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**TITLE 327 WATER POLLUTION CONTROL DIVISION**

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*NOTE: Under P.L. 133-2012, SECTION 72, the statutory authority to adopt these rules has been transferred to the Environmental Rules Board to be administered and implemented by the Water Pollution Control Division of the Department of Environmental Management, effective January 1, 2013.*

**Proposed Rule**  
LSA Document #10-659

DIGEST

Adds [327 IAC 5-1.5-19.5](#), [327 IAC 5-1.5-19.7](#), [327 IAC 5-1.5-25.5](#), [327 IAC 5-1.5-37.5](#), [327 IAC 5-1.5-62.5](#), [327 IAC 5-1.5-63.5](#), [327 IAC 5-1.5-64.2](#), [327 IAC 5-2-1.6](#), [327 IAC 5-2-1.7](#), [327 IAC 5-2-1.8](#), [327 IAC 15-2-2.3](#), and [327 IAC 15-3.5](#) and amends [327 IAC 5-1-1.5](#), [327 IAC 5-1.5-1](#), [327 IAC 5-2-1.5](#), [327 IAC 5-2-3](#), [327 IAC 5-2-8](#), [327 IAC 5-2-14](#), [327 IAC 5-2-15](#), [327 IAC 5-2-17](#), [327 IAC 5-2-20](#), [327 IAC 5-2-22](#), [327 IAC 5-3-8](#), [327 IAC 5-3-9](#), [327 IAC 5-3-12](#), [327 IAC 5-3-14](#), [327 IAC 5-3.5-9](#), [327 IAC 5-4-5](#), [327 IAC 5-4-6](#), [327 IAC 5-16-1](#), [327 IAC 5-16-5](#), [327 IAC 5-16-5.3](#), [327 IAC 5-18-4](#), [327 IAC 5-18-5](#), [327 IAC 15-1-1](#), [327 IAC 15-1-2](#), [327 IAC 15-1-3](#), [327 IAC 15-1-4](#), [327 IAC 15-2-1](#), [327 IAC 15-2-2](#), [327 IAC 15-2-3](#), [327 IAC 15-2-5](#), [327 IAC 15-2-6](#), [327 IAC 15-2-9](#), [327 IAC 15-2-10](#) to transfer authority to issue NPDES general permits from the Water Pollution Control Division to the commissioner to comply with the Clean Water Act (33 U.S.C. 1251 et seq.) and to update requirements to meet current federal standards. Repeals [327 IAC 5-1.5-62](#), [327 IAC 5-2-4](#), [327 IAC 5-18-10](#), [327 IAC 15-2-4](#), [327 IAC 15-2-7](#), [327 IAC 15-2-8](#), [327 IAC 15-3](#), [327 IAC 15-4](#), [327 IAC 15-5-1](#), [327 IAC 15-5-2](#), [327 IAC 15-5-3](#), [327 IAC 15-5-4](#), [327 IAC 15-5-5](#), [327 IAC 15-5-6](#), [327 IAC 15-5-7](#), [327 IAC 15-5-8](#), [327 IAC 15-5-9](#), [327 IAC 15-5-10](#), [327 IAC 15-5-12](#), [327 IAC 15-6](#), [327 IAC 15-7](#), [327 IAC 15-8](#), [327 IAC 15-9](#), [327 IAC 15-10](#), [327 IAC 15-11](#), [327 IAC 15-12](#), [327 IAC 15-13](#), and [327 IAC 15-14](#). Effective 30 days after filing with the Publisher.

**HISTORY**

First Notice of Comment Period: October 27, 2010, Indiana Register (DIN: [20101027-IR-327100659FNA](#)).

Continuation of First Notice of Comment Period: September 7, 2011, Indiana Register (DIN: [20110907-IR-327100659FCA](#)).

Second Notice of Comment Period: May 2, 2012, Indiana Register (DIN: [20120502-IR-327100659SNA](#)).

Notice of Public Hearing: May 2, 2012, Indiana Register (DIN: [20120502-IR-327100659PHA](#)).

Change in Notice of Public Hearing: June 13, 2012, Indiana Register (DIN: [20120613-IR-327100659CHA](#)).

Date of First Hearing: July 25, 2012.

**REQUEST FOR PUBLIC COMMENTS**

This proposed (preliminarily adopted) rule is substantively different from the draft rule published on May 2, 2012, at DIN: [20120502-IR-327100659SNA](#). The Indiana Department of Environmental Management (IDEM) is requesting comment on the entire proposed (preliminarily adopted) rule. The proposed rule contains numerous changes from the draft rule that make the proposed rule substantively different from the draft rule to an extent that public comment on the entire proposed rule is advisable. This notice requests the submission of comments on the entire proposed rule, including suggestions for specific amendments. These comments and the department's responses thereto will be presented to the Environmental Rules Board for its consideration at final adoption under [IC 13-14-9-6](#). Comments may be submitted in one of the following ways:

(1) By mail or common carrier to the following address:

LSA Document #10-659 (NPDES General Permits)

Attn: Janet Pittman

Rules Development Branch

Office of Legal Counsel

Indiana Department of Environmental Management

100 North Senate Avenue

MC 65-46

Indianapolis, IN 46204-2251

(2) By facsimile to (317) 233-5517. Please confirm the timely receipt of your faxed comments by calling the Rules Development Branch at (317) 232-8922.

(3) By electronic mail to [dwatts1@idem.in.gov](mailto:dwatts1@idem.in.gov). To confirm timely delivery of your comments, please request a document receipt when you send the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.**

(4) Hand delivered to the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking you are commenting on.

### COMMENT PERIOD DEADLINE

All comments must be postmarked, faxed, or time stamped no later than February 6, 2013. Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date. Additional information regarding this action may be obtained from Dan Watts, Rules Development Branch, Office of Legal Counsel, (317) 234-5345 or (800) 451-6027 (in Indiana).

### SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND PUBLIC COMMENT PERIOD

IDEM requested public comment from May 2, 2012, through June 1, 2012, regarding new rules and amendments to rules in [327 IAC 5](#) and [327 IAC 15](#) concerning NPDES general permits. IDEM received comments from the following commentors:

Jessica Dexter, Environmental Law & Policy Center, with Kim Ferraro, Hoosier Environmental Council and Bowden Quinn, Sierra Club Hoosier Chapter (ELPC)

Thomas W. Baker, Hatchett & Hauck, LLP, representing Steel Dynamics, Inc., Engineered Bar Products Division (TWB)

Charles L. Nichols, Danisco USA Inc. (CLN)

Following is a summary of the comments received and IDEM's responses thereto:

*Comment:* One of the biggest problems with Indiana's general permit program is that it allows unlimited discharges to waters that are already suffering the adverse effects of pollution. A specific example is that IDEM under the existing general permit rules allows new or increased discharges of the pollutants for which a waterbody is listed as "impaired" on Indiana's 303(d) list without any further review of whether those discharges will cause or contribute to violations of water quality standards. This is in direct violation of federal and Indiana law. See 40 CFR 122.44 (d) and 122.4(i) and [327 IAC 5-2-10\(a\)\(4\)](#) and 5-2-7(f). It is probable that discharges of a pollutant into waters identified as impaired for that pollutant will cause or contribute to violations of water quality standards. In order to determine whether a discharge would in fact cause or contribute to a violation of water quality standards, IDEM needs to look carefully at the proposed discharge and the condition of the receiving waters. This is accomplished through the individual permit process. Accordingly, language should be added to the exclusions in [327 IAC 15-2-6](#) (listing instances when an individual permit is required in lieu of a general permit) to prohibit the use of a general permit in a receiving stream that is listed as impaired for a pollutant proposed to be discharged by that activity or operation. (ELPC)

*Response:* This rule would require the commissioner to issue general permits that are consistent with all applicable guidelines and requirements of the Clean Water Act (CWA) and regulations promulgated under the CWA, including 40 CFR 122.4(i) and 40 CFR 122.44(d), as required by section 402 of the CWA (33 U.S.C. 1342). See proposed [327 IAC 15-2-10](#). The commissioner retains the right to require an individual permit in any instance where an individual permit is deemed appropriate.

*Comment:* It is a fundamental tenet of both the federal and state general permit program that authority is retained to require individual permits (rather than general permits) in appropriate circumstances, even if a general permit is available for that type of discharge. The proposed language in [327 IAC 15-2-9\(a\)](#) gives the commissioner authority to require individual permits, but appears to limit that authority to existing discharges. This is so wrong that we assume it must be a mistake. The Commissioner must have authority to require individual permits for new discharges as well as existing discharges. (ELPC)

*Response:* The terms "existing discharge" and "new discharge" are not defined in the Clean Water Act, 40 CFR 122 or Indiana laws or rules. No discharge to which 40 CFR 122 applies is excluded from the permitting authority transferred to the commissioner.

*Comment:* Along these lines, we also recommend that the language of [327 IAC 15-2-9\(a\)](#) be changed from permissive to mandatory (i.e. change "may" to "must"), at least under certain circumstances. The Commissioner's authority to require individual permits has rarely if ever been exercised. Yet several of the circumstances listed under 9(a) would lead to illegal discharges under the Clean Water Act if allowed to proceed under a general permit. The IDEM Commissioner does not have discretion to authorize discharges that do not comply with Clean Water Act requirements, and accordingly should not have discretion about whether an individual permit is necessary when the general permit is not protective. For example, discharges cannot be legally authorized under a general permit if the general permit cannot ensure compliance with water quality standards, if more stringent effluent limitations are required, if more stringent limits are necessary to comply with TMDL wasteload allocation requirements. These sections should be included in a list where individual permits are always required. A separate list of circumstances can include the remainder of the list (non-exclusively, so that other circumstances can be accommodated as necessary) and can provide more discretion for the Commissioner to exercise the authority to require an individual permit. (ELPC)

*Response:* This rule would require the commissioner to issue general permits that are consistent with all

applicable guidelines and requirements of the Clean Water Act (CWA) and regulations promulgated under the CWA. Section 402 of the CWA (33 U.S.C. 1342) does not allow the commissioner to issue permits that violate the CWA. The current requirements for administrative rulemaking demand ascertainable standards and do not permit the variability in requirements recommended by the commentor.

*Comment:* The proposed language in [327 IAC 5-2-1.8](#) lists a number of exemptions that "do not require an NPDES permit." Subsection (1) lists "any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel." This exemption seems to directly contradict U.S. EPA's required regulation of vessel discharges under a 2006 court order. See, <http://cfpub.epa.gov/npdes/vessels/background.cfm>. The U.S. EPA draft vessel general permit would require an NPDES permit for "discharges incidental to the normal operation of all non-recreational, non-military vessels of 79 feet or greater in length which discharge in waters of the United States." [http://www.epa.gov/npdes/pubs/vgp\\_factsheet\\_english.pdf](http://www.epa.gov/npdes/pubs/vgp_factsheet_english.pdf) Indiana cannot override this federal permit requirement in its rules, and should not convey the false impression that a permit is not required for these discharges. (ELPC)

*Response:* This comment addresses conformity with the federal NPDES program. IDEM will study this comment in light of recommendations received from EPA Region 5 and make appropriate changes.

*Comment:* The proposed language in [327 IAC 15-2-2](#) (d) would allow the IDEM Commissioner to "authorize a person to discharge under a general permit without submitting a notice of intent if the commissioner finds that a notice of intent would be inappropriate." As a policy matter, regulating discharges under a general permit without requiring a notice of intent is a bad idea and does not provide IDEM the information necessary to issue other pollution permits in watersheds with such discharges or undertake watershed planning (e.g. TMDLs). Similarly, failing to require an NOI allows "secret" pollution to our waters and prevents the public from making informed personal decisions about whether or not it is safe to swim or eat fish from a given lake, river or stream. Accordingly we ask that this provision be removed from the proposed rules. To the extent that this provision remains in the rules despite our objection, the rule adopted in Indiana must track the federal rule that sets the standards for such a decision. The current draft rule does not contain any version of the following language from 40 CFR 122.28 (b)(2)(v):

"In making such a finding, the Director shall consider: the type of discharge; the expected nature of the discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the discharges; other means of identifying discharges covered by the permit; and the estimated number of discharges to be covered by the permit. The Director shall provide in the public notice of the general permit the reasons for not requiring a notice of intent."

It is absolutely critical that the public be given notice and an opportunity to comment on any decisions not to require NOIs for discharges under a general permit. (ELPC)

*Response:* [327 IAC 15-2-2](#)(d), as well as [327 IAC 15-2-5](#) which governs the notice of intent, references 40 CFR 122.28(b)(2)(v) and provides that the commissioner would make a finding that a notice of intent would be inappropriate in accordance with that paragraph. The language of [327 IAC 15-2-2](#)(d) is functionally equivalent to the federal language which includes the requirement to include the reasons for not requiring the notice of intent in the public notice of the permit. In fact, subsection (d) is more restrictive than the federal language in that it includes a list of sources and discharges for which a notice of intent must always be required. Waiving the notice of intent requirement can be critical in certain circumstances, such as a general permit where thousands of entities would seek coverage for small discharges and the volume of the notices of intent submitted for review and individual action would overwhelm IDEM's permitting staff. This rulemaking specifically prohibits the commissioner from issuing a general permit that conflicts with federal law. See [327 IAC 15-2-10](#).

*Comment:* [327 IAC 15-2-5](#) should require the department to make notices of intent available to the public so people can know when a discharger is operating under a general permit. This should include posting notices of intent on the IDEM website. (ELPC)

*Response:* Proposed [327 IAC 5-2-1.6](#) requires the commissioner to issue permits consistent with 40 CFR 122.28(b) for notices of intent. Notices of intent are public records under [IC 5-14-3](#) and will be made available to the public upon request.

*Comment:* Amend [327 IAC 5-3-12](#)(d)(1)(A) to read: A brief description of the types of activities or operations (or subsets of activities or operations) to be covered by the general permit; (ELPC)

*Response:* This comment addresses conformity with the federal NPDES program. IDEM will study this comment in light of recommendations received from EPA Region 5 and make appropriate changes.

*Comment:* Amend [327 IAC 15-1-1](#) to read: The purpose of this article is to establish IDEM's authority to issue general permits for qualified NPDES permitted discharges. (ELPC)

*Response:* This comment addresses conformity with the federal NPDES program. IDEM will study this comment in light of recommendations received from EPA Region 5 and make appropriate changes.

*Comment:* Amend [327 IAC 15-1-3](#)(a) to read: The commissioner may, in as a term or condition of a general permit issued under this article, require any person who is subject to this article . . . (ELPC)

*Response:* This comment addresses conformity with the federal NPDES program. IDEM will study this

comment in light of recommendations received from EPA Region 5 and make appropriate changes.

*Comment:* Amend [327 IAC 15-2-9\(a\)\(5\)](#) to read: A water quality management plan (e.g. a TMDL) containing more stringent requirements applicable to such discharges is approved. (ELPC)

*Response:* This comment addresses conformity with the federal NPDES program. IDEM will study this comment in light of recommendations received from EPA Region 5 and make appropriate changes.

*Comment:* Amend [327 IAC 15-2-10](#) to read: No general permit shall be issued, and no discharges authorized under a general permit, where the terms and conditions of the permit do not comply with the applicable guidelines and requirements. . . (ELPC)

*Response:* Since the general permit itself is the vehicle that authorizes a discharge, the language of this section conforms to federal law and no change is necessary.

*Comment:* The stated scope of the rulemaking is clearly limited to the *General* NPDES Permit Program, but several revisions are made to the regulations concerning *individual* NPDES permits. (See, e.g., [327 IAC 5-2-3](#), [327 IAC 5-2-8](#) (new subsection 7), [327 IAC 5-2-14\(b\)](#), [327 IAC 5-2-22\(a\)](#), and [327 IAC 5-4-6](#).) In particular, the attempt to incorporate the MSGP requirements into *individual* NPDES permits is completely unrelated to the revisions of Indiana's *General* Permit Program. (TWB/CLN)

*Response:* As stated in the notices, this rulemaking changes only the requirements of the general permit program. It does not impose EPA general permit requirements on individual permittees. Because of the construction of the NPDES permit rules, making the required changes in the general permit program also requires us to make conforming changes in sections that apply to both individual and general permits. Regardless as to whether the language is used in an individual or a general permit, the department may consider the current MSGP language. The effect of this rule would be to transfer the authority to write NPDES general permits from the board to the commissioner, and to require the commissioner to write those permits in conformity with current federal standards.

*Comment:* The incorporation of the MSGP requirements into individual NPDES permits would substantially burden individual permittees. These requirements are vaguely worded and are often contradictory, making compliance extremely difficult to establish. They are also overly burdensome. For example, the MSGP terms can be construed to require storage of large amounts of raw materials in indoor areas or the installation of containment berms around these areas. This is at least very costly, and in many cases impossible. The MSGP also imposes container labeling, spill prevention, dust control, and identification of historical spills despite existing laws that require these activities where appropriate, such as the federal Spill Prevention Control and Countermeasures rule for storage of a certain amount of petroleum. These new requirements have very little relationship to stormwater control, and existing rules provide sufficient control over these activities. The MSGP can even be construed to regulate extremely trivial activities, such as the manner in which snow is plowed. IDEM should not propose that the Board layer on these new and unnecessary substantive requirements for NPDES individual permits, and it certainly should not be done via this general permit rulemaking. (TWB)

*Response:* This rulemaking does not incorporate MSGP provisions into every individual permit. It allows the commissioner to consider the provisions of the current federal standards as expressed in the MSGP when establishing individual permit conditions for certain storm water discharges, and helps ensure that those individual permit conditions would be consistent with the current federal standards for similar discharges.

*Comment:* The incorporation of MSGP requirements into individual NPDES permits would substantially burden individual permittees. These requirements are vaguely worded and are often contradictory, making compliance extremely difficult to establish. They are also overly burdensome. For example, the MSGP states that a minimum, the permittee "must implement preventive measures such as barriers between material storage and traffic areas, secondary containment provisions, and procedures for material storage and handling." This means that the permittee must incur costs to set up barriers between material storage and traffic areas, such as tanks, 55 gallon containers, totes, and pallets of raw materials and traffic areas. The identification of a "traffic area" is very subjective. The MSGP could also require expensive grading, berming, or curbing around material loading and unloading areas, or require that they be located indoors. These are but two examples of extensive and expensive compliance requirements that could apply. (CLN)

*Response:* This rulemaking does not incorporate MSGP provisions into every individual permit as the commentor states. It allows the commissioner to consider the provisions of the current federal standards expressed in the MSGP when establishing individual permit conditions for certain storm water discharges and helps ensure that those individual permit conditions would be consistent with the current federal standards for similar discharges.

*Comment:* The commentor is also concerned that the proposed rule lacks constraints and clear guidance on the types of requirements that can be placed on permittees. This subjects permittees to the inconsistent interpretations of permit writers and of inspectors from one visit to another. The vagueness of the rules proposed by IDEM will not only be open to interpretation by agency employees, but for the same reason will open companies to third party complaints during the permitting process and in complying with issued permits. In sum, IDEM should not propose that the board layer on these new substantive requirements for NPDES individual permits, and certainly should not do so via this general permit rulemaking. (CLN)

*Response:* Please see the previous comment.

*Comment:* The incorporation of U.S. EPA general permit terms into NPDES permits is unnecessary given existing state requirements for addressing stormwater. For example, Indiana's rules already require individual NPDES permit holders to develop and implement a detailed Storm Water Pollution Prevention Plan for dealing with storm water at the permitted facility. There is no indication that the existing rules are in any way deficient or that the proposed new burdens on industry will somehow lead to any measurable water quality improvements. IDEM has provided no justification for imposing the new requirements. (TWB/CLN)

*Response:* Please see the previous comment.

*Comment:* There is also no legal reason to adopt these standards. The MSGP is applicable only to states that have no delegated NPDES permit program and to certain federal facilities and lands. None of these conditions exist in Indiana. IDEM is inappropriately claiming that EPA general permits are federal requirements applicable to Indiana's individual NPDES program because IDEM cannot have less restrictive requirements than the EPA's general permits noted above. In actuality, the EPA general permits were issued for states with EPA-administered NPDES programs and are not required for delegated state NPDES programs. Many states have not adopted the EPA general permit requirements nor are they required to per the federal law. Each state can develop its own stormwater individual and general permit requirements, as appropriate. There is no federal requirement to impose the standards of the U.S. EPA MSGP in Indiana, let alone in individual NPDES permits. (TWB/CLN)

*Response:* It is correct to say that each state can develop its own storm water individual and general permit language and it would seem to make sense to develop language that is consistent with language developed by U.S. EPA to address storm water associated with industrial activity for both individual and general permits to address discharges of storm water associated with industrial activity, as state requirements must be at least as stringent as federal requirements.

*Comment:* Furthermore, by applying the federal NPDES general permit to individual permits, IDEM is creating requirements in the individual NPDES permit program that do not exist in federal law. There is no federal requirement to impose the standards of the U.S. EPA MSGP in Indiana, let alone to impose the MSGP provisions in individual NPDES permits. The newly proposed incorporation of federal general permit terms would be a requirement that is "more stringent than a restriction or requirement imposed under federal law or that applies in a subject area in which federal law does not impose restrictions or requirements" as described in [IC 13-14-9-4](#). Under that statute, IDEM must identify this rulemaking as being beyond federal requirements, provide a rationale for the adoption of such requirements, and identify the materials relied upon in developing the requirement. IDEM has failed to follow these legal requirements. (TWB/CLN)

*Response:* For individual NPDES permits, IDEM has already developed language that is consistent with the language developed by the EPA and contained in the MSGP. The intent would be to develop stormwater language in the General Permit that is consistent with the language that is already in use in individual NPDES permits and with language already developed and in use by U.S. EPA.

*Comment:* There is no practical reason and no legal basis to adopt this expansive rulemaking and its new stormwater requirements. The rulemaking should focus solely on the five-year permit term and the perceived conflict of interest issues. By attempting to revise other aspects of its permit program without following proper procedures, IDEM is running afoul of the legal requirements for rulemaking such as this. We request that IDEM drop its efforts to incorporate the burdensome and unnecessary MSGP requirements, and in particular drop any attempt to alter the individual NPDES permit requirements via this general permit rulemaking. (TWB/CLN)

*Response:* IDEM has been issuing permits since 2010 that contain stormwater language that is consistent with the MSGP, at the instruction and with the approval of EPA. The intent is for the individual and general permit language to be consistent.

*Comment:* IDEM also mistakenly claims the rulemaking will have no economic impact on the regulated community and fails to identify that the agency will for the first time impose new requirements on Indiana NPDES dischargers. However, such changes go beyond the requirements of federal law, because the changes will apply U.S. EPA regulations and guidance that never have applied and were never meant to apply to Indiana dischargers. As such, IDEM is incorrect to claim that this rule will have a zero dollar economic impact because the rule will impose significant new requirements and might even require capital improvements in an attempt to comply with the new stormwater provisions. This is particularly true with regard to individual NPDES permittees. Incorporation of these more stringent federal terms into Indiana NPDES permits will most certainly have a significant economic impact on NPDES permit holders. (TWB/CLN)

*Response:* The effect of this rulemaking is to transfer the authority to write general permits from the board to the commissioner. Prior to this rulemaking, the board had not updated its requirements to conform to the currently existing federal general permit requirements. This rulemaking would require the commissioner to follow those federal minimum requirements. Since the current federal rules have been in place for some time, any additional costs result from those existing federal standards which the state is required to incorporate as part of its delegation authority and not from this transfer of authority to the commissioner. Any "new" obligations are directly required under federal law. This rulemaking brings IDEM's NPDES program into conformity with current federal

law and standards as required under Indiana's delegation authority. IDEM has already developed language consistent with the MSGP and has been incorporating that language into individual permits since 2010.

## SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST PUBLIC HEARING

On July 25, 2012, the Water Pollution Control Board (board) conducted the first public hearing/board meeting on new rules and amendments to rules at [327 IAC 5](#) and [327 IAC 15](#) concerning NPDES general permits.

Comments were made by the following persons:

Thomas W. Baker, Hatchett & Hauck, LLP, representing DuPont Danisco Cellulosic Ethanol (TWB)

Bowden Quinn, representing the Sierra Club, Hoosier Chapter (SC)

Vince Griffin, representing the Indiana Chamber of Commerce (ICC)

Paul Berebitsky, representing the Indiana Construction Association (ICA)

Following is a summary of the comments received and IDEM's responses thereto:

*Comment:* DuPont Danisco originally opposed preliminary adoption of this rule, but only to the extent that it imposed substantive changes on the individual NPDES permit rule scheme. It sounds as if IDEM has recognized that this is an issue for another rulemaking. We would certainly agree with that. Based on IDEM's commitment to remove particularly the individual permit storm water language, I believe that preliminary adoption would make sense. (TWB)

*Response:* IDEM agrees and will continue to work with interested parties to assure the rule language is reflective of the general permit process and clarifies distinctions between individual and general permit requirements.

*Comment:* I generally support preliminary adoption. The rule should require that notices of intent are made easily available to the public, because the public is viewed in this rule and in the general permit program as being an integral part of the program. A member of the public or somebody close by might well be more aware of a failure to meet a permit condition than the Department. There should be a Web site with all of the general permits, and then the people who have an issue over a notice of intent and are operating under the general permit. (SC)

*Response:* IDEM will be providing for public notice and comment on every general permit it develops, as required by federal law. The public notice and comment information for each draft general permit will be available online. Additional information on the process to provide comment on a notice of intent submitted to IDEM will also be made available to the public as well.

*Comment:* The exceptions to general permit requirements in [327 IAC 5-4-6\(c\)](#) are inappropriate. (SC)

*Response:* EPA Region 5 commented on this provision in the draft rule as follows: "IDEM should remove the exclusions in 5-4-6(c)(2) and (c)(3) related to mining and oil and gas operations and leave the deleted language in 5-4-6 (c) in place. EPA's 2006 Oil and Gas Rule was vacated by the Ninth Circuit Court and the effective requirements are the federal regulations in place prior to the 2006 rule plus the additional Energy Policy Act of 2005 clarifications of the activities included in the CWA section 402(l)(2) exemption." The rule that IDEM proposes for final adoption must be and shall be consistent with the Clean Water Act and other controlling legislation.

*Comment:* We support the rule as proposed. (ICC)

*Response:* IDEM agrees and appreciates the support.

*Comment:* While most of the sections of Rule 5, which is the general storm water permit for construction activity, would be repealed under the proposal, it appears that two sections would remain in effect. Leaving these two sections in place, might cause confusion more than anything else. (ICA)

*Response:* IDEM agrees and will correct this oversight in the rule proposed for final adoption.

*Comment:* While ICA understands the reasons for moving permit requirements from the Administrative Code to the permits themselves, we encourage the Water Pollution Control Board and the Department to work with the construction industry on the parameters and conditions associated with the new permits. IDEM did utilize the construction work group when changes to the rule were developed in 2003, and we would like to see a similar group assembled as the general permit conditions are developed, for the following reasons: First, there is a strong indication that the permit conditions will closely parallel the U.S. Environmental Protection Agency construction storm water requirements. While we certainly need to learn more about the EPA provisions, our understanding is that the federal regulations provide flexibility on how to proceed in some areas. Where that flexibility does exist, we would like to work with the Department to seek an appropriate balance between the regulatory cost of compliance and protection of the environment that does not unnecessarily burden construction businesses. (ICA)

*Response:* IDEM intends to conduct meetings with interested stakeholders on the draft general permits prior to placing them on public comment. IDEM is also well aware of the state of flux in federal storm water standards, as several regulations are in various stages of development that may eventually affect state programs. Therefore IDEM anticipates several meetings on these general permits for the very reasons stated in the comment. It is always IDEM's goal to find the balance between environmental protection and economic growth.

*Comment:* We think there are aspects to the current Rule 5 requirements that only add cost and time to the construction process, without any corresponding environmental or society benefits. If, as we have frequently heard from the industry, the Department's emphasis is on minimizing sediment runoff in the field, then it would seem possible to streamline some of the requirements in the preconstruction phase of a project. (ICA)

*Response:* IDEM will be working with interested stakeholders on the development of the Rule 5 general permit and will consider suggested efficiencies and streamlined requirements so long as the general permit contains provisions necessary to protect the environment and meet federal standards.

*Comment:* We would also like to discuss how the requirement for renewal of the general permit every five years would apply for a project that is granted a permit late in that five-year period. We do not think a permitted project that is under construction should face the possibility of different requirements or having to be re-permitted just because the five-year period comes to an end. (ICA)

*Response:* Under federal law, an NPDES permit term is up to five years (see Sections 402 and 404 of the Clean Water Act). In order to be in compliance with minimum federal requirements, such a term must be maintained within the program. Every NPDES permit holder faces the same requirements for renewal of permits.

*Comment:* Not all construction is the same. The requirements that might make sense for a subdivision, where there is little change in the grade during the duration of the project, may not be the same requirements that make sense for a highway project, where there can be dramatic changes on a daily basis. ICA would like to work with IDEM to develop general permit conditions that make sense and are not unduly burdensome for the various types of construction. (ICA)

*Response:* IDEM intends to work with all interested stakeholders on the development of the general permits. It is IDEM's goal to develop common sense general permits that meet the federal requirements and existing state requirements and are protective of the environment.

[327 IAC 5-1-1.5](#); [327 IAC 5-1.5-1](#); [327 IAC 5-1.5-19.5](#); [327 IAC 5-1.5-19.7](#); [327 IAC 5-1.5-25.5](#); [327 IAC 5-1.5-37.5](#); [327 IAC 5-1.5-62](#); [327 IAC 5-1.5-62.5](#); [327 IAC 5-1.5-63.5](#); [327 IAC 5-1.5-64.2](#); [327 IAC 5-2-1.5](#); [327 IAC 5-2-1.6](#); [327 IAC 5-2-1.7](#); [327 IAC 5-2-1.8](#); [327 IAC 5-2-3](#); [327 IAC 5-2-4](#); [327 IAC 5-2-8](#); [327 IAC 5-2-14](#); [327 IAC 5-2-15](#); [327 IAC 5-2-17](#); [327 IAC 5-2-20](#); [327 IAC 5-2-22](#); [327 IAC 5-3-8](#); [327 IAC 5-3-9](#); [327 IAC 5-3-12](#); [327 IAC 5-3-14](#); [327 IAC 5-3.5-9](#); [327 IAC 5-4-5](#); [327 IAC 5-4-6](#); [327 IAC 5-16-1](#); [327 IAC 5-16-5](#); [327 IAC 5-16-5.3](#); [327 IAC 5-18-4](#); [327 IAC 5-18-5](#); [327 IAC 5-18-10](#); [327 IAC 15-1-1](#); [327 IAC 15-1-2](#); [327 IAC 15-1-3](#); [327 IAC 15-1-4](#); [327 IAC 15-2-1](#); [327 IAC 15-2-2](#); [327 IAC 15-2-2.3](#); [327 IAC 15-2-3](#); [327 IAC 15-2-4](#); [327 IAC 15-2-5](#); [327 IAC 15-2-6](#); [327 IAC 15-2-7](#); [327 IAC 15-2-8](#); [327 IAC 15-2-9](#); [327 IAC 15-2-10](#); [327 IAC 15-3](#); [327 IAC 15-3.5](#); [327 IAC 15-4](#); [327 IAC 15-5-1](#); [327 IAC 15-5-2](#); [327 IAC 15-5-3](#); [327 IAC 15-5-4](#); [327 IAC 15-5-5](#); [327 IAC 15-5-6](#); [327 IAC 15-5-7](#); [327 IAC 15-5-8](#); [327 IAC 15-5-9](#); [327 IAC 15-5-10](#); [327 IAC 15-5-12](#); [327 IAC 15-6](#); [327 IAC 15-7](#); [327 IAC 15-8](#); [327 IAC 15-9](#); [327 IAC 15-10](#); [327 IAC 15-11](#); [327 IAC 15-12](#); [327 IAC 15-13](#); [327 IAC 15-14](#)

SECTION 1. [327 IAC 5-1-1.5](#) IS AMENDED TO READ AS FOLLOWS:

### [327 IAC 5-1-1.5](#) Prohibitions

**Authority:** [IC 13-11-2-99](#); [IC 13-13-5-1](#); [IC 13-22-2-3](#)

**Affected:** [IC 13-18-3](#)

Sec. 1.5. Except as provided in [327 IAC 15-14](#), [327 IAC 15-3.5](#), the point source discharge of sewage, treated or untreated, from a dwelling or its associated residential sewage disposal system, to the waters of the state is prohibited.

(Water Pollution Control Division; [327 IAC 5-1-1.5](#); filed Nov 13, 1995, 5:00 p.m.: 19 IR 660; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Dec 18, 2003, 10:39 a.m.: 27 IR 1563; readopted filed Nov 21, 2007, 1:16 p.m.: [20071219-IR-327070553BFA](#))

SECTION 2. [327 IAC 5-1.5-1](#) IS AMENDED TO READ AS FOLLOWS:

### [327 IAC 5-1.5-1](#) Definitions

**Authority:** [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3](#)

**Affected:** [IC 13-11-2](#); [IC 13-12-3-1](#); [IC 13-18-3-15](#); [IC 13-18-4](#)

Sec. 1. In addition to The definitions contained in **the materials incorporated by reference in this article, 40 CFR 122, [IC 13-11-2](#), [IC 13-12-3-1](#), ~~[IC 13-14-2](#)~~, [327 IAC 1](#), [327 IAC 2-1](#), and [327 IAC 2-1.5](#)**, the definitions in and this rule apply throughout this article.

(Water Pollution Control Division; [327 IAC 5-1.5-1](#); filed Jan 14, 1997, 12:00 p.m.: 20 IR 1412; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; readopted filed Nov 21, 2007, 1:16 p.m.: [20071219-IR-327070553BFA](#))

SECTION 3. [327 IAC 5-1.5-19.5](#) IS ADDED TO READ AS FOLLOWS:

**[327 IAC 5-1.5-19.5](#) "Existing source" defined**

Authority: [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3](#)

Affected: [IC 13-11-2](#); [IC 13-18-3-15](#); [IC 13-18-4](#)

**Sec. 19.5. "Existing source" means any source that is not a new source or a new discharger.**

*(Water Pollution Control Division; [327 IAC 5-1.5-19.5](#))*

SECTION 4. [327 IAC 5-1.5-19.7](#) IS ADDED TO READ AS FOLLOWS:

**[327 IAC 5-1.5-19.7](#) "Facilities or equipment" defined**

Authority: [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3](#)

Affected: [IC 13-11-2](#); [IC 13-18-3-15](#); [IC 13-18-4](#)

**Sec. 19.7. "Facilities or equipment" means buildings, structures, or process or production equipment or machinery that form a permanent part of the new source and that will be used in its operation, provided that the facilities or equipment are of such value as to represent a substantial commitment to construct. The term does not include facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source.**

*(Water Pollution Control Division; [327 IAC 5-1.5-19.7](#))*

SECTION 5. [327 IAC 5-1.5-25.5](#) IS ADDED TO READ AS FOLLOWS:

**[327 IAC 5-1.5-25.5](#) "Individual NPDES permit" or "individual permit" defined**

Authority: [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3](#)

Affected: [IC 13-11-2](#); [IC 13-18-3-15](#); [IC 13-18-4](#)

**Sec. 25.5. "Individual NPDES permit" or "individual permit" means a NPDES permit issued to one (1) facility that contains requirements specific to that facility. An individual NPDES permit is not a general permit.**

*(Water Pollution Control Division; [327 IAC 5-1.5-25.5](#))*

SECTION 6. [327 IAC 5-1.5-37.5](#) IS ADDED TO READ AS FOLLOWS:

**[327 IAC 5-1.5-37.5](#) "Notice of intent" defined**

Authority: [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3](#)

Affected: [IC 13-11-2](#); [IC 13-18-3-15](#); [IC 13-18-4](#)

**Sec. 37.5. "Notice of intent" means a written notification indicating a person's intention to comply with the terms of a specified general permit in lieu of applying for an individual NPDES permit and includes information as required by the applicable general permit.**

*(Water Pollution Control Division; [327 IAC 5-1.5-37.5](#))*

SECTION 7. [327 IAC 5-1.5-62.5](#) IS ADDED TO READ AS FOLLOWS:

**[327 IAC 5-1.5-62.5](#) "Site" defined**



Authority: [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3](#)

Affected: [IC 13-11-2](#); [IC 13-18-3-15](#); [IC 13-18-4](#)

**Sec. 62.5. "Site"** means the land or water area upon which a source and its water pollution control facilities are physically located, including, but not limited to, adjacent land used for utility systems, repair, storage, shipping or processing areas, or other areas incident to the industrial, manufacturing, or water pollution treatment processes.

(Water Pollution Control Division; [327 IAC 5-1.5-62.5](#))

SECTION 8. [327 IAC 5-1.5-63.5](#) IS ADDED TO READ AS FOLLOWS:

**[327 IAC 5-1.5-63.5](#) "Source" defined**

Authority: [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3](#)

Affected: [IC 13-11-2](#); [IC 13-18-3-15](#); [IC 13-18-4](#)

**Sec. 63.5. "Source"** means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

(Water Pollution Control Division; [327 IAC 5-1.5-63.5](#))

SECTION 9. [327 IAC 5-1.5-64.2](#) IS ADDED TO READ AS FOLLOWS:

**[327 IAC 5-1.5-64.2](#) "Storm water" defined**

Authority: [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3](#)

Affected: [IC 13-11-2](#); [IC 13-18-3-15](#); [IC 13-18-4](#)

**Sec. 64.2. "Storm water"**, as defined in 40 CFR 122.26(b)(13), means storm water runoff, snow melt runoff, and surface runoff and drainage.

(Water Pollution Control Division; [327 IAC 5-1.5-64.2](#))

SECTION 10. [327 IAC 5-2-1.5](#) IS AMENDED TO READ AS FOLLOWS:

**[327 IAC 5-2-1.5](#) Incorporation by reference**

Authority: [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3](#)

Affected: [IC 13-11-2](#); [IC 13-18-3-15](#); [IC 13-18-4](#)

Sec. 1.5. **(a)** The following materials have been **are** incorporated by reference: in this article. Each of the following items, in addition to its title, will list the name and address of where it may be located for inspection and copying:

- (1) Clean Water Act (CWA), 33 U.S.C. 1251 et seq., in effect on July 1, 2004, is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, or from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.
- (2) All Federal Registers listed in this rule are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, or the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.
- (3) Code of Federal Regulations (40 CFR 100B149, 40 CFR 400-424, and 40 CFR 425-699), in effect on July 1, 2004, are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, or the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.

(4) Standard Form A Municipal (EPA Form 7550-22), available from the U.S. Environmental Protection Agency, Office of Water Resource Center, 401 M Street, S.W., Washington, D.C. 20460, or the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.

(5) Pollution Prevention Act of 1990 (42 U.S.C. 13101 et seq.), available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, or the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.

Part	Title of Part	Revision Date
40 CFR 125	Criteria and Standards for the National Pollutant Discharge Elimination System	July 1, 2011
40 CFR 130	Water Quality Planning and Management	July 1, 2011
40 CFR 133	Secondary Treatment Regulation	July 1, 2011
40 CFR 136	Guidelines Establishing Test Procedures for the Analysis of Pollutants	July 1, 2011
40 CFR 403	General Pre-Treatment Regulations for Existing and New Sources of Pollution	July 1, 2009
40 CFR 405	Dairy Products Processing	July 1, 2009
40 CFR 406	Grain Mills Point Source Category	July 1, 2009
40 CFR 407	Canned and Preserved Fruits and Vegetables Processing	July 1, 2009
40 CFR 408	Canned and Preserved Seafood (Seafood Processing)	July 1, 2009
40 CFR 411	Cement Manufacturing	July 1, 2009
40 CFR 412	Concentrated Animal Feeding Operations (CAFO) Point Source Category	July 1, 2009
40 CFR 413	Electroplating Point Source Category	July 1, 2009
40 CFR 414	Organic Chemicals, Plastics and Synthetic Fibers	July 1, 2009
40 CFR 415	Inorganic Chemicals Manufacturing Point Source Category	July 1, 2009
40 CFR 417	Soap and Detergent Manufacturing Point Source Category	July 1, 2009
40 CFR 418	Fertilizer Manufacturing Point Source Category	July 1, 2009
40 CFR 419	Petroleum Refining Point Source Category	July 1, 2009
40 CFR 420	Iron and Steel Manufacturing Point Source Category	July 1, 2009
40 CFR 421	Nonferrous Metals Manufacturing Point Source Category	July 1, 2009
40 CFR 423	Steam Electric Power Generating Point Source Category	July 1, 2009
40 CFR 424	Ferroalloy Manufacturing	July 1, 2009
40 CFR 425	Leather Tanning and Finishing Point Source Category	July 1, 2011
40 CFR 426	Glass Manufacturing Point Source Category	July 1, 2011
40 CFR 427	Asbestos Manufacturing	July 1, 2011
40 CFR 428	Rubber Manufacturing Point Source Category	July 1, 2011
40 CFR 429	Timber Products Processing Point Source Category	July 1, 2011
40 CFR 430	Pulp, Paper and Paperboard Point Source Category	July 1, 2011
40 CFR 432	Meat and Poultry Products	July 1, 2011
40 CFR 433	Metal Finishing Point Source Category	July 1, 2011
40 CFR 434	Coal Mining Point Source Category BPT, BAT, BCT Limitations and New Source Performance Standards	July 1, 2011
40 CFR 435	Oil and Gas Extraction Point Source Category	July 1, 2011
40 CFR 437	Centralized Waste Treatment Point Source Category	July 1, 2011
40 CFR 439	Pharmaceutical Manufacturing Point Source Category	July 1, 2011
40 CFR 442	Transportation Equipment Cleaning Point Source Category	July 1, 2011
40 CFR 443	Effluent Limitations Guidelines for Existing Sources and Standards of Performance and Pretreatment Standards for New Sources for the Paving and Roofing Materials (Tars and Asphalt) Point Source Category	July 1, 2011
40 CFR 444	Waste Combustors Point Source Category	July 1, 2011
40 CFR 445	Landfills	July 1, 2011
40 CFR 446	Paint Formulating Point Source Category	July 1, 2011
40 CFR 447	Ink Formulating Point Source Category	July 1, 2011
40 CFR 451	Concentrated Aquatic Animal Production (Aquaculture)	July 1, 2011

40 CFR 454	Gum and Wood Chemicals	July 1, 2011
40 CFR 455	Pesticide Chemicals	July 1, 2011
40 CFR 457	Explosives Manufacturing	July 1, 2011
40 CFR 458	Carbon Black Manufacturing Point Source Category	July 1, 2011
40 CFR 460	Hospitals	July 1, 2011
40 CFR 461	Battery Manufacturing Point Source Category	July 1, 2011
40 CFR 464	Metal Molding and Casting Point Source Category	July 1, 2011
40 CFR 465	Coil Coating Point Source Category	July 1, 2011
40 CFR 466	Porcelain Enameling Point Source Category	July 1, 2011
40 CFR 467	Aluminum Forming Point Source Category	July 1, 2011
40 CFR 468	Copper Forming Point Source Category	July 1, 2011
40 CFR 469	Electrical and Electronic Components Point Source Category	July 1, 2011
40 CFR 471	Nonferrous Metals Forming and Metal Powders Point Source Category	July 1, 2011
40 CFR 501	State Sludge Management Program Regulations	July 1, 2011
40 CFR 503	Standards for the Use or Disposal of Sewage Sludge	July 1, 2011

(b) Federal regulations that have been incorporated by reference do not include any later amendments than those specified in this section.

(c) The Code of Federal Regulations is available:

(1) electronically at <http://www.gpo.gov/fdsys/>; and

(2) in paper copies from the U.S. Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or online at <http://bookstore.gpo.gov/>.

The incorporated materials are available for public review at the Department of Environmental Management, Office of Water Quality, Permits Branch, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.

(d) Where exceptions to materials incorporated by reference are necessary, these exceptions will be noted in section 1.8 of this rule or otherwise identified in this article.

(e) The incorporation of federal regulations as state rules does not negate the requirement to comply with federal provisions that may be effective in Indiana that are not incorporated in this article or are retained as federal authority.

(Water Pollution Control Division; [327 IAC 5-2-1.5](#); filed Jan 14, 1997, 12:00 p.m.: 20 IR 1421; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3378; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2097; errata filed Feb 6, 2006, 11:15 a.m.: 29 IR 1936)

SECTION 11. [327 IAC 5-2-1.6](#) IS ADDED TO READ AS FOLLOWS:

[327 IAC 5-2-1.6](#) Consistency with federal references

Authority: [IC 13-14-8-1](#); [IC 13-18-10-4](#)

Affected: [IC 13-11-2](#); [IC 13-14-12](#); [IC 13-18](#); [IC 13-30](#)

Sec. 1.6. The department shall issue NPDES permits consistent with the following:

Part	Title of Part	Revision Date
40 CFR 122	EPA Administered Permit Programs: The National Pollutant Discharge Elimination System	July 1, 2011
40 CFR 123	State Program Requirements	July 1, 2011
40 CFR 124	Procedures for Decisionmaking	July 1, 2011
40 CFR 131	Water Quality Standards	July 1, 2011

(Water Pollution Control Division; [327 IAC 5-2-1.6](#))

SECTION 12. [327 IAC 5-2-1.7](#) IS ADDED TO READ AS FOLLOWS:

**[327 IAC 5-2-1.7](#) Conversion of federal terms**

Authority: [IC 13-14-8-1](#); [IC 13-18-10-4](#)

Affected: [IC 13-11-2](#); [IC 13-14-12](#); [IC 13-18](#); [IC 13-30](#)

Sec. 1.7. When used in 40 CFR, as incorporated by reference in this article, substitute the following unless otherwise indicated:

- (1) "Administrator" means the commissioner of the Indiana department of environmental management.
- (2) "Agency" means the Indiana department of environmental management.
- (3) "Director" means the commissioner of the Indiana department of environmental management.
- (4) "Environmental protection agency" or "EPA" means the Indiana department of environmental management.
- (5) "Water management division director" means the commissioner.
- (6) "State", "authorized state", "approved state", and "approved program" means Indiana.
- (7) "United States" means the state of Indiana.

(Water Pollution Control Division; [327 IAC 5-2-1.7](#))

SECTION 13. [327 IAC 5-2-1.8](#) IS ADDED TO READ AS FOLLOWS:

**[327 IAC 5-2-1.8](#) Exceptions and additions**

Authority: [IC 13-14-8-1](#); [IC 13-18-10-4](#)

Affected: [IC 13-11-2-38.3](#); [IC 13-14-12](#); [IC 13-18](#); [IC 13-30](#)

Sec. 1.8. The following are exceptions and additions to materials incorporated by reference in section 1.5 of this rule. Delete 40 CFR 122.3 and insert the following: The following discharges do not require an NPDES permit:

- (1) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when a vessel is being used as an energy or mining facility, a storage facility, or a seafood processing facility, or is secured to the bed of the waters of the state for the purpose of mineral or oil exploration or development.
- (2) Discharges of dredged or fill material into waters of the state and regulated under Section 404 of the Clean Water Act (33 U.S.C. 1344), except where the commissioner determines, on a case-by-case basis that such a discharge threatens to violate state water quality standards concerning toxic pollutants.
- (3) The introduction of sewage, industrial wastes, or other pollutants into publicly owned treatment works by indirect dischargers. However, all applicable pretreatment standards promulgated under Section 307(b) and 307(c) of the Clean Water Act (33 U.S.C. 1317(b) and 33 U.S.C. 1317(c)) must also be complied with, and may be included in the permit to the publicly owned treatment works. This exclusion does not apply to discharges through pipes, sewers, or other conveyances owned by a public entity not leading to treatment works.
- (4) Any introduction of pollutants from nonpoint source agricultural and silvicultural activities, including runoff from orchards, cultivated crops, pastures, range lands, and forest lands, except that this exclusion shall not apply to discharges from:
  - (A) concentrated animal feeding operations as defined in [IC 13-11-2-38.3](#) and 40 CFR 122.23; or
  - (B) silvicultural point sources, as defined in 40 CFR 122.27, that are point sources subject to the NPDES permit program.
- (5) Any discharge in compliance with the instructions of an on-scene coordinator pursuant to 40 CFR 300 or 33 CFR 153.10(e) or of a state employee acting in a similar capacity.
- (6) Discharges into a privately owned treatment works, except as the commissioner may otherwise require under section 10(e) of this rule.
- (7) Any discharge by underground injection of salt or sulfur-bearing water or waste liquids associated

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with the recovery of oil and natural gas, if the discharge is pursuant to a valid permit issued by the natural resources commission under [IC 13-8](#).

(8) Any discharge consisting entirely of return flows from irrigated agriculture.

(9) Deep injection wells, except in accordance with [327 IAC 5-4-2](#).

(Water Pollution Control Division; [327 IAC 5-2-1.8](#))

SECTION 14. [327 IAC 5-2-3](#) IS AMENDED TO READ AS FOLLOWS:

**[327 IAC 5-2-3](#) Permit application**

**Authority:** [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3](#)

**Affected:** [IC 13-11-2](#); [IC 13-18-3-15](#); [IC 13-18-4](#)

Sec. 3. (a) Any person required to have an NPDES permit, except for persons covered by general NPDES permits under [327 IAC 15](#), shall submit a complete application to the commissioner in accordance with this section, and [327 IAC 5-3](#), and [40 CFR 122.21](#). **In lieu of the forms specified in this section, a person may submit the application using equivalent state forms provided by the commissioner.**

(b) An application for a permit shall be submitted to the commissioner by the time specified in [327 IAC 5-3-2](#) or, in the case of an application for a statutory modification of or variance from effluent limitations, by the time specified in [327 IAC 5-3-4](#).

(c) The owner of the facility or operation from which a discharge of pollutants occurs is responsible for applying for and obtaining a permit, except where the facility or operation is operated by a person other than an employee of the owner in which case it is the operator's duty to apply for and obtain a permit.

(d) All applicants for NPDES permits, **other than POTWs**, shall submit to the commissioner a completed Application Form 1 - General as described in ~~45 FR 33545-56 (May 19, 1980), including any revisions made to this form by EPA through December 31, 1986. The commissioner may substitute a substantially equivalent form for submittal in place of the Form 1-General.~~ **Information EPA Form 3510-1, revised August 1990.**

(e) Existing **industrial facilities, including** manufacturing, commercial, mining, and silvicultural dischargers **operations** applying for NPDES permits shall provide the commissioner with the additional information specified in Application Form 2C NPDES as described in ~~45 FR 38054-71 (September 26, 1984), including any revisions made to this form by EPA through December 31, 1986, or substantially equivalent forms supplied by the commissioner.~~ - **Wastewater Discharge Information, EPA Form 3510-2C, revised August 1990.**

(f) New and existing concentrated animal feeding operations and concentrated aquatic animal production facilities shall provide the commissioner with the additional information specified in ~~application Form 2B NPDES, as described in 45 FR 33557-8 (May 19, 1980), including any revisions made to this form by EPA through December 31, 1986, or substantially equivalent forms supplied by the commissioner.~~ **Applications for Permit to Discharge Wastewater, Concentrated Animal feeding Operations and Aquatic Animal Production Facilities, EPA Form 3510-2B, revised November 2008.**

(g) New and existing POTWs shall provide the additional information specified **by 40 CFR 122.21(j)** on ~~Standard Form A-Municipal (EPA Form 7550-22) or substantially equivalent forms supplied by the commissioner. If EPA promulgates NPDES Form 2A NPDES, the commissioner may specify its use for applications by new and existing POTWs.~~ **Application Overview, EPA Form 3510-2A, revised January 1999. Pursuant to 40 CFR 122.21(j), the commissioner may waive any requirement of Form 2A that is not of material concern for a specific permit, if approved by EPA.** The following POTWs shall provide the results of valid whole effluent biological toxicity testing to the commissioner:

- (1) All POTWs with design influent flows equal to or greater than one million (1,000,000) gallons per day.
- (2) All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program.

(h) In addition to the POTWs listed in subsection (g), the commissioner may require other POTWs to submit the results of toxicity tests with their permit applications, based on consideration of the following factors:

- (1) The variability of the pollutants or pollutant parameters in the POTW effluent (based on chemical-specific information, the type of industrial contributors).
- (2) The dilution of the effluent in the receiving water (ratio of effluent flow to receiving stream flow).
- (3) Existing controls on point or nonpoint sources, including total maximum daily load calculations for the waterbody segment and the relative contribution of the POTW.
- (4) Receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to one (1) of the Great Lakes, or a water designated as an outstanding natural resource.
- (5) Other considerations (including, but not limited to, the history of toxic impact and compliance problems at the POTW), which the commissioner determines could cause or contribute to adverse water quality impacts.

(i) For POTWs required under subsection (g) or (h) to conduct toxicity testing, POTWs shall use EPA's methods or other established protocols, which are scientifically defensible and sufficiently sensitive to detect aquatic toxicity. Such testing must have been conducted since the last NPDES permit reissuance or permit modification under 40 CFR 122.62(a), whichever occurred later.

(j) All POTWs with approved pretreatment programs shall provide, to the commissioner, a written technical evaluation of the need to revise local limits under 40 CFR 403.5(c)(1).

**(k) Except for stormwater discharges, all existing industrial facilities engaged in manufacturing, commercial, mining, and silvicultural operations shall provide the additional information specified in Application Form 2C – Wastewater Discharge Information, EPA Form 3510-2C, revised August 1990.**

~~(k)~~ **(l) Except for storm water discharges, all new sources and new dischargers industrial facilities engaged in manufacturing, commercial, mining, and silvicultural activities operations shall provide the additional information specified in Application Form 2D NPDES as described in 51 FR 26999-27014 (July 28, 1986) or substantially equivalent forms supplied by the commissioner. – New Sources and New Dischargers: Application for Permit to Discharge Process Wastewater, EPA Form 3510-2D, revised August 1990.**

~~(l)~~ **(m) Except for storm water discharges, all manufacturing, commercial, mining, and silvicultural dischargers applying for NPDES permits which discharge only nonprocess wastewater not regulated by an effluent limitations guideline or new source performance standard shall provide the commissioner with the additional information specified in Application Form 2E NPDES as described in 51 FR 26994-98 (July 28, 1986) or substantially equivalent forms supplied by the commissioner. – Facilities Which Do Not Discharge Process Wastewater, revised August 1, 1990.**

~~(m)~~ **(n) Discharges of storm water associated with new and existing industrial activity as defined in 40 CFR 122.26(b)(14) shall provide additional information specified in application NPDES Form 2F, Application for Permit to Discharge Storm Water Discharges Associated with Industrial Activity, EPA Form 3510-2F, revised January 1992.**

~~(n)~~ **(o) Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this section for a period of at least three (3) years from the date the application is signed.**

~~(o)~~ **(p) In the case of an application for permit reissuance by a manufacturing, commercial, mining, or silvicultural discharger who has previously submitted an application in accordance with subsection (e) or ~~(k)~~, (l), the permittee may request a waiver of the submission of analytical data for toxic pollutants otherwise required as part of the application if:**

- (1) analyses reported in the previous **application or** applications of at least two (2) samples of the effluent did not detect the presence of the toxic pollutants; and
- (2) the permittee certifies that, to the best of his knowledge, no change in his operation has occurred since the previous **application or** applications that would give reason to believe the previous results would no longer be applicable.

The commissioner may grant or deny, in the commissioner's discretion, a request for a waiver under this subsection.

~~(p)~~ **(q) For discharges to waters within the Great Lakes system, in addition to the other requirements of this**

section, applicants requesting a permit renewal shall submit valid, representative receiving waterbody monitoring data for every metal monitored or limited in the applicant's existing permit. If the existing permit contains monitoring for cadmium, chromium (III), copper, lead, nickel, or zinc, the applicant shall also submit receiving waterbody monitoring data for hardness. The commissioner may require waterbody monitoring for additional substances if the data are necessary to process the permit application. If valid, representative, monitoring data in the waterbody for these parameters are already available, the applicant may request that this existing data substitute for the monitoring required under this subsection. The commissioner may require the submission of this additional receiving waterbody monitoring data for applicants requesting a new, renewal of, or modification of an NPDES permit if these additional data are necessary to draft an NPDES permit.

**(r) Applications for permits for on-site residential sewage discharging disposal systems located within the Allen County on-site waste management district must be submitted in accordance with [327 IAC 15-3.5](#).**

**(s) The permit application forms described in this section are available online at <http://cfpub.epa.gov/npdes/> or from the IDEM Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.**

*(Water Pollution Control Division; [327 IAC 5-2-3](#); filed Sep 24, 1987, 3:00 p.m.: 11 IR 618; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1738; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1422; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3378)*

SECTION 15. [327 IAC 5-2-8](#) IS AMENDED TO READ AS FOLLOWS:

**[327 IAC 5-2-8](#) Conditions applicable to all permits**

**Authority:** [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3](#)

**Affected:** [IC 13-11-2](#); [IC 13-18-7-1](#); [IC 13-30-10-1](#)

Sec. 8. The following conditions apply to all NPDES permits and shall be incorporated into the permits either expressly or by reference:

(1) The permittee must comply with all terms and conditions of the permit. Any permit noncompliance constitutes a violation of the Clean Water Act (~~CWA~~) and the **EMA environmental management laws** and its grounds for:

- (A) enforcement action;
- (B) permit termination, revocation and reissuance, or modification; or
- (C) denial of a permit renewal application.

A permittee may claim an affirmative defense to a permit violation; however, if the circumstances of the noncompliance meet the criteria of an upset as defined in subdivision ~~(12)~~: **(13)**.

(2) If the permittee wishes to continue an activity regulated by a permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

(3) The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with the permit.

(4) The following permit actions:

- (A) Permits may be modified, revoked and reissued, or terminated for cause.
- (B) Any information that the permittee knows or has reason to believe would constitute cause for modification or revocation and reissuance of the permit, such as plans for physical alterations or additions to the permitted facility that:
  - (i) could significantly change the nature of, or increase the quantity of, pollutants discharged; or
  - (ii) the commissioner may request to evaluate whether such cause exists;shall be submitted for the commissioner's evaluation at the earliest time such information becomes available.

(C) The filing by the permittee of:

- (i) a request for a permit modification, revocation and reissuance, or termination; or
- (ii) information specified in clause (B);

does not stay or suspend any permit term or condition.

(D) The permit may not be transferred to any person except in accordance with section 6(c) of this rule.

(5) If any applicable effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under Section 307(a) of the ~~CWA~~ **Clean Water Act (33 U.S.C.**

**1317(a)** for a toxic pollutant injurious to human health and that standard or prohibition is more stringent than any limitation upon such pollutant in the permit, the commissioner shall institute proceedings to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition. Effluent standards or prohibitions established under Section 307(a) of the **GWA Clean Water Act (33 U.S.C. 1317(a))** for toxic pollutants injurious to human health are effective and must be complied with, if applicable to the permittee, within the time provided in the implementing regulations, even absent permit modification.

(6) The permit does not convey any property rights of any sort or any exclusive privilege.

**(7) The permittee shall furnish to the commissioner, within a reasonable time, any information that the commissioner may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the commissioner, upon request, copies of records required to be kept by this permit and 40 CFR 122.41(h).**

~~(7)~~ **(8)** The permittee shall allow the commissioner, or an authorized representative (including an authorized contractor acting as a representative of the commissioner), upon the presentation of credentials and such other documents as may be required by law:

(A) to enter upon the permittee's premises where a ~~point source~~ **regulated facility or activity** is located or where any records must be kept under the terms and conditions of the permit;

(B) to have access to and copy at reasonable times any records that must be kept under the terms and conditions of the permit;

(C) to inspect, at reasonable times:

(i) any monitoring equipment or method;

(ii) any collection, treatment, pollution management, or discharge facilities; or

(iii) practices required or otherwise regulated under the permit; and

(D) to sample or monitor, at reasonable times, any discharge of pollutants or internal wastestream (where necessary to ascertain the nature of a discharge of pollutants) for the purpose of evaluating compliance with the permit or as otherwise authorized.

~~(8)~~ **(9)** The permittee shall at all times maintain in good working order and efficiently operate all facilities and systems (and related appurtenances) for collection and treatment that are:

(A) installed or used by the permittee; and

(B) necessary for achieving compliance with the terms and conditions of the permit.

This subdivision does not act as an independent source of authority to set effluent limitations. Such limitations will be based on the design removal rates of installed treatment facilities only as required under this article.

Nor should this subdivision be construed to require the operation of installed treatment facilities that are unessential for achieving compliance with the terms and conditions of the permit.

~~(9)~~ **(10)** The permittee shall comply with monitoring, recording, and reporting requirements established in accordance with sections 13 through 15 of this rule. **Penalties include the following:**

**(A) Section 309(c)(4) of the GWA, as well as [IC 13-30-6-2](#) and [IC 35-50-3-3](#), Clean Water Act (33 U.S.C. 1319(c)(4)),** provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under a permit shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000) per violation, or by imprisonment for not more than one hundred eighty (180) days per violation, or by both.

**(B) [IC 13-30-10-1](#) provides that a person who knowingly or intentionally renders inaccurate or inoperative a recording device or a monitoring device required to be maintained by a permit issued by the department commits a class B misdemeanor.**

~~(10)~~ **(11)** The following are reporting requirements:

(A) Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than fourteen (14) days following each schedule date.

(B) The permittee shall give advance notice to the commissioner of any planned changes in the permitted facility, any activity, or other circumstances that the permittee has reason to believe may result in noncompliance with permit requirements.

(C) The permittee shall orally report information on any of the following types of noncompliance within twenty-four (24) hours from the time the permittee becomes aware of such noncompliance:

(i) Any unanticipated bypass that exceeds any effluent limitation in the permit.

(ii) Violation of a maximum daily discharge limitation for any of the pollutants listed by the commissioner in the permit to be reported within twenty-four (24) hours.

(iii) Any noncompliance that may pose a significant danger to human health or the environment. Reports under this item shall be made as soon as the permittee becomes aware of the noncomplying circumstances to the emergency response telephone numbers specified in [327 IAC 2-6-2](#). **(888) 233-7745.**

(iv) Any upset that exceeds any effluent limitation in the permit.

A written submission shall also be provided within five (5) days of the time the permittee becomes aware of



the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance. The commissioner may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

(D) The permittee shall also report all instances of noncompliance not reported under clauses (A) through (C), at the time discharge monitoring reports (DMRs) are submitted. The reports shall contain the information listed in clause (C).

(E) Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the commissioner, it shall promptly submit such facts or corrected information.

(F) The permittee shall give notice to the commissioner as soon as possible of any planned physical alterations or additions to the permitted facility. (As used in this clause, "permitted facility" refers to a point source discharge, not a wastewater treatment facility. See [IC 13-18-7-1](#).) Notice is required only when either of the following applies:

(i) The alteration or addition to a permitted facility may meet one (1) of the criteria for determining whether a facility is a new source. ~~in [327 IAC 5-1-2\(b\)](#).~~

(ii) The alteration or addition could significantly change the nature of, or increase the quantity of, pollutants discharged. This notification applies to pollutants that are subject ~~either~~ **neither** to effluent limitations in the permit ~~or~~ **nor** to notification requirements under section 9 of this rule.

~~(11)~~ **(12)** The following are requirements for bypass:

(A) The following definitions:

(i) "Bypass" means the intentional diversion of a waste stream from any portion of a treatment facility.

(ii) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which would cause them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(B) The permittee may allow any bypass to occur that does not exceed any effluent limitations contained in the NPDES permit, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to clauses (C) and (D).

(C) The permittee must provide the commissioner with the following notice:

(i) If the permittee knows or should have known in advance of the need for a bypass (anticipated bypass), it shall submit prior written notice. If possible, such notice shall be provided at least ten (10) days before the date of the bypass for approval by the commissioner.

(ii) The permittee shall submit notice of an unanticipated bypass as required by subdivision (10)(C).

(D) The following provisions are applicable to bypasses:

(i) Bypass is prohibited, and the commissioner may take enforcement action against a permittee for bypass unless the following occur:

(AA) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage.

(BB) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment down time. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment down time or preventive maintenance.

(CC) The permittee submitted notices as required under clause (C).

(ii) The commissioner may approve an anticipated bypass, after considering its adverse effects if the commissioner determines that the anticipated bypass will meet the three (3) conditions listed in item (i). The commissioner may impose any conditions determined to be necessary to minimize any adverse effects.

~~(12)~~ **(13)** The following are requirements for upset:

(A) "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(B) An upset shall constitute an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of clause (C) are met.

(C) A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence, that:

(i) an upset occurred and the permittee has identified the specific cause of the upset; ~~if possible;~~

(ii) the permitted facility was at the time being operated in compliance with proper operation and

maintenance procedures;

(iii) the permittee complied with any remedial measures required under subdivision (3); and

(iv) the permittee submitted notice of the upset as required in subdivision (10)(C).

~~(13)~~ (14) It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

~~(14)~~ (15) All applications, reports, or other information submitted to the commissioner shall be signed and certified as defined **described** under section 22 of this rule. **Penalties include the following:**

**(A) Section 309(c)(4) of the CWA, ~~IC 13-6-2~~, and ~~IC 35-50-3-3~~ provide Clean Water Act (U.S.C. 1319(c)(4)), provides** that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000) per violation, or by imprisonment for not more than one hundred eighty (180) days per violation, or by both.

**(B) ~~IC 13-30-10-1~~ provides that a person who knowingly or intentionally renders inaccurate or inoperative a recording device or a monitoring device required to be maintained by a permit issued by the department commits a class B misdemeanor.**

*(Water Pollution Control Division; [327 IAC 5-2-8](#); filed Sep 24, 1987, 3:00 p.m.: 11 IR 620; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1741; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1423)*

SECTION 16. [327 IAC 5-2-14](#) IS AMENDED TO READ AS FOLLOWS:

### [327 IAC 5-2-14](#) Recording of monitoring results

**Authority:** [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3](#)

**Affected:** [IC 13-11-2](#); [IC 13-14-4-3](#); [IC 13-18-4](#)

Sec. 14. (a) Any permittee required to monitor under [327 IAC 5-2-13](#) shall maintain records of all monitoring information and monitoring activities, including:

- (1) the date, exact place and time of sampling or measurements;
- (2) the **person or** persons who performed the sampling or measurements;
- (3) the **date or** dates analyses were performed;
- (4) the person **or** persons who performed the analyses;
- (5) the analytical techniques or methods used; and
- (6) the results of such measurements and analyses.

(b) All records of monitoring activities and results (including all original strip chart recordings for continuous monitoring instrumentation and calibration and maintenance records) shall be retained by the permittee for three (3) years. **These records shall be retained on-site at the permitted facility or in such a manner that the records are reasonably available for review by agency staff to comply with the provisions of [327 IAC 5-1-3](#).** The three-year period shall be extended:

- (1) automatically during the course of any unresolved litigation regarding the discharge of pollutants by the permittee or regarding promulgated effluent guidelines applicable to the permittee; or
- (2) as requested by the commissioner.

*(Water Pollution Control Division; [327 IAC 5-2-14](#); filed Sep 24, 1987, 3:00 p.m.: 11 IR 629)*

SECTION 17. [327 IAC 5-2-15](#) IS AMENDED TO READ AS FOLLOWS:

### [327 IAC 5-2-15](#) Reporting requirements

**Authority:** [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3](#)

**Affected:** [IC 13-11-2](#); [IC 13-14-4-3](#); [IC 13-18-4](#)

Sec. 15. (a) Permittees shall report to the commissioner, using discharge monitoring reports (DMR) (EPA Form 3320-1) and, also, in the case of POTWs, semipublic, state, and federal facilities' reports of operation, the results of any monitoring specified by the permit, under section 13 of this rule, as often as required by the permit, but in no case less than once per year. POTWs with pretreatment or hybrid pretreatment requirements in their

NPDES permits as well as industrial dischargers shall also submit the results of effluent analysis on the Indiana Discharge **Monthly Monitoring Report (MMR) for Industrial Discharge Permits (State Form 30530)**.

**Alternatively, permittees may seek authorization by the commissioner to utilize agency-approved electronic reporting formats for the submittal of all NPDES-related reports in lieu of submitting paper copies of such documents.**

(b) If the permittee monitors any pollutant more frequently than required by the permit, using approved analytical methods, the results of this monitoring shall be reported in the DMR. Other monitoring data not specifically required in the permit (such as internal process or internal wastestream data) that is collected by or for the permittee need not be submitted unless requested by the commissioner. Any such additional monitoring data that indicates a violation of a permit limitation shall be followed up by the permittee, whenever feasible, with a monitoring sample obtained and analyzed pursuant to approved analytical methods. The results of the analysis of the follow-up sample shall be reported to the commissioner in the permittee's DMR.

(c) All reports required by this section shall be prepared by or under the direction of a certified wastewater treatment plant operator or a certified water treatment plant operator licensed under the provisions of [327 IAC 5-22](#) or [327 IAC 8](#) when such reports concern a discharge originating in whole or in part from a wastewater treatment plant or a water treatment plant, respectively, as defined in [IC 13-11-2](#).

(d) As used in this section, "approved analytical methods" means those test procedures for the analysis of pollutants under section 13(d) of this rule.

(e) NPDES effluent data is to be reported on the monthly DMRs as follows:

(1) Effluent concentrations less than the LOD shall be reported as less than the value of the LOD. For example, if a substance is not detected at a concentration of one (1.0) milligram per liter, the value shall be reported as < 1.0 mg/l.

(2) Effluent concentrations greater than or equal to the LOD shall be reported at the measured value. Effluent concentrations greater than or equal to the LOD and less than the LOQ that are reported on a DMR shall be annotated on the DMR to indicate that the value is not quantifiable.

(3) Except as provided in section 11.6(h)(3) of this rule, when the individual daily values are averaged for the purpose of determining the weekly average or monthly average, values less than the LOQ shall be accommodated in calculation of the averages using statistical methods that have been approved by the commissioner.

(4) Mass discharge values that are calculated from concentrations reported as less than the value of the LOD shall be reported as less than the corresponding mass discharge value.

(5) Mass discharge values that are calculated from effluent concentrations greater than the LOD shall be reported at the calculated value.

(6) Except as provided in section 11.6(h)(3) of this rule, when the individual daily mass discharge values are averaged for the purpose of determining the weekly average or monthly average, values less than the LOQ shall be accommodated in calculation of the averages using statistical methods that have been approved by the commissioner.

*(Water Pollution Control Division; [327 IAC 5-2-15](#); filed Sep 24, 1987, 3:00 p.m.: 11 IR 629; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1754; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1466; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2126)*

SECTION 18. [327 IAC 5-2-17](#) IS AMENDED TO READ AS FOLLOWS:

**[327 IAC 5-2-17](#) New sources and new dischargers**

**Authority:** [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3](#)

**Affected:** [IC 13-11-2](#); [IC 13-18-3-15](#); [IC 13-18-4](#)

Sec. 17. (a) Definitions. "~~Existing source~~" means ~~any source which is not a new source or a new discharger.~~

~~"Facilities or equipment" means buildings, structures, process or production equipment or machinery which form a permanent part of the new source and which will be used in its operation, provided that such facilities or equipment are of such value as to represent a substantial commitment to construct. It does not include facilities or~~

equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source.

"New source" and "new discharger" are defined in [327 IAC 5-1-2](#).

"Site" means the land or water area upon which a source and its water pollution control facilities are physically located, including but not limited to adjacent land used for utility systems, repair, storage, shipping or processing areas, or other areas incident to the industrial, manufacturing, or water pollution treatment processes.

"Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

~~(b)~~ **(a)** Criteria for new source determination.

(1) Construction of a new source has commenced if the owner or operator has:

(A) begun, or caused to begin as part of a continuous on-site construction program:

(i) any placement, assembly, or installation of facilities or equipment; or

(ii) significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(B) entered a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this subsection.

~~(c)~~ **(b)** Effect of compliance with new source performance standards.

(1) Except as provided in subdivision (2), any new source which meets the applicable promulgated new source performance standards from the commencement of discharge, shall not be subject to any more stringent new source performance standards, or to any more stringent technology-based standards under Section 301(b)(2) of the **CWA Clean Water Act (33 U.S.C. 1311(b)(2))** for the shortest of the following periods:

(A) ten (10) years from the date that construction is completed;

(B) ten (10) years from the date the source begins to discharge process wastewater or other wastewater not related to construction; or

(C) the period of depreciation or amortization of the facility for the purposes of ~~Section~~ **Sections 167 and 169 (or both)** of the Internal Revenue Code **(26 U.S.C. 167; 26 U.S.C. 169)**.

(2) The protection from more stringent standards of performance afforded by subdivision (1) does not apply to:

(A) additional or more stringent permit conditions which are not technology-based, e.g., conditions based on water quality standards, or effluent standards or prohibitions under Section 307(a) of the **CWA; Clean Water Act (33 U.S.C. 1317(a))**; and

(B) additional technology-based permit conditions established under [327 IAC 5-5-2\(b\)](#) to control pollutants listed as toxic under Section 307(a) of the **CWA Clean Water Act (33 U.S.C. 1317(a))** or as hazardous substances under Section 311 of the **CWA Clean Water Act (33 U.S.C. 1321)** and which are not controlled by new source performance standards. This includes permit conditions controlling pollutants other than those identified as toxic or hazardous where control of those other pollutants has been specifically identified as the method to control the toxic or hazardous pollutant.

(3) Where an NPDES permit issued to a source enjoying a "protection period" under subdivision (1) will expire on or after the expiration of the protection period, such permit shall require the owner or operator of the source to be in compliance with the requirements of Section 301 of the **CWA Clean Water Act (33 U.S.C. 1311)** and any other then applicable requirements of the **CWA Clean Water Act** immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements shall be allowed.

(4) The owner or operator of a new source, a new discharger, a source recommencing discharge after terminating operations, or a source which had been an indirect discharger which commences discharging into navigable waters shall install and have in operating condition, and shall "start-up" all pollution control equipment required to meet the terms and conditions of its permit before beginning to discharge. Within the shortest feasible time (not to exceed ninety (90) days), the owner or operator must meet all permit terms and conditions.

(5) After the effective date of new source performance standards, it shall be unlawful for any owner or operator of any new source to operate such source in violation of those standards applicable to such source.

*(Water Pollution Control Division; [327 IAC 5-2-17](#); filed Sep 24, 1987, 3:00 p.m.: 11 IR 631)*

SECTION 19. [327 IAC 5-2-20](#) IS AMENDED TO READ AS FOLLOWS:

**[327 IAC 5-2-20](#) Enforcement**

**Authority:** [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3](#)

**Affected:** [IC 13-11-2](#); [IC 13-14-10](#); [IC 13-18-3-15](#); [IC 13-18-4](#); [IC 13-30](#)

Sec. 20. (a) Any violation of this article:

- (1) may subject the person causing or contributing to said violation to administrative or judicial enforcement proceedings, pursuant to ~~[IC 13-7-5](#), [IC 13-7-11](#)~~, and the penalties provided under ~~[IC 13-7-13](#); [IC 13-30](#)~~;
- (2) may be cause, pursuant to section 16 of this rule, for modification, revocation and reissuance, or termination of an NPDES permit; and
- (3) may, in an appropriate case, warrant the invocation of emergency procedures provided in ~~[IC 13-7-12](#); [IC 13-14-10](#)~~.

(b) The three (3) enforcement responses enumerated in subsection (a) are independent and not mutually exclusive. Thus the initiation and prosecution of any particular response to a violation of this article does not exclude the concurrent or subsequent initiation of any other response.

(c) For purposes of this section, a "violation of this article" shall include, but not be limited to:

- (1) the discharge of pollutants without an NPDES permit or in violation of any effluent limitation in an NPDES permit;
- (2) the violation of any other term or condition of an NPDES permit;
- (3) failure to comply with NPDES application requirements under section 3 of this rule or [327 IAC 5-3](#); or
- (4) failure to allow entry, inspection, and monitoring by the commissioner when requested in accordance with applicable law or to carry out monitoring, recording, and reporting required under this article.

**(d) For a permit for storm water runoff associated with construction activity, the department shall investigate potential violations of the permit to determine which person may be responsible for the violation. The department shall, if appropriate, consider public records of ownership, building permits issued by local units of government, and other relevant information, which may include site inspections, storm water pollution prevention plans, notices of intent, and other information related to the specific facts and circumstances of the potential violation.**

*(Water Pollution Control Division; [327 IAC 5-2-20](#); filed Sep 24, 1987, 3:00 p.m.: 11 IR 632; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1756)*

SECTION 20. [327 IAC 5-2-22](#) IS AMENDED TO READ AS FOLLOWS:

**[327 IAC 5-2-22](#) Signatories to permit applications and reports**

**Authority:** [IC 13-1-3-4](#); [IC 13-1-3-7](#); [IC 13-7-7](#); [IC 13-7-10-1](#)

**Affected:** [IC 13-1-3](#); [IC 13-7](#)

Sec. 22. (a) All permit applications shall be signed as follows:

(1) The following for a corporation by a responsible corporate officer: ~~(A)~~ For purposes of this section, "a responsible corporate officer" means either of the following:

- ~~(i) (A)~~ A president, secretary, treasurer, any vice president of the corporation in charge of a principal business function, or any other person who performs similar policymaking or decision making functions for the corporation.
- ~~(ii) (B)~~ The manager of one (1) or more manufacturing, production, or operating facilities employing more than two hundred fifty (250) persons or having gross annual sales or expenditures exceeding twenty-five million dollars (\$25,000,000) (in second quarter 1980 dollars), if **provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty to make major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are**

**established or actions taken to gather complete and accurate information for permit application**

**requirements; and where** authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(B) For purposes of this section, a principal executive officer of a federal agency includes the following:

(i) The chief executive officer of the agency.

(ii) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

(2) For a partnership or sole proprietorship by a general partner or the proprietor, respectively.

(3) For a municipality, state, federal, or other public agency or political subdivision thereof by either a principal executive officer or ranking elected official. **For purposes of this section, a principal executive officer of a federal agency includes:**

**(A) the chief executive officer of the agency; or**

**(B) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (for example, Regional Administrators of EPA).**

**(4) Permit applicants who meet the criteria set forth in this subsection may also utilize agency-approved electronic application mechanisms in lieu of paper NPDES applications.**

(b) All reports required by permits and other information requested by the commissioner shall be signed by a person described in subsection (a), or by a duly authorized representative of that person. A person is a duly authorized representative only if the authorization meets the following requirements:

(1) The authorization is made in writing by a person described in subsection (a).

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

(3) The written authorization is submitted to the commissioner.

(c) If an authorization under subsection (b) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (b) must be submitted to the commissioner prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) Any person signing a document under subsection (a) or (b) shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

*(Water Pollution Control Division; [327 IAC 5-2-22](#); filed Sep 24, 1987, 3:00 p.m.: 11 IR 633; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1756)*

SECTION 21. [327 IAC 5-3-8](#) IS AMENDED TO READ AS FOLLOWS:

**[327 IAC 5-3-8](#) Fact sheet**

**Authority:** [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3](#)

**Affected:** [IC 13-11-2](#); [IC 13-18-3-15](#); [IC 13-18-4](#)

Sec. 8. (a) **The department shall prepare** a fact sheet ~~shall be prepared~~ for every draft permit for a major discharger, any draft permit that incorporates a statutory variance or modification or requires explanation under subsection (b)(5), general permits, and every draft permit that the commissioner finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the major facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The commissioner shall send this fact sheet to the following:

(1) The applicant.

(2) EPA Region 5.

- (3) The district engineer of the Corps of Engineers.
- (4) The regional director of the U.S. Fish and Wildlife Service.
- (5) Other interested state and federal agencies.
- (6) Any other person on request.
- (7) All persons on a mailing list for receipt of fact sheets (see section 12(g) of this rule).

Any of these persons may waive their right to receive a fact sheet for any classes and categories of permits.

(b) The fact sheet shall include the following:

- (1) A brief description of the type of facility or activity that is the subject of the draft permit and, where appropriate, a sketch or detailed description of the discharge described in the application.
- (2) A description of the type and quantity of pollutants that are, or are proposed to be, discharged.
- (3) A brief explanation of the express statutory or regulatory provisions on which permit requirements are based.
- (4) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, including a citation to the applicable guideline or development documents or standard provisions as required under [327 IAC 5-2-10](#) and reasons why they are applicable or an explanation of how alternate effluent limitations were developed.
- (5) When the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:
  - (A) Technology-based limitations to control toxic pollutants under [327 IAC 5-2-10](#).
  - (B) Limitations on internal waste streams in accordance with [327 IAC 5-2-11\(h\)](#).
  - (C) Limitations on indicator pollutants under [327 IAC 5-2-10\(6\)](#) and [327 IAC 5-5-2\(f\)](#).
  - (D) Limitations allowing an increase in the discharge of any pollutant, including an explanation that satisfies the requirements of [327 IAC 5-2-10\(11\)](#) and the antidegradation requirements of [327 IAC 2-1](#), [327 IAC 2-1.3](#), and [327 IAC 2-1.5](#).
  - (E) Limitations implementing a variance from water quality standards under [327 IAC 2-1-8.8](#) or [327 IAC 2-1.5-17](#) and section 4.1 of this rule.
- (6) Reasons why requested variances or modifications from otherwise required effluent limitations do or do not appear justified.
- (7) Name and telephone number of a departmental contact person who can provide additional information.
- (8) Any information, not otherwise specified herein, required under section 12 or 12.1 [sic] of this rule.

*(Water Pollution Control Division; [327 IAC 5-3-8](#); filed Sep 24, 1987, 3:00 p.m.: 11 IR 638; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1761; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1472; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; readopted filed Nov 21, 2007, 1:16 p.m.: [20071219-IR-327070553BFA](#); filed May 29, 2012, 3:19 p.m.: [20120627-IR-327080764FRA](#))*

SECTION 22. [327 IAC 5-3-9](#) IS AMENDED TO READ AS FOLLOWS:

### **[327 IAC 5-3-9](#) Public comments and public hearings**

**Authority:** [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3](#)

**Affected:** [IC 13-11-2](#); [IC 13-18-3-15](#); [IC 13-18-4](#)

Sec. 9. (a) A comment period of at least thirty (30) days following the date of public notice of the formulation of a draft permit shall be provided. During this period any interested persons may submit written comments on the draft permit and may request a public hearing in accordance with subsection (b). All comments, including those submitted in a public hearing, shall be considered by the commissioner in preparing the final permit and shall be responded to as provided in [327 IAC 5-3-15](#).

(b)(1) A public hearing on a draft permit may be held by the commissioner in appropriate cases, either on the commissioner's own initiative or in response to a request or requests for public hearing submitted during the public comment period. Such a hearing shall be held where the commissioner finds there is a significant public interest in the draft permit. Instances of doubt will be resolved in favor of holding a hearing. Public notice of a public hearing shall be given as specified in [327 IAC 5-3-12](#).

(2) A request for a public hearing shall be in writing and shall state the nature of the issues to be raised and the reasons why a hearing is warranted.

(3) Any hearing conducted pursuant to this section shall be held in the geographical area of the proposed discharge, or other appropriate area where significant public interest exists in the discretion of the commissioner, and may, when appropriate, consider two or more related draft permits.

(4) Any person appearing at such a hearing may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. A hearing conducted under this section shall not constitute an "administrative adjudication" for purposes of [IC 4-22-1](#) or [IC 4-21.5](#).

(c) All persons, including the applicant, who believe any of the terms and conditions of a draft permit or a tentative decision to deny or terminate a permit is not appropriate for any reason, must raise all reasonably ascertainable issues and submit all arguments and a summary of the factual grounds supporting their position by the close of the public comment period (including any public hearing period).

(d) ~~Since a general permit is in the nature of rule, Public notice and opportunity for comment and public hearing of the a proposed issuance of a general permit must be given provided in accordance with statutorily prescribed procedures for administrative agency rulemaking as well as the provisions of this section and [327 IAC 5-3-12](#); section 12 of this rule.~~

*(Water Pollution Control Division; [327 IAC 5-3-9](#); filed Sep 24, 1987, 3:00 p.m.: 11 IR 638; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; readopted filed Nov 21, 2007, 1:16 p.m.: [20071219-IR-327070553BFA](#))*

SECTION 23. [327 IAC 5-3-12](#) IS AMENDED TO READ AS FOLLOWS:

**[327 IAC 5-3-12](#) Public notice of comment period; public hearings concerning permit determinations**

**Authority:** [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3](#)

**Affected:** [IC 13-11-2](#); [IC 13-18-3-15](#); [IC 13-18-4](#)

Sec. 12. (a) Notice of every proposed determination on a permit issuance or denial and of a public hearing concerning such a proposed determination shall be circulated in a manner designed to inform interested persons. Notice of a proposed permit determination shall allow at least thirty (30) days for public comment, as specified in section 9 of this rule, and notice of a public hearing shall be given at least thirty (30) days before the hearing.

(b) Public notices required by subsection (a) shall be given by the commissioner as follows:

(1) By ~~mailing~~ **transmitting** a copy ~~by certified mail, return receipt requested,~~ to the applicant, to EPA, and to the U.S. Army Corps of Engineers, ~~and by regular first class mail~~ to federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources (including the U.S. Fish and Wildlife Service and the Indiana department of natural resources), to other appropriate governmental authorities including any affected state, to any person on request, and to all persons on a mailing list for receipt of such notices.

(2) By publication of a notice in a daily or weekly newspaper in general circulation throughout the area affected by the discharge or, at the commissioner's discretion, by any other method reasonably calculated to give actual notice of the proposed permit action to persons potentially affected by it, including the use of press releases or by posting a copy of the information required under subsection (c) at the principal office of the municipality or political subdivision affected by the facility or discharge. ~~and at the United States post office serving these premises.~~

Any person otherwise entitled to receive notice under subdivision (1) may waive the right to receive notice for any classes and categories of permits.

(c) All public notices issued under this section shall contain the following information:

(1) Name and address of this department.

(2) Except in the case of general permits, name and address of the applicant and the discharger (if different from the applicant) and a general description of the location of each existing or proposed discharge point, including the receiving water.

(3) A brief description of the applicant's activities or operations that result in the discharge described in the application, and a statement whether the application pertains to a new or existing discharge.



(4) A brief description of the tentative permit determination, e.g., to issue, deny, modify, revoke and reissue, terminate the permit, or grant or deny a request for variance from applicable water quality standards, in accordance with section 4.1 of this rule.

(5) If the applicant has properly applied under Section 316(a) of the ~~CWA~~ **Clean Water Act (33 U.S.C. 1326(a))** for a thermal variance, a statement to that effect. The notice shall state that all data submitted by the applicant are available as part of the administrative record for public inspection during office hours. The notice shall also include the following:

(A) A brief description, including a quantitative statement, of the thermal effluent limitations proposed under Section 301 or 306 of the ~~CWA~~ **Clean Water Act (33 U.S.C. 1311 or 33 U.S.C. 1316)**.

(B) A statement that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge under Section 316(a) of the ~~CWA~~ **Clean Water Act (33 U.S.C. 1326(a))** and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the application.

(C) If the applicant has filed an early screening application for a ~~CWA~~ **Clean Water Act** Section 316(a) **(33 U.S.C. 1326(a))** variance under [327 IAC 5-7-3](#), a statement that the applicant has submitted such a plan.

(6) A brief description of the comment procedures provided under section 9 of this rule and a statement of the right and procedures to request a public hearing.

(7) Name of a contact person, and an address and telephone number where interested persons may obtain further information, including copies of the draft permit and the statement of basis or fact sheet.

(d) Notice of the formulation of a draft general permit and the issuance of a final general permit under ~~section 15 of this rule~~ [327 IAC 15](#) shall:

(1) meet the requirements of subsection (c) and shall also include:

(A) a brief description of the types of activities or operations to be covered by the general permit;

(B) a map or description of the general permit boundary; and

(C) the basis for choosing the general permit boundary; ~~and~~

(2) be published in ~~the Indiana Register and in~~ one (1) or more daily or weekly newspapers in general circulation within the general permit boundaries; ~~and~~

**(3) comply with the public notice requirements in 40 CFR 123.25(a)(28).**

In addition to the publication required by ~~subdivision~~ **subdivisions (2) and (3)**, the commissioner shall use all other reasonable means to notify affected dischargers of the draft and final general permit, including the ~~mailing~~ **transmitting** of a copy of such notice to those permittees which are affected.

(e) In addition to the information required under subsection (c), public notice of a public hearing held under section 9 of this rule shall contain the following information:

(1) Reference to the date and identification number of the public notice of the draft permit.

(2) Date, time, and place of the hearing.

(3) A brief description of the nature and purpose of the hearing including the applicable rules and procedures.

(f) The commissioner, at the commissioner's discretion, may include in any notice of a tentative permit determination under subsection (c) a notice of hearing in accordance with subsection (e), whether or not any request for such hearing shall have been submitted to him **or her**.

(g) The mailing lists referred to in subsection (b)(1) and in section 8(a) of this rule consists of those persons who request to be on the list to receive copies of all public notices. ~~or fact sheets, respectively, or both.~~ Such a request shall be made in writing to the department and shall be renewed annually in the month of January. Failure to renew the request will be cause for the commissioner to remove a name from the appropriate mailing list. Availability of the mailing lists will be publicized periodically through press releases and notices in the Indiana Register, **IDEM website**, or other appropriate publications. The commissioner may establish regional mailing lists in addition to or in place of a statewide list.

*(Water Pollution Control Division; [327 IAC 5-3-12](#); filed Sep 24, 1987, 3:00 p.m.: 11 IR 639; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1761; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; readopted filed Nov 21, 2007, 1:16 p.m.: [20071219-IR-327070553BFA](#))*

SECTION 24. [327 IAC 5-3-14](#) IS AMENDED TO READ AS FOLLOWS:

**[327 IAC 5-3-14](#) Issuance and effective date of a permit**

**Authority:** [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3](#)

**Affected:** [IC 4-21.5-3-7](#); [IC 13-11-2](#); [IC 13-15](#); [IC 13-18-3-15](#); [IC 13-18-4](#)

Sec. 14. (a) After the close of:

(1) the public comment period (~~including any public hearing~~) required by section 9 **9(a)** of this rule on a draft permit; **and**

(2) **any public hearing held under section 9(b) of this rule;**

the commissioner, except as provided in subsection (c), shall issue a final permit decision and shall serve notice of that action on the applicant and on each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures available to contest the permit terms by requesting an adjudicatory hearing. For the purposes of this section, "final permit decision" means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

(b) Issuance of a general permit shall be accomplished by the publication of the full text of the permit in the Indiana Register and the notification specified under section 12(d) of this rule, in addition to the notification required by subsection (a).

(c) The commissioner may delegate authority to a staff member to issue or deny NPDES permits to applicants within a specified class or category of ~~point sources~~. **discharges**. Within the scope of any such delegation, a reference in this rule to the commissioner shall also mean the commissioner's delegatee.

(d) A final permit decision shall become effective with respect to the applicant unless, within fifteen (15) days after receipt of notice of said decision, the applicant files a request for adjudicatory hearing concerning the permit decision with the commissioner in accordance with ~~IC 13-7-10-2.5~~(e) [IC 13-15-16-1](#) and [IC 4-21.5-3-7](#).

(e) If an adjudicatory hearing request concerning a final permit decision is granted by the board pursuant to ~~IC 13-7-10-2.5~~(e), [IC 13-15-6-3](#), any permit provisions that are stayed by order of the board shall not go into effect until confirmed at the final resolution of the hearing or until the board otherwise dissolves the stay. Any permit provisions not stayed by the board in such a proceeding remain effective and in full force.

(f) Where permit provisions are stayed during an adjudicatory proceeding on a renewal permit for an existing source, all provisions of the previous permit which correspond to the stayed provisions of the new permit and which are consistent with those provisions of the new permit that are not stayed shall continue in full force and effect until a final resolution of the adjudicatory proceeding. However, this subsection shall not apply if a timely and sufficient application for the renewal permit was not submitted in accordance with ~~IC 13-7-10-2~~(e): [IC 13-15-3-6](#).

*(Water Pollution Control Division; [327 IAC 5-3-14](#); filed Sep 24, 1987, 3:00 p.m.: 11 IR 641; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1762; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; readopted filed Nov 21, 2007, 1:16 p.m.: [20071219-IR-327070553BFA](#))*

SECTION 25. [327 IAC 5-3.5-9](#) IS AMENDED TO READ AS FOLLOWS:

### [327 IAC 5-3.5-9](#) PMPP requirements

**Authority:** [IC 13-13-5-1](#); [IC 13-13-5-2](#); [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18](#)

**Affected:** [IC 13-18-3-15](#); [IC 13-18-4](#); [IC 13-20-17.5](#)

Sec. 9. (a) A PMPP for a facility must be submitted with an application for an SMV. The PMPP must contain the following:

- (1) Results of a preliminary inventory of potential uses and sources of mercury in all buildings and departments and a plan and schedule for providing the department results of a complete inventory.
- (2) Preliminary identification of known mercury-bearing equipment, wastestreams, and mercury storage sites.
- (3) A list of planned activities to be conducted to eliminate or minimize the release of mercury to the water. The list of planned activities may consider technical and economic feasibility and must include, at a minimum, the following:

- (A) A review of purchasing policies and procedures.
- (B) Necessary training and awareness for facility staff.
- (C) Evaluation of alternatives to the use of any mercury-containing equipment or materials.
- (D) Other specific activities designed to reduce or eliminate mercury loadings.
- (E) An identification of the facility's responsibilities under ~~P.L.225-2001 (also known as House Enrolled Act 1901 of the 2001 legislative session)~~ [IC 13-20-17.5](#).

(4) For each activity specified in subdivision (3), the plan must contain the following:

- (A) The goal to be accomplished.
- (B) A measure of performance.
- (C) A schedule for action.

(5) All available mercury monitoring data and any information on mercury in biosolids, if required by an NPDES permit or land application permit, for the two (2) year period preceding the SMV application.

(6) Identification of the resources and staff necessary to implement the PMPP.

(7) Proof of completion of public notice activities required under this section.

(8) Annual reports according to a schedule in the PMPP. Each annual report must describe the following:

- (A) The facility's progress toward fulfilling each of the requirements of the PMPP.
- (B) The results of mercury monitoring.
- (C) The steps taken to implement each planned activity developed under this subsection and subsection (b) to reduce or eliminate mercury from the facility's water.

(b) In addition to subsection (a), a PMPP for a POTW must include the following:

(1) Results of a preliminary evaluation of possible mercury sources in the facility's influent and a plan and schedule for providing the department results of a complete evaluation. The evaluation shall include, at a minimum, the following:

(A) Medical facilities, for example, the following:

- (i) Hospitals.
- (ii) Clinics.
- (iii) Nursing homes.
- (iv) Veterinary facilities.

(B) Dental clinics.

(C) Public and private educational laboratories.

(D) General industry and all SIUs.

(E) Significant sources of residential and retail contributions of mercury, for example, the following:

- (i) Heating, ventilation, and air conditioning contractors.
- (ii) Automobile and appliance repair.
- (iii) Veterinarians.
- (iv) Others specific to the community served.

(F) An identification of the responsibilities under ~~P.L.225-2001 (also known as House Enrolled Act 1901 of the 2001 legislative session)~~ [IC 13-20-17.5](#) for the significant industrial users for the POTW.

(2) A list of planned activities designed to reduce or eliminate mercury loadings from the sources identified in subdivision (1).

(3) For each activity specified in subdivision (2), the plan must contain the following:

- (A) The goal to be accomplished.
- (B) A measure of performance.
- (C) A schedule for action.

(4) In addition to activities required under subsection (a)(3), activities must also include an education program for the facility employees and the public within the service area of the facility.

(c) Prior to submitting the PMPP to the department as part of the SMV application, an applicant shall do the following:

(1) Publish notice of the availability of the draft PMPP in a daily or weekly newspaper of general circulation throughout the area affected by the discharge.

(2) Post a copy of the information required by this section at the following:

- (A) Principal office of the municipality or political subdivision affected by the facility or discharge.
- (B) The United States post office.
- (C) If one is available, the library serving those premises.

(d) All notices published under this section shall contain the following information:

- (1) The name and address of the applicant that prepared the PMPP.
- (2) A general description of the elements of the PMPP.

- (3) A brief description of the activities or operations that result in the discharge for which an SMV is being requested.
- (4) A brief description of the purpose of this notice and the comment procedures.
- (5) The name of a contact person, a mailing address, an internet address, if available, and a telephone number where interested persons may obtain additional information and a copy of the PMPP.

(e) The applicant shall do the following:

- (1) Provide a minimum comment period of thirty (30) days.
- (2) Include a copy of the comments received and the applicant's responses to those comments in the SMV application submitted to the department.

(f) The department shall consider a PMPP to be complete if it meets the requirements of this section.

*(Water Pollution Control Division; [327 IAC 5-3.5-9](#); filed Apr 6, 2005, 4:00 p.m.: 28 IR 2351; readopted filed Jun 15, 2011, 11:15 a.m.: [20110713-IR-327110193BFA](#))*

SECTION 26. [327 IAC 5-4-5](#) IS AMENDED TO READ AS FOLLOWS:

### **[327 IAC 5-4-5](#) Aquaculture projects**

**Authority:** [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3](#)

**Affected:** [IC 13-11-2](#); [IC 13-18-3-15](#); [IC 13-18-4](#)

Sec. 5. Discharges into ~~aquaculture~~ **aquaculture** projects, as defined in 40 CFR 122.25, are subject to the NPDES permit program in accordance with the criteria specified in 40 CFR Part 125, Subpart B.

*(Water Pollution Control Division; [327 IAC 5-4-5](#); filed Sep 24, 1987, 3:00 p.m.: 11 IR 643)*

SECTION 27. [327 IAC 5-4-6](#) IS AMENDED TO READ AS FOLLOWS:

### **[327 IAC 5-4-6](#) Storm water discharges**

**Authority:** [IC 13-14-8](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#)

**Affected:** [IC 13-18-4](#)

Sec. 6. (a) The following discharges consisting entirely of storm water require an individual NPDES permit:

- (1) A discharge that the commissioner determines:
  - (A) contributes to a violation of a water quality standard;
  - (B) is a significant contributor of pollutants to waters or to a regulated municipal separate storm sewer system (MS4) conveyance; or
  - (C) meets **any** of the conditions of ~~one (1) of the six (6) cases listed in [327 IAC 15-2-9\(b\)](#). [327 IAC 15-2-9\(a\)](#).~~
- (2) A discharge with respect to which a permit has been issued prior to February 4, 1987.
- (3) A discharge that is subject to federal storm water effluent limitation guidelines unless the effluent limitations are placed in a general permit under [327 IAC 15](#).
- (4) A discharge associated with the state department of transportation.
- ~~(5) A discharge from an MS4 conveyance subject to regulation under 40 CFR 122.26(a)(iii) or 40 CFR 122.26(a)(iv).~~

(b) ~~The following~~ Discharges ~~consisting~~ **described in [327 IAC 15-2-2](#) that consist** entirely of storm water require an NPDES permit and are eligible for coverage under a general NPDES permit unless ~~one (1) any~~ **any** of the conditions in subsection (a) **is for issuance of an individual permit are met.**

- ~~(1) A discharge exposed to categories of industrial activity specified in [327 IAC 15-6-2](#).~~
- ~~(2) A discharge associated with construction activities, which disturb one (1) or more acres of land. Included in these activities are disturbances of less than one (1) acre of land that are part of a larger common plan of development or sale if the larger common plan will ultimately disturb one (1) or more acres of land.~~
- ~~(3) A discharge from an MS4 conveyance that meets the designation criteria in [327 IAC 15-13-3\(a\)](#) or [327 IAC](#)~~

(c) The commissioner shall not, under this section, require a permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows from conveyances or systems of conveyances, including, but not limited to, pipes, conduits, ditches, and channels, used for collecting and conveying precipitation run-off and which are not contaminated by contact with or do not come into contact with any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations. **any of the following:**

- (1) **Agricultural storm water runoff or return flows from irrigated agriculture.**
- (2) **Storm water discharges from mining operations composed entirely of flows from conveyances or systems of conveyances used for collecting and conveying precipitation runoff that has not come into contact with any overburden, raw material, intermediate products, finished product, byproducts, or waste products located on the site of the operations. Conveyances include pipes, conduits, ditches, and channels.**
- (3) **Storm water discharges from oil and gas exploration field activities or operations associated with oil and gas exploration, production, processing or treatment operations or transmission facilities, including activities necessary to prepare a site for drilling and the movement and placement of drilling equipment.**

(d) If an individual NPDES permit is required under subsection (a) **for discharges consisting entirely of storm water, or if an individual permit is required under [327 IAC 5-2-2](#) that includes discharge of commingled storm water associated with industrial activity**, the department may consider the following in determining the requirements to be contained in the permit:

- (1) The provisions in **the following:**
  - (A) ~~[327 IAC 15-5](#), [327 IAC 15-6](#), and [327 IAC 15-13](#)~~, as appropriate to the type of storm water discharge; or
  - (A) The EPA 2012 NPDES General Permit for Discharges from Construction Activities effective February 16, 2012.**
  - (B) The EPA 2008 NPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity, as modified, effective May 27, 2009.**
  - (C) EPA's general permit requirements for small municipal separate storm sewer systems (MS4s) in 40 CFR 122, Subpart B.**
  - (D) NPDES Pesticide General Permit for Point Source Discharges to Waters of the State from the Application of Pesticides, Permit Number ING870000, effective October 31, 2011, available at: [http://www.in.gov/idem/files/npdes\\_permit\\_pesticide\\_final\\_permit.pdf](http://www.in.gov/idem/files/npdes_permit_pesticide_final_permit.pdf) or from the IDEM Office of Water Quality, Permits Branch, 100 North Senate Avenue, Indianapolis, IN 46204-2251.**
  - ~~(B)~~ **(E) [327 IAC 5-2](#), [327 IAC 5-5](#), and [327 IAC 5-9](#) for establishing NPDES permit effluent limitations and conditions.**
- (2) ~~The United States Environmental Protection Agency guidance document titled "Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits", EPA 833-D-96-001, September 1, 1996<sup>2</sup>, 1996, available from U.S. EPA/NSCEP, P.O. Box 42419, Cincinnati, Ohio 45242-0419 or from the department.~~
- (3) The nature of the discharges and activities occurring at the site or facility.
- (4) Other information relevant to the potential impact on water quality.

(e) Storm water runoff discharged into a combined sewer system is not subject to the provisions of this section.

(f) Whether a discharge from an MS4 conveyance is, subject to regulation under this section, shall have no bearing on whether the owner or operator of the discharge is eligible for funding under Title II, Title III, or Title VI of the CWA. **Clean Water Act.**

(g) Terms, as used in this section, have the same meaning as defined under 40 CFR 122.26(b), ~~[327 IAC 15-5-4](#), [327 IAC 15-6-4](#), or [327 IAC 15-13-5](#)~~, unless defined as follows:

- (1) ~~"General NPDES permit" means an authorization to discharge under the NPDES rules, that is applicable to all owners and operators of point sources of a particular category located within a designated general permit boundary, other than owners and operators of such sources to whom individual NPDES permits have been issued.~~

~~(2) "Individual NPDES permit" means an authorization to discharge under the NPDES rules, that is applicable to an individual owner or operator of point sources, and establishes requirements specific for that owner or operator.~~

~~\*Copies of the United States Environmental Protection Agency guidance document referenced in this section may be obtained from the Government Printing Office, Washington, D.C. 20402 or the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.~~

~~(Water Pollution Control Division; [327 IAC 5-4-6](#); filed Sep 24, 1987, 3:00 p.m.: 11 IR 644; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1764; filed Jul 7, 2003, 2:15 p.m.: 26 IR 3575; errata filed Sep 8, 2003, 3:15 p.m.: 27 IR 191; errata filed Feb 6, 2006, 11:15 a.m.: 29 IR 1936)~~

SECTION 28. [327 IAC 5-16-1](#) IS AMENDED TO READ AS FOLLOWS:

**[327 IAC 5-16-1](#) Purpose and objectives**

**Authority:** [IC 13-14-8](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-2](#); [IC 13-18-3](#)

**Affected:** [IC 13-11-2](#); [IC 13-13-5-1](#); [IC 13-18-3-15](#); [IC 13-18-4](#)

Sec. 1. (a) The pretreatment rules establish a state program to control the discharge of industrial pollutants into publicly owned treatment works (POTWs), as defined in [327 IAC 5-1.5-48](#), to implement 40 CFR 403 and related provisions of the federal Clean Water Act, 33 U.S.C. 1251.

(b) The state pretreatment program has the following three (3) objectives:

- (1) To prevent the introduction of pollutants into a POTW that will interfere with the operation of a POTW, including interference with the use or disposal of municipal sludge.
- (2) To prevent the introduction of pollutants into a POTW that will pass through the treatment works without receiving effective treatment or otherwise be incompatible with such works.
- (3) To improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.

(c) The pretreatment rules apply to:

- (1) new or existing industries that discharge by direct connection or indirectly by truck, rail, or other means, nondomestic wastes into POTWs; and
- (2) POTWs that receive or may receive discharges of nondomestic wastes from those industries.

~~(d) Unless otherwise indicated, any reference to a provision of the Code of Federal Regulations in the pretreatment rules refers to the July 1, 1999, revision.~~

~~(Water Pollution Control Division; [327 IAC 5-16-1](#); filed Oct 10, 2000, 3:02 p.m.: 24 IR 290)~~

SECTION 29. [327 IAC 5-16-5](#) IS AMENDED TO READ AS FOLLOWS:

**[327 IAC 5-16-5](#) Reporting requirements for POTWs and industrial users**

**Authority:** [IC 13-14-8](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-2](#); [IC 13-18-3](#)

**Affected:** [IC 13-11-2](#); [IC 13-13-5-1](#); [IC 13-18](#)

Sec. 5. (a) All POTWs and industrial users shall comply with the applicable reporting requirements of 40 CFR 403.12\*. **403.12.**

(b) The reporting requirements for an industrial user upon the effective date of a categorical pretreatment standard are as follows:

- (1) An existing industrial user subject to the categorical pretreatment standards and currently discharging to or scheduled to discharge to a POTW shall submit to the control authority a baseline report that contains the information listed in subsection (c) within one hundred eighty (180) days after the:

(A) effective date of a categorical pretreatment standard; or

(B) final administrative decision made upon a category determination submission under 40 CFR 403.6(a)(4); whichever is later.

(2) A new source, and a source that becomes an industrial user subsequent to the promulgation of an applicable categorical standard, shall be required to submit to the control authority a report that contains the information listed in subsection (c)(1) through (c)(5), at least ninety (90) days prior to commencement of discharge.

(3) A new source shall:

(A) also be required to include in this report information on the method of pretreatment the source intends to use to meet applicable pretreatment standards; and

(B) give estimates of the information requested in subsection (c)(4) and (c)(5).

(c) The baseline monitoring report submitted by the industrial user to the POTW must include the following information:

(1) The name and address of the facility, including the name of the operator and owners.

(2) A list of any environmental control permits held by or for the facility.

(3) A brief description of the operation, including:

(A) the nature;

(B) the average rate of production; and

(C) the standard industrial classification;

of the operation or operations carried out by the industrial user. This description must include a schematic process diagram that indicates points of discharge to the POTW from the regulated processes.

(4) Measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following:

(A) Regulated process streams.

(B) Other streams, as necessary, to allow use of the combined waste stream formula of subdivision (6)(C).

The control authority may allow for verifiable estimates of these flows where justified by cost or feasibility considerations.

(5) The pretreatment standards applicable to each regulated process.

(6) The results of sampling and analysis, identifying the nature and concentration (or mass, where required by the standard or control authority) of regulated pollutants in the discharge from each regulated process. The following apply to sampling and analysis results:

(A) Both daily maximum and average concentration (or mass, where required) must be reported. The sample must be representative of daily operations. In cases where the standard requires compliance with a best management practice or pollution prevention alternative, the industrial user shall submit documentation as required by the control authority or the applicable standards to determine compliance with the standard.

(B) The industrial user shall take a minimum of one (1) representative sample to compile the data necessary to comply with the requirements of this subdivision.

(C) Samples must be taken immediately downstream from existing pretreatment facilities, or immediately downstream from the regulated process, if no pretreatment facilities exist. If other wastewaters are mixed with the regulated wastewater prior to pretreatment, the industrial user shall measure the flows and concentrations necessary to allow use of the combined waste stream formula of 40 CFR 403.6(e) in order to evaluate compliance with the pretreatment standards. Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR 403.6(e), this adjusted limit, along with supporting data, must be submitted to the control authority.

(D) Sampling and analysis must be performed in accordance with the techniques prescribed in 40 CFR Part 136. and amendments thereto. Where:

(i) 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question; or

(ii) the administrator determines that the Part 40 CFR 136 sampling and analytical techniques are inappropriate for the pollutant in question;

sampling and analysis must be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the commissioner.

(E) The control authority may allow the submission of a baseline report that utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures.

(F) The baseline report allowed under clause (E) must:

(i) indicate:

(AA) the time;

(BB) the date;

(CC) the place of sampling; and

(DD) the methods of analysis; and

(ii) certify that the sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.

(7) The industrial user shall submit a certification statement indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O and M) or additional pretreatment, or both, is required for the industrial user to meet the pretreatment standards and requirements. The statement must be:

- (A) reviewed by an authorized representative of the industrial user, as defined in section 5.3 of this rule; and
- (B) certified by a qualified professional.

(8) The industrial user shall use the shortest compliance schedule by which additional pretreatment or O and M, or both, may be provided if required to meet the pretreatment standards. The completion date in this schedule must not be later than the compliance date established for the applicable pretreatment standard.

(9) Where the industrial user's categorical pretreatment standard has been modified by a removal allowance under 40 CFR 403.7, the combined waste stream formula under 40 CFR 403.6(e), or a fundamentally different factors variance under 40 CFR 403.13, at the time the industrial user submits the report required by subsection (b), the information required by subdivisions (7) and (8) shall apply to the modified limits.

(10) If the categorical pretreatment standard is modified by a removal allowance under 40 CFR 403.7, combined waste stream formula under 40 CFR 403.6(e), or a fundamentally different factors variance under 40 CFR 403.13, after the industrial user submits the report required by subsection (b), any necessary amendments to the information required by subdivisions (7) and (8) must be submitted by the industrial user to the control authority within sixty (60) days after the modified limit is approved.

(d) The following conditions apply to the compliance schedule for meeting categorical pretreatment standards required by subsection (c)(8):

(1) The schedule must contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the applicable categorical pretreatment standards, for example, the following:

- (A) Hiring an engineer.
- (B) Completing preliminary plans.
- (C) Completing final plans.
- (D) Executing a contract for major components.
- (E) Commencing construction.
- (F) Completing construction.

(2) No increment established in subdivision (1) may exceed nine (9) months.

(3) Not later than fourteen (14) days following each date in the schedule and the final date for compliance, the industrial user shall submit a progress report to the control authority, including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the following:

- (A) The date on which it expects to comply with this increment of progress.
- (B) The reason for delay.
- (C) The steps being taken by the industrial user to return the construction to the schedule established.

In no event may more than nine (9) months elapse between the progress reports to the control authority.

(e) Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards or, in the case of a new source, following the introduction of wastewater into the POTW, an industrial user shall do the following:

(1) An industrial user subject to pretreatment standards and requirements shall submit to the control authority a report containing the information described in subsection (c)(4) through (c)(6).

(2) For an industrial user subject to equivalent mass or concentration limits established by the control authority in accordance with the procedures in 40 CFR 403.6(c), the report required under subdivision (1) must contain a reasonable measure of the industrial user's long-term production rate.

(3) For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), the report required under subdivision (1) must include the industrial user's actual production during the appropriate sampling period.

(f) This subsection does not apply to nonsignificant categorical users as defined in 40 CFR 403.3(v)(2). An industrial user subject to a categorical pretreatment standard, after the compliance date of the pretreatment standard or, in the case of a new source, after commencement of the discharge into the POTW, shall submit a periodic compliance monitoring report to the control authority during the months of June and December, unless required more frequently in the pretreatment standard or by the control authority or the approval authority. The periodic compliance monitoring report shall contain the following:



- (1) The monitoring report must include the following:
  - (A) A report indicating the nature and concentration of pollutants in the effluent that are limited by the categorical pretreatment standards.
  - (B) A record of measured or estimated average and maximum daily flows for the reporting period for the discharge reported in subsection (c)(4), except that the control authority may require more detailed reporting of flows if necessary to determine the industrial user's compliance with applicable regulations.
- (2) When a pretreatment standard requires compliance with a best management practice or pollution prevention alternative, the industrial user shall submit documentation required by the control authority or the pretreatment standard necessary to determine the compliance status of the industrial user. At the discretion of the control authority and in consideration of factors including local high or low flow rates, holidays and budget cycles, the control authority may modify the months during which the reports required under subdivision (1) are to be submitted.
- (3) The control authority may grant an industrial user subject to a categorical pretreatment standard a waiver from sampling of a pollutant regulated by a categorical pretreatment standard if the industrial user has demonstrated thorough sampling and other technical factors that the pollutant is neither present nor expected to be present in the discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the industrial user. This waiver is subject to the following conditions:
  - (A) The control authority may authorize a waiver where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility, provided that the sanitary wastewater is not regulated by an applicable categorical standard and otherwise includes no process wastewater.
  - (B) The monitoring waiver is valid only for the duration of the effective period of the permit or other equivalent individual control mechanism, but in no case longer than five (5) years. The industrial user shall submit a new request for a waiver before the waiver can be granted for each subsequent control mechanism.
  - (C) In making a demonstration that a pollutant is not present, the industrial user shall provide data from at least one (1) sampling of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes. The request for a monitoring waiver must be signed in accordance with section 5.3 of this rule and include the certification statement in 40 CFR ~~403.6(a)(2)(ii)\*\*~~. **403.6(a)(2)(ii)**. Nondetectable sample results may be used only as a demonstration that a pollutant is not present if the EPA approved method from 40 CFR Part 136, with the lowest minimum detection level for that pollutant, was used in the analysis.
  - (D) Any grant of a monitoring waiver by the control authority must be included as a condition in the industrial user's control mechanism. The reasons supporting the waiver and any information submitted by the industrial user in its request for the waiver must be maintained by the control authority for three (3) years after expiration of the waiver.
  - (E) Upon approval of the monitoring waiver and revision of the industrial user's control mechanism by the control authority, the industrial user shall certify on each report that there has been no increase in the pollutant in its waste stream due to activities of the industrial user. The statement must include the following:

"Based on my inquiry of the person or persons directly responsible for managing compliance with the Pretreatment Standard for 40 CFR (specify applicable National Pretreatment Standard part(s)), I certify that, to the best of my knowledge and belief, there has been no increase in the level of (list pollutant(s)) in the wastewaters due to the activities at the facility since filing of the last periodic report under 40 CFR 403.12(e)(1)."
  - (F) In the event that a waived pollutant is found to be present or is expected to be present based on changes that occur in the industrial user's operations, the industrial user shall immediately notify the control authority and comply with:
    - (i) the monitoring requirements of subdivisions (1) and (2); or
    - (ii) other more frequent monitoring requirements imposed by the control authority.
  - (G) This subdivision does not supersede certification processes and requirements established in **federal** categorical pretreatment standards at ~~327 IAC 5-18-10~~, **incorporated by reference in 327 IAC 5-2-1.5**, except as otherwise specified in the categorical pretreatment standard.
- (4) Where the control authority has imposed mass limitations on industrial users as provided for by 40 CFR 403.6(d), the report required by this subsection must indicate the mass of pollutants regulated by pretreatment standards in the discharge from the industrial user.
- (5) For industrial users subject to equivalent mass or concentration limits established by the control authority in accordance with the procedures in 40 CFR 403.6(c), the report required by this subsection must contain a reasonable measure of the industrial user's long-term production rate. For all other industrial users subject to categorical pretreatment standards expressed only in terms of allowable pollutant discharge per unit of production, or other measure of operation, the report required by this subsection must include the industrial user's actual average production rate for the reporting period.

(g) All categorical and noncategorical industrial users shall notify the POTW immediately of all discharges that could cause problems to the POTW, including any slug loadings, as defined by 40 CFR ~~403.5(b)~~\*\*\*. **403.5(b)**.

(h) Industrial users shall continue monitoring and analysis to demonstrate continued compliance, including the following:

(1) Except for nonsignificant categorical users, the reports required in subsections (b), (c), (e), (f), and (i) must contain the results of sampling and analysis of the discharge, including the flow and the nature and concentration, or production and mass where requested by the control authority, of pollutants contained therein that are limited by the applicable pretreatment standards. This sampling and analysis may be performed by the control authority in lieu of the industrial user. Where the POTW performs the required sampling and analysis in lieu of the industrial user, the industrial user will not be required to submit the compliance certification required under subsections (c)(7) and (e). In addition, where the POTW collects all the information required for the report, including flow data, the industrial user will not be required to submit the report.

(2) If sampling performed by an industrial user indicates a violation, the industrial user shall notify the control authority within twenty-four (24) hours of becoming aware of the violation. The industrial user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the control authority within thirty (30) days after becoming aware of the violation. Where the control authority has performed the sampling and analysis in lieu of the industrial user, the control authority shall perform the repeat sampling and analysis unless it notifies the industrial user of the violation and requires the industrial user to perform the repeat analysis. Resampling is not required if the control authority performs sampling at the industrial user:

(A) at a frequency of at least once per month; or

(B) between the time when the initial sampling was conducted and the time when the industrial user or the control authority receives the results of this sampling.

(3) The reports required in subsections (b) through (e) and (i) must be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data are representative of conditions occurring during the reporting period. The control authority shall require that frequency of monitoring necessary to assess and assure compliance by industrial users with applicable pretreatment standards and requirements. Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds. For all other pollutants, twenty-four (24) hour composite samples must be obtained through flow proportional composite sampling techniques, unless time proportional composite sampling or grab sampling is authorized by the control authority. Where time-proportional composite sampling or grab sampling is authorized by the control authority, the samples must be representative of the discharge and the decision to allow the alternative sampling must be documented in the industrial user file for that facility or facilities. Using protocols, including appropriate preservation, specified in 40 CFR ~~Part 136~~ and appropriate EPA guidance, multiple grab samples collected during a twenty-four (24) hour period may be composited prior to the analysis as follows:

(A) For cyanide, total phenols, and sulfides, the samples may be composited in the laboratory or in the field.

(B) For volatile organics and oil and grease, the samples may be composited in the laboratory.

(C) Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the control authority, as appropriate.

(4) For sampling required in support of baseline monitoring and ninety (90) day compliance reports required in subsections (b) and (e), a minimum of four (4) grab samples must be used for:

(A) pH;

(B) cyanide;

(C) total phenols;

(D) oil and grease;

(E) sulfide; and

(F) volatile organic compounds;

for facilities for which historical sampling data do not exist. For facilities for which historical sampling data are available, the control authority may authorize a lower minimum. For the reports required by subsections (e) and (i), the control authority shall require the number of grab samples necessary to assess and assure compliance by industrial users with applicable pretreatment standards and requirements.

(5) All analyses must be performed in accordance with procedures established by the commissioner pursuant to 33 U.S.C. 1314(h) and contained in 40 CFR ~~Part 136~~\*\*\*\* **136** or with any other test procedures approved by the commissioner. Sampling must be performed in accordance with the techniques approved by the commissioner. Where:

(A) 40 CFR ~~Part 136~~ does not include sampling or analytical techniques for the pollutants in question; or

(B) the commissioner determines that the ~~Part 40 CFR 136~~ sampling and analytical techniques are

inappropriate for the pollutant in question;

sampling and analyses must be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the commissioner.

(6) If an industrial user subject to the reporting requirement in subsection (f) or (i) monitors any regulated pollutant at the appropriate sampling location more frequently than required by the control authority, using the procedures prescribed in subdivision (5), the results of this monitoring must be included in the report.

(i) The reporting requirements for industrial users not subject to categorical pretreatment standards are as follows:

(1) Significant noncategorical industrial users shall submit to the control authority, at least once every six (6) months, on dates specified by the control authority, a description of the:

- (A) nature;
- (B) concentration; and
- (C) flow;

of the pollutants required to be reported by the control authority.

(2) In cases where a local limit requires compliance with a best management practice or pollution prevention alternative, the industrial user shall submit documentation required by the control authority to determine the compliance status of the industrial user. These reports must be based on sampling and analysis performed in the period covered by the report and in accordance with the techniques described in 40 CFR Part 136. and amendments thereto.

(3) This sampling and analysis may be performed by the control authority in lieu of the significant noncategorical industrial user.

(j) Additionally, reporting of:

- (1) spills into a POTW; or
- (2) upsets in pretreatment facilities;

may be required of an industrial user by its control authority.

~~\*Notwithstanding [327 IAC 5-16-1](#)(d), the July 1, 2007, version of 40 CFR 403.12 is incorporated by reference. Copies of this publication may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.~~

~~\*\*Notwithstanding [327 IAC 5-16-1](#)(d), the July 1, 2007, version of 40 CFR 403.6(a)(2)(ii) is incorporated by reference. Copies of this publication may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.~~

~~\*\*\*Notwithstanding [327 IAC 5-16-1](#)(d), the July 1, 2007, version of 40 CFR 403.5(b) is incorporated by reference. Copies of this publication may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.~~

~~\*\*\*\*Notwithstanding [327 IAC 5-16-1](#)(d), the July 1, 2007, version of 40 CFR Part 136 is incorporated by reference. Copies of this publication may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.~~

*(Water Pollution Control Division; [327 IAC 5-16-5](#); filed Oct 10, 2000, 3:02 p.m.: 24 IR 291; filed Apr 3, 2009, 1:55 p.m.: [20090429-IR-327060156FRA](#))*

SECTION 30. [327 IAC 5-16-5.3](#) IS AMENDED TO READ AS FOLLOWS:

**[327 IAC 5-16-5.3](#) Additional reporting requirements for POTWs and industrial users**

**Authority:** [IC 13-14-8](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-2](#); [IC 13-18-3](#)  
**Affected:** [IC 13-11-2](#); [IC 13-13-5-1](#); [IC 13-18-3-15](#); [IC 13-18-4](#); [IC 13-18-11](#)

Sec. 5.3. (a) The reports required by 40 CFR 403.12 or [327 IAC 5-21-10](#) must be signed by one (1) of the following:

- (1) A responsible corporate officer. As used in this section, "responsible corporate officer" means either of the following:
  - (A) A:
    - (i) president;
    - (ii) secretary;
    - (iii) treasurer; or
    - (iv) vice president;of the corporation in charge of a principal business function or any other person who performs similar policymaking or decision making functions for the corporation.
  - (B) The manager of one (1) or more manufacturing, production, or operating facilities, provided the following:
    - (i) The manager is authorized to:
      - (AA) make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations; and
      - (BB) initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations.
    - (ii) The manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements.
    - (iii) Authority to sign has been assigned or delegated to the manager to sign documents in accordance with corporate procedures.
- (2) A general partner or proprietor or manager, if the industrial user submitting the reports is a partnership or sole proprietorship, respectively.
- (3) A duly authorized representative of the individual designated in either subdivision (1) or (2) if:
  - (A) the authorization:
    - (i) is made in writing by the individual described in either subdivision (1) or (2); and
    - (ii) specifies either an individual or a position having responsibility for the overall operation of the facility from which the industrial discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and
  - (B) the written authorization is submitted to the control authority.
- (4) If an authorization under subdivision (3) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of subdivision (3) must be submitted to the control authority prior to or together with any reports to be signed by an authorized representative.

(b) An industrial user subject to the reporting requirements of section 5 of this rule and this section shall maintain records of the monitoring activities in accordance with [327 IAC 5-2-14](#), including documentation associated with best management practices. These records must be made available, upon request, to the:

- (1) commissioner;
- (2) regional administrator; and
- (3) POTW to which the industrial user discharges its wastewater.

(c) A POTW to which reports are submitted by an industrial user under this section shall:

- (1) retain the reports, including documentation associated with best management practices, for a minimum of three (3) years; and
- (2) make the reports available for inspection and copying by the:
  - (A) commissioner; and
  - (B) regional administrator.

This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the industrial user, the operation of the approved POTW pretreatment, or when requested by the commissioner or the regional administrator.

(d) A report required by this section that relates to the actual operation of or discharge from a pretreatment

facility must be prepared by or under the direction of a wastewater treatment plant operator certified under [IC 13-18-11](#).

(e) A report required of a POTW by 40 CFR 403.12 must be signed by a responsible corporate officer, ranking elected official, or other duly authorized employee. The duly authorized employee shall be an individual or position having responsibility for the overall operation of the facility or the pretreatment program. This authorization must be:

- (1) made in writing by the principal executive officer or ranking elected official; and
- (2) submitted to the approval authority prior to or together with the report being submitted.

If an employee is authorized to submit the reports, a copy of the written authorization designating the employee must be submitted to the commissioner.

(f) An industrial user who wishes to demonstrate the affirmative defense of upset for noncompliance with any pretreatment standard or requirement in [327 IAC 5-2](#) shall, as provided in [327 IAC 5-18-3](#), comply with the reporting requirements and conditions under section 6 of this rule.

(g) An industrial user shall report incidents of bypass or intent to bypass in accordance with section 7 of this rule.

(h) All industrial users shall promptly notify the:

- (1) control authority; and
- (2) POTW, if the POTW is not the control authority;

in advance of any substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the industrial user has submitted initial notification under subsection (j).

(i) A facility determined to be a nonsignificant categorical industrial user pursuant to 40 CFR 403.3(v)(2) shall annually submit a certification statement, signed in accordance with the signatory requirements in 40 CFR 403.12(l). This certification must accompany an alternative report required by the control authority. The certification statement must include the following:

"Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical pretreatment standards under 40 CFR \_\_\_\_\_, I certify that, to the best of my knowledge and belief that during the period from \_\_\_\_\_, \_\_\_\_\_ to \_\_\_\_\_, \_\_\_\_\_ (months, days, year):

- (a) The facility described as \_\_\_\_\_ (facility name) met the definition of a nonsignificant categorical industrial user as described in 40 CFR 403.3(v)(2);
- (b) the facility complied with all applicable pretreatment standards and requirements during this reporting period; and
- (c) the facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period. This compliance certification is based upon the following information."

(j) An industrial user shall notify the POTW, the EPA Regional Waste Management Division Director, and the commissioner in writing of any discharge into the POTW of a substance that, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. The notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge, for example, continuous, batch, or other. If the industrial user discharges more than one hundred (100) kilograms of the waste per calendar month to the POTW, the notification must also contain the following information to the extent the information is known and readily available to the industrial user:

- (1) An identification of the hazardous constituents contained in the wastes.
- (2) An estimation of the mass and concentration of the constituents in the waste stream discharged during that calendar month.
- (3) An estimation of the mass of constituents in the waste stream expected to be discharged during the following twelve (12) months.

All notifications must occur not later than one hundred eighty (180) days after the effective date of this rule. Industrial users who commence discharging after the effective date of this rule shall provide the notification not later than one hundred eighty (180) days after the discharge of the listed or characteristic hazardous waste. Any notification under this subsection need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under 40 CFR 403.12(j). The notification requirement in this section does not apply to pollutants already reported under the self-monitoring requirements of 40 CFR

(k) Dischargers are exempt from the requirements of this subsection and subsections (j) and (l) during a calendar month in which they discharge not more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 40 CFR 261.33(e). Discharge of more than fifteen (15) kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 40 CFR 261.33(e), requires a one (1) time notification.

(l) Subsequent months, during which the industrial user discharges more than such quantities of any hazardous waste do not require additional notification.

(m) In the case of any notification made under subsections (j) through (l), the industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

(n) The control authority that chooses to receive electronic documents shall satisfy the requirements of 40 CFR Part 3<sup>\*\*\*</sup>, 3, electronic reporting.

~~\*Notwithstanding [327 IAC 5-16-1](#)(d), the July 1, 2007, version of 40 CFR 403.12(l) is incorporated by reference. Copies of this publication may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.~~

~~\*\*Notwithstanding [327 IAC 5-16-1](#)(d), the July 1, 2007, version of 40 CFR 403.12(j) is incorporated by reference. Copies of this publication may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.~~

~~\*\*\*Notwithstanding [327 IAC 5-16-1](#)(d), the July 1, 2007, version of 40 CFR Part 3 is incorporated by reference. Copies of this publication may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.~~

~~(Water Pollution Control Division; [327 IAC 5-16-5.3](#); filed Apr 3, 2009, 1:55 p.m.: [20090429-IR-327060156FRA](#))~~

SECTION 31. [327 IAC 5-18-4](#) IS AMENDED TO READ AS FOLLOWS:

**[327 IAC 5-18-4](#) National categorical pretreatment standards**

**Authority:** [IC 13-14-8](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-2](#); [IC 13-18-3](#)

**Affected:** [IC 4-22-2](#); [IC 13-11-2](#); [IC 13-13-5-1](#); [IC 13-18-3-15](#); [IC 13-18-4](#)

Sec. 4. (a) General provisions for the categorical pretreatment standards are as follows:

(1) Unless specifically noted otherwise, categorical pretreatment standards are:

(A) enforceable by the commissioner against an industrial user upon the incorporation by reference of the standards in section 10 of this rule in accordance with [IC 4-22-2](#); and

(B) in addition to all applicable pretreatment standards and requirements in the pretreatment rules.

(2) Irrespective of whether a particular categorical pretreatment standard has been incorporated by reference in section 10 of this rule, the commissioner may do the following:

(A) Make certifications regarding the applicability of that standard under subsection (b).

(B) Deny or recommend to EPA the approval of any request for a fundamentally different factors variance from that standard in accordance with section 5 of this rule.

(C) Recommend to the EPA the approval or disapproval of any application for calculation of that standard on a net basis in accordance with section 6 of this rule.

(b) The requirements concerning a request for a subcategory determination are as follows:

(1) Within sixty (60) days after the effective date of a categorical pretreatment standard for a subcategory under which an industrial user may be included, the existing industrial user or POTW may request that the regional administrator or the commissioner provide written certification on whether the industrial user falls within that particular subcategory. If an existing industrial user adds or changes a process or operation that may be included in a subcategory, the existing industrial user must request this certification prior to commencing discharge from the added or changed processes or operations. A new source must request this certification prior to commencing discharge. If a request for certification is submitted by a POTW, the POTW shall notify any affected industrial user of the submission. The industrial user may provide written comments to the commissioner within thirty (30) days of receipt of notification from the POTW about the POTW's request for certification.

(2) A request for certification must contain the following:

(A) A description of the subcategories that may be applicable.

(B) A statement citing evidence and reasons why a particular subcategory applies and why others are not applicable.

Any person signing the application statement submitted under this section shall make the signed certification, "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(3) A determination will be made on each request for certification in accordance with the procedures specified in 40 CFR ~~403.6(a)\*~~. **403.6(a)**.

(c) Compliance with new categorical standards shall be in accordance with the following:

(1) Except where an existing source meets the definition of a new source as defined under [327 IAC 5-17-13](#), an existing source with categorical pretreatment standards, including an existing source that:

(A) becomes an industrial user subsequent to promulgation of an applicable categorical pretreatment standard; and

(B) is thereafter considered an existing industrial user;

shall achieve compliance within three (3) years of the date the new standard is promulgated by EPA, unless a shorter compliance time is specified in the standard.

(2) A new source shall:

(A) install;

(B) have in operating condition; and

(C) start up;

all pollution control equipment required to comply with all pretreatment standards and requirements in this rule before beginning to discharge. Within the shortest feasible time, not to exceed ninety (90) days, a new source must meet all pretreatment standards and requirements in this rule.

(d) Concentration and mass limits are determined by the following:

(1) If the pollutant discharge limit for a categorical pretreatment standard is expressed as a concentration limit, the concentration limit shall apply only to the effluent of the process regulated by the standard or as otherwise specified by the standard. Wherever possible:

(A) an equivalent mass limit will be provided as an alternative to the standard; and

(B) it may be applied by the commissioner or a POTW with an approved POTW pretreatment program.

(2) If a pollutant discharge limit in a categorical pretreatment standard is expressed only as mass of pollutant per unit of production, the control authority may convert the limit to an equivalent limitation expressed either as mass of pollutant discharged per day or effluent concentration for the purpose of calculating the effluent limitation applicable to an individual industrial user.

(3) A control authority calculating an equivalent mass-per-day limitation according to subdivision (2) shall not calculate the limitation by multiplying the limit in the standard by the industrial user's production capacity but rather upon a reasonable measure of the industrial user's actual long-term daily production, such as the average daily production during a representative year. For a new source, actual production shall be estimated using projected production.

(4) A control authority calculating an equivalent concentration limitation according to subdivision (2) shall calculate the limitation by dividing the mass limitation derived according to subdivision (3) by the average daily flow rate of the industrial user's regulated process wastewater. This average daily flow rate must be based upon a reasonable measure of the industrial user's actual long-term average flow rate, such as the average

daily flow rate during a representative year.

(e) When the limits in a categorical pretreatment standard are expressed only in terms of pollutant concentrations, an industrial user may request that the control authority convert the limits to equivalent mass limits. The determination to convert concentration limits to mass limits is within the discretion of the control authority. The control authority may establish equivalent mass limits only if the industrial user meets all of the following conditions:

- (1) To be eligible for equivalent mass limits, the industrial user shall:
  - (A) employ, or demonstrate that it will employ, water conservation methods and technologies that substantially reduce water use during the term of its control mechanism;
  - (B) currently use control and treatment technologies adequate to achieve compliance with the applicable categorical pretreatment standard and not have used dilution as a substitute for treatment;
  - (C) provide sufficient information to establish the facility's actual average daily flow rate for all waste streams, based on data from a continuous effluent flow monitoring device, as well as the facility's long-term average production rate, in which both the actual average daily flow rate and the long-term average production rate must be representative of current operating conditions;
  - (D) not have daily flow rates, production levels, or pollutant levels that vary so significantly that equivalent mass limits are not appropriate to control the discharge; and
  - (E) have consistently complied with all applicable categorical pretreatment standards during the period prior to the industrial user's request for equivalent mass limits.
- (2) An industrial user subject to equivalent mass limits shall do the following:
  - (A) Maintain and effectively operate control and treatment technologies adequate to achieve compliance with the equivalent mass limits.
  - (B) Continue to do the following:
    - (i) Record the facility's:
      - (AA) flow rates through the use of a continuous effluent flow monitoring device; and
      - (BB) production rates and notify the control authority whenever production rates are expected to vary by more than twenty percent (20%) from its baseline production rates determined in subdivision (1)(C); upon notification the control authority must reassess the equivalent mass limit and revise the limit as necessary to reflect changed conditions at the facility.
    - (ii) Employ the same or comparable water conservation methods and technologies as those implemented under subdivision(1)(A) so long as it discharges under an equivalent mass limit.

(f) A control authority that chooses to establish equivalent mass limits under subsection (e):

- (1) shall calculate the equivalent mass limit by multiplying the actual average daily flow rate of the regulated process or processes of the industrial user by the concentration-based daily maximum and monthly average standard for the applicable categorical pretreatment standard and the appropriate unit conversion factor;
- (2) upon notification of a revised production rate, shall reassess the equivalent mass limit and recalculate the limit as necessary to reflect changed conditions at the facility;
- (3) may retain the same equivalent mass limit in subsequent control mechanism terms if the industrial user:
  - (A) meets the actual average daily flow rate was reduced solely as a result of the implementation of water conservation methods and technologies;
  - (B) meets the actual average daily flow rates used in the original calculation of the equivalent mass limit were not based on the use of dilution as a substitute for treatment under this section; and
  - (C) is in compliance with 40 CFR 403.17, regarding the prohibition of bypass; and
- (4) may not express limits in terms of mass for pollutants such as pH, temperature, radiation, or other pollutants that cannot appropriately be expressed as mass.

(g) The control authority may convert the mass limits of the categorical pretreatment standards at 40 CFR Parts 414, 419, and 455 to concentration limits for purposes of calculating limitations applicable to individual industrial users under the following conditions:

- (1) When converting mass to concentration limits, the control authority must use the concentrations listed in the applicable subparts of 40 CFR Parts 414, 419, and 455.
- (2) There must be documentation that dilution is not being substituted for treatment as prohibited by subsection (i).

(h) The application of a limitation for a categorical pretreatment standard shall be in accordance with the following:

- (1) An equivalent limitation calculated in accordance with subsections (d)(3), (d)(4), and (e) is deemed



pretreatment standards for the purposes of Section 307(d) of the Clean Water Act (33 U.S.C. 1317(d)) and the pretreatment rules. The control authority shall:

- (A) document how the equivalent limits were derived; and
- (B) make this information publicly available.

Once incorporated into its control mechanism, the industrial user shall comply with an equivalent limitation in lieu of a promulgated categorical standard from which the equivalent limitation was derived.

(2) Many categorical pretreatment standards specify:

- (A) one (1) limit for calculating a maximum daily discharge limitation; and
- (B) a second limit for calculating a maximum monthly average or four (4) day average limitation.

If such a standard is being applied, the same production or flow figure shall be used in calculating both the average and the maximum equivalent limitation.

(3) Any industrial user operating under a control mechanism incorporating an equivalent mass or concentration limit calculated from a production based standard shall notify the control authority within two (2) business days after the industrial user has a reasonable basis to know that the production level will significantly change within the next calendar month. Any user not notifying the control authority of such anticipated change will be required to meet the mass or concentration limit in its control mechanism that was based on the original estimate of the long-term average production rate.

(i) Except where expressly authorized to do so by an applicable categorical pretreatment standard, no industrial user shall increase the use of process water or, in any other way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with any pretreatment standard or requirement. An unauthorized attempt by an industrial user to dilute a regulated discharge shall be cause for the control authority to impose the mass limits set forth in the categorical standard.

*\*Notwithstanding [327 IAC 5-16-1\(d\)](#), the July 1, 2007, version of 40 CFR 403.6(a) is incorporated by reference. Copies of this publication may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.*

*(Water Pollution Control Division; [327 IAC 5-18-4](#); filed Oct 10, 2000, 3:02 p.m.: 24 IR 298; errata filed Feb 6, 2006, 11:15 a.m.: 29 IR 1936; filed Apr 3, 2009, 1:55 p.m.: [20090429-IR-327060156FRA](#))*

SECTION 32. [327 IAC 5-18-5](#) IS AMENDED TO READ AS FOLLOWS:

**[327 IAC 5-18-5](#) Variance from a categorical pretreatment standard for fundamentally different factors**

**Authority:** [IC 13-14-8](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-2](#); [IC 13-18-3](#)

**Affected:** [IC 13-11-2](#); [IC 13-13-5-1](#); [IC 13-18-3-15](#); [IC 13-18-4](#)

Sec. 5. (a) The requirements for requesting a variance from a categorical pretreatment standard for fundamentally different factors are as follows:

(1) Any interested person may request a fundamentally different factors variance under this section for the following reasons:

- (A) Factors relating to an industrial user are fundamentally different from the factors considered during development of a categorical pretreatment standard applicable to that industrial user.
- (B) The existence of the differing factors justifies a different discharge limit from that specified in the applicable categorical pretreatment standard.

(2) Requests for a variance and supporting evidence must be submitted in writing to the commissioner within one hundred eighty (180) days after the date when a categorical pretreatment standard is published in the Federal Register. If an industrial user has requested a categorical determination under section 4(b) of this rule, the industrial user may defer submission of a variance request under this section until no later than thirty (30) days after a final decision has been made on the categorical determination under 40 CFR 403.6(a)(4).

(3) A written request for a fundamentally different factors variance (FDFV) must include the following:

- (A) The name and address of the person making the request.
- (B) Identification of the interest of the requester, which is affected by the categorical pretreatment standard, for which the variance is requested.
- (C) Identification of the POTW currently receiving the waste from the industrial user for which alternative discharge limits are requested.

- (D) Identification of the categorical pretreatment standards that are applicable to the industrial user.
- (E) A list of each pollutant or pollutant parameter for which an alternative discharge limit is sought.
- (F) The alternative discharge limits proposed by the requester for each pollutant or pollutant parameter identified in clause (E).
- (G) A description of the industrial user's existing water pollution control facilities.
- (H) A schematic flow representation of the industrial user's water system, including water supply, process wastewater systems, and points of discharge.
- (I) A statement of facts clearly establishing why the variance request should be approved, including detailed support data, documentation, and evidence necessary to fully evaluate the merits of the request.

(b) The commissioner shall act upon a FDFV request according to the following:

- (1) A decision on a FDFV request according to subsection (a) shall be made in accordance with the criteria and standards set forth in 40 CFR 403.13<sup>\*</sup>. **403.13.** A variance shall not be granted if a proposed alternative discharge limit would result in a violation of prohibitive discharge standards in section 2 of this rule.
- (2) When the commissioner makes a tentative decision on a FDFV request the commissioner shall provide a public notice of receipt of the request, opportunity to review the submission, and opportunity to comment. The public notice shall meet the following:
  - (A) Be circulated in a manner designed to inform interested and potentially interested persons of the request. Public notice shall include mailing notices to the following:
    - (i) The POTW that will receive the discharge from the industrial user requesting the variance.
    - (ii) Adjoining states whose waters may be affected.
    - (iii) Planning agencies, federal and state fish agencies, and shellfish and wildlife resource agencies designated in Section 208 of the Clean Water Act (33 U.S.C. 1288).
    - (iv) Any other person or group that has requested individual notice.
  - (B) Provide for a comment period of not less than thirty (30) days duration following the date of the public notice during which time interested persons may review the request and submit written comments on the request.
- (3) The commissioner shall make a determination on the request for a FDFV taking into consideration any comments received during the comment period. If the commissioner denies the request, the commissioner's decision shall be final and notice thereof shall be provided to the following:
  - (A) The requester.
  - (B) The industrial user for which the variance was requested, if different from the requester of clause (A).
  - (C) The POTW intended to receive the industrial user's discharge that was the subject of the FDFV request.
  - (D) All persons who submitted comments on the request.
- (4) If the commissioner concludes that fundamentally different factors do exist, the commissioner shall forward the request and a recommendation that a variance be approved to the EPA water management division director for a final determination pursuant to 40 CFR 403.13.
- (5) The commissioner will act only on variances that contain all of the information required. The commissioner shall notify a person who has made an incomplete submission that the request is deficient and, unless the time period is extended, the person will be given a maximum of thirty (30) days to correct the deficiency. If the deficiency is not corrected within the time period allowed by the commissioner, the request for variance shall be denied.

~~\*40 CFR 403.13 is incorporated by reference. Copies of this publication may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.~~

~~(Water Pollution Control Division; [327 IAC 5-18-5](#); filed Oct 10, 2000, 3:02 p.m.: 24 IR 300; errata filed Feb 6, 2006, 11:15 a.m.: 29 IR 1936)~~

SECTION 33. [327 IAC 15-1-1](#) IS AMENDED TO READ AS FOLLOWS:

**[327 IAC 15-1-1](#) Purpose**

**Authority:** [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3](#)

**Affected:** [IC 13-11-2](#); [IC 13-18-3-15](#); [IC 13-18-4](#)

Sec. 1. The purpose of this article is to establish NPDES **administrative** general permit **rules authority** for

certain classes or categories of point source discharges, by prescribing the policies, procedures, and technical criteria to operate and discharge under the requirements of a NPDES general permit rule. Compliance with all requirements of applicable general permit rules may obviate the need for an individual NPDES permit issued under [327 IAC 5](#). A facility can operate under an individual NPDES permit and one (1) or more applicable general permit rules. **except those covered by individual permits, within a geographical area within the state.**

(Water Pollution Control Division; [327 IAC 15-1-1](#); filed Aug 31, 1992, 5:00 p.m.: 16 IR 15; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; readopted filed Nov 21, 2007, 1:16 p.m.: [20071219-IR-327070553BFA](#))

SECTION 34. [327 IAC 15-1-2](#) IS AMENDED TO READ AS FOLLOWS:

### [327 IAC 15-1-2](#) Definitions

**Authority:** [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3](#)

**Affected:** [IC 13-11-2](#); [IC 13-18-3-15](#); [IC 13-18-4](#)

Sec. 2. In addition to The definitions contained in [IC 13-7-1](#), [IC 13-1-3-1.5](#), [327 IAC 1](#), and [327 IAC 5](#), as amended, the following definitions [IC 13-11-2](#), [327 IAC 5-1.5](#), [40 CFR 122.26\(b\)](#), and [40 CFR 403.3](#) apply throughout this article.

- (1) "Existing discharge" means any point source discharge of process or storm water which occurs either continuously or intermittently from a property at the time coverage under an individual NPDES permit is being sought.
- (2) "General permit rule boundary" means an area based upon existing geographic or political boundaries indicating the area within which a facility affected by this article is located.
- (3) "Individual NPDES permit" means a NPDES permit issued to one (1) facility which contains requirements specific to that facility.
- (4) "Notice of intent letter" or "NOI" means a written notification indicating a person's intention to comply with the terms of a specified general permit rule in lieu of applying for an individual NPDES permit and includes information as required under [327 IAC 15-3](#) and the applicable general permit rule.
- (5) "Storm water" means water resulting from rain, melting or melted snow, hail, or sleet.

(Water Pollution Control Division; [327 IAC 15-1-2](#); filed Aug 31, 1992, 5:00 p.m.: 16 IR 15; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; readopted filed Nov 21, 2007, 1:16 p.m.: [20071219-IR-327070553BFA](#))

SECTION 35. [327 IAC 15-1-3](#) IS AMENDED TO READ AS FOLLOWS:

### [327 IAC 15-1-3](#) Department request for data

**Authority:** [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3](#)

**Affected:** [IC 13-11-2](#); [IC 13-18-3-15](#); [IC 13-18-4](#)

Sec. 3. (a) **The commissioner may, in a general permit issued under this article, require** any person as defined at [IC 13-7-1-17](#) **who is** subject to this article shall: **to:**

- (1) establish and maintain such records;
- (2) make such reports;
- (3) install, use, and maintain such monitoring equipment or methods (including, where appropriate, biomonitors methods);
- (4) sample such effluents, internal wastestreams where appropriate, or other material; and
- (5) provide such other data, including, but not limited to, raw materials, catalysts, intermediate products, byproducts, production rates, and related process information;

at such locations, at such times, and in such a manner, as the commissioner may reasonably prescribe.

(b) Sampling of internal wastestreams under subsection (a)(4) and the provisions of data under subsection (a)(5) shall not be required by the commissioner unless:

- (1) such data are reasonably expected to facilitate the identification or quantification of pollutants which may be released to the environment from facilities operated by the person to whom the request is made, and the identification or quantification of such pollutants could not reasonably be made by the commissioner in the absence of the requested information; or

(2) such data are necessary to properly control wastewater treatment processes.

(Water Pollution Control Division; [327 IAC 15-1-3](#); filed Aug 31, 1992, 5:00 p.m.: 16 IR 16; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; readopted filed Nov 21, 2007, 1:16 p.m.: [20071219-IR-327070553BFA](#))

SECTION 36. [327 IAC 15-1-4](#) IS AMENDED TO READ AS FOLLOWS:

#### **[327 IAC 15-1-4](#) Enforcement**

**Authority:** [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3](#)

**Affected:** [IC 13-11-2](#); [IC 13-18-3-15](#); [IC 13-18-4](#); [IC 13-30](#)

Sec. 4. This article shall be enforced through the provisions of [IC 13-7-10-5](#), [IC 13-7-11](#), or [IC 13-7-12](#), or any combination thereof, as appropriate. Penalties for violation of this article shall be governed by [IC 13-7-13](#), as provided in [IC 13-30](#).

(Water Pollution Control Division; [327 IAC 15-1-4](#); filed Aug 31, 1992, 5:00 p.m.: 16 IR 16; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; readopted filed Nov 21, 2007, 1:16 p.m.: [20071219-IR-327070553BFA](#))

SECTION 37. [327 IAC 15-2-1](#) IS AMENDED TO READ AS FOLLOWS:

#### **[327 IAC 15-2-1](#) Purpose and scope**

**Authority:** [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3](#)

**Affected:** [IC 13-11-2-79](#); [IC 13-18-3-15](#); [IC 13-18-4](#)

Sec. 1. This rule defines the basic programmatic requirements of the **NPDES administrative** general permit rule program to be administered by the commissioner consistent with NPDES requirements under the Federal Clean Water Act, as defined at [IC 13-1-4-1](#), [IC 13-7-1-10](#), and [327 IAC 5-13-11-2-79](#).

(Water Pollution Control Division; [327 IAC 15-2-1](#); filed Aug 31, 1992, 5:00 p.m.: 16 IR 16)

SECTION 38. [327 IAC 15-2-2](#) IS AMENDED TO READ AS FOLLOWS:

#### **[327 IAC 15-2-2](#) NPDES general permit requirements**

**Authority:** [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3](#)

**Affected:** [IC 13-11-2](#); [IC 13-18-4](#); [IC 13-18-12-9](#)

Sec. 2. (a) The commissioner may regulate the following discharges under an NPDES **administrative** general permit: ~~rules:~~

(1) ~~Point source discharges of~~ Storm water **discharges** associated with industrial activity, as defined in 40 CFR 122.26(b)(14) as published in the Federal Register on November 16, 1990, **consistent with the EPA 2008 NPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity**, as modified, effective May 27, 2009.

(2) Storm water discharges associated with construction activity consistent with the EPA 2012 NPDES General Permit for Discharges from Construction Activities effective February 16, 2012.

(3) Small municipal separate storm sewer system discharges consistent with EPA's general permit requirements for small municipal separate storm sewer systems (MS4s) in 40 CFR 122, Subpart B.

(4) Discharges of pesticides to waters of the state consistent with EPA's NPDES Pesticide General Permit (PGP) for Point Source Discharges to Waters of the United States from the Application of Pesticides, effective October 31, 2011.

(5) Discharges of treated sewage from on-site residential sewage discharging disposal systems within the Allen County on-site waste management district for which an operating permit has been issued pursuant to [IC 13-18-12-9](#).

~~(2)~~ (6) Such other categories or subcategories of point sources discharges or sludge use or disposal practices or facilities, sites, and entities operating within the state that:

(A) involve the same or substantially similar types of operations;

- (B) discharge the same types of wastes;
- (C) require the same effluent limitations, or operating conditions; and
- (D) require the same or similar monitoring requirements;

**consistent with the federal NPDES permit program administered by the EPA.**

(b) The commissioner may determine that an individual permit must be obtained under section 9 of this rule. ~~Any person to whom this article applies may avoid compliance with this article by obtaining an individual NPDES permit.~~

(c) ~~Each general permit rule shall be applicable to persons meeting the criteria of subsection (a) existing within specific boundaries designated by the commissioner in accordance with the following:~~

- ~~(1) A general permit rule boundary shall correspond with existing geographic or political boundaries such as:
  - (A) designated planning areas under the Federal Act;
  - (B) regional sewer districts or sewer authorities;
  - (C) city, county, or state political boundaries;
  - (D) state highway systems;
  - (E) standard metropolitan statistical areas;
  - (F) urbanized areas as defined by the Bureau of Census according to the criteria in 39 FR 15202 (May 1, 1974); or
  - (G) any other appropriate divisions or combinations of the boundaries in this subdivision which will encompass the sources subject to the general permit rule.~~
- ~~(2) Any designation of any general permit rule boundary is subject to reclassification by the commissioner:
  - (A) upon revision of a general permit rule;
  - (B) if individual NPDES permits have been issued to all persons in a category of point sources; or
  - (C) as necessary to address water quality problems effectively. **issued by the commissioner must meet the criteria for general permits in 40 CFR 122.28.**~~

(d) **As provided in 40 CFR 122.28(b)(2)(v), the commissioner may authorize a person to discharge under a general permit without submitting a notice of intent if the commissioner finds that a notice of intent would be inappropriate. However, this provision does not apply to discharges from:**

- (1) publicly owned treatment works;**
- (2) combined sewer overflows;**
- (3) municipal separate storm sewer systems;**
- (4) primary industrial facilities; and**
- (5) storm water discharges associated with industrial activity.**

*(Water Pollution Control Division; [327 IAC 15-2-2](#); filed Aug 31, 1992, 5:00 p.m.: 16 IR 16; errata filed Sep 10, 1992, 12:00 p.m.: 16 IR 65)*

SECTION 39. [327 IAC 15-2-2.3](#) IS ADDED TO READ AS FOLLOWS:

**[327 IAC 15-2-2.3](#) Public notice and comment**

**Authority:** [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3](#)

**Affected:** [IC 13-11-2](#); [IC 13-18-3-15](#); [IC 13-18-4](#)

**Sec. 2.3. The commissioner shall make draft general permits available for public comment for not less than thirty (30) days, consistent with Section 402 of the Clean Water Act (33 U.S.C. 1342).**

*(Water Pollution Control Division; [327 IAC 15-2-2.3](#))*

SECTION 40. [327 IAC 15-2-3](#) IS AMENDED TO READ AS FOLLOWS:

**[327 IAC 15-2-3](#) NPDES general permit applicability requirements**

**Authority:** [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3](#)

**Affected:** [IC 13-11-2](#); [IC 13-18-3-15](#); [IC 13-18-4](#)

Sec. 3. (a) A general permit rule may regulate all designated categories of point sources **discharges** for which a general permit rule exists except:

- (1) as provided under section 6 or 9 of this rule or the applicable general permit rule; and
- (2) point source discharges meeting the applicability requirements of a general permit rule, who are already subject to individual NPDES permits prior to the effective date of a general permit rule.

(b) Persons excluded from general permit rule regulation solely because they have an existing individual NPDES permit may request to be regulated under a general permit rule and may request that the individual NPDES permit be revoked or modified to remove the point source **discharge** from the existing permit. Upon revocation or expiration of the individual NPDES permit, the general permit rule shall apply to such point source discharges regulated under this article. This allowance to change from an individual NPDES permit to a general NPDES permit does not apply to municipal separate storm sewer system permittees who were issued an individual NPDES permit before January 1, 2000.

(c) A person that holds an individual NPDES permit may have discharges regulated under an applicable general permit rule if such discharges are not addressed in the individual permit.

*(Water Pollution Control Division; [327 IAC 15-2-3](#); filed Aug 31, 1992, 5:00 p.m.: 16 IR 17; filed Oct 27, 2003, 10:15 a.m.: 27 IR 830)*

SECTION 41. [327 IAC 15-2-5](#) IS AMENDED TO READ AS FOLLOWS:

#### [327 IAC 15-2-5](#) Notice of intent

**Authority:** [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3](#)

**Affected:** [IC 13-11-2](#); [IC 13-18-3-15](#); [IC 13-18-4](#)

Sec. 5. (a) **Except as provided in 40 CFR 122.28(b)(2)(v)**, any person ~~subject to the requirements of this article seeking to obtain an NPDES general permit shall submit a NOI letter that complies with this section, [327 IAC 15-3](#), and notice of intent in accordance with the additional requirements in any of the applicable general permit rule.~~

(b) A ~~NOI letter~~ **notice of intent** shall be submitted to the commissioner by the time specified under [327 IAC 15-3](#) or the time indicated in the applicable general permit rule.

~~(c) The person responsible for the operation of the facility from which a point source discharge of pollutants and/or storm water occurs must submit a NOI letter.~~

*(Water Pollution Control Division; [327 IAC 15-2-5](#); filed Aug 31, 1992, 5:00 p.m.: 16 IR 17)*

SECTION 42. [327 IAC 15-2-6](#) IS AMENDED TO READ AS FOLLOWS:

#### [327 IAC 15-2-6](#) Exclusions

**Authority:** [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3](#)

**Affected:** [IC 13-11-2](#); [IC 13-18-3-15](#); [IC 13-18-4](#)

Sec. 6. (a) Except as provided in subsection (b), an individual NPDES permit issued under [327 IAC 5](#) is required for a discharge:

(1) to a receiving stream identified as an:

(A) outstanding state resource water ~~an exceptional use water, or an~~ **as described in:**

(i) [327 IAC 2-1-11\(b\)](#);

(ii) [327 IAC 2-1.3-3\(d\)](#); or

(iii) [327 IAC 2-1.5-19\(b\)](#); or

(B) outstanding national resource water as defined under [327 IAC 2-1-11\(b\)](#), **designated in [327 IAC 2-1.3-2](#), or [327 IAC 2-1.3-3\(d\)](#)**; or

(2) that would significantly lower the water quality as defined under [327 IAC 2-1.3-2](#)(50) of such a water downstream of the ~~point source~~ discharge.

(b) A discharge to an outstanding national resource water ~~or~~ outstanding state resource water ~~or~~ exceptional use **that consists only of storm** water may be permitted under ~~[327 IAC 15-5](#), [327 IAC 15-6](#), or [327 IAC 15-13](#)~~ **this article** if the commissioner determines the discharge will not significantly lower the water quality as defined under [327 IAC 2-1.3-2](#)(50) of such a water downstream of that ~~point source~~ discharge.

*(Water Pollution Control Division; [327 IAC 15-2-6](#); filed Aug 31, 1992, 5:00 p.m.: 16 IR 17; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1476; filed Oct 27, 2003, 10:15 a.m.: 27 IR 830; filed May 29, 2012, 3:19 p.m.: [20120627-IR-327080764FRA](#))*

SECTION 43. [327 IAC 15-2-9](#) IS AMENDED TO READ AS FOLLOWS:

**[327 IAC 15-2-9](#) Special requirements for NPDES general permits**

**Authority:** [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3](#)

**Affected:** [IC 4-21.5](#); [IC 13-11-2](#); [IC 13-18-3-15](#); [IC 13-18-4](#)

Sec. 9. (a) If a general permit rule is amended, all persons regulated by the affected general permit rule must be notified by first class mail of the amendment by the commissioner. Those persons notified by the commissioner under this subsection shall:

- (1) apply for an individual NPDES permit under [327 IAC 5-3](#); or
- (2) submit a complete NOI letter containing the information required in [327 IAC 15-3-2](#) and the amended rule; within ninety (90) days after receipt of the notice from the commissioner.

~~(b)~~ **(a)** The commissioner may require any person either with an existing discharge subject to the requirements of this article ~~or who is proposing a discharge that would otherwise be subject to the requirements of this article~~ to apply for and obtain an individual NPDES permit if ~~one (1) of the six (6) cases listed in this subsection occurs. Interested persons may petition the commissioner to take action under this subsection. Cases where individual NPDES permits may be required include~~ **any of the following occurs:**

- (1) The applicable requirements contained in this article are not adequate to ensure compliance with:
    - (A) water quality standards under [327 IAC 2-1](#) or [327 IAC 2-1.5](#); or
    - (B) the provisions that implement water quality standards contained in [327 IAC 5](#).
  - (2) The person is not in compliance with the terms and conditions of ~~the~~ **an NPDES** general permit. ~~rule.~~
  - (3) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants from the ~~point source~~. **discharge.**
  - (4) Effluent limitations guidelines that are more stringent than the requirements in the general permit ~~rule~~ are subsequently promulgated for ~~point sources~~ **discharges** regulated by the general permit. ~~rule.~~
  - (5) A water quality management plan containing more stringent requirements applicable to such ~~point source~~ **discharges** is approved.
  - (6) Circumstances have changed since the activity regulated under this article began so that the discharger is no longer appropriately controlled under the general permit ~~rule~~ or either a temporary or permanent reduction or elimination of the authorized discharge is necessary.
  - (7) The water is identified as impaired pursuant to Section 303(d) of the Clean Water Act (33 U.S.C. 1313(d)) and listed at <http://www.in.gov/idem/nps/2647.htm>.**
  - (8) The commissioner has revoked the person's coverage under the general permit.**
- Interested persons may petition the commissioner to take action under this subsection.**

~~(c)~~ **(b)** If, under subsection ~~(b)~~, **(a)**, the commissioner requires an individual NPDES permit, pursuant to [327 IAC 5-3](#), the commissioner shall notify the person in writing that an individual NPDES permit application is required. This notice shall be issued pursuant to [IC 4-21.5](#) and shall also include the following:

- (1) A brief statement of the reasons for this decision.
- (2) An application form.
- (3) A statement setting a time for the person to file the application.
- (4) A statement that on the effective date of the individual NPDES permit, the general permit ~~rule~~, as it applies to the individual person, shall no longer apply.

The commissioner may grant additional time upon request of the applicant for completion of the application.

(d) **(c)** A person having financial responsibility or operational control for a facility, project site, or municipal separate storm sewer system area and the associated storm water discharges, that meets the applicability requirements of the general permit rule and is not covered by an existing individual NPDES permit, must submit an application under 40 CFR 122.26 as published in the Federal Register on November 16, 1990, and [327 IAC 5-3](#) if the operator seeks to cover the discharge under an individual permit.

(e) On the effective date of an individual NPDES permit that is issued to a person regulated under this article, this article no longer applies to that person.

(f) Persons with a discharge meeting all the applicability criteria of more than one (1) general permit rule shall comply with all applicable general permit rules.

(Water Pollution Control Division; [327 IAC 15-2-9](#); filed Aug 31, 1992, 5:00 p.m.: 16 IR 18; errata filed Sep 10, 1992, 12:00 p.m.: 16 IR 65; errata, 16 IR 751; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1476; filed Oct 27, 2003, 10:15 a.m.: 27 IR 831)

SECTION 44. [327 IAC 15-2-10](#) IS AMENDED TO READ AS FOLLOWS:

### [327 IAC 15-2-10](#) Prohibitions

**Authority:** [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3](#)

**Affected:** [IC 13-11-2](#); [IC 13-18-3-15](#); [IC 13-18-4](#)

Sec. 10. No general permit rule shall be promulgated and issued where the terms and conditions of the permit rule do not comply with the applicable guidelines and requirements of:

- (1) the Federal **Clean Water Act**; or
- (2) effective regulations promulgated under the Federal **Clean Water Act**;
- (3) [327 IAC 2](#);
- (4) [327 IAC 5](#); or
- (5) this article.

(Water Pollution Control Division; [327 IAC 15-2-10](#); filed Aug 31, 1992, 5:00 p.m.: 16 IR 18)

SECTION 45. [327 IAC 15-3.5](#) IS ADDED TO READ AS FOLLOWS:

### **Rule 3.5. On-Site Residential Sewage Discharging Disposal Systems**

#### [327 IAC 15-3.5-1](#) On-site residential sewage discharging disposal systems

**Authority:** [IC 13-14-8](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3-1](#); [IC 13-18-3-2](#)

**Affected:** [IC 13-18-12-9](#)

Sec. 1. This rule applies to on-site residential sewage discharging disposal systems located within the Allen County on-site waste management district that have been installed to repair or replace a sewage disposal system that fails to meet public health and environmental standards and for which an operating permit has been issued under [IC 13-18-12-9](#).

(Water Pollution Control Division; [327 IAC 15-3.5-1](#))

#### [327 IAC 15-3.5-2](#) Definitions

**Authority:** [IC 13-14-8](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3-1](#); [IC 13-18-3-2](#)

**Affected:** [IC 13-11-2](#); [IC 13-18-3-15](#); [IC 13-18-4](#); [IC 36-11](#)



Sec. 2. In addition to the definitions in [IC 13-11-2](#), [327 IAC 5](#), and [327 IAC 15-1.5](#), the following definitions apply throughout this rule:

- (1) "CBOD5" means five (5) day carbonaceous biochemical oxygen demand.
- (2) "District" means the Allen County on-site waste management district established under [IC 36-11](#).
- (3) "E. coli" means Escherichia coli bacteria.
- (4) "On-site residential sewage discharging disposal system" means a sewage disposal system that:
  - (A) is located on a site with and serves a one (1) or two (2) family residence; and
  - (B) discharges effluent off-site.
- (5) "Permittee" means, for purposes of this rule, the owner of an on-site residential sewage discharging disposal system and the district in subdivision (2).
- (6) "Sewage disposal system" means septic tanks, wastewater holding tanks, seepage pits, cesspools, privies, composting toilets, interceptors or grease traps, portable sanitary units, and other equipment, facilities, or devices used to:
  - (A) store;
  - (B) treat;
  - (C) make inoffensive; or
  - (D) dispose of;human excrement or liquid carrying wastes of a domestic nature.
- (7) "TSS" means total suspended solids.

(Water Pollution Control Division; [327 IAC 15-3.5-2](#))

### [327 IAC 15-3.5-3](#) Notice of intent

Authority: [IC 13-14-8](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3-1](#); [IC 13-18-3-2](#)

Affected: [IC 13-18-12-9](#)

Sec. 3. (a) Except as provided in subsection (f), the owner of property upon which an on-site residential sewage discharging disposal system subject to this rule is located shall submit to the district a request for inclusion into the district and coverage under the on-site residential sewage discharging disposal system general permit. The request shall include the following:

- (1) The name and address of the owner and location of the property for which the request is submitted, if different than the mailing address.
- (2) A copy of the operating permit issued by the local health department with jurisdiction over the system as provided in section 7 of this rule, under [IC 13-18-12-9\(d\)](#).
- (3) A statement that the person named under subdivision (1) wishes to be covered by the general permit.
- (4) The signature of the person named under subdivision (1).

(b) If an on-site residential sewage discharging disposal system serves more than one (1) home, each homeowner served by the system shall submit the information required in subsection (a).

(c) If there is a change of ownership of the property upon which an on-site residential sewage discharging disposal system is located, the following must be accomplished in accordance with any applicable district requirements:

- (1) The seller of the property shall submit a:
  - (A) notice to the district reporting the change in property ownership; and
  - (B) written statement to the buyer of the property explaining the obligations, including the requirements of the general permit, of owning an on-site residential sewage discharging disposal system.
- (2) The buyer of the property shall submit to the district a statement requesting to remain subject to coverage under the general permit.

(d) The district shall submit a notice of intent in accordance with [327 IAC 15-2-5](#) and [327 IAC 15-3](#).

(e) In addition to the information required in [327 IAC 15-2-3](#) and [327 IAC 15-3](#), the notice of intent shall include the following:

- (1) The names and mailing addresses of all persons requesting inclusion in the district.

(2) A map indicating the following:

- (A) The location of each on-site residential sewage discharging disposal system within the district.
- (B) The location of any pond or lake within two (2) miles downstream of any on-site residential sewage discharging disposal system within the district.

(3) The names of the receiving streams into which the on-site residential sewage discharging disposal systems will discharge.

(f) For an on-site residential sewage discharging disposal system installed at a residence that was constructed after July 1, 2002, because of failure of the original on-site nondischarging sewage disposal system, the following additional requirements apply:

(1) The owner of the system shall submit all information required under this section to both the district and IDEM, including a copy of the operating permit issued by the local health department, prior to discharge from the system.

(2) The owner shall also submit to IDEM a system failure report, on a form provided by the department, that summarizes:

- (A) the known reasons for failure of the system; and
- (B) other technologies for repair or options for managing the on-site waste that were considered by the local health department prior to issuing an operating permit.

(3) The owner may not discharge from the system until receiving approval from the department. If the department does not approve the operation within fifteen (15) days of receipt of the notice of intent, the system is approved for purposes of this rule.

(g) The notice of intent must be signed by the head of the governing body of the district.

*(Water Pollution Control Division; [327 IAC 15-3.5-3](#))*

#### **[327 IAC 15-3.5-4](#) Deadline for submission of a notice of intent and update requirements**

Authority: [IC 13-14-8](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3-1](#); [IC 13-18-3-2](#)

Affected: [IC 13-18-3-15](#); [IC 13-18-4](#)

Sec. 4. (a) Any person requesting inclusion in the district and coverage under this rule shall submit the request for inclusion to the district within thirty (30) days of receipt of the operating permit issued by the local health department. However, a person described in section 3(f) of this rule shall submit the notice of intent required under section 3 of this rule to the district and IDEM at least fifteen (15) days prior to discharging.

(b) The district shall submit the notice of intent to the department within ninety (90) days of the effective date of this rule.

(c) The district shall provide written updates to the department every three (3) months after submission of the initial notice of intent. The updates shall include the following:

(1) An updated list of names and mailing addresses of district members, including the following:

(A) Additional persons included in the district and requesting coverage under the general permit since the last update.

(B) Changes in ownership of any systems, including the names of the new and former owners.

(2) An updated map containing the most recent information required under section 3(e)(2) of this rule.

(d) The update required by subsection (c) must be signed by the head of the governing body of the district.

*(Water Pollution Control Division; [327 IAC 15-3.5-4](#))*

#### **[327 IAC 15-3.5-5](#) Standard conditions**

Authority: [IC 13-14-8](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3-1](#); [IC 13-18-3-2](#)

Affected: [IC 13-18-3-15](#); [IC 13-18-4](#)

**Sec. 5. (a)** The standard conditions for a NPDES permit under [327 IAC 5](#) and the standard conditions for an NPDES general permit under this article apply to an on-site residential sewage discharging disposal system general permit.

**(b)** The district shall maintain the following records within the district office and make them available for inspection:

- (1)** Monitoring reports required under the an on-site residential sewage discharging disposal system general permit for each system within the district.
- (2)** A copy of the operating permit issued by the local health department for each system within the district.
- (3)** Signed requests for inclusion in the district and coverage under the general permit for each system within the district.

*(Water Pollution Control Division; [327 IAC 15-3.5-5](#))*

### **[327 IAC 15-3.5-6](#) Inspection**

**Authority:** [IC 13-14-8](#); [IC 13-15-1-2](#); [IC 13-15-2-1](#); [IC 13-18-3-1](#); [IC 13-18-3-2](#)

**Affected:** [IC 13-14-10](#); [IC 13-15-7](#); [IC 13-18-3](#); [IC 13-18-4](#); [IC 13-30](#); [IC 36-11-2-1](#); [IC 36-11-5](#)

**Sec. 6.** In addition to the requirements of [327 IAC 5-2-8\(8\)](#), the district shall allow the commissioner or an authorized representative, upon presentation of credentials, to enter the district office and have access to and copy any records that must be kept under the conditions of the general permit.

*(Water Pollution Control Division; [327 IAC 15-3.5-6](#))*

SECTION 46. THE FOLLOWING ARE REPEALED: [327 IAC 5-1.5-62](#); [327 IAC 5-2-4](#); [327 IAC 5-18-10](#); [327 IAC 15-2-4](#); [327 IAC 15-2-7](#); [327 IAC 15-2-8](#); [327 IAC 15-3](#); [327 IAC 15-4](#); [327 IAC 15-5-1](#); [327 IAC 15-5-2](#); [327 IAC 15-5-3](#); [327 IAC 15-5-4](#); [327 IAC 15-5-5](#); [327 IAC 15-5-6](#); [327 IAC 15-5-7](#); [327 IAC 15-5-8](#); [327 IAC 15-5-9](#); [327 IAC 15-5-10](#); [327 IAC 15-5-12](#); [327 IAC 15-6](#); [327 IAC 15-7](#); [327 IAC 15-8](#); [327 IAC 15-9](#); [327 IAC 15-10](#); [327 IAC 15-11](#); [327 IAC 15-12](#); [327 IAC 15-13](#); [327 IAC 15-14](#).

### **[Notice of Public Hearing](#)**

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