

Consideration of the addition of a new nonrule policy document, Information Bulletin #81, which is a roster of low head dams presented for adoption by the Natural Resources Commission. Administrative Cause No. 20-WA-036.

Nonrule policy document, Information Bulletin #81, is necessary to fulfill the requirements of IC 14-27-7.3-4, a new section of IC 14-27-7.3, a new chapter on low head dams, that became effective on July 1, 2020. IC 14-27-7.3 states:

IC 14-27-7.3 Chapter 7.3. Low Head Dams

IC 14-27-7.3-1 Applicability

Sec. 1. This chapter does not apply to a dam that is regulated by the Federal Energy Regulatory Commission or owned by the Army Corps of Engineers.

As added by P.L.104-2020, SEC.3.

IC 14-27-7.3-2 "Low head dam"

Sec. 2. As used in this chapter, "low head dam" means a manmade in-channel structure in a watercourse that is capable of generating hazardous recirculating currents that pose a risk to public health and safety and causes the watercourse to have a vertical drop of twenty-five (25) feet or less. The term does not include:

- (1) a dam with a downstream structure in place to dissipate the hydraulic energy of the water past the crest of the dam; or
- (2) ramped impoundments which drop at slopes of five percent (5%) or flatter.

As added by P.L.104-2020, SEC.3.

IC 14-27-7.3-3 "Roster"

Sec. 3. As used in this chapter, "roster" refers to the roster of low head dams adopted under section 4 of this chapter.

As added by P.L.104-2020, SEC.3.

IC 14-27-7.3-4 Duties of commission

Sec. 4. (a) Not later than July 1, 2021, the commission shall adopt a roster of low head dams located in the state that are capable of creating hazardous currents that pose safety issues to swimmers, waders, or boaters. The roster must be updated periodically.

(b) The roster of low head dams must include the following information:

- (1) The location of the low head dam.
- (2) To the extent feasible, the name of each low head dam owner. If an owner cannot be identified, the roster must list the owner as unknown.

As added by P.L.104-2020, SEC.3.

IC 14-27-7.3-5 Duties of department

Sec. 5. The department shall do the following:

- (1) Establish warning standards for low head dams that are on the roster.
- (2) Provide information on low head dam safety.
- (3) Provide contact information for the department so that a low head dam owner can discuss options for low head dam removal or modification.

(4) Not more than ninety (90) days after the commission adopts a roster, notify each identified owner of a low head dam on the roster by certified mail of the requirements for a low head dam under this chapter.

(5) Not more than ninety (90) days after the department receives information of a new owner of a low head dam on the roster, notify the new owner by certified mail of the requirements for a low head dam under this chapter.

As added by P.L.104-2020, SEC.3.

IC 14-27-7.3-6 Duties of owner

Sec. 6. A person who owns a low head dam that is on the roster shall do the following:

(1) Except as provided in section 7 of this chapter, comply with the warning standards established by the department under section 5(1) of this chapter.

(2) Inform the department of any change of ownership of the low head dam not more than thirty (30) days after the change.

(3) Except for a low head dam owned by the state, maintain general liability insurance, with a general aggregate limit of not less than one million dollars (\$1,000,000), to cover claims from injuries and death that the low head dam may cause, and before July 1 of each year provide the department with proof of insurance.

As added by P.L.104-2020, SEC.3.

IC 14-27-7.3-7 Exemption for certain owners

Sec. 7. A person who owns at least two (2) low head dams is exempted from the requirements under section 6(1) of this chapter if:

(1) that person has previously installed warning signs in coordination with the department; and

(2) that person maintains and repairs the signs that exist.

As added by P.L.104-2020, SEC.3.

IC 14-27-7.3-8 Damage or breach; duty to notify; inspections; right of entry upon premises

Sec. 8. (a) The owner of a low head dam that is on the roster and that has been damaged or breached shall notify the department within four (4) business days of becoming aware of the damage or breach.

(b) The department and the department's agents, engineers, geologists, and other employees may, for purposes of conducting an assessment of the low head dam that has been reported as damaged or breached, enter upon any land or water in Indiana without liability for trespass. The owner of the low head dam shall do the following:

(1) Cooperate with the department and the department's agents, engineers, geologists, and other employees in the conduct of the assessment.

(2) Facilitate access to the low head dam.

(c) After the low head dam has been assessed under subsection (b), the department shall provide a written report to each owner of the low head dam.

As added by P.L.104-2020, SEC.3.

IC 14-27-7.3-9 Prohibited acts

Sec. 9. (a) A person may not access a low head dam or wade, boat, swim, or access the waters within fifty (50) feet of the low head dam when warning signs are present.

(b) Notwithstanding subsection (a), a person who is performing:

(1) an assessment, inspection, or maintenance on or removal of a low head dam with the written permission of the owner; or

(2) duties of the department;

is exempt from this section.

As added by P.L.104-2020, SEC.3.

IC 14-27-7.3-10 Title searches by department

Sec. 10. The department may use funds appropriated to the department to perform title searches to determine the owners of existing low head dams.

As added by P.L.104-2020, SEC.3.

IC 14-27-7.3-11 Department immunity from liability

Sec. 11. (a) The state is not liable for any death or injury that occurs on or resulting from a low head dam that is not owned by the state.

(b) Nothing in this chapter limits an owner's liability for any damage, loss, or injury that is caused by a low head dam.

As added by P.L.104-2020, SEC.3.

IC 14-27-7.3-12 Adoption of rules

Sec. 12. The department may adopt rules under IC 4-22-2 to implement this chapter.

As added by P.L.104-2020, SEC.3.

IC 14-27-7.3-13 Violations

Sec. 13. A person who violates this chapter commits a Class C infraction.

As added by P.L.104-2020, SEC.3.

IC 14-27-7.3-14 Appeal of administrative decision or penalty

Sec. 14. (a) A person may appeal an administrative decision or penalty assessed under this chapter to the commission.

(b) IC 4-21.5 applies to proceedings by the commission under this section.

As added by P.L.104-2020, SEC.3.

IC 14-27-7.3-15 Recommendations report

Sec. 15. (a) Not later than October 1, 2020, the department shall:

(1) prepare a report that includes recommendations concerning the creation of a low head dam removal program and any recommendations concerning low head dam safety legislation; and

(2) submit the report required in this section in an electronic format under IC 5-14-6 to the executive director of the legislative services agency for distribution to the members of the general assembly.

(b) This section expires July 1, 2021.

As added by P.L.104-2020, SEC.3.

The following proposed nonrule policy is presented for adoption.

NATURAL RESOURCES COMMISSION
Information Bulletin #81

SUBJECT: Roster of Low Head Dams

I. Introduction

A. Background

In 2020, the Indiana General Assembly enacted IC 14-27-7.3 to bring focus to the topic of safety at low head dams. A “low head dam” is now defined at IC 14-27-7.3-2 and this “roster” is defined at IC 14-27-7.3-3. In addition, a new chapter regarding the requirements for low head dams is found at IC 14-27-7.3-1, et seq.

Low head/in-channel dams are typically structures left behind by industrial activities early in the nation’s history. The ownership of many of these dams has been obscured by time. In many cases, their original purpose has since expired, but they remain deceptively dangerous. During periods of high water, these structures often create dangerous currents around, up and downstream of the structure. These dams normally:

- span the entire river channel or stream width,
- have a noticeable change in elevation from upstream to downstream under normal flow conditions,
- are easily accessible to the general public for fishing and hiking activities,
- have a deteriorating structure and foundation, and
- create dangerous currents around the structure that can overcome paddled and even motorized watercraft.

While many low head dams may not pose a traditional safety of dam’s risk and may not pose a recreational risk during very low water flow conditions, they can be deceptively dangerous to those recreating during increased water flows or mild flooding conditions.

There is a significant difference in focus of “safety of dams” programs vs. “safety at dams”. Recreation and boater safety near in-channel dams are not typically regulated by dam safety programs in states throughout the nation. As with most other state dam safety programs, Indiana’s existing Regulation of Dams Act, IC 14-27-7.5 (active since 1961), focuses primarily on “safety of dams” meaning the structural integrity aspects of dams and the risk to downstream life and property, should a dam have an incident or failure that causes downstream flooding.

Low head dam mitigation involves a multi-disciplined, and multi-party collaborative effort. Public and private volunteer stakeholders have already begun several outreach and awareness initiatives. Collaborating stakeholders include dam owners, recreational users, private sector and non-profit groups, and federal/state/local agencies.

B. Document Purpose

This document creates a Roster of Low Head Dams (Roster) regulated under IC 14-27-7.3.

This document does not:

- Authorize or permit construction activities or modifications to any low head dams.
- Remove any obligation provided for by any federal, State, or local law, administrative rule, regulation, ordinance, or similar requirement.
- Preclude compliance with any other federal, State, or local law, administrative rule, regulation, ordinance, or similar requirement.
- Constitute verification that an identified dam owner, is in fact the current legal or sole owner of a dam.
- Alter the statutory authority for State employees and their agents to enter privately owned land to assess the condition of a low head dam.
- Convey public access or easement rights to any low head dam across private property or to erect or maintain low head dam warning signage.

II. Definitions

For the purposes of this Non-Rule Policy Document:

A. “Division” means; the Division of Water of the Indiana Department of Natural Resources (DNR).

B. “Low head dam” has the meaning set forth in IC 14-27-7.3-2. A "low head dam" means a manmade in-channel structure in a watercourse that is capable of generating hazardous recirculating currents that pose a risk to public health and safety and causes the watercourse to have a vertical drop of twenty-five (25) feet or less. The term does not include:
 (1) a dam with a downstream structure in place to dissipate the hydraulic energy of the water past the crest of the dam; or
 (2) ramped impoundments which drop at slopes of five percent (5%) or flatter.

C. “Roster” has the meaning set forth in IC 14-27-7.3-3. The listing of low head dams in this document includes the location of each dam in Indiana and, to the extent feasible, the owner of the dam. If an owner cannot be identified, the roster must list the owner as unknown. The Roster is proposed by the Division and adopted by the Natural Resources Commission (Commission).

III. Roster of Low Head Dams

State ID #	Location County	Dam Name	Location		Name of Owner(s)
			Waterbody Name	Closest Road	
				d/s-downstream u/s – upstream N - North S - South E – East W- West	
2-3	Allen	Hosey (Maumee River)	Maumee River	N Anthony Blvd. and Niagara Dr. - d/s	Fort Wayne City Utilities

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2-4	Allen	St. Joseph River	St. Joseph River	State Rd. 930 - u/s and N Anthony Blvd.	City of Fort Wayne
2-13	Allen	Spy Run Dam	Spy Run Creek	E 4th Street - d/s	Fort Wayne City Utilities
3-7	Bartholomew	Q.G. Noblitt Dam	Flatrock River	Indianapolis Rd. d/s and Flatrock Dr. (E)	Noblitt Addition Owner's Association
3-13	Bartholomew	East Fork White River	East Fork White River	State Rd. 46 - u/s	City of Columbus - Board of Public Works and Safety
3-39	Bartholomew	Haw Creek N.E.	Tributary to Haw Creek	Rocky Ford Rd. - u/s	City of Columbus - Board of Public Works and Safety
9-1	Cass	Pipe Creek Falls	Pipe Creek	S County Rd. 850 E - d/s and E County Rd. 275 S (W)	Thomas Marlott
9-2	Cass	Lower Pipe Creek	Pipe Creek	S County Rd. 850 E - d/s	James A. Swanson Jr
9-4	Cass	Logansport 10th. Street	Eel River	State Rd. 25 - d/s	Logansport Municipal Utilities
9-6	Cass	Logansport 9th. Street	Eel River	State Rd. 25 - d/s	Logansport Municipal Utilities
10-2	Clark	Tunnel Mill	Fourteenmile Creek	Tunnel Mill Rd. - d/s or New Market Rd. - d/s	Lincoln Heritage BSA
10-4	Clark	Blackiston Mills	Silver Creek	Fourth Dam Rd. - d/s or Blackiston Mill Rd. - d/s	Larry & Nancy Beeler
13-1	Crawford	Milltown	Blue River	Main Street - u/s	Johnny And Justin Hammond and others
16-2	Decatur	Greensburg Water	Flatrock River	N US Highway 421 - d/s	Greensburg Water Dept
16-3	Decatur	Westport Water	Sand Creek	W County Rd. 1100 S - u/s and W Laytons Dr. - u/s	City of Westport
18-3	Delaware	Muncie Waterworks	West Fork White River	E Memorial Dr. - u/s and S Burlington Dr. (W)	Indiana-American Water Company Inc.
18-7	Delaware	Pauline Street	West Fork White River	N Wheeling Ave. - u/s and W Washington Street - d/s	City of Muncie
19-9	Dubois	Dubois-Patoka River	Patoka River	State Rd. 545 - d/s and N Cuzco Rd. - d/s	Indiana (DNR)

19-27	Dubois	Jasper-Patoka River	Patoka River	State Rd. 164 or E 3rd Ave. - u/s and N Riverwalk - d/s	City of Jasper
20-3	Elkhart	Elkhart River	Elkhart River	S Elkhart Ave.- d/s and County Rd. 9 or Prairie Street - u/s	Elkhart Public Works
20-7	Elkhart	Bainter Town Dam	Elkhart River	County Rd. 142 - d/s	Elkhart County Parks & Rec Board
20-8	Elkhart	Bonneyville Mill Dam	Little Elkhart River	County Rd. 131 - u/s	Elkhart County Parks & Rec Board
20-9	Elkhart	Little Elkhart River	Little Elkhart River	State Rd. 13 and Miller's Cider Mill - u/s and Bristol Ave. (W)	Alta Miller
20-11	Elkhart	Benton Dam	Elkhart River Hydraulic Canal	US 33 - u/s and County Rd. 31 - d/s	Elkhart County Parks & Rec Board
20-14	Elkhart	Christiana Creek	Christiana Creek	Cassopolis Street - u/s and E Beardsley Ave. - d/s	City of Elkhart
23-2	Fountain	Snoddy Mill	Coal Creek	S Stringtown Rd. - d/s and W County Rd. 640 S	Michael Horvath
23-4	Fountain	Pratt	Little Shawnee Creek	Adams Street - bridge over weir	Michael Trueblood
24-1	Franklin	Laurel Feeder	Whitewater River	Laurel Rd. - u/s, State Rd. 121 W and Dam Rd. E	Indiana (State Museum and Historic Sites)
27-3	Grant	Old Mill	Mississinewa River	W/E Highland Ave. - d/s	City of Marion
29-2	Hamilton	Riverwood Power	West Fork White River	E 206th Street - d/s IN-37 and E 211 St (East)	Duke Energy
29-13	Hamilton	Williams Creek	Williams Creek	W 106th Street - u/s Spring Mill Rd. and Millridge Dr. (East)	David & Jacqueline Simon
31-4	Harrison	Indian Creek No. 1	Indian Creek	State Rd. 337 or Old Hwy 135 - d/s	Corydon Water Utilities
34-5	Howard	Kokomo Creek	Kokomo Creek	S Webster Street - u/s and Stadium Dr. (East)	City of Kokomo
34-7	Howard	Kokomo Waterworks #3	Wildcat Creek	E Carter Street - d/s and S Reed Rd. - u/s	Indiana American Water
35-1	Huntington	Salamonie River	Salamonie	State Rd. 5 or S	Salamonie Mills

			River	Wayne Rd. - d/s	Inc.
35-6	Huntington	Belleville Mill	Salamonie River	W County Rd. 800 and Interstate 69 - u/s, S Belleville Rd. and W County Rd. 700 S (North)	Mike Driscoll
36-3	Jackson	Seymour Water Co.	East Fork White River	E County Rd. 725 N - u/s and N County Rd. 760 E (East)	Indiana- American Water
39-3	Jefferson	Camp Creek	Camp Creek	County Rd. W 1000 N - u/s and N State Rd. 7 (East)	Hoosier Hills BSA
40-4	Jennings	N. Vernon Water Supply	Vernon Fork Muscatatuck	E Summit St and US Highway 50 - d/s	City of North Vernon
40-11	Jennings	Muscatatuck River	Vernon Fork Muscatatuck	Muscatatuck UTC Rd. - u/s and E County Rd. 425 N (South)	Indiana (National Guard)
41-4	Johnson	Thompson Mill	Big Blue River	State Rd. 252 or N Eisenhower Dr. - d/s	Town of Edinburgh
44-1	Lagrange	Star Mill Lower Dam	Fawn River	County Rd. N 50 W - d/s and N State Rd. 9 - u/s	Star Mill Inc.
44-1a	Lagrange	Star Mill	Fawn River	County Rd. N 50 W - d/s and N State Rd. 9 - u/s	Star Mill Inc.
44-4	Lagrange	Ontario Millpond	Pigeon River	County Rd. 420 N - d/s and County Rd. N 390 E - u/s	Indiana (DNR)
44-5	Lagrange	Nasby Lake	Pigeon River	N County Rd. 600 E - u/s	Indiana (DNR)
44-22	Lagrange	Wolcottville Town	Little Elkhart Creek	N 1st Street Over the dam and N Main Street - u/s	Town of Wolcottville
45-1	Lake	Hobart Deep River	Deep River	Liverpool Rd. - u/s and I-80 - d/s	Gary Community Schools
46-12	Laporte	Jack Ragle	Galena River	W County Rd. 650 N - d/s	Peter Murphy
47-5	Lawrence	Williams	East Fork White River	Williams Covered Bridge and Huron Williams Rd. - d/s and US Highway 50 - u/s	Indiana (DNR)
47-6	Lawrence	Avoca State Fish Hatchery	Tributary Goose Creek	State Rd. 54 - u/s and Avoca-Eureka Rd. - d/s	Marshall Township
48-1	Madison	Killbuck Creek	Killbuck Creek	E Grand Ave. - d/s	City of Anderson
48-7	Madison	Pendleton	Fall Creek	Main Street - u/s	City of Pendleton

49-1	Marion	10th Street - Eagle Creek	Eagle Creek	W 10th Street - d/s	Speedway Water Works
49-2	Marion	Fall Creek Keystone Ave.	Fall Creek	Intersection of E Fall Creek Parkway N Dr. and N Keystone Ave. - u/s	Citizens Energy Group
49-3	Marion	Harding St. Power	West Fork White River	S Harding Street - u/s	Indianapolis Power & Light
49-28	Marion	Shirley Lake Park	Pleasant Run	N Shadeland Ave. - d/s	Shirley Lake Park
54-2	Montgomery	Sugar Creek	Sugar Creek	US Highway 231/Lafayette Rd - d/s	Crawfordsville Energy LLC
55-21	Morgan	West Fork White River	West Fork White River	US Highway 67 -d/s	Indianapolis Power & Light
59-6	Orange	Lick Creek Dam No. 1	Lick Creek	State Rd. 37 - d/s	Town of Paoli
59-7	Orange	Lick Creek Dam No. 2	Lick Creek	State Rd. 37 - d/s and close to US Highway 150	Town of Paoli
59-8	Orange	Lick Creek Dam No. 3	Lick Creek	State Rd. 37 - d/s and close to US Highway 150	Town of Paoli
59-9	Orange	Lick Creek Dam No. 4	Lick Creek	State Rd. 37 - d/s and close to US Highway 150	Town of Paoli
59-14	Orange	French Lick Springs	French Lick Creek	State Rd. 56 - d/s	French Lick Springs Hotel and Country Club
61-3	Parke	Mansfield Mill Pond	Raccoon Creek	State Rd. 59 - d/s and off S Mill road	Indiana (DNR)
61-4	Parke	Raccoon Creek Bridgeton	Raccoon Creek	S Bridgeton Road - u/s	Michael & Karen Roe
63-29	Pike	Winslow Water Supply	Patoka River	State Rd. 61 - d/s	Town of Winslow
64-4	Porter	Roy Nicholson	Damon Run	N County Rd. 100 W - u/s	Arthur E. & Rosele E. Ostrowski
64-17	Porter	Bethlehem Steel no. 2	Tributary Little Calumet River	US Highway 12 - u/s	Tecumseh Redevelopment Inc.
64-18	Porter	Bethlehem Steel No. 3	Tributary Little Calumet River	US Highway 12 - u/s	Tecumseh Redevelopment Inc.
64-19	Porter	Bethlehem Steel No. 4	Tributary Little Calumet River	US Highway 12 - u/s	Tecumseh Redevelopment Inc.

64-20	Porter	Bethlehem Steel No. 5	Tributary Little Calumet River	US Highway 12 - u/s	Tecumseh Redevelopment Inc.
64-21	Porter	Linde Dam	Little Calumet River	State Rd. 149 - u/s	United States of America
67-2	Putnam	State Farm	Deer Creek	State Rd. 243 - u/s and close to Putnamville Correctional Facility	Indiana (DOC / DNR)
67-3	Putnam	Big Walnut Creek	Big Walnut Creek	US Highway 231 - d/s	City of Greencastle
67-5	Putnam	Old Cagles Mill	Mill Creek	W County Rd. 1200 S -u/s	Albert & Lily Killion
68-1	Randolph	White River	West Fork White River	S County Rd. 1250 W - d/s	David & Christina Bragg
68-5	Randolph	Sparrow Creek	Sparrow Creek	W State Road 32 - u/s	Richard & Melinda Waters
69-26	Ripley	Bob's Creek	Bobs Creek	E County Rd. 1400 N -u/s	City of Batesville
71-1	St. Joseph	South Bend	St. Joseph River	E Jefferson Blvd. - u/s	City of South Bend
71-2	St. Joseph	Ball Band	St. Joseph River	Cedar Street - u/s	Edge Water LLC
72-12	Scott	Morgan Packing Co.	Muscatatuck River	US Highway 31 and railway track - u/s	Morgan Packing Company & City of Austin
72-42	Scott	Lexington Presbyterian Church Dam	Town Creek	State Rd. 203 - d/s	United Presbyterian Ministries Inc.
73-3	Shelby	Old Monroe Mill	Flatrock River	State Rd. 9 - d/s	Ruth Davidson
73-4	Shelby	Geneva Upper	Flatrock River	E Vandalia Rd. - d/s	Angie McLaughling
73-4a	Shelby	Geneva Lower	Flatrock River	E Vandalia Rd. u/s	Jack R Yeend
84-5	Vigo	Markle Mill	Otter Creek	Rosedale Rd. - d/s	Vigo County Parks & Rec.
85-6	Wabash	Stockdale Mill Dam	Eel River	State Rd. 16 - 100 yards down river	Stockdale Mill Foundation
89-2	Wayne	Marlott Mill	Greens Fork	Sample Rd. u/s 213 yds	Chaley Sadler
89-5	Wayne	Richmond Water Works	East Fork Whitewater River	Hayes Arboretum Rd. - u/s Close to Elks Country Club Rd.	Indiana American Water
89-13	Wayne	Whitewater Gorge	East Fork Whitewater	692 yards. tall bridge. Richmond Ave.	City of Richmond

			River		
89-15	Wayne	Nettle Creek Mill	Nettle Creek	Tumike Rd. - d/s	Marjorie T. Myer

IV. Roster Amendments

IC 14-27-7.3-4 requires periodic amendment of this Roster. At least annually, DNR will review the information included within the Roster and propose necessary revisions for the Commission’s consideration.

Low head dam structures have the potential for removal from the Roster if the low head dam no longer poses a risk to public health and safety. An owner may contact the Division and pursue removal from the Roster by the deconstruction and removal or modification of the low head dam. The Division shall consider the expectations of IC 14-27-7.3, the considerations identified in Section III above, before recommending the removal of a structure from the Roster.

Updated information will be maintained by the DNR. The DNR anticipates that It will maintain information for low head dams that includes construction permit applications received, permitted, denied, terminated, and an updated list of low head dams built, modified, or removed.

V. Administrative Review of Listing

The initial notice to owners of low head dams on the Roster under Indiana Code section 14-27-7.3-5(5) shall include the right to appeal the placement of a structure on the Roster through administrative review as provided under Indiana Code section 14-27-7.3-14.

A person may obtain administrative review from the Commission for the listing of a low head dam by filing a petition under IC 4-21.5-3-7 at the following address:

Division of Hearings
 Natural Resources Commission
 Indiana Government Center North
 100 North Senate Avenue, Room N103
 Indianapolis, IN 46204-2273

VI. History

The Commission approved this initial listing at a regular meeting conducted on May 18, 2021. The approved information bulletin is published in the Indiana Register.