydrant to qualify, the hydrant must satisfy each of the following:

(1) Be sponsored or owned by a volunteer or full-time fire department recognized by the public safety training institute.

(2) Be readily accessible from an all-weather road, public access site, or similar area.

(3) Have a diameter of at least six (6) inches.

(4) Be constructed of PVC pipe or a similar nontoxic material.

(5) Extend no more than one hundred fifty (150) feet from the waterline or shoreline.

(6) Have all portions of the hydrant and its in-lake accessories be at least five (5) feet below the legally established or average normal water level.

(7) Be marked with a danger buoy, which conforms to 312 IAC 5-4-6(a)(1), at the lakeward end of the hydrant.

(8) Be equipped with a screen or straining device on the lakeward end.

(9) Glacial stone or riprap only may be placed in or on the lakebed for either of the following:

- (A) Bedding the intake pipe.
- (B) Straining the intake water.
- (10) Be approved by the riparian landowner.

(e) In order for the placement of glacial stone on the lakeward side of a seawall ~~that is located within or along the waterline or shoreline of a public freshwater lake~~ to qualify, the glacial stone reface must satisfy each of the following:

- (1) The seawall reface must be comprised exclusively of glacial stone.
- (2) The reface must not extend more than four (4) feet lakeward of the ~~waterline or shoreline~~ **or water line** at the base of a lawful seawall.
- (3) A walk or structural tie must not be constructed on the existing seawall in combination with the glacial stone reface.
- (4) An impermeable material must not be placed behind or beneath the glacial stone reface.
- (5) Filter cloth placed behind or beneath the glacial stone reface must be properly anchored to prevent displacement or flotation.

(6) Erosion from disturbed areas landward of the ~~waterline or shoreline~~ **or water line** must be controlled to prevent its transport into the lake. (*Natural Resources Commission; 312 IAC 11-3-1; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2223; filed Jan 23, 2001, 10:05 a.m.: 24 IR 1614; filed May 25, 2004, 8:45 a.m.: 27 IR 3062; filed Jan 7, 2005, 2:10 p.m.: 28 IR 1681; readopted filed Aug 4, 2005, 6:00 p.m.:28 IR 3661*)

312 IAC 11-3-2 Disputes relative to a temporary structure or dry hydrant placed through a general license

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-2-23

Affected: IC 4-21.5; IC 14-15; IC 14-26-2

Sec. 2. (a) A person may seek administrative review of the placement or maintenance of a temporary structure or a dry hydrant, or a glacial stone reface, under section 1 of this rule.

(b) Administrative review under this section is subject to IC 4-21.5 and 312 IAC 3-1. If a dispute involves the placement of a pier, another temporary structure, or a glacial stone reface, where the review of another structure authorized by a general license appears appropriate to a full and fair determination of the dispute, the administrative law judge may order additional parties joined.

(c) The administrative law judge shall commit the matter to mediation under 312 IAC 11-1-3 as soon as practicable. Except as otherwise provided in this subsection, no administrative review brought under this section shall proceed to formal discovery or to a hearing without the completion of at least two (2) mediation sessions. A mediation session is not required to be scheduled where either:

- (1) all parties agree in writing, **during a prehearing conference, or during a status conference** not to participate in mediation; or
- (2) a party is dismissed or defaulted under 312 IAC 3-1-9(a), 312 IAC 3-1-9(b)(1), or 312 IAC 3-1-9(b)(2).

(d) Unless otherwise ordered by the administrative law judge or agreed in writing by all the parties, any structure placed by a party under section 1 of this rule must be removed from ~~within areas~~ along or lakeward of the ~~waterline or shoreline~~ **or water line** upon the later of the following:

- (1) Ninety (90) days after filing of the request for administrative review.
- (2) January 1 of the year following the filing of the request for administrative review.

(e) In exercising discretion under subsection (d), an administrative law judge shall consider whether the structure poses a substantial intrusion or merely a de minimis intrusion to the interests protected by IC 14-26-2, IC 14-15-7-3, and this rule. (*Natural Resources Commission; 312 IAC 11-3-2; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2224; filed Jan 23, 2001, 10:05 a.m.: 24 IR 1615; filed Jun 21, 2001, 3:03 p.m.: 24 IR 3374; readopted filed Aug 4, 2005, 6:00 p.m.: 28 IR 3661*)

312 IAC 11-3-3 Individual licenses for structures that do not qualify for a general license

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-2-23

Affected: IC 14-11-4; IC 14-15; IC 14-26-2

Sec. 3. (a) Except as provided in section 1 of this rule and in subsection (c), a structure placed within the ~~waterline or shoreline~~ **or water line** of a public freshwater lake requires a written license issued by the department under IC 14-26-2 and this rule.

(b) Except as provided in 312 IAC 11-4-7, a structure that is located on a public freshwater lake:

- (1) more than one hundred fifty (150) feet; and
- (2) less than two hundred (200) feet;

from the ~~legally established or average normal waterline or shoreline~~ **or water line** requires a written license under IC 14-26-2, this rule, IC 14-15-7-3, and 312 IAC 5-4. The department may provide that the multiple licensing requirements of this subsection be satisfied with a single written license.

(c) Except as provided in 312 IAC 11-4-7, a structure that is located:

- (1) on a public freshwater lake; and
- (2) not less than two hundred (200) feet from the ~~waterline or shoreline~~ **or water line**;

does not require a license under IC 14-26-2 and this rule, but the structure does require a license under IC 14-15-7-3 and 312 IAC 5-4. Only a navigation aid or water recreation structure can be licensed under 312 IAC 5-4.

(d) The director or a delegate shall not issue a license under this rule except upon a written determination that shows the following:

(1) The license, including conditions attached to the license, conforms ~~with~~ **to** IC 14-26-2 and this rule. In making the determination, there shall be a determination that issuance of the permit would not result in significant environmental harm to the public freshwater lake.

(2) The applicant has demonstrated that an owner of each parcel of real estate, reasonably known to be adjacent to the real estate described in subsection (e)(2), has been notified under IC 14-11-4 and 312 IAC 2-3.

(e) An application for a license under this section must include a description of the following:

(1) The permanent structure, including plans and specifications of sufficient detail for the department to evaluate the project under IC 14-26-2 and this rule.

(2) The real estate:

- (A) on which the structure would be located; or
- (B) that the structure would benefit.

(f) Examples of a structure that requires a written license under this section include the following:

(1) A marina.

(2) A group pier.

~~(2)~~ (3) A new seawall or a seawall refacing.

~~(3)~~ (4) An underwater beach.

~~(4)~~ (5) A boat well excavation, construction, or fill.

~~(5)~~ (6) A fish attractor.

~~(6)~~ (7) A pier that is supported by a structure permanently mounted in, or affixed to, the bed of the lake.

~~(7)~~ (8) A boathouse that is totally or partially enclosed on the sides. This structure ordinarily should be:

(A) placed over a boat well constructed landward of the ~~legally established or average normal waterline or shoreline~~ **or water line**; and

(B) constructed only after a permit is obtained to alter the ~~legally established or average normal waterline or shoreline~~ **or water line**.

~~(g) The requirements of this rule are in addition to the requirements of 312 IAC 6 for any public freshwater lake that is also a navigable waterway. (Natural Resources Commission; 312 IAC 11-3-3; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2224; readopted filed Aug 4, 2005, 6:00 p.m.: 28 IR 3661; filed Sep 14, 2005, 2:45 p.m.: 29 IR 465)~~

312 IAC 11-4-1 Marinas

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-2-23

Affected: IC 14-15; IC 14-26-2

Sec. 1. (a) A written license under IC 14-26-2 and this rule is required to place a marina within a public freshwater lake.

(b) Except as provided in subsection (d), a person must not operate a marina unless the person provides a pumpout that is in good working order and readily accessible to patrons of the marina and 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 a 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.

(c) The requirements of subsection (b) shall be made a condition for a license issued by the department to construct a ~~new~~ marina or to modify an existing marina.

(d) A person may apply to the division of law enforcement for an exemption from subsection (b). The exemption shall be granted, for a period not to exceed five (5) years, where the person demonstrates either of the following:

(1) The marina is designed to serve exclusively ~~watercraft~~ **boats** that are neither required nor likely to be equipped with a marine sanitation device.

(2) The operator of the marina has entered a binding agreement with another marina or similar facility along the lake to provide pumpout services where the other marina or similar facility:

(A) maintains a lawful pumpout as described in subsection (b);

(B) is in proximity to the marina seeking the exemption so patrons to be served at a pumpout, which would otherwise be required at the exempted marina, would not be significantly inconvenienced; and

(C) has sufficient pumpout capacity and accessibility to effectively serve the patrons of both parties to the agreement.

(Natural Resources Commission; 312 IAC 11-4-1; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2225; filed Jul 22, 2004, 10:05 a.m.: 27 IR 3886; readopted filed Aug 4, 2005, 6:00 p.m.: 28 IR 3661)

312 IAC 11-4-8 Group piers

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-2-23

Affected: IC 14-15; IC 14-26-2

Sec. 8. (a) A written license under IC 14-26-2 and this rule is required to place a group pier within a public freshwater lake.

(b) A person must not place a group pier along or within the shoreline or water line of a public freshwater lake unless the person obtains a written license from the department under this section.

(c) The applicant must demonstrate exercise of the license would not do any of the following:

(1) Unreasonably impair the navigability of the public freshwater lake.

(2) Pose an unreasonable hazard to life or property.

(3) Violate the public rights described in IC 14-26-2-5.

(4) Interfere in the reasonable exercise of boating operations by the public.

(5) Interfere in the interests of a landowner having property rights abutting the lake or rights to access the lake.

(d) The department shall condition a license for a group pier so the placement, configuration, and maintenance of the pier would satisfy each of the following:

(1) Be a temporary structure, placed by a riparian owner or with the written approval of a riparian owner, which:

(A) Is easily removable.

(B) Does not infringe on the access of an adjacent landowner to the public freshwater lake.

(C) Does not unduly restrict navigation.

(D) Is not unusually wide or long relative to similar structures within the vicinity on the same public freshwater lake.

(E) Does not extend more than one hundred fifty (150) feet from the shoreline or water line.

(F) Does not extend over water that is continuously more than six (6) feet deep to a distance of one hundred fifty (150) feet from the shoreline or water line. The illustrations contained in subsection (1)(d) apply to this clause.

(2) Provide a reasonable buffer zone, between the pier and the riparian zone of an adjacent property owner, to provide for reasonable navigation by the adjacent property owner and by the public. Except as otherwise provided in this subdivision, ten (10) feet of clearance on both sides of a riparian line (for a total of twenty (20) feet) is preferred, and a minimum of five (5) feet of clearance on both sides of a riparian line (for a total of ten (10) feet) is required. The department may approve an exception where adjacent riparian

owners use a common pier along their mutual property line, and the purposes of this subdivision are satisfied by waters elsewhere within their riparian zones.

- (1) Avoid unreasonable traffic congestion in the immediate vicinity of the pier.
~~(B) to impair the carrying capacity of the lake.~~

- (2) Avoid the placement of structures which are likely to be hidden or obscured so as to pose a hazard to the public.

- (3) Minimize disturbances to **the Natural Resources in close proximity to the group pier.**

- (4) Minimize the likelihood debris would be trapped or sediments or currents would be redirected to cause erosion or accretion that is detrimental to either:

- (A) navigation; or

- (B) the enjoyment of property rights by other riparian owners.

- (5) Avoid causing or appearing to cause appropriation of public waters unnecessary to the reasonable exercise of riparian rights. A pier must not extend, **in total width**, more than one-half ($\frac{1}{2}$) the length of the applicant's shoreline or water line. As used in this subdivision, "length" is determined by the straight line formed between the points located at intersections of the applicant's property lines with the shoreline or water line. (*Natural Resources Commission; 312 IAC 6-4-4*)