

**Consideration of Amendments to Definition of “Lake”; Administrative Cause No. 08-047A**

Presented are proposed amendments to the definition of “lake”, a term which applies universally to rules of the Natural Resources Commission. The amendments are believed to be mostly legal or technical and address several topics:

(1) This year, the Indiana General Assembly approved Senate Enrolled Act 41 which makes several amendments to IC 14-26-2 (the “Lakes Preservation Act”). Among the amendments is a new definition for “lake” which sets five acres as the minimum size for agency jurisdiction. Other regulatory programs either have differing or no size minimums, so the definition in the Lakes Preservation Act needs to be distinguished.

(2) SEA 41 provides that based upon recommendations by the Department and the Advisory Council, the Commission shall adopt a nonrule policy document listing Indiana’s “public freshwater lakes” (in other words, those lakes subject to the Lakes Preservation Act). Principles are needed to help delineate the boundaries of a lake, and whether the minimum five-acre size requirement is met, to assist in the preparation of the list.

(3) A critical measurement for whether boats may be operated on a lake, in excess of ten miles per hour, is whether a “small lake” is as follows:

- a body of public water having a surface area that does not exceed three hundred (300) acres, excluding the following in determining the surface area;
  - (1) An adjoining channel.
  - (2) Any other small lake connected to the body of public water by a natural or manmade channel less than five hundred (500) feet wide at the narrowest point.

The “small lake” concept has been the subject of confusion, and a clear line needs to be drawn for measuring a “small lake” relative to measuring any other “lake”.

(4) The original legislative enactment for what is now the Lakes Preservation Act was made effective on March 12, 1947. This enactment provided the “public of Indiana has a vested right in...[t]he preservation, protection, and enjoyment of all the public freshwater lakes of Indiana in their present state.” A manmade channel which existed on March 12, 1947 is subject to the Lakes Preservation Act.

(5) Another provision of the Lakes Preservation Act provides in IC 14-26-2-9(b):

- (b) As a condition precedent to granting a permit, an applicant must, in writing, do the following:
  - (1) Acknowledge that all additional water area created is part of the lake.
  - (2) Dedicate the additional area to the general public use.

Waters in a channel which are dedicated pursuant to a license under IC 14-26-2 (or under antecedent codifications at IC 13-2-11 or IC 13-2-11.5, before their repeal) would be included in the boundaries of a lake. Similarly, if a person constructed a channel for which a permit is lawfully required but failed to obtain a permit, those waters would be included.

**Recommendation:** The recommendation is that the Advisory Council recommend the Natural Resources Commission give preliminary adoption to amendments to 312 IAC 1-1-21 for the definition of "lake".

-----

**312 IAC 1-1-21 "Lake" defined**

Authority: IC 14-10-2-4

Affected: IC 14-15; IC 14-26-3-1; IC 25

Sec. 21. (a) "Lake" means, except as provided in subsections (b) and (c), a reasonably permanent body of water substantially at rest in a depression in the surface of the earth, if both the depression and the body of water are of natural origin or part of a watercourse. If part of a watercourse, a lake may be formed by damming a river or stream.

(b) For purposes of IC 14-15, "lake" means a natural or an artificial lake.

**(c) For purposes of IC 14-26-2, "lake" has the meaning set forth in IC 14-26-2-1.5.**

~~(d)~~ (d) For purposes of IC 14-26-3, "lake" has the meaning set forth in IC 14-26-3-1.

**(e) In determining the boundaries of a lake:**

**(1) Any bays or coves are included, except for a determination of a "small lake" as defined under IC 14-8-2-259.**

**(2) A manmade channel connected to a public freshwater lake, if the channel:**

**(A) Existed on March 12, 1947;**

**(B) As a condition of a department license was required to conform to IC 14-26-2-9 (or, before their repeals, to conform to IC 13-2-11-2 or IC 13-2-11.1-5); or**

**(C) Was constructed without a department license required under IC 14-26-2 (or, before their repeals, under IC 13-2-11 or IC 13-2-11.1).**

**(3) If a lake has more than one (1) legal elevation, the highest legal elevation is used.** (*Natural Resources Commission; 312 IAC 1-1-21; filed Dec 1, 1995, 10:00 a.m.: 19 IR 658; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895; readopted filed May 29, 2007, 9:42 a.m.: 20070613-IR-312070111RFA*)