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**TITLE 327 WATER POLLUTION CONTROL DIVISION****Proposed Rule**  
LSA Document #21-164**DIGEST**

Amends [327 IAC 2-1-3.1](#), adds [327 IAC 2-1.1](#), and repeals [327 IAC 2-1-11.5](#) concerning the establishment of a combined sewer overflow (CSO) wet weather limited use subcategory. Effective 30 days after filing with the Publisher.

**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed a proposed rule under [IC 13-14-9-14\(c\)](#) to amend [327 IAC 2-1-3.1](#), add [327 IAC 2-1.1](#), and repeal [327 IAC 2-1-11.5](#) concerning the establishment of a combined sewer overflow (CSO) wet weather limited use subcategory for the area defined by the use attainability analysis (UAA) for the city of Fort Wayne. IDEM is soliciting public comment on the proposed rule and will schedule a public hearing before the Environmental Rules Board (board) for consideration of adoption of these rules. IDEM seeks comment on the affected citations listed and any other provisions of Title 327 that may be affected by this rulemaking.

**CITATIONS AFFECTED:** [327 IAC 2-1-3.1](#); [327 IAC 2-1.1](#); [327 IAC 2-1-11.5](#).

**AUTHORITY:** [IC 13-14-8-7](#); [IC 13-14-9-14](#); [IC 13-18-3-2](#); [IC 13-18-3-2.5](#).

**SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING****Basic Purpose and Background**

[IC 13-18-3-2.5](#) originated with Senate Enrolled Act (SEA) 620 (also known as Public Law 54-2005) that was passed in the 2005 legislative session to establish the CSO wet weather limited use subcategory of the recreational use designation for waters receiving combined sewer overflows. Accordingly, the water pollution control board (WPCB) adopted rules in 2007 to implement the establishment of the subcategory. The subcategory is available to CSO communities that perform a UAA to change the designated use of waters receiving CSOs and have implemented an approved long term control plan (LTCP). The LTCP must be approved by IDEM and incorporated into the community's National Pollutant Discharge Elimination System (NPDES) permit or an order of the commissioner under [IC 13-14-2-6](#). The LTCP must also specify the water quality-based requirements that apply to CSOs during and immediately following wet weather events.

[IC 13-14-9-14](#), added by Public Law 100-2006, Section 10, allows the Environmental Rules Board to adopt a rule to establish new water quality standards for a community served by a combined sewer that has an approved LTCP and an approved UAA that supports the use of a CSO wet weather limited use subcategory established under [IC 13-18-3-2.5](#). The subcategory will apply to the identified stream segments impacted by the community's CSO outfalls when the approved LTCP is implemented, in accordance with [IC 13-18-3-2.5](#). [IC 13-14-9-14\(c\)](#) requires IDEM to publish in the Indiana Register a proposed rule to establish a CSO wet weather limited use subcategory for the area of a CSO community defined by the community's UAA after IDEM approves the community's LTCP and UAA.

The city of Fort Wayne has complied with the requirements under [IC 13-18-3-2.5](#) for establishing a CSO wet weather limited use subcategory of the recreational use designation for CSO-impacted streams through rulemaking done according to [IC 13-14-9-14](#). The city's LTCP was approved in December 2007. Fort Wayne, Indiana, and the United States entered into a Consent Decree in 2008 with modifications in 2015 and 2019. The city's UAA was approved by IDEM on July 9, 2020. The CSO-impacted streams that are designated for the CSO wet weather limited use subcategory are identified in the approved LTCP and further detailed in the approved UAA. The performance criteria that are expected to be achieved following complete LTCP implementation in 2025 are detailed at Section 4.6 of the LTCP as updated by Appendices 3 and 4 of the modified Consent Decree. In part, those performance criteria require that the implemented LTCP will reduce the number of CSO events from 71 events per typical year to one annual, untreated CSO event per typical year to the St. Joseph River and a maximum of four annual, untreated CSO events per typical year for the waters other than the St. Joseph River. This LTCP level of control is as required by the consent decree and subsequent modifications.

**PUBLIC COMMENTS UNDER [IC 13-14-9-14\(d\)\(2\)](#)**

[IC 13-14-9-14\(d\)\(2\)](#) states that notice of rule language to amend a designated use to allow for a CSO wet weather limited use subcategory in accordance with [IC 13-18-3-2.5](#) shall include a written comment period of at least 30 days.

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## REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the proposed rule language, including suggestions for specific revisions to language to be contained in the proposed rule. Comments may be submitted in one of the following ways:

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

LSA Document #21-164 (Fort Wayne CSO Wet Weather Limited Use Designation)  
MaryAnn Stevens  
Rules Development Branch  
Office of Legal Counsel  
Indiana Department of Environmental Management  
Indiana Government Center North  
100 North Senate Avenue  
Indianapolis, IN 46204-2251

(2) By electronic mail to [mstevens@idem.in.gov](mailto:mstevens@idem.in.gov). To confirm timely delivery of submitted comments, please request a document receipt when sending 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.**

Contact Karla Kindrick at [kkindrick@idem.in.gov](mailto:kkindrick@idem.in.gov) or 317-232-8922 if a different method of submitting comments by the comment period deadline is desired.

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.

### COMMENT PERIOD DEADLINE

All comments must be postmarked or time stamped not later than June 11, 2021.

Additional information regarding this action may be obtained from MaryAnn Stevens, Rules Development Branch, Office of Legal Counsel, (317) 232-8635 or (800) 451-6027 (in Indiana).

[327 IAC 2-1-3.1](#); [327 IAC 2-1-11.5](#); [327 IAC 2-1.1](#)

SECTION 1. [327 IAC 2-1-3.1](#) IS AMENDED TO READ AS FOLLOWS:

### [327 IAC 2-1-3.1](#) CSO wet weather limited use designation

**Authority:** [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-18-3-2.5](#)

**Affected:** [IC 13-14-2-6](#); [IC 13-14-9-14](#); [IC 13-18-4](#)

Sec. 3.1. (a) The combined sewer overflow (CSO) wet weather limited use subcategory established under section 3 of this rule only applies to waters receiving wet weather discharges from combined sewer overflows that are listed in ~~section 11.5 of this rule.~~ [327 IAC 2-1.1](#).

(b) To receive consideration for the CSO wet weather limited use subcategory designation, a CSO community must do the following:

- (1) Perform a use attainability analysis (UAA) to change the recreational designated use of the waterbody or waterbodies receiving the wet weather discharges from combined sewer overflows.
- (2) Submit the UAA to the department for approval.
- (3) Submit a long term control plan (LTCP) consistent with the application of the CSO wet weather limited use subcategory to the department for approval.

(c) The LTCP submitted to the department must:

- (1) specify the water quality-based requirements that will apply to combined sewer overflows under subsection (h) if the waterbody or waterbodies receiving the wet weather overflows are redesignated to the CSO wet weather limited use subcategory; and
- (2) meet the requirements of Section 402(q) of the Clean Water Act\*.

(d) The department shall:

- (1) review the UAA concurrently with the LTCP if they are submitted concurrently; and
- (2) use the LTCP to satisfy the requirements of the UAA, to the extent possible.

(e) Upon approval of a UAA, the department shall begin a rulemaking under [IC 13-14-9-14](#) to amend the

designated use to a CSO wet weather limited use designation. The rulemaking may commence before full implementation of the approved LTCP.

(f) Upon completion of the rulemaking required under subsection (e), the department shall submit the amended recreational use designation and the supporting UAA to the U.S. EPA for approval.

(g) Upon U.S. EPA's approval of the use designation change for the waterbody or waterbodies receiving wet weather overflows from a CSO community, the department shall modify the NPDES permit holder's permit to incorporate the CSO wet weather limited use designation and the approved LTCP into the permit.

(h) The water quality-based requirements for the CSO wet weather limited use designation must:

- (1) be determined by the approved LTCP for the combined sewer system;
- (2) be consistent with the Clean Water Act; and
- (3) remain in effect during the time and to the physical extent that the recreational use designation that applied to the waters immediately before the application to the waters of the CSO wet weather limited use subcategory is not attained but for not more than four (4) days after the date the overflow discharge ends.

\*This document is incorporated by reference. Copies may be obtained from the Government Publishing Office, [www.gpo.gov](http://www.gpo.gov), or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, Thirteenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.

(Water Pollution Control Division; [327 IAC 2-1-3.1](#); filed Sep 6, 2007, 12:25 p.m.: [20071003-IR-327050218FRA](#); filed Apr 27, 2020, 8:57 a.m.: [20200506-IR-327190510FRA](#), eff Apr 27, 2020, see Executive Order 20-15, posted at [20200422-IR-GOV200234EOA](#))

SECTION 2. [327 IAC 2-1.1](#) IS ADDED TO READ AS FOLLOWS:

### **Rule 1.1. Waters Designated as Limited Use under the CSO Wet Weather Limited Use Subcategory Designation**

#### **[327 IAC 2-1.1-1](#) Water quality-based requirements for the CSO wet weather limited use subcategory designation**

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

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

Sec. 1. The water quality-based requirements that apply to the combined sewer overflow (CSO) wet weather limited use subcategory designations in this rule are set forth in [327 IAC 2-1-3.1\(h\)](#).

(Water Pollution Control Division; [327 IAC 2-1.1-1](#))

#### **[327 IAC 2-1.1-2](#) CWA Authority, Inc., CSO wet weather limited use; designated waters**

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

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

Sec. 2. (a) The following waters of the state are designated for limited use in CWA Authority, Inc.'s approved long term control plan (LTCP) for the city of Indianapolis pursuant to the CSO wet weather limited use subcategory established under [327 IAC 2-1-3\(c\)](#):

- (1) White River from 56th Street on the Indianapolis north side to Freedom (River Mile 146).
- (2) Fall Creek from Keystone Avenue to the White River.
- (3) Little Eagle Creek from Michigan Street to the confluence with Big Eagle Creek.
- (4) Big Eagle Creek from the confluence with Little Eagle Creek to the White River.
- (5) Pagues Run from 21st Street to the White River.
- (6) Pleasant Run from Kitley Avenue to the White River.
- (7) Bean Creek from Interstate 65 to Pleasant Run.

- (b) The water quality-based requirements for the CSO wet weather limited use subcategory:
- (1) are determined by the November 2017 approved LTCP for the combined sewer system; and
  - (2) require that CSO discharges that occur be consistent with the performance criteria contained in the approved LTCP that include:
    - (A) ninety-seven percent (97%) capture of typical year CSO volume and an annual average of two (2) typical year CSOs within the Fall Creek watershed; and
    - (B) ninety-five percent (95%) capture of typical year CSO volume and an annual average of four (4) typical year CSOs in watersheds other than the Fall Creek watershed.

(Water Pollution Control Division; [327 IAC 2-1.1-2](#))

**[327 IAC 2-1.1-3](#) City of Fort Wayne, CSO wet weather limited use; designated waters**

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

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

Sec. 3. (a) The following waters of the state are designated for limited use in the city of Fort Wayne's approved LTCP and approved use attainability analysis (UAA) pursuant to the CSO wet weather limited use subcategory established under [327 IAC 2-1-3\(c\)](#) and [327 IAC 2-1.5-5\(c\)](#):

- (1) St. Marys River (from its junction with Natural Drain #4 near Tillman Road to the confluence with the St. Joseph River).
- (2) Natural Drain #4 (from CSO Outfall 054, near the intersection of Hollis Lane and Mercer Avenue, to its junction with the St. Marys River).
- (3) St. Joseph River (from CSO Outfall 052, located immediately south of Coliseum Boulevard near N. Anthony Boulevard, to the confluence with the St. Marys River).
- (4) Spy Run Creek (from CSO Outfall 036, located north of W. State Street along Eastbrook/Westbrook Drive, to its junction with the St. Marys River south of 4th Street).
- (5) Baldwin Ditch (from CSO Outfalls 061 and 062, near the intersection of E. State Street and Barnhart Avenue, to its junction with the Maumee River near CSO Ponds 1 and 2).
- (6) Harvester Drain (from CSO Outfall 064, near New Haven Avenue and South Coliseum Boulevard, to its junction with the Maumee River).
- (7) Maumee River (from its origin, at the confluence of the St. Marys River and St. Joseph River in the city, to the boundary between the states of Indiana and Ohio).

- (b) The water quality-based requirements for the CSO wet weather limited use subcategory:
- (1) are determined by the December 2007 approved LTCP for the combined sewer system as updated by the modified Consent Decree, Case No. 2:07\_cv\_00445, entered by the United States District Court for the Northern District of Indiana; and
  - (2) require that CSO events that occur be consistent with the performance criteria contained in the approved LTCP, including its maximums of:
    - (A) one (1) annual, untreated CSO event per typical year to the St. Joseph River; and
    - (B) four (4) annual, untreated CSO events per typical year to waters other than the St. Joseph River.

(Water Pollution Control Division; [327 IAC 2-1.1-3](#))

SECTION 3. [327 IAC 2-1-11.5](#) IS REPEALED.

[Notice of Public Hearing](#)

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An [html](#) version of this document.