

TITLE 312 NATURAL RESOURCES COMMISSION

Emergency Rule
LSA Document #11- 677 (E)

DIGEST

Temporarily adds noncode provisions to amend 312 IAC 6.2 to assist with the implementation of Article 4 of IC 14-25-15-1, pertaining to water management and regulation under the Great Lakes-St. Lawrence River Basin Water Resources Compact, to address registration and permitting of water withdrawal facilities in the Great Lakes Basin of Indiana. Effective November 1, 2011.

SECTION 1. (a) This document implements and regulates a water withdrawal, diversion, or consumptive use that is subject to registration or permitting under IC 14-25-15.

(b) This document supplements 312 IAC 6.2.

SECTION 2. (a) Definitions in Section 1.2 of IC 14-25-15-1, 312 IAC 1, and 312 IAC 6.2 apply throughout this document.

(b) In addition to the definitions referenced in subsection (a), the following definitions apply:

(1) "Baseline volume" refers to the amount of water approved through a status determination under IC 14-25-15-12 (or approved through a modification to a status determination or another previous department order) with respect to any of the following categories:

- (A) A total water withdrawal capability registered under IC 14-25-7-15(c)(3).**
- (B) A consumptive use attributable to a facility.**
- (C) A facility that diverts water outside the basin.**

(2) "Basin of Indiana" means the portion of the basin located in the State of Indiana.

(3) "Deputy director" refers to the deputy director for the bureau of water and resource regulation established by IC 14-9-3.

(4) "Facility" means a water withdrawal facility.

(5) "Q90" means the amount of flow in a stream that was equaled or exceeded by the annual daily mean stream flow ninety percent (90%) of the time.

(6) "Salmonid stream" refers to each of the following:

- (A) Trail Creek and its tributaries downstream to Lake Michigan.**
- (B) Galena River and its tributaries in LaPorte County.**
- (C) East Branch of the Little Calumet River and its tributaries downstream to Lake Michigan via Burns Ditch.**

(D) St. Joseph River and its tributaries in St. Joseph County from the Twin Branch Dam in Mishawaka downstream to the Indiana/Michigan state line.

(7) "Water withdrawal facility" refers to a system or process that:

- (A) in the aggregate from all sources and by all methods, has the capability of**

withdrawing more than one hundred thousand (100,000) gallons of ground water, surface water, or ground and surface water combined, in one (1) day; or
(B) diverts.

SECTION 3. A facility that does not exceed its baseline volume for any category listed in SECTION 2(b)(1) of this document is exempt from the permitting requirements but must satisfy the monitoring and reporting requirements of this document.

SECTION 4. (a) This SECTION applies to the sale or other transfer of a facility with a baseline volume.

(b) Not later than March 31 of the year following a sale or other transfer to another person of a right to use all or a portion of a facility's baseline volume, the facility must notify the division on a department form. The notification must include the name and contact information for the buyer or other transferee and any other information reasonably required on the form to achieve compliance with this document.

(c) If a facility does not comply with subsection (b), the sale or transfer is ineffective under IC 14-25-15, 312 IAC 6.2, and this document.

(d) For a sale or transfer that is effective, the buyer or transferee is beneficiary to the amount of the baseline volume that is sold or transferred. The amount of the approved baseline volume of the seller or transferor is reduced by the amount sold or transferred.

(e) A buyer or transferee must comply with any action required by Section 4.12(4) of IC 14-25-15-1.

SECTION 5. (a) This SECTION governs registration of a withdrawal, consumptive use, or diversion.

(b) A person must register a facility with the division on a department form under this SECTION.

(c) A new facility that would withdraw less than a threshold amount described in SECTION 6(b)(1) or 6(b)(3) of this document must notify the department within ninety (90) days of completion of the withdrawal system.

(d) An existing facility that would have an increased withdrawal exceeding the baseline volume, for a water withdrawal capability under IC 14-25-7-15(c)(3), which, when combined with all prior increases, does not result either in:

(1) an increase above the threshold amount described in SECTION 6(b) of this document; or

(2) increased total consumptive use for the facility that is greater than five million (5,000,000) gallons daily;

must notify the department by March 31 of the year following the increase.

(e) An existing facility with an increased withdrawal that would not satisfy subsection (c) must obtain authorization in advance under IC 14-25-15, 312 IAC 6.2, and this document.

(f) To qualify for registration, an applicant must provide the following information on a department form:

(1) The applicant's:

(A) name and mailing address;

(B) contact person's name; and

(C) contact person's telephone number and e-mail address.

(2) If an applicant authorizes another person to be responsible for implementation of a withdrawal and the return of water to the basin, and the associated reporting requirements, the authorized person must provide the following information:

(A) Name and mailing address.

(B) Contact person's name.

(C) Contact person's telephone number and e-mail address.

(3) The location and sources of any withdrawal or diversion.

(4) The capacity of any withdrawal in gallons per day.

(5) The amount withdrawn or diverted from each source in gallons per day for any thirty (30) day period.

(g) By March 31 of the following year, a person registered under this SECTION must report each of the following to the division on a department form:

(1) Updates to registration information.

(2) Information regarding evaluation, implementation, and results of water conservation and efficiency efforts used at the facility during the year.

(3) Monthly volumes of water in gallons for each of the following:

(A) Withdrawals.

(B) Consumptive uses.

(C) Diversions.

(h) Registration under IC 14-25-15 and this document also satisfies the registration requirements of IC 14-25-7-15.

SECTION 6. (a) This SECTION governs an individual permit for a withdrawal, consumptive use, or diversion.

(b) A person must obtain a permit under IC 14-25-15 and this document before implementing a new water withdrawal, for any ninety (90) day period, which exceeds on a daily basis at least the following:

(1) From Lake Michigan, five million (5,000,000) gallons.

(2) From a salmonid stream, one hundred thousand (100,000) gallons.

(3) From any other source of ground water or surface water or of ground water and surface water combined, one million (1,000,000) gallons.

(c) Unless exempted under IC 14-25-15-8, a person must obtain advance approval to increase, for any ninety (90) day period, the average thresholds under subsection (b) of an existing withdrawal of ground or surface water or ground water and surface water combined for either:

(1) a withdrawal; or

(2) an increase in consumptive use to greater than five million (5,000,000) gallons per day.

(d) Except as provided in subsection (g), an applicant must provide each of the following:

(1) The information required for registration in SECTION 5(f) of this document.

(2) Identification of which of the following the applicant seeks:

(A) A new or increased withdrawal in excess of a threshold described in subsection (b).

- (B) A new or increased consumptive use in excess of five million (5,000,000) gallons per day.
- (C) An exception to the prohibition on diversions for any of the following:
 - (i) A straddling community.
 - (ii) A community within a straddling community.
 - (iii) An intra-basin transfer.
- (3) The location of any source of water for a withdrawal or diversion to include the following:
 - (A) The applicant's sole or preferred source.
 - (B) Any source that is an alternative to clause (A).
 - (C) Any well or pump site.
 - (D) If a person other than the applicant would make a withdrawal, information to reasonably support a finding the person:
 - (i) has sufficient capacity to serve the applicant's needs; and
 - (ii) is willing to negotiate a purchase price with the applicant.
- (4) A map or photograph to assist with identification of the following:
 - (A) The source watershed that includes if:
 - (i) ground water, that the source is a confined or an unconfined aquifer; or
 - (ii) surface water, that the source is a river, stream, or lake (and the name of the water body).
 - (B) The proposed location of any withdrawal and return flow discharge.
 - (C) If a diversion, both of the following:
 - (i) The existing water supply service area.
 - (ii) The area that is proposed to receive the diverted water.
- (5) The new or increased diversion and any associated consumptive use, which includes the following:
 - (A) The total proposed maximum volume of the withdrawal, diversion, or consumptive use over the planned life of the project (but not exceeding fifty (50) years) in millions of gallons per day:
 - (i) averaged over a calendar year;
 - (ii) over the peak ninety (90) day period during a calendar year; and
 - (iii) monthly.
 - (B) Whether the use would be:
 - (i) continuous;
 - (ii) seasonal; or
 - (iii) temporary.
 - (C) Locations where the withdrawal and where the return discharge would be measured.
 - (D) The technical method to be used for determining the rates of flow.
- (6) If within the prior ten (10) years, an application was approved to increase the baseline volume for the facility, the date of the approval and the daily volume in gallons for any the following:
 - (A) Withdrawal.
 - (B) Consumptive use.
 - (C) Diversion.

(e) For an exception to the prohibition on diversions that is subject to Section 4.9 of IC 14-25-15-1, an applicant must additionally satisfy the criteria in:

- (1) Section 4.9.1 of IC 14-25-15-1 for a straddling community.
- (2) Section 4.9.2 of IC 14-25-15-1 for an intra-basin transfer.
- (3) Section 4.9.3 of IC 14-25-15-1 for a straddling county;

as further described in Section 4.9.4 of IC 14-25-15-1.

(f) For a new or increased withdrawal or consumptive use that is subject to Section 4.10 of IC 14-25-15-1, an applicant must additionally satisfy the criteria in the decision making standard of Section 4.11 of IC 14-25-15-1.

(g) The owner of a facility is not required to register under IC 14-25-7-15, or to obtain a water withdrawal permit under this document, if the facility is installed and used exclusively for any of the following purposes:

- (1) Testing or evaluating the ground water resource for a period not greater than seventy-two (72) hours in one (1) calendar year.
- (2) A noncommercial project that continues for not more than three (3) months for firefighting, humanitarian, or emergency response purposes.
- (3) Supplying a vehicle, boat, or aircraft with respect to:
 - (A) transport of a person or animal;
 - (B) ballast; or
 - (C) operating a vehicle, boat, or aircraft.

SECTION 7. (a) This SECTION establishes a general permit for a withdrawal or for a consumptive use

(b) A person who qualifies under this SECTION is not required to obtain an individual permit under IC 14-25-15 and SECTION 6 of this document.

(c) To qualify for a general permit, a person must satisfy each of the following:

- (1) Comply with all requirements for registration of a withdrawal or consumptive use under SECTION 5 of this document.
- (2) Limit any new or increased average consumptive use to less than five million (5,000,000) gallons over any ninety (90) day period.
- (3) Unless prior written approval is obtained from the department, refrain from making a withdrawal from, or from a well within one-half (1/2) mile of, a salmonid stream.
- (4) Following an order issued by the department under IC 4-21.5-4, cease or curtail the withdrawal as directed, if the department determines either:
 - (A) a ground water withdrawal exceeds the recharge capability of the source aquifer; or
 - (B) the withdrawal is causing a stream flow that is both:
 - (i) below Q90; and
 - (ii) likely to result in an adverse impact to fish, wildlife, or botanical resources.

SECTION 8. (a) A person violates IC 14-25-15 and this document if the person either:

- (1) acts without authorization where authorization is required under IC 14-25-15 or this document; or

(2) violates a term or condition of a registration, an individual permit, a general permit, an exemption, or another authorization described in IC 14-25-15 or this document.

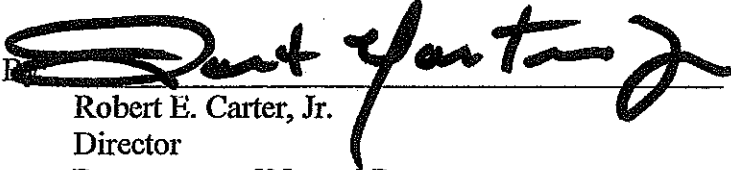
(b) Except as provided in 312 IAC 6.2-1-3(c) and subject to IC 14-10-2-3, the deputy director may issue any order appropriate to licensure under or enforcement of IC 14-25-15 and this document.

SECTION 9. SECTIONS 1 through 8 of this document take effect on November 1, 2011.

Rule Signature Page

Rule #: LSA #11- **677** (E)
Agency: Natural Resources Commission
Subject: GLC Registration Permitting

ADOPTED:

 Date: 10/26/2011
Robert E. Carter, Jr.
Director
Department of Natural Resources

ACCEPTED FOR FILING:

By: _____
TITLE 312 NATURAL RESOURCES COMMISSION
LSA Document #11-677(ER)
Filed with Publisher: October 28, 2011. 3:24 p.m.
By: Kks