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**TITLE 327 WATER POLLUTION CONTROL DIVISION****FIRST NOTICE OF COMMENT PERIOD**

LSA Document #22-71

**NPDES APPLICATION AND PUBLIC NOTICE UPDATES****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at [327 IAC 5](#) concerning the National Pollutant Discharge Elimination System (NPDES) permit application and public notice requirements. 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 5-1.5](#); [327 IAC 5-2-3](#); [327 IAC 5-3-2](#); [327 IAC 5-3-9](#); [327 IAC 5-3-12](#).

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

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

IDEM has delegation from the United States Environmental Protection Agency (U.S. EPA) to implement the NPDES program in Indiana under the Clean Water Act. Having delegation means the state's NPDES regulations must be as stringent as the federal rules. This rulemaking will update Indiana's NPDES permit application regulations to conform to U.S. EPA's current NPDES permit application regulations under 40 CFR 122.21 and 40 CFR 122.26(c), which concerns individual permit application requirements for stormwater discharges. U.S. EPA's most recent revisions to the federal NPDES permit application regulations posted in the Federal Register at 84 FR 3324 on February 12, 2019, and became effective on June 12, 2019. In addition to the revisions to 40 CFR 122.21, U.S. EPA's final rule also included revisions to 40 CFR 124.10 to allow permitting authorities to provide public notice of permitting actions for NPDES major permits and NPDES general permits on the permitting authority's publicly available website in lieu of newspaper notices. IDEM intends to adopt U.S. EPA's revisions to 40 CFR 124.10 in this rulemaking.

With this rulemaking, IDEM intends to largely mirror the current federal NPDES permit application regulations under 40 CFR 122.21 and 40 CFR 122.26(c). IDEM is considering certain changes from the federal rules under 40 CFR 122.21 to better reflect Indiana's permitting needs. Some of the categories where IDEM is considering differing from U.S. EPA's regulations include changes to application submission deadlines, appropriate parameters for screening and monitoring, the number of samples required, locational information, and environmental project information. Alternative application requirements for concentrated animal feeding operations and aquatic animal production facilities may also be considered. Minimal formatting changes may also be made to conform to the Administrative Rules Drafting Manual.

IDEM seeks comment on the affected citations listed, including suggestions for specific language, any other provisions of Title 327 that may be affected by this rulemaking, and alternative ways to achieve the purpose of the rulemaking.

**Alternatives to Be Considered Within the Rulemaking**

Alternative 1. Add or incorporate by reference the current version of 40 CFR 122.21, 40 CFR 122.26(c), and 40 CFR 124.10(c)(2)(iv).

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? Yes.
- Is this alternative imposed by federal law or is there a comparable federal law? Yes.
- If it is a federal requirement, is it different from federal law? No.
- If it is different, describe the differences. Not applicable.

Alternative 2. Add or incorporate by reference the current version of 40 CFR 124.10(c)(2)(iv) and 40 CFR 122.26(c) and 40 CFR 122.21 with some adjustments of the requirements as needed for Indiana's permitting process.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? It is for the most part with some differences that will allow Indiana's permit applications to provide the information most suited to complete application submissions.
- Is this alternative imposed by federal law or is there a comparable federal law? Yes.
- If it is a federal requirement, is it different from federal law? Any differences will be to tailor the requested application information to Indiana facilities and Indiana's NPDES permitting process to provide the information most suited to complete application submissions that will facilitate timely permit issuance.
- If it is different, describe the differences. Any differences from federal rule language will be specific to Indiana permitting needs and may involve removing federal rule language that is inapplicable to Indiana, amending federal rule language, or adding new Indiana-specific requirements. Some of the categories where

IDEM's rule may differ from U.S. EPA's regulations include changes to application submission deadlines, appropriate parameters for screening and monitoring, the number of samples required, locational information, and environmental project information.

Alternative 3. Do not amend existing rules.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

#### **Applicable Federal Law**

40 CFR 122.21 includes U.S. EPA's NPDES permit application requirements. U.S. EPA most recently updated 40 CFR 122.21 in the final rule that was noticed in the Federal Register at 84 FR 3324, on February 12, 2019, with the requirements becoming effective on June 12, 2019. The federal final rule also updated public notice requirements applicable to the NPDES permit program under 40 CFR 124.10. 40 CFR 122.26(c) contains requirements concerning individual permit application requirements for stormwater discharges. This rulemaking will update [327 IAC 5](#) to be consistent with 40 CFR 122.21, 40 CFR 122.26(c), and 40 CFR 124.10.

#### **Potential Fiscal Impact**

Potential Fiscal Impact of Alternative 1. There would be no fiscal impact from this rulemaking beyond what is federally required.

Potential Fiscal Impact of Alternative 2. IDEM is considering adopting some changes from the federal NPDES permit application rules that may include removing, revising, and/or adding to certain requirements in 40 CFR 122.21 to better suit IDEM's NPDES permitting program. Overall, the fiscal impact from these differences is anticipated to be minimal, if any. Of the potential changes being considered by IDEM, adjustment of the parameters for screening and monitoring and a change in the number of samples required are the alternatives that could have a fiscal impact. Some applicants may face increased or decreased costs depending on whether more or fewer parameters and samples are included in the requirements in order to allow IDEM to facilitate the processing of permits based on the most complete information that allows informed decisionmaking.

Potential Fiscal Impact of Alternative 3. There would be no fiscal impact from this rulemaking, but IDEM's delegation for conducting the NPDES program could be challenged by U.S. EPA.

#### **Small Business Assistance Information**

IDEM established a compliance and technical assistance program (CTAP) under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on CTAP and other resources available can be found at:

[www.in.gov/idem/ctap](http://www.in.gov/idem/ctap)

For purposes of [IC 4-22-2-28.1](#), small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Angela Taylor  
IDEM Small Business Regulatory Coordinator/CTAP Small Business Liaison  
IGCN 1316  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 233-0572 or (800) 988-7901  
[ctap@idem.in.gov](mailto:ctap@idem.in.gov)

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-6](#) is:

Emily Criss Totten  
Small Business Ombudsman  
Indiana Economic Development Corporation  
One North Capitol, Suite 700  
Indianapolis, IN 46204  
(317) 402-3062  
[etotten@iedc.in.gov](mailto:etotten@iedc.in.gov)

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-6](#), specifically [IC 5-28-17-6\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Erin Moorhous  
IDEM Small Business Assistance Program Ombudsman/Business, Agricultural, and Legislative Liaison  
IGCN 1301  
100 North Senate Avenue

Indianapolis, IN 46204-2251  
(317) 232-8921 or (800) 451-6027  
emoorhou@idem.in.gov

#### **Public Participation and Work Group Information**

At this time, no work group is planned for the rulemaking. If you feel that a work group or other informal discussion on the rule is appropriate, please contact MaryAnn Stevens, Rules Development Branch, Office of Legal Counsel at (317) 232-8635 or (800) 451-6027 (in Indiana).

#### **REQUEST FOR PUBLIC COMMENTS**

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.

Comments may be submitted in one of the following ways:

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

LSA Document #22-71 Title 327 NPDES Application Updates  
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 April 8, 2022.

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).

Christine Pedersen, Section Chief  
Rules Development Branch  
Office of Legal Counsel

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