ARTICLE 5. INDUSTRIAL WASTEWATER PRETREATMENT PROGRAMS AND NPDES

Rule 1. NPDES and Pretreatment Programs; General Provisions

327 IAC 5-1-1 Purpose

Authority: IC 13-14-8; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-18-3

Sec. 1. This article prescribes policies, procedures, and technical criteria for the following programs of the water pollution control board:

(1) The issuance of discharge permits under the National Pollutant Discharge Elimination System (NPDES).

(2) The implementation of a program for the pretreatment of industrial wastewater to be discharged into municipal sewage treatment facilities.

The provisions of this rule are generally applicable to all other rules of this article. *(Water Pollution Control Board; 327 IAC 5-1-1; filed Sep 24, 1987, 3:00 p.m.: 11 IR 614; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1734; filed Nov 13, 1995, 5:00 p.m.: 19 IR 660; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

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, 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 Board; 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)*

327 IAC 5-1-2 Definitions (Repealed)

Sec. 2. *(Repealed by Water Pollution Control Board; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1479)*

327 IAC 5-1-3 Department requests for data

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. 3. (a) Whenever necessary to carry out the provisions of this article, any person who is or may be reasonably expected to be subject to such regulatory provisions shall:

(1) establish and maintain such records;

(2) make such reports;

(3) install, use, and maintain such monitoring equipment or methods (including, where appropriate, biomonitoring methods);

(4) sample such effluents, internal wastestreams, where appropriate, or other material; and

(5) provide such other data, including, but not limited to:

(A) raw materials;

(B) catalysts;

(C) intermediate products;

(D) by-products;

(E) production rates; and

(F) 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 provision of data under subsection (a)(5) shall not be required by the commissioner unless:

(1) such data is reasonably expected to facilitate the identification or quantification of pollutants which may be released to the environment from facilities owned or operated by the person to whom the request is made; and

(2) the identification or quantification of such pollutants could not reasonably be made by the commissioner in the absence

of the requested information.

(c) The commissioner, upon presentation of proper credentials:

(1) shall have a right of entry to, upon, or through any premises, public or private, in which records, reports, monitoring or treatment equipment or methods, samples, or other data required to be maintained or provided under subsection (a) are located; and

(2) may at reasonable times have access to and copy any records, inspect any monitoring or treatment equipment or method, or sample any effluent, internal wastestream, or other material required under subsection (a).

(d) For purposes of subsection (c), the commissioner may authorize, as his representative, any employee of the Indiana department of environmental management or any person under contract with the Indiana department of environmental management whereby such person has agreed, in writing under oath, not to disclose any information collected in performance of his contact to any person except as specified by the contract. *(Water Pollution Control Board; 327 IAC 5-1-3; filed Sep 24, 1987, 3:00 p.m.: 11 IR 617; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1738; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

Rule 1.5. Definitions

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 13-18-4

Sec. 1. In addition to the definitions contained in IC 13-12-3-1, IC 13-11-2, 327 IAC 1, 327 IAC 2-1, and 327 IAC 2-1.5, the definitions in this rule apply throughout this article. *(Water Pollution Control Board; 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)*

327 IAC 5-1.5-2 "Administrator" 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 13-18-4

Sec. 2. "Administrator" means the administrator of the United States Environmental Protection Agency or an authorized representative. *(Water Pollution Control Board; 327 IAC 5-1.5-2; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1412; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-3 "Ambient intake concentration" 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 13-18-4

Sec. 3. "Ambient intake concentration" means the concentration of a substance occurring in the intake, which is present, or likely to be present, in the absence of upstream point source contributions. *(Water Pollution Control Board; 327 IAC 5-1.5-3; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1413; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-4 "Ambient upstream concentration" 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 13-18-4

Sec. 4. "Ambient upstream concentration" means the concentration of a substance occurring immediately upstream of the point of discharge, which is present, or likely to be present, in the absence of upstream point source contributions. *(Water Pollution Control Board; 327 IAC 5-1.5-4; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1413; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-5 "Applicable effluent standards and limitations" 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 13-18-4

Sec. 5. "Applicable effluent standards and limitations" means all federal, state, and interstate standards and limitations to which a discharge is subjected under the Clean Water Act and Indiana law. *(Water Pollution Control Board; 327 IAC 5-1.5-5; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1413; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-6 "Best management practices" 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 13-18-4

Sec. 6. (a) "Best management practices" or "BMPs" means the following measures to prevent or reduce the pollution of waters of the state:

(1) Schedules of activities.
(2) Prohibitions of practice.
(3) Treatment requirements.
(4) Operation and maintenance procedures.
(5) Use of containment facilities.
(6) Other management practices.

(b) BMPs may be employed, for example, to control:

(1) plant site run-off;
(2) spillage or leaks;
(3) sludge or waste disposal; or
(4) drainage from raw materials storage resulting from:
    (A) manufacturing;
    (B) commercial;
    (C) mining; or
    (D) silvicultural;

activities.

(Water Pollution Control Board; 327 IAC 5-1.5-6; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1413; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3378; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

327 IAC 5-1.5-7 "Combined sewer" 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 13-18-4

Sec. 7. "Combined sewer" means a sewer designed and employed to receive both:

(1) water-carried or liquid wastes; and
(2) storm or surface water.

(Water Pollution Control Board; 327 IAC 5-1.5-7; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1413; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

327 IAC 5-1.5-8 "Controlled discharge" 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 13-18-4

Sec. 8. "Controlled discharge" means a discharge of wastewater from a wastewater treatment plant which is designed and operated to control the volume of discharge, either by manual adjustment or by an automated control mechanism, such that the discharge rate does not exceed a prescribed fraction of the stream flow rate at any given time. *(Water Pollution Control Board; 327 IAC 5-1.5-8; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1413; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-9 "Conventional pollutants" 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 13-18-4

Sec. 9. “Conventional pollutants” includes the following:
(1) Biochemical oxygen demanding pollutants.
(2) Suspended solids.
(3) Fecal coliform.
(4) pH.
(5) Oil and grease.
(Water Pollution Control Board; 327 IAC 5-1.5-9; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1413; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

327 IAC 5-1.5-10 “Discharge” or “direct discharge” 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 13-18-4

Sec. 10. “Discharge” or “direct discharge”, when used without qualification, means a discharge of a pollutant. *(Water Pollution Control Board; 327 IAC 5-1.5-10; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1413; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-11 “Discharge of a pollutant” 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 13-18-4

Sec. 11. “Discharge of a pollutant” means any addition of any pollutant, or combination of pollutants, into any waters of the state from a point source in Indiana. The term includes, without limitation, additions of pollutants into waters of the state from the following:
(1) Surface run-off collected or channeled by man.
(2) Discharges through pipes, sewers, or other conveyances that do not lead to treatment works.
(Water Pollution Control Board; 327 IAC 5-1.5-11; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1414; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

327 IAC 5-1.5-12 “Draft 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 13-18-4

Sec. 12. “Draft permit” means a document prepared prior to the public comment period by the commissioner indicating the commissioner's tentative decision to:
(1) issue or deny;
(2) modify;
(3) revoke and reissue;
(4) terminate; or
(5) reissue;
a permit. *(Water Pollution Control Board; 327 IAC 5-1.5-12; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1414; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-13 “Effluent limitation” 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 13-18-4

Sec. 13. “Effluent limitation” means any restriction established by the commissioner on quantities, discharge rates, and concentrations of pollutants that are discharged, or will be discharged, from point sources into waters of the state. *(Water Pollution Control Board; 327 IAC 5-1.5-13; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1414; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-14 "Effluent limitations guideline" 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 13-18-4

Sec. 14. "Effluent limitations guideline" means a regulation adopted by the administrator of the EPA, under Section 304(b) of the CWA, for use in establishing effluent limitations for specific point sources within a particular industrial class or category. *(Water Pollution Control Board; 327 IAC 5-1.5-14; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1414; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-15 "Effluent standard or prohibition" 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 13-18-4

Sec. 15. "Effluent standard or prohibition" means a regulation adopted by the administrator of the EPA, under Section 307(a) of the Clean Water Act, which restricts or prohibits the discharge of a toxic pollutant, based on the toxic qualities of that pollutant, and does not mean an effluent limitations guideline. *(Water Pollution Control Board; 327 IAC 5-1.5-15; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1414; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-16 "Environmental Management Act" or "EMA" 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 13-13; IC 13-18-4

Sec. 16. "Environmental Management Act" or "EMA" means IC 13-13. *(Water Pollution Control Board; 327 IAC 5-1.5-16; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1414; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-17 "Environmental Protection Agency" or "EPA" 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 13-18-4

Sec. 17. "Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency. *(Water Pollution Control Board; 327 IAC 5-1.5-17; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1414; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-18 "EPA water management division director" 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 13-18-4

Sec. 18. "EPA water management division director" means the director of the water management division of the regional office of the EPA having jurisdiction over Indiana or this person's delegated representative. *(Water Pollution Control Board; 327 IAC 5-1.5-18; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1414; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-19 "Existing Great Lakes discharger" 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 13-18-4

Sec. 19. "Existing Great Lakes discharger" means any building, structure, facility, or installation from which there is or may be a discharge of a pollutant to the Great Lakes system that is not a new Great Lakes discharger. *(Water Pollution Control Board; 327 IAC 5-1.5-19; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1414; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-20 "General 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 13-18-4

Sec. 20. "General 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 (GPB), other than owners and operators of such sources to whom individual NPDES permits have been issued. *(Water Pollution Control Board; 327 IAC 5-1.5-20; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1415; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-21 "General permit boundary" or "GPB" 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 13-18-4

Sec. 21. "General permit boundary" or "GPB" means the designated geographic area within which a particular general permit is applicable. *(Water Pollution Control Board; 327 IAC 5-1.5-21; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1415; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-22 "Hazardous substance" 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 13-18-4

Sec. 22. "Hazardous substance" means, for purposes of NPDES, any substance designated under 40 CFR 116 pursuant to Section 311 of the Clean Water Act. *(Water Pollution Control Board; 327 IAC 5-1.5-22; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1415; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-23 "Hazardous waste" 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 13-11-2-99; IC 13-18-4; IC 13-22-2-3

Sec. 23. "Hazardous waste" means a waste having the characteristics described in IC 13-11-2-99(a) and specifically a waste listed under IC 13-22-2-3. *(Water Pollution Control Board; 327 IAC 5-1.5-23; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1415; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-24 "Indigenous" 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 13-18-4

Sec. 24. "Indigenous" means, generally, an organism native to and growing and reproducing in a particular region. The term also includes historically nonnative species introduced by the Indiana department of natural resources as part of a program of wildlife management whether such species reproduce or not. *(Water Pollution Control Board; 327 IAC 5-1.5-24; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1415; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-25 "Indirect discharger" 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 13-18-4

Sec. 25. "Indirect discharger" means a nondomestic discharger introducing pollutants into a POTW. *(Water Pollution Control Board; 327 IAC 5-1.5-25; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1415; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-26 "Limit of detection" or "LOD" 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 13-18-4

Sec. 26. "Limit of detection" or "LOD" means the minimum concentration of a substance that can be measured and reported with ninety-nine percent (99%) confidence that the analyte concentration is greater than zero (0) for a particular analytical method and sample matrix. *(Water Pollution Control Board; 327 IAC 5-1.5-26; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1415; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-27 "Limit of quantitation" or "LOQ" 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 13-18-4

Sec. 27. "Limit of quantitation" or "LOQ" means a measurement of the concentration of a contaminant obtained by using a specified laboratory procedure calibrated at a specified concentration above the method detection level. It is considered the lowest concentration at which a particular contaminant can be quantitatively measured using a specified laboratory procedure for monitoring of the contaminant. This term is also sometimes called limit of quantification or quantification level. *(Water Pollution Control Board; 327 IAC 5-1.5-27; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1415; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-28 "Load allocation" or "LA" 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 13-18-4

Sec. 28. "Load allocation" or "LA" means the portion of a receiving water's loading capacity that is attributed either to one (1) of its existing or future nonpoint sources of pollution or to natural background sources. Load allocations are best estimates of the loading, which may range from reasonably accurate estimates to gross allotments, depending on the availability of data and appropriate techniques for predicting the loading. Wherever possible, natural and nonpoint source loads should be distinguished. Nonpoint sources include any discharge of a pollutant that is not a point source, such as the following:

(1) In-place contaminants.
(2) Direct wet and dry deposition.
(3) Ground water inflow.
(4) Overland run-off.

(Water Pollution Control Board; 327 IAC 5-1.5-28; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1415; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

327 IAC 5-1.5-29 "Loading capacity" 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 13-18-4

Sec. 29. "Loading capacity" means the greatest amount of loading that a water can receive without violating water quality criteria. The loading capacity shall be determined in accordance with the procedure contained in 327 IAC 5-2-11.4(a)(12). *(Water Pollution Control Board; 327 IAC 5-1.5-29; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1416; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-30 "Major discharger" 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 13-18-4

Sec. 30. "Major discharger" means any point source discharger designated as such annually by agreement between the commissioner and the U.S. EPA. Classification of a discharger as major generally involves consideration of factors relating to the significance of the discharge's impact on the environment, such as:

(1) nature and quantity of pollutants discharged;
(2) character and assimilative capacity of the receiving waters;
(3) presence of toxic pollutants in the discharge; and
(4) compliance history of the discharger.

(Water Pollution Control Board; 327 IAC 5-1.5-30; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1416; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

327 IAC 5-1.5-31 "Method detection level" or "MDL" 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 13-18-4

Sec. 31. "Method detection level" or "MDL" means the minimum concentration of an analyte (substance) that can be measured and reported with a ninety-nine percent (99%) confidence that the analyte concentration is greater than zero (0) as determined by the procedure set forth in 40 CFR 136, Appendix B. *(Water Pollution Control Board; 327 IAC 5-1.5-31; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1416; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-32 "Minimum level" or "ML" 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 13-18-4

Sec. 32. "Minimum level" or "ML" means the concentration at which the entire analytical system must give a recognizable signal and acceptable calibration point. The ML is the concentration in a sample that is equivalent to the concentration of the lowest calibration standard analyzed by a specific analytical procedure, assuming that all the method-specified sample weights, volumes, and processing steps have been followed. *(Water Pollution Control Board; 327 IAC 5-1.5-32; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1416; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-33 "Minor discharger" 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 13-18-4

Sec. 33. "Minor discharger" means all dischargers not designated as major dischargers. *(Water Pollution Control Board; 327 IAC 5-1.5-33; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1416; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-34 "National Pollutant Discharge Elimination System" or "NPDES" 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 13-18-4

Sec. 34. "National Pollutant Discharge Elimination System" or "NPDES" means the national program for:
(1) issuing;
(2) modifying;
(3) revoking and reissuing;
(4) terminating;
(5) denying;
(6) monitoring; and
(7) enforcing;

permits for the discharge of pollutants from point sources and imposing and enforcing pretreatment requirements by the EPA or an authorized state under Sections 307, 318, 402, and 405 of the Clean Water Act. *(Water Pollution Control Board; 327 IAC 5-1.5-34; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1416; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-35 "New discharger" 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 13-18-4

Sec. 35. (a) "New discharger" means any building, structure, facility, or installation:

(1) from which there is or may be a discharge of pollutants;

(2) that did not commence the discharge of pollutants at a particular site prior to August 13, 1979;

(3) is not a new source; and

(4) that has never received a finally effective NPDES permit for discharges at that site.

(b) The term includes an indirect discharger that commences discharging into waters of the state after August 13, 1979. It also includes any existing mobile point source that begins discharging at a site for which it does not have a permit. *(Water Pollution Control Board; 327 IAC 5-1.5-35; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1416; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-36 "New Great Lakes discharger" 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 13-18-4

Sec. 36. "New Great Lakes discharger" means any building, structure, facility, or installation from which there is or may be a discharge of a pollutant to the Great Lakes system, the construction of which commenced after March 23, 1997. *(Water Pollution Control Board; 327 IAC 5-1.5-36; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1417; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-37 "New 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 13-18-4

Sec. 37. "New source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commences:

(1) after promulgation of standards of performance under Section 306 of the Clean Water Act which are applicable to such source; or

(2) after publication of proposed standards of performance in accordance with Section 306 of the Clean Water Act that are applicable to such source if the standards subsequently are promulgated in accordance with Section 306 of the Clean Water Act.

(Water Pollution Control Board; 327 IAC 5-1.5-37; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1417; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

327 IAC 5-1.5-38 "Outfall" 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 13-18-4

Sec. 38. "Outfall" means the point of discharge from a point source. *(Water Pollution Control Board; 327 IAC 5-1.5-38; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1417; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-39 "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 13-18-4

Sec. 39. "Permit" means any written authorization, license, or equivalent document issued to regulate the discharge of pollutants, the construction of water pollution treatment or control facilities, or land application of sludge or waste products. *(Water Pollution Control Board; 327 IAC 5-1.5-39; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1417; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-40 "Point 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 13-18-4

Sec. 40. (a) "Point source" means any discernible, confined, and discrete conveyance, including, but not limited to, any of the following from which pollutants are or may be discharged:

(1) Pipe.
(2) Ditch.
(3) Channel.
(4) Tunnel.
(5) Conduit.
(6) Well.
(7) Discrete fissure.
(8) Container.
(9) Rolling stock.
(10) Concentrated animal feeding operation.
(11) Landfill leachate collection system.
(12) Vessel.
(13) Other floating craft.

(b) The term does not include return flows from irrigated agriculture or agricultural storm run-off. See 327 IAC 5-2-4(a)(4) for other exclusions. *(Water Pollution Control Board; 327 IAC 5-1.5-40; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1417; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-41 "Pollutant" 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 13-18-4

Sec. 41. "Pollutant" means, but is not limited to:

(1) dredged spoil;
(2) incinerator residue;
(3) filter backwash;
(4) sewage;
(5) garbage;
(6) sewage sludge;
(7) munitions;
(8) chemical wastes;
(9) solid wastes;
(10) toxic wastes;
(11) hazardous substances;
(12) biological materials;
(13) radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended; 42 U.S.C. 2011, et seq.);
(14) heat;
(15) wrecked or discarded equipment;
(16) rock;
(17) sand;
(18) cellar dirt; and
(19) other industrial, municipal, and agricultural waste;

discharged into water. *(Water Pollution Control Board; 327 IAC 5-1.5-41; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1417; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-42 "Population equivalent" or "PE" 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 13-18-4

Sec. 42. "Population equivalent" or "PE" means the calculated population that would contribute a particular amount of biochemical oxygen demand (BOD) per day, using the base of seventeen-hundredths (0.17) pound of five (5) day BOD per capita per day. A different conversion factor may be used in the calculation when approved by the commissioner on the basis of site-specific technical information. *(Water Pollution Control Board; 327 IAC 5-1.5-42; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1418; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-43 "POTW treatment plant" 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 13-18-4

Sec. 43. "POTW treatment plant" means that portion of the POTW designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste. *(Water Pollution Control Board; 327 IAC 5-1.5-43; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1418; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-44 "Preliminary wasteload allocations" or "preliminary WLA" 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 13-18-4

Sec. 44. "Preliminary wasteload allocations" or "preliminary WLAs" means wasteload allocations developed for the purpose of determining the need for water quality-based effluent limitations under 327 IAC 5-2-11.5. *(Water Pollution Control Board; 327 IAC 5-1.5-44; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1418; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-45 "Primary industrial category" 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 13-18-4

Sec. 45. "Primary industrial category" means any industrial category listed in 327 IAC 5-2-23. *(Water Pollution Control Board; 327 IAC 5-1.5-45; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1418; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-46 "Process wastewater" 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 13-18-4

Sec. 46. "Process wastewater" means any water that, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product. *(Water Pollution Control Board; 327 IAC 5-1.5-46; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1418; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-47 "Proposed 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 13-18-4

Sec. 47. "Proposed permit" means an NPDES permit prepared after the close of the public comment period (and, when applicable, any public hearing and administrative appeals) that is sent to EPA for review before final issuance by the state. A proposed permit shall be distinguished from a draft permit. A denial of a request for modification, revocation and reissuance, or termination is neither a draft permit nor a proposed permit. *(Water Pollution Control Board; 327 IAC 5-1.5-47; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1418; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-48 "Publicly owned treatment works" or "POTW" 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 13-18-4

Sec. 48. "Publicly owned treatment works" or "POTW" means a treatment works as defined by Section 212(2) of the Clean Water Act owned by the state or a municipality (as defined by Section 502(4) of the Clean Water Act), except that it does not include pipes, sewers, or other conveyances not connected to a facility providing treatment. The term includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or compatible industrial wastes. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality, as defined by Section 502(4) of the Clean Water Act, that has jurisdiction over the indirect discharges to and the discharges from such a treatment works. *(Water Pollution Control Board; 327 IAC 5-1.5-48; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1418; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-49 "RCRA" 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 13-13-5; IC 13-18-4

Sec. 49. "RCRA" means the Resource Conservation and Recovery Act as defined in IC 13-13-5. *(Water Pollution Control Board; 327 IAC 5-1.5-49; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1418; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-50 "Recommencing discharger" 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 13-18-4

Sec. 50. "Recommencing discharger" means a source that recommences discharge after terminating operations. *(Water Pollution Control Board; 327 IAC 5-1.5-50; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1419; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-51 "Regional administrator" 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 13-18-4

Sec. 51. "Regional administrator" means the Region 5 administrator of the EPA. *(Water Pollution Control Board; 327 IAC 5-1.5-51; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1419; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-52 "Revocation and reissuance" 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 13-18-4

Sec. 52. "Revocation and reissuance" means the revocation of an NPDES permit prior to the express expiration date thereof accompanied by the concurrent issuance of a new permit to supersede the revoked permit. *(Water Pollution Control Board; 327 IAC 5-1.5-52; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1419; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-53 "Sanitary sewer" 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 13-18-4

Sec. 53. "Sanitary sewer" means a sewer, to which storm, surface, and ground waters are not intentionally allowed to enter, that conveys liquid and water-carried wastes from:

(1) residences;
(2) commercial buildings;

(3) industrial plants; and
(4) institutions.
(Water Pollution Control Board; 327 IAC 5-1.5-53; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1419; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

327 IAC 5-1.5-54 "Sanitary wastewater" 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 13-18-4

Sec. 54. "Sanitary wastewater" (commonly called sewage) means the liquid and water-carried waste from residences, commercial buildings, industrial plants, institutions, and other places of human occupancy that is transported by sewers and is primarily composed of human and household waste. Sanitary wastewater, as received by a POTW, may contain a component of industrial waste. *(Water Pollution Control Board; 327 IAC 5-1.5-54; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1419; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-55 "Schedule of compliance" 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 13-18-4

Sec. 55. "Schedule of compliance" means a schedule of remedial measures, including an enforceable sequence of actions or operations, including construction, leading to compliance with an effluent limitation, other limitation, prohibition, standard, or another permit condition. *(Water Pollution Control Board; 327 IAC 5-1.5-55; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1419; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-56 "SDWA" 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 13-13-5-1; IC 13-18-4

Sec. 56. "SDWA" means the Safe Drinking Water Act as defined in IC 13-13-5-1. *(Water Pollution Control Board; 327 IAC 5-1.5-56; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1419; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-57 "Secondary industrial category" 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 13-18-4

Sec. 57. "Secondary industrial category" means any industrial category that is not a primary industrial category. *(Water Pollution Control Board; 327 IAC 5-1.5-57; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1419; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-58 "Secretary" 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 13-18-4

Sec. 58. "Secretary" means the Secretary of the Army, acting through the Chief of Engineers. *(Water Pollution Control Board; 327 IAC 5-1.5-58; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1419; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-59 "Semipublic facilities" 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 13-18-4

Sec. 59. "Semipublic facilities" means those persons or any entity who provide sewage disposal services for entities that are

not POTWs, are not state or federally owned, or are not individual industrial sites, including, but not limited to, the following:

(1) Trailer or mobile home parks.
(2) Commercial or shopping centers.
(3) Housing developments.
(4) Truck stops.
(5) Restaurants.
(6) Schools.
(7) Campgrounds.

(Water Pollution Control Board; 327 IAC 5-1.5-59; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1419; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

327 IAC 5-1.5-60 "Sewage from vessels" 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 13-18-4

Sec. 60. "Sewage from vessels" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under Section 312 of the Clean Water Act, except that with respect to commercial vessels on the Great Lakes, this term includes graywater. As used in this section, "graywater" means galley, bath, or shower water. *(Water Pollution Control Board; 327 IAC 5-1.5-60; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1420; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-61 "Sewer" 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 13-18-4

Sec. 61. "Sewer" means a pipe or conduit that carries wastewater or drainage water. *(Water Pollution Control Board; 327 IAC 5-1.5-61; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1420; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-62 "SIC" 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 13-18-4

Sec. 62. "SIC" means the standard industrial classification applicable to a particular industrial activity in accordance with the Standard Industrial Classification Manual published by the Office of Management and Budget of the Executive Office of the President of the United States. *(Water Pollution Control Board; 327 IAC 5-1.5-62; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1420; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-63 "Sludge" 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 13-18-4

Sec. 63. "Sludge" means any solid, semisolid, or liquid waste generated from:

(1) municipal, industrial, commercial, mining, or agricultural operations;
(2) water pollution treatment or control facilities;
(3) air pollution control facilities; or
(4) water supply treatment plants;

exclusive of the treated effluent from a water pollution treatment facility. *(Water Pollution Control Board; 327 IAC 5-1.5-63; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1420; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-64 "Storm sewer" 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 13-18-4

Sec. 64. "Storm sewer" means a sewer:
(1) designed to transport only storm and surface water; and
(2) does not lead to a wastewater treatment facility.

(Water Pollution Control Board; 327 IAC 5-1.5-64; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1420; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

327 IAC 5-1.5-65 "Termination" 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 13-15-3-2; IC 13-18-4

Sec. 65. "Termination" means the revocation of an NPDES permit prior to its express expiration date where a new permit is not proposed by the commissioner in place of the revoked permit. The term also applies to those permits continued in force after their express expiration date under the terms of IC 13-15-3-2 that are then terminated. *(Water Pollution Control Board; 327 IAC 5-1.5-65; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1420; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-66 "Total maximum daily load" or "TMDL" 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 13-18-4

Sec. 66. "Total maximum daily load" or "TMDL" means the sum of the individual wasteload allocations for point sources and load allocations for nonpoint sources and natural background minus the sum of a specified margin of safety and any capacity reserved for growth. If a receiving water has only one (1) point source discharger, the TMDL is the sum of that point source WLA plus the LAs for any nonpoint sources of pollution and natural background sources, tributaries, or adjacent segments minus the sum of a specified margin of safety and any capacity reserved for growth. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. If best management practices (BMPs) or other nonpoint source pollution controls make more stringent load allocations practicable, then wasteload allocations may be made less stringent. Thus, the TMDL process provides for nonpoint source control tradeoffs. A TMDL sets and allocates the maximum amount of a pollutant that may be introduced into a waterbody and still assure attainment and maintenance of water quality standards. *(Water Pollution Control Board; 327 IAC 5-1.5-66; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1420; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-67 "Toxic pollutant" 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 13-18-4

Sec. 67. "Toxic pollutant" means any pollutant listed as toxic under Section 307(a)(1) of the Clean Water Act. *(Water Pollution Control Board; 327 IAC 5-1.5-67; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1421; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-68 "UIC" 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 13-18-4

Sec. 68. "UIC" means the Underground Injection Control program under Part C of the SDWA. *(Water Pollution Control Board; 327 IAC 5-1.5-68; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1421; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-69 "Wasteload allocation" or "WLA" 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 13-18-4

Sec. 69. "Wasteload allocation" or "WLA" is the portion of a receiving water's loading capacity that is allocated to one (1) of its existing or future point sources of pollution. In the absence of a TMDL approved by EPA under 40 CFR 130.7 or an assessment and remediation plan developed and approved in accordance with 327 IAC 5-2-11.4(a), a WLA is the allocation for an individual point source, that ensures that the level of water quality to be achieved by the point source is derived from and complies with all applicable water quality standards. *(Water Pollution Control Board; 327 IAC 5-1.5-69; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1421; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-70 "Wastewater" 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 13-18-4

Sec. 70. "Wastewater" means liquid or water-carried wastes from industrial, municipal, agricultural, or other sources. *(Water Pollution Control Board; 327 IAC 5-1.5-70; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1421; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-1.5-71 "Water pollution treatment or control facility" 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 13-18-4

Sec. 71. "Water pollution treatment or control facility" means any equipment, device, unit, or structure that is used to control, prevent, pretreat, or treat any discharge or threatened discharge of pollutants into any waters of Indiana, including surface and subsurface waters and public or private sewerage systems. The term includes, but is not limited to, the following:

(1) Treatment facilities.
(2) Combined sewers.
(3) Sanitary sewers.
(4) Disposal well systems.
(5) Animal feeding operation treatment facilities.
(6) Land application treatment facilities.
(7) Cyanide isolation facilities.

(Water Pollution Control Board; 327 IAC 5-1.5-71; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1421; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

327 IAC 5-1.5-72 "Waters of the state of Indiana" or "waters of the state" 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 13-11-2-265; IC 13-18-4

Sec. 72. "Waters of the state of Indiana" or "waters of the state" has the meaning set forth in IC 13-11-2-265. *(Water Pollution Control Board; 327 IAC 5-1.5-72; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1421; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2097)*

Rule 2. Basic NPDES Requirements

327 IAC 5-2-1 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; IC 13-18-4

Sec. 1. This rule defines the general programmatic requirements of a pollutant discharge permit system to be administered by the commissioner consistent with the NPDES requirements set forth in Sections 118, 318, 402, and 405 of the Clean Water Act and federal regulations adopted pursuant thereto. *(Water Pollution Control Board; 327 IAC 5-2-1; filed Sep 24, 1987, 3:00 p.m.: 11 IR 617; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1421)*

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 13-18-4

Sec. 1.5. The following materials have been 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 100–149, 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.

(Water Pollution Control Board; 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)

327 IAC 5-2-2 Requirement to have a permit

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. 2. Any discharge of pollutants into waters of the state as a point source discharge, except for exclusions made in 327 IAC 5-2-4, is prohibited unless in conformity with a valid NPDES permit obtained prior to the discharge. *(Water Pollution Control Board; 327 IAC 5-2-2; filed Sep 24, 1987, 3:00 pm: 11 IR 618)*

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 13-18-4

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.

(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 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.

(e) Existing manufacturing, commercial, mining, and silvicultural dischargers 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.

(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.

(g) New and existing POTWs shall provide the additional information specified on Standard Form A-Municipal (EPA Form 7550-22) or substantially equivalent forms supplied by the commissioner. If EPA promulgates Form 2A NPDES, the commissioner may specify its use for applications by new and existing POTWs. 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 storm water discharges, all new sources and new dischargers engaged in manufacturing, commercial, mining, and silvicultural activities 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.

(l) 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.

(m) Point source discharges of storm water associated with industrial activity as defined in 40 CFR 122.26(b)(14) shall provide additional information specified in application Form 2F.

(n) 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) 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), 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(s) 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(s) 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) 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. *(Water Pollution Control Board; 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)*

327 IAC 5-2-4 Exclusions

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; IC 13-8

Sec. 4. 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 CWA, 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 CWA 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 concentrated animal feeding operations as defined in 327 IAC 5-4-3 or from silvicultural point sources as defined in 327 IAC 5-4-7.

(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 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 Board; 327 IAC 5-2-4; filed Sep 24, 1987, 3:00 p.m.: 11 IR 619; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1740)

327 IAC 5-2-5 Effect of permit issuance

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. 5. (a) Compliance with a permit during its term constitutes compliance with all applicable standards and limitations of the CWA and state law, except for any standard or prohibition imposed under section 307 of the CWA for a toxic pollutant injurious to human health.

(b) The issuance of a permit does not:

(1) convey any property rights of any sort, or any exclusive privileges;

(2) authorize any injury to persons or private property or invasion of other private rights, or any infringement of federal, state, or local laws or regulations; or

(3) preempt any duty to obtain state or local assent required by law for the discharge or for construction or operation of the

facility from which the discharge is made.
(Water Pollution Control Board; 327 IAC 5-2-5; filed Sep 24, 1987, 3:00 pm: 11 IR 619)

327 IAC 5-2-6 Duration of permits and transferability of permits

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1; IC 13-7-10-2
Affected: IC 13-1-3; IC 13-7

Sec. 6. (a) A permit shall be issued for a fixed term not to exceed five (5) years. Permits of less than five (5) years duration may be issued in appropriate circumstances at the discretion of the commissioner. A permit may be modified, revoked and reissued, or terminated prior to the expiration of the term for cause, as specified in section 16 of this rule, or in accordance with conditions set forth in the permit (as in a reopening clause). In no event may the term of a permit be extended beyond five (5) years from its original effective date by modification, extension, or other means, except as provided in subsection (b).

(b) The terms and conditions of an expired permit are automatically extended in full force and effect until the effective date of a new permit, if:

(1) the permittee has submitted a timely and sufficient application for a new permit under section 3 of this rule and 327 IAC 5-3-2; and

(2) the commissioner, through no fault of the permittee, does not issue a new permit prior to the expiration date of the previous permit.

(c) Except as provided in this subsection, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued under section 16(c)(1) or 16(e)(4) of this rule, to identify the new permittee and incorporate such other requirements as may be necessary under the CWA. A permit may be transferred to another person by a permittee, without modification or revocation and reissuance being required, if the following occurs:

(1) The current permittee notifies the commissioner at least thirty (30) days in advance of the proposed transfer date in subdivision (2).

(2) A written agreement containing a specific date for transfer of permit responsibility and coverage between the current permittee and the transferee (including acknowledgement that the existing permittee is liable for violations up to that date, and that the transferee is liable for violations from that date on) is submitted to the commissioner.

(3) The transferee certifies in writing to the commission intent to operate the facility without making such material and substantial alterations or additions to the facility as would significantly change the nature or quantities of pollutants discharged and thus constitute cause for permit modification under section 16(d) of this rule. However, the commissioner may allow a temporary transfer of the permit without permit modification for good cause, e.g., to enable the transferee to purge and empty the facility's treatment system prior to making alterations, despite the transferee's intent to make such material and substantial alterations or additions to the facility.

(4) The commissioner, within thirty (30) days, does not notify the current permittee and the transferee of the intent to modify, revoke and reissue, or terminate the permit and to require that a new application be filed rather than agreeing to the transfer of the permit.

(Water Pollution Control Board; 327 IAC 5-2-6; filed Sep 24, 1987, 3:00 p.m.: 11 IR 619; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1740)

327 IAC 5-2-7 Prohibitions

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. 7. No permit shall be issued in the following circumstances:

(a) Where the terms or conditions of the permit do not comply with the applicable guidelines and requirements of the CWA or effective regulations promulgated under the CWA or this article (327 IAC 5).

(b) Where the regional administrator has objected to issuance of the proposed permit under section 402(d) of the CWA.

(c) Where, in the judgment of the secretary of the Army, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge.

(d) For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste.

(e) For any discharge from a point source substantially inconsistent with a plan or plan amendment approved under section 208(b) of the CWA.

(f) To a facility which is a new source or a new discharger, if the discharge from the construction or operation of the facility will cause or contribute to the violation of water quality standards in the receiving waters, unless:

(1) The commissioner has conducted a pollutant load allocation analysis for the pertinent segment of the receiving stream which will result in compliance with applicable water quality standards;

(2) Sufficient pollutant load allocations remain to accommodate the proposed discharge and the permit contains effluent limitations consistent with the remaining allocations.

(3) The commissioner has imposed schedules for compliance with the pollutant load allocation upon all existing dischargers into the segment.

(Water Pollution Control Board; 327 IAC 5-2-7; filed Sep 24, 1987, 3:00 pm: 11 IR 620)

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 13-18-4; IC 13-18-7-1; IC 13-30-6-2; IC 35-50-3-3

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 and is 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).

(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 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 CWA 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 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 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) 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) The permittee shall comply with monitoring, recording, and reporting requirements established in accordance with sections 13 through 15 of this rule. The CWA, as well as IC 13-30-6-2 and IC 35-50-3-3, 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.

(10) 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 *[327 IAC 2-6 was repealed filed Feb 25, 1997, 1:00 p.m.: 20 IR 1734.]*.

(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) *[327 IAC 5-1 was repealed filed Jan 14, 1997, 12:00 p.m.: 20 IR 1479.]*.

(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 to effluent limitations in the permit or to notification requirements under section 9 of this rule.

(11) 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) 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) 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) All applications, reports, or other information submitted to the commissioner shall be signed and certified as defined under section 22 of this rule. The CWA, IC 13-6-2 *[IC 13-6 was repealed by P.L.1-1996, SECTION 99, effective July 1, 1996.]*, and IC 35-50-3-3 provide 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.

(Water Pollution Control Board; 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)

327 IAC 5-2-9 Notification requirements for toxic pollutants

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-2; IC 13-18-4
Affected: IC 13-15-1-2; IC 13-18-3

Sec. 9. In addition to the reporting requirements of section 8(10) of this rule, permits issued to any manufacturing, commercial, mining, or silvicultural discharger shall contain conditions requiring the discharger to notify the commissioner as soon as the discharger knows or has reason to know the following:

(1) That any activity has occurred or will occur that would result in the discharge of any toxic pollutant that is not limited in the permit if that discharge will exceed the highest of the following notification levels:

(A) One hundred (100) micrograms per liter.

(B) Two hundred (200) micrograms per liter for acrolein and acrylonitrile; five hundred (500) micrograms per liter for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one (1) milligram per liter for antimony.

(C) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7).

(D) A notification level established by the commissioner on a case-by-case basis, either at the commissioner's own initiative or upon a petition by the permittee. This notification level may exceed the levels specified in clause (A), (B), or (C) but may not exceed the level which can be achieved by the technology-based treatment requirements applicable to the permittee under the CWA (see 327 IAC 5-5-2).

(2) That the discharger has begun or expects to begin to use or manufacture, as an intermediate or final product or byproduct, any toxic pollutant that was not reported in the permit application under 40 CFR 122.21(g)(9). However, this subdivision does not apply to the permittee's use or manufacture of a toxic pollutant solely under research or laboratory conditions.

(Water Pollution Control Board; 327 IAC 5-2-9; filed Sep 24, 1987, 3:00 p.m.: 11 IR 622; filed Apr 9, 2003, 2:55 p.m.: 26 IR 2613)

327 IAC 5-2-10 Applicable limitations, standards, and conditions

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-18-3
Affected: IC 13-11-2; IC 13-18-4

Sec. 10. Each NPDES permit shall provide for and ensure compliance with all applicable requirements of the Clean Water Act (CWA), regulations promulgated under the CWA, and state law. For the purposes of this section, an applicable requirement is a statutory or regulatory requirement that takes effect under state law prior to final administrative disposition of a permit. In addition to the requirements of sections 6, 8, 9, and 12 of this rule, permits shall contain terms and conditions that ensure compliance with the following requirements as applicable:

(1) Effluent limitations and standards under Sections 301, 304, 307(a), 318, and 405 of the CWA.

(2) Standards of performance for new sources under Section 306 of the CWA and 40 CFR 122.44(a).

(3) In the case of a POTW, which primarily is designed and utilized for the treatment of wastewater from an industry of a particular class or category, the effluent limitations or standards that would apply under Section 301, 304, 306, 307, 318, or 405 of the CWA to the industry if it were a direct discharger. If the POTW receives sewage from domestic sources as well as industrial wastewater, the permit shall include composite (or hybrid) effluent limitations comprising the effluent limitations or standards applicable to the industrial wastewater, as specified in this subdivision, and effluent limitations applicable to the domestic sewage under Sections 301 and 304 of the CWA. Such composite limitations will be cumulative for mass limitations

and weighted in proportion to respective flows for concentration limitations.

(4) Water quality standard based and other more stringent requirements. Any effluent limitations or other requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under Sections 301, 304, 306, 307, 318, and 405 of the CWA where necessary to do the following:

(A) Achieve water quality standards established by the water pollution control board or by EPA in accordance with Sections 118 and 303 of the CWA. Numeric water quality-based effluent limitations shall be established in accordance with sections 11.1 and 11.3 through 11.6 of this rule.

(B) Attain or maintain a specified water quality through water quality related effluent limits established under Section 302 of the CWA.

(C) Incorporate, in accordance with Section 301(b)(1)(C) of the CWA, any more stringent limitations, treatment standards, or schedules of compliance requirements established under federal or state law or regulations (including those adopted under interstate agreements or compacts such as the Ohio River Valley Water Sanitation Commission (ORSANCO)).

(D) Ensure consistency with the requirements of a water quality management plan approved by EPA under Section 208(b) of the CWA.

(E) Incorporate alternative effluent limitations or standards where warranted by fundamentally different factors, under 327 IAC 5-6.

(5) The following requirements for toxic pollutant limitations:

(A) Limitations established under subdivision (1), (2), (3), or (4) to control pollutants meeting the criteria listed in clause (B). Such limitations shall be established in accordance with clause (C).

(B) Limitations must control all toxic pollutants that:

(i) the commissioner determines (based on information reported in a permit application or in a notification under section 9 of this rule or on other information) are or may be discharged at a level greater than the level that is allowed under the technology-based effluent limitations applicable to the permittee under the CWA (see 327 IAC 5-5-2(c)); or

(ii) the discharger does or may use or manufacture as an intermediate or final product or byproduct; however, limitations are not required under this subdivision merely because the discharger does or may use or manufacture a toxic pollutant under research or laboratory conditions.

(C) The requirement that the limitations control the pollutants meeting the criteria of clause (B) shall be satisfied by:

(i) limitations on those pollutants; or

(ii) limitations on other pollutants that, in the judgment of the commissioner, will ensure treatment of the pollutants specified under clause (B) to the levels required by the CWA.

(D) As used in this subdivision, "toxic pollutant" means:

(i) a pollutant listed as toxic under Section 307(a)(1) of the CWA; or

(ii) a pollutant or a combination of pollutants determined by the commissioner to have significant toxic characteristics when discharged into the waters of the state for organisms reasonably expected to be exposed to such pollutant or pollutants.

(6) Permits issued prior to promulgation by the administrator of applicable effluent limitations and standards (including best management practices) under Sections 301, 304, 307, 318, and 405 of the CWA shall contain such limitations and other conditions as the commissioner determines to be necessary to carry out those provisions of the CWA, under 327 IAC 5-5-2(b) and Section 402(a)(1) of the CWA.

(7) Best management practices to control or abate the discharge of pollutants where:

(A) required under Section 304(e) of the CWA for the control of toxic and hazardous pollutants from ancillary industrial activities;

(B) numeric effluent limitations are infeasible; or

(C) the practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA.

Examples of best management practices that may be appropriate under clause (B) include proper operation and maintenance criteria and sludge-handling requirements. Examples of best management practices that may be appropriate under clause (C) include the construction of sheds over material storage piles to prevent rainfall from leaching materials from these piles and creating a source of pollution; ditching and diversion of rainfall run-off to minimize or prevent contamination from a

discharger's manufacturing operations; and the use of solid, absorbent materials for cleaning up leaks and drips as opposed to washing these materials down a floor drain creating additional sources of pollution.

(8) Twenty-four (24) hour reporting. Pollutants for which the permittee must report violations of maximum daily discharge limitations under section 8(10)(C)(iii) of this rule (twenty-four (24) hour reporting) shall be listed as such in the permit. This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

(9) Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with 327 IAC 5-3-10(a).

(10) Additional conditions applicable to POTWs shall be as follows:

(A) Any conditions imposed in grants made by the administrator to POTWs under Sections 201 and 204 of the CWA that are reasonably necessary for the achievement of effluent limitations required under Section 301 of the CWA.

(B) Requirements under Section 405 of the CWA governing the disposal of sewage sludge from POTWs or any other treatment works treating domestic sewage for any use for which rules have been established in accordance with any applicable rules.

(C) All POTWs shall identify, in terms of character and volume of pollutants, any significant indirect discharges into the POTW which are subject to pretreatment standards under Section 307(b) and 307(c) of the CWA.

(D) All POTWs must provide adequate notice to the commissioner of the following:

(i) Any new introduction of pollutants into the POTW from an indirect discharger that would be subject to Section 301 or 306 of the CWA if it were directly discharging those pollutants.

(ii) Any substantial change in the volume or character of pollutants being introduced into that POTW by any source where such change would render the source subject to pretreatment standards under Section 307(b) or 307(c) of the CWA or would result in a modified application of such standards.

As used in this clause, “adequate notice” includes information on the quality and quantity of effluent introduced into the POTW and any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

(E) POTWs must develop and submit to the commissioner a POTW pretreatment program when required by 40 CFR 403 and 327 IAC 5-13-1 in order to assure compliance by industrial users of the POTW with applicable pretreatment standards established under Sections 307(b) and 307(c) of the CWA. The pretreatment program shall meet the criteria of 327 IAC 5-13-2(f) and, once approved, shall be incorporated into the POTW's permit.

(11) Antibacksliding requirements shall be as follows:

(A) In the case of effluent limitations established on the basis of Section 402(a)(1)(B) of the CWA, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under Section 304(b) of the CWA subsequent to the original issuance of such permit to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit. In the case of effluent limitations established on the basis of Section 301(b)(1)(C), 303(d), or 303(e) of the CWA, a permit may not be renewed, reissued, or modified to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit except in compliance with Section 303(d)(4) of the CWA.

(B) A permit, with respect to which clause (A) applies, may be renewed, reissued, or modified to contain less stringent effluent limitations applicable to a pollutant if:

(i) material and substantial alterations or additions to the permitted facility occurred after permit issuance that justify the application of a less stringent effluent limitation;

(ii) information is available that was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and that would have justified the application of a less stringent effluent limitation at the time of permit issuance, or the commissioner determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under Section 402(a)(1)(B) of the CWA;

(iii) a less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

(iv) the permittee has received a permit modification under Section 301(c), 301(g) through 301(i), 301(k), 301(n), or 316(a) of the CWA; or

(v) the permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities, but has nevertheless been unable to achieve the

previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

Item (ii) shall not apply to any revised waste load allocations or any alternative grounds for translating water quality standards into effluent limitations, except where the cumulative effect of such revised allocations results in a decrease in the amount of pollutants discharged into the concerned waters, and such revised allocations are not the result of a discharger eliminating or substantially reducing its discharge of pollutants due to complying with the requirements of the CWA or for reasons otherwise unrelated to water quality.

(C) In no event may a permit with respect to which clause (A) applies be renewed, reissued, or modified to contain an effluent limitation that is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, reissued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard under Section 303 of the CWA, 327 IAC 2-1, or 327 IAC 2-1.5 applicable to such waters.

(12) For a POTW, any conditions expressly applicable to any user, as a limited copermittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this subdivision. Alternatively, the commissioner may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The commissioner's decision to issue a permit with no conditions applicable to any user, to impose conditions on one (1) or more users, to issue separate permits, or to require separate applications, and the basis for that decision, shall be stated in the fact sheet for the draft permit for the treatment works.

(Water Pollution Control Board; 327 IAC 5-2-10; filed Sep 24, 1987, 3:00 p.m.: 11 IR 623; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1743; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1426; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3378)

327 IAC 5-2-11 Considerations in the calculation and specification of effluent limitations

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

Sec. 11. (a) The following definitions and averaging procedure apply throughout this section:

(1) “Average monthly discharge” means the total mass or flow-weighted concentration of all daily discharges sampled or measured during a calendar month on which daily discharges are sampled and measured, divided by the number of daily discharges sampled and/or measured during such month. The average monthly discharge limitation is the highest allowable average monthly discharge for any calendar month.

(2) “Average weekly discharge” means the total mass or flow-weighted concentration of all daily discharges during any calendar week on which daily discharges are sampled or measured, divided by the number of daily discharges sampled and/or measured during such calendar week. The average weekly discharge limitation is the maximum allowable average weekly discharge for any calendar week.

(3) “Continuous discharge” means a discharge that occurs without interruption, except for infrequent shutdowns for maintenance, process changes, or other similar activities, throughout the operating hours of the facility.

(4) “Daily discharge” means the total mass of a pollutant discharged during the calendar day or, in the case of a pollutant limited in terms other than mass pursuant to subsection (e), the average concentration or other measurement of the pollutant specified over the calendar day or any twenty-four (24) hour period that reasonably represents the calendar day for the purposes of sampling. The maximum daily discharge limitation is the maximum allowable daily discharge for any calendar day.

(5) The average of discharge data shall be determined as follows:

(A) For fecal coliform, the average monthly discharge and average weekly discharge, as concentrations, shall be calculated using a geometric mean.

(B) For E. coli, the average monthly discharge, as a concentration, shall be calculated using a geometric mean.

(C) For all other parameters, calculations that require averaging of sample analyses or measurements of daily discharges shall use an arithmetic mean unless otherwise specified or approved by the commissioner.

(b) All permits shall impose final and, where necessary, interim effluent limitations under sections 8 and 10 of this rule for each outfall or discharge point of the permitted facility, except as otherwise provided under section 10(7)(B) of this rule and subsection (h).

(c) Production-based limitations requirements shall be as follows:

(1) For dischargers other than POTWs, permit effluent limitations which are based on production rates (or another measure of operation) shall be calculated on the basis of a reasonable measure of the actual production of the facility. The time period of the production rate shall correspond to the time period of the calculated permit limitations, for example, monthly production shall be used to calculate average monthly limitations. The commissioner may include a condition establishing alternate permit limitations, standards, or prohibitions based upon anticipated increases (not to exceed maximum production capacity) or decreases to production levels.

(2) A discharger whose permit limitations are determined through a waste load allocation procedure, for example, to maintain water quality above applicable standards, may request the commissioner to calculate the discharger's load allocation, relative to the load allocations of other dischargers, on the basis of the design production capacity of the discharger's facility. The commissioner may grant such a request if the commissioner determines that a reasonable probability exists that the discharger will attain the design production capacity for significant periods during the expected lifetime of the waste load allocation. Even if a discharger's load allocation is established on the basis of design production, the commissioner shall consider the discharger's current actual production in calculating current permit limitations.

(3) In the case of POTWs, permit limitations shall be calculated based on design flow unless good cause exists for utilizing a different basis, for example, effluent limitations for a POTW designed to treat industrial wastes under section 10 of this rule would be based on actual production.

(d) For continuous dischargers, all interim and final permit effluent limitations, including those necessary to achieve water quality standards, shall be stated, unless impracticable, as maximum daily and average monthly discharge limitations for all dischargers, except that, for POTWs average weekly and average monthly discharge limitations shall be used for BOD_5, TSS, and ammonia nitrogen. For discharges within the Great Lakes system, limitations for ammonia shall be stated as maximum daily and average monthly discharge limitations for all dischargers.

(e) All pollutants limited in permits shall have effluent limitations expressed in terms of mass except:

(1) for pH, temperature, radiation or other pollutants, and flow that cannot be appropriately expressed by mass;

(2) where applicable, promulgated effluent guideline limitations, standards, or prohibitions are expressed in terms other than mass, for example, as concentration levels; or

(3) if, in establishing permit limitations on a case-by-case basis, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation (for example, discharges of total suspended solids (TSS) from certain mining operations) or are inadequate to assure continuous compliance with applicable water quality standards, and permit conditions ensure that dilution will not be used as a substitute for treatment.

Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations.

(f) Except as provided as follows or in section 11.1(g) or 11.6(i) of this rule, effluent limitations imposed in permits shall not be adjusted for pollutants in the intake water:

(1) Upon request of the discharger, technology-based effluent limitations imposed in a permit shall be calculated on a net basis, that is, adjusted to reflect credit for pollutants in the discharger's intake water, if each of the following conditions are met:

(A) The applicable effluent limitations guidelines or standards promulgated under the Clean Water Act (CWA) specifically provide that they shall be applied on a net basis or the discharger demonstrates that pollutants present in the intake water will not be essentially removed by the properly installed, maintained, and operated intake and wastewater treatment systems operated by the discharger.

(B) The discharger's intake water is drawn from:

(i) the same body of water into which the discharge is made; or

(ii) a body of water containing ambient concentrations of pollutants for which net limitations are desired that are no greater than the upstream ambient concentrations for the pollutants in the body of water receiving the discharge.

(C) The pollutants in the intake water do not vary significantly in physical, chemical, or biological nature from the pollutants limited by the permit nor are they concentrated by the discharger to such a degree that their discharge would significantly degrade the quality of the receiving body of water.

(2) Adjustments to a discharger's effluent that allow for the application of effluent limitations on a net basis shall be calculated as follows, and the amount of pollutants present in the intake water limited by the permit shall be reduced:

(A) To reflect removal of such pollutants by any treatment of the intake water performed by or for the discharger.

(B) To reflect any further removal of such pollutants by the wastewater treatment technology employed by the discharger.

The amount of such pollutants remaining after the reductions may be applied as an adjustment to the gross amount of the pollutants in the discharge prior to its evaluation for compliance with applicable effluent limitations. If the discharger can demonstrate that pollutants are present in the intake water in sufficient quantities to significantly reduce the efficiency of the discharger's wastewater treatment system, the amount of the adjustment calculated under this subsection may be modified to the extent necessary to compensate for the reduction in treatment efficiency.

(3) If the application of effluent limitations on a net basis is authorized under this subsection, the permit shall specify the method of calculating adjustments to the gross effluent and shall contain conditions requiring the permittee to conduct additional monitoring, for example, for flow and concentration of pollutants, as necessary to determine continued eligibility for and compliance with any such adjustments. The discharger shall notify the commissioner if this monitoring indicates that eligibility for an adjustment under this section has been altered or no longer exists. In such case, the permit shall be modified or revoked and reissued under section 16 of this rule.

(4) Credit for generic pollutants such as biochemical oxygen demand (BOD) or TSS shall not be granted unless:

(A) the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water; or

(B) appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

(5) Credit shall be granted only to the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with permit limits.

(g) Discharges that are not continuous, as defined in subsection (d), shall be particularly described and limited, considering the following factors, as appropriate:

(1) Frequency.

(2) Total mass.

(3) Maximum rate of discharge of pollutants during the discharge.

(4) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure.

(h) Where permit effluent limitations imposed at the point of discharge are impractical or infeasible (such as where the final discharge point is practicably inaccessible, the wastes at the point of discharge are so diluted as to make monitoring impracticable, or interferences among pollutants at the point of discharge would make detection or analysis impracticable), effluent limitations for discharges of pollutants may be imposed on internal waste streams prior to mixing with other waste streams or cooling water streams. In such instances, the effluent limitations shall be adjusted to reflect any removal of pollutants occurring between the point at which the limitation is imposed and the point of discharge, and the monitoring, recording, and reporting required by sections 13 through 15 of this rule shall be applied to the internal waste streams at the closest practicable or feasible point to the point of discharge unless the permittee and the commissioner agree that another location is more suitable. Intermediate waste streams that constitute input to other industrial processes (excluding treatment processes) shall not be considered internal waste streams for purposes of this subsection.

(i) Where part of a discharger's process wastewater is not being discharged into waters of the state because it is disposed into a well, into a POTW, or by land application, applicable effluent limitations and standards for the discharge shall be adjusted in the permit to reflect the reduced raw waste resulting from such disposal, including the following:

(1) Adjusted effluent limitations and standards in the permit shall be calculated by one (1) of the following methods:

(A) If none of the waste from a particular process is discharged into waters of the state and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be eliminated from calculation of permit effluent limitations or standards.

(B) In all cases other than those described in clause (A), effluent limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent guidelines to the total waste stream by the amount of wastewater flow to be treated and discharged into waters of the state, and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under 327 IAC 5-6 to make them more stringent if discharges to wells, POTW, or by land application change the character or treatability of the pollutants being discharged to receiving waters.

(2) Subdivision (1) shall not apply where promulgated effluent limitations guidelines:

(A) control concentrations of pollutants discharged, but not mass; or

(B) specify a different specific technique for adjusting effluent limitations to account for well injection.

(3) Subdivision (1) does not alter a discharger's obligation to meet any more stringent requirements otherwise established under this rule.

(j) Technology-based permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of total recoverable metals as defined in 40 CFR 136 unless:

(1) an applicable effluent standard or limitation has been promulgated under the CWA and specifies the limitation for the metal in the dissolved, valent, or total form;

(2) in establishing permit limitations on a case-by-case basis under 327 IAC 5-5-2, it is necessary to express the limitation on the metal in the dissolved, valent, or total form to carry out the provisions of the CWA; or

(3) all approved analytical methods for the metal inherently measure only its dissolved form, for example, hexavalent chromium.

(Water Pollution Control Board; 327 IAC 5-2-11; filed Sep 24, 1987, 3:00 p.m.: 11 IR 625; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1746; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1429; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3378)

327 IAC 5-2-11.1 Establishment of water quality-based effluent limitations for dischargers not discharging to waters within the Great Lakes system

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

Sec. 11.1. (a) The water quality standards established through the criteria set forth in 327 IAC 2-1-6 and 327 IAC 2-1-8.9 or under the procedures described in 327 IAC 2-1-8.2 through 327 IAC 2-1-8.6 and 327 IAC 2-1-8.9 shall:

(1) be the basis for water quality-based effluent limitations (WQBELs) applicable to point source dischargers, not discharging to waters within the Great Lakes system, through NPDES permits (except for instances where a variance has been approved under 327 IAC 2-1-8.8 and 327 IAC 5-3-4.1); and

(2) not be enforceable against point source dischargers until translated into effluent limitations that are incorporated in NPDES permits in accordance with this article.

(b) This subsection describes how the surface water quality criteria in 327 IAC 2-1-6(a) and 327 IAC 2-1-8.9(g) or those criteria derived using the procedures in 327 IAC 2-1-8.2 through 327 IAC 2-1-8.6 and 327 IAC 2-1-8.9 will be applied in determining appropriate WQBELs to NPDES permits as follows:

(1) The final acute value (FAV = 2(AAC)) will be applied directly to the undiluted discharge, or, if dilution by discharge induced mixing is allowed, the AAC will be applied outside the discharge induced mixing zone. If the AAC for a metal is expressed in the form of dissolved metal, the AAC shall be set equal to $C_{instream}$ determined for the AAC in accordance with subdivision (8).

(2) The CAC and the TLSC will be applied outside of the mixing zone. In the absence of site-specific mixing zone data, the allowable mixing zone dilution shall be determined by applying the guideline in 327 IAC 2-1-4 to the $Q_{7,10}$ low flow of the receiving stream. If the CAC for a metal is expressed in the form of dissolved metal, the CAC shall be set equal to $C_{instream}$ determined for the CAC in accordance with subdivision (8).

(3) The HLSC shall be applied outside of the mixing zone, if based on the consumption of organisms and incidental water intake. If based on consumption of organisms and drinking water, the HLSC shall apply at the point of the public water system intake, if this does not cause the HLSC based on consumption of organisms and incidental water intake to be exceeded outside of the mixing zone. Allowable mixing zone dilution shall be determined by applying the guideline of 327 IAC 2-1-4 to the $Q_{7,10}$ low flow of the receiving stream if the HLSC is based on consumption of organisms and incidental water intake and the $Q_{7,10}$ flow at the point of the public water system intake (provided the effluent has had time to fully mix with the receiving water) shall be allowed for dilution if the HLSC is based on consumption of organisms and drinking water.

(4) The criterion to provide an acceptable degree of protection to public health for cancer effects shall apply outside of the mixing zone if the criterion is based on consumption of organisms and incidental water intake and at the point of the public water system intake if based on the consumption of organisms and drinking water, if this would not cause the criterion based on the consumption of organisms and incidental water intake to be exceeded outside of the mixing zone. For calculation of allowable dilution, one-fourth (¼) of the fiftieth percentile flow of the receiving stream shall be used if the criterion is based on consumption of organisms and incidental water intake, and the fiftieth percentile flow of the receiving stream at the point of the public water system intake can be used if the criterion is based on the consumption of organisms and drinking water.

(5) As used in this rule, "FAV", "AAC", "CAC", "TLSC", and "HLSC" have the meanings set forth in 327 IAC 2-1-9.

(6) For a new discharge of a BCC, the water quality standard for a BCC shall be applied directly to the undiluted discharge. Beginning January 1, 2004, the water quality criteria for a BCC shall be applied directly to the undiluted discharge for all discharges of a BCC. As used in this subdivision, "new discharge" means a discharge of a BCC that is initiated after the effective date of this subdivision.

(7) For intermittent or controlled discharges, the mixing zone dilution may be determined using stream flows other than those specified in this subsection if these alternate stream flows will ensure compliance with water quality criteria.

(8) The following procedures shall be used to calculate $C_{instream}$, the total recoverable metal concentration outside the mixing zone that equates to an AAC or CAC expressed in the form of dissolved metal:

(A) For an AAC expressed in the form of dissolved metal, $C_{instream}$ shall be calculated by dividing the AAC by the acute translator found in clause (D).

(B) For a CAC expressed in the form of dissolved metal, $C_{instream}$ shall be calculated by dividing the CAC by the chronic translator found in clause (D).

(C) If all approved analytical methods for the metal inherently measure only its dissolved form, such as hexavalent chromium, $C_{instream}$ shall not be calculated and the AAC and CAC expressed in the form of dissolved metal shall be applied in determining appropriate WQBELs.

(D) Unless a site-specific translator is determined in accordance with clause (E), the following translators shall be used:

Table 11.1-1

Metals Translators

Dissolved to Total Recoverable

Substances	Acute Translators	Chronic Translators
Arsenic (III)	1.000	1.000
Cadmium	1.136672-[(ln hardness)(0.041838)]	1.101672-[(ln hardness)(0.041838)]
Chromium (III)	0.316	0.860
Copper	0.960	0.960
Lead	1.46203-[(ln hardness)(0.145712)]	1.46203-[(ln hardness)(0.145712)]
Nickel	0.998	0.997
Silver	0.85	
Zinc	0.978	0.986

(E) A discharger or proposed discharger may request the use of an alternate translator by using site-specific data. The discharger must conduct a site-specific study to identify the ratio of the dissolved fraction to the total recoverable fraction for a metal in the receiving waterbody outside the mixing zone. If the discharger provides an acceptable study and other provisions of 327 IAC 2-1 and this article are satisfied (such as antibacksliding and antidegradation), the commissioner shall use the site-specific translator. A translator derived for one (1) discharge into a waterbody segment may be applied to other discharges on the same waterbody segment if the translator would adequately represent the site-specific conditions applicable to the other discharges.

(c) In a case where a variance has been granted from a water quality standard under 327 IAC 2-1-8.8 and 327 IAC 5-3-4.1, WQBELs for the pollutant that is the subject of the variance shall be calculated under subsection (b) on the basis of the variance rather than the water quality standard.

(d) WQBELs in an NPDES permit for a metal calculated from a water quality criterion expressed in the form of dissolved metal that is:

(1) contained in 327 IAC 2-1; or

(2) subsequently developed under the procedures contained in 327 IAC 2-1;

shall be expressed in the permit as total recoverable metal unless all approved analytical methods for the metal inherently measure only its dissolved form, such as hexavalent chromium.

(e) WQBELs for cyanide, calculated from a criterion for free cyanide contained in 327 IAC 2-1, shall be limited in the permit as free cyanide and monitored in the effluent using the "Cyanides Amenable to Chlorination" (CATC) method (40 CFR 136, Method 4500-CN G) or another method approved by the commissioner. The commissioner may include additional monitoring, limitations, or other requirements in a permit, on a case-by-case basis, if the additional requirements are necessary to ensure that water quality

standards will be attained.

(f) When the WQBEL for any substance is less than the limit of quantitation normally achievable and determined by the commissioner to be appropriate for that substance in the effluent, the permit shall contain the following provisions:

(1) The permittee shall be required to use an approved analytical methodology for the substance in the effluent to produce the LOD and LOQ achievable in the effluent. This analytical method, and the LOD and LOQ associated with this method, shall be specified in the permit in addition to the following requirements:

(A) The permit shall include conditions that state that effluent concentrations less than the limit of quantitation are in compliance with the effluent limitations.

(B) In addition, the permit shall require the permittee to implement one (1) or more of the following requirements:

(i) Develop a more sensitive analytical procedure.

(ii) Use an existing, more sensitive, analytical procedure that has not been approved by EPA.

(iii) Conduct studies to determine the bioaccumulative or bioconcentrative properties of the substance in aquatic species through caged-biota studies or fish tissue analyses of resident species.

(iv) Conduct effluent bioconcentration evaluations.

(v) Conduct whole effluent toxicity testing.

(vi) Other requirements, as appropriate, such as engineering assessments or sediment analyses.

For substances defined as BCCs, at a minimum, either item (iii) or (iv) shall be included in the permit.

(2) If the measured effluent concentrations for a substance are above the WQBELs and above the LOD specified by the permit in any three (3) consecutive analyses or any five (5) out of nine (9) analyses, or if any of the additional analyses required under subdivision (1)(B) indicate that the substance is present in the effluent at concentrations exceeding the WQBELs, the permit shall contain provisions that require the discharger to:

(A) determine the source of this substance through evaluation of sampling techniques, analytical/laboratory procedures, and industrial processes and wastestreams; and

(B) increase the frequency of sampling and testing for the substance.

(3) The permit shall contain provisions allowing the permit to be reopened, in accordance with section 16 of this rule, to include additional requirements or limitations if the information gathered under subdivisions (1) and (2) indicates that such additional requirements or limitations are necessary.

(g) The department shall use the representative ambient upstream concentration of a substance in determining the WQBELs for that substance. This upstream concentration shall be determined by the department on a case-by-case basis, using existing, acceptable data for the receiving water. Where limited or no acceptable data exists, the permittee shall be required to supply the necessary data. Whenever the representative ambient upstream concentration for a substance in the receiving water is determined to be greater than any applicable water quality criterion for that substance, the following conditions apply:

(1) If the source of the wastewater is not the receiving water, the permit limitations shall be calculated using the applicable water quality criterion and a value of zero (0) for the upstream dilution flow. Except for substances defined as BCCs, the department may establish limitations greater than the applicable water quality criterion for the substance as required in this subdivision, in a range up to, but not greater than, the lesser of the representative ambient upstream concentration of the substance in the receiving water or the representative ambient concentration of the substance in the body of water at the point of intake. The limitation shall only be increased above the criterion if it is demonstrated to the department that the concentration of the substance in the body of water at the point of intake exceeds the applicable criterion for that substance and that reasonable, practical, or otherwise required methods are implemented to minimize the addition of the substance to the wastewater.

(2) If the source of the wastewater is the receiving water, the effluent limitation for that substance shall equal the representative ambient upstream concentration of that substance in the receiving water as determined by the department. Where circumstances allow, such as the discharge of once through noncontact cooling water, this will be implemented through the use of net limitations, with a net limitation of zero (0) being applied to the effluent. The representative ambient upstream concentration applicable to this subdivision shall be established at the upper ninety-ninth percentile of the available acceptable upstream data or otherwise appropriately determined as the reasonably expected upstream concentration for that substance.

(h) In addition to the requirements of 40 CFR 122.43(a), NPDES permits shall include limitations more stringent than promulgated effluent limitations guidelines from Sections 301, 306, 307, 318, and 405 of the CWA where necessary to achieve water quality standards established under Section 303 of the CWA, including narrative criteria for water quality as follows:

(1) Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants)

that the commissioner determines are, or may be, discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any narrative or numeric water quality criterion promulgated under 327 IAC 2-1-6.

(2) When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an instream excursion above a narrative or numeric criterion within an Indiana water quality standard, the commissioner shall use procedures that account for:

(A) existing controls on point and nonpoint sources of pollution;

(B) the variability of the pollutant or pollutant parameter in the effluent;

(C) the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity); and

(D) where appropriate, the dilution of the effluent in the receiving water.

(3) When the commissioner determines, using the procedures in subdivision (2), that a discharge causes, has the reasonable potential to cause, or contributes to an instream excursion above the allowable ambient concentration of a numeric criterion from 327 IAC 2-1-6 for an individual pollutant, the permit must contain effluent limitations for that pollutant.

(4) When the commissioner determines, using the procedures in subdivision (2), that a discharge causes, has the reasonable potential to cause, or contributes to an instream excursion above the numeric criterion for whole effluent toxicity, the permit must contain effluent limits for whole effluent toxicity.

(5) Except as provided in this subdivision, when the commissioner determines, using the procedures in subdivision (2), toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an instream excursion above a narrative criterion from 327 IAC 2-1-6, the permit must contain effluent limitations for whole effluent toxicity. Limitations on whole effluent toxicity are not necessary where the commissioner demonstrates in the fact sheet or briefing memo of the NPDES permit, using the procedures in subdivision (2), that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative water quality criteria.

(6) Where a water quality criterion has not been established for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion from 327 IAC 2-1-6, the commissioner must establish effluent limits using one (1) or more of the following options:

(A) Establish effluent limits using a calculated numeric water quality criterion for the pollutant that the commissioner demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using a proposed state criterion, or an explicit policy or rule interpreting the narrative water quality criterion, supplemented with other relevant information that may include:

(i) EPA's Water Quality Standards Handbook, Second Edition–Revised (1994);

(ii) risk assessment data;

(iii) exposure data;

(iv) information about the pollutant from the Food and Drug Administration; and

(v) current EPA criteria documents.

(B) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under Section 304(a) of the CWA, supplemented where necessary by other relevant information.

(C) Establish effluent limitations on an indicator parameter for the pollutant of concern, provided the following:

(i) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation.

(ii) The fact sheet required by 327 IAC 5-3-8 sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern that are sufficient to attain and maintain applicable water quality standards.

(iii) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards.

(iv) The permit contains a reopening clause allowing the permitting authority to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

(7) When developing WQBELs under this subsection, the commissioner shall ensure the following:

(A) The level of water quality to be achieved by limits on point sources established under this subsection is derived from, and complies with, all applicable water quality standards.

(B) Effluent limits developed to protect a narrative water quality criterion or a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available WLA for the discharge prepared by the commissioner and approved by EPA under 40 CFR 130.7.

(Water Pollution Control Board; 327 IAC 5-2-11.1; filed Feb 1, 1990, 4:30 p.m.: 13 IR 1043; filed Feb 26, 1993, 5:00 p.m.: 16 IR

1749; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1432; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3378; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2097)

327 IAC 5-2-11.2 Public notice of comment period and public meetings for site-specific modification of water quality criteria and values; implementation of antidegradation; alternate mixing zone demonstrations; variances

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 13-15-4-1; IC 13-15-5-1; IC 13-18-4; IC 13-18-7; IC 13-23-13; IC 13-24-1; IC 13-25-5

Sec. 11.2. (a) This section is applicable to an application for the following:

(1) Site-specific modification to water quality criteria under 327 IAC 2-1-8.9 and Tier I water quality criteria and Tier II water quality values under 327 IAC 2-1.5-16.

(2) An antidegradation demonstration under section 11.3(b)(4) of this rule.

(3) An antidegradation exception under section 11.7(c) of this rule.

(4) An alternate mixing zone under section 11.4(b)(4)(F) of this rule.

(5) A variance under 327 IAC 5-3-4.1(c).

(b) Upon receipt of an application listed in subsection (a), the commissioner shall provide notice, request comment, and, if requested, schedule and hold a public meeting on the application in accordance with the following conditions:

(1) The commissioner shall provide notice of receipt of an application in the following manner:

(A) Publication of a notice in a daily or weekly newspaper in general circulation throughout the area affected by the discharge for which the application was submitted.

(B) Send the notice to interested persons on either mailing list identified under the following:

(i) 327 IAC 5-3-8(a).

(ii) 327 IAC 5-3-12(b)(1).

(C) Send the notice to the applicant.

(2) The notice under subdivision (1) shall contain the following:

(A) The name and address of the department.

(B) The name and address of the applicant.

(C) An identification of the type of application submitted, such as alternate mixing zone or variance.

(D) A brief description of the location of any existing or proposed discharge point subject to the application, including an identification of the receiving water.

(E) A brief description of the applicant's activities or operations that result in the discharge identified in the application.

(F) An identification of the substance for which the application was submitted.

(G) The name of an agency contact person and an address and telephone number where interested persons may obtain further information, including a copy of the application.

(H) A brief description of the comment procedures and the procedures to request a public meeting.

(3) If requested, the commissioner shall hold a public meeting on the application in accordance with the following provisions:

(A) The commissioner shall provide notice of the public meeting as follows:

(i) Publication of a notice in a daily or weekly newspaper in general circulation throughout the area affected by the discharge for which the application was submitted.

(ii) Send the notice to the following interested persons:

(AA) Persons on the mailing list identified under 327 IAC 5-3-8(a).

(BB) Persons on the mailing list identified under 327 IAC 5-3-12(b)(1).

(CC) Those persons that commented on the notice of receipt of the application.

(iii) Send the notice to the applicant.

(B) The notice required by clause (A) shall contain the date, time, and place of the public meeting and the information required under subdivision (2).

(C) The meeting shall be held at least ten (10) days after the later of the following:

(i) The notice in accordance with clause (A)(i) appears in the newspaper.

(ii) The postmark date of the written notice sent to interested parties and to the applicant in accordance with clause (A)(ii) and (A)(iii).

(D) The meeting shall be recorded by any of the following:

(i) Audiotape.

(ii) Videotape.

(iii) Any other method of accurately and completely recording the details of the meeting.

(E) The commissioner shall request the applicant to provide a summary and rationale for the application at the meeting.

(F) At the commissioner's discretion, a public meeting may be noticed and held without having first received a request for a public meeting. In these instances, the notice for the public meeting may be contained in the notice of receipt of the application.

(4) The time period under IC 13-15-4-1 is hereby changed to increase the period by thirty (30) days for any permit application subject to the time period that is affected by the application. If a public meeting is requested, the time period under IC 13-15-4-1 is hereby changed to increase the period by an additional thirty (30) days.

(Water Pollution Control Board; 327 IAC 5-2-11.2; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1435; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3378; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2101)

327 IAC 5-2-11.3 Great Lakes system dischargers antidegradation implementation procedures

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 13-11-2-24; IC 13-15-5-1; IC 13-18-4; IC 13-18-7; IC 13-23-13; IC 13-24-1; IC 13-25-5

Sec. 11.3. (a) For all waters within the Great Lakes system, the commissioner shall ensure that the level of water quality necessary to protect existing uses is maintained. In order to achieve this requirement, and consistent with 40 CFR 131.10, water quality standards use designations must include all existing uses. Controls shall be established as necessary on point and nonpoint sources of pollutants to ensure that the criteria applicable to the designated use are achieved in the water and that any designated use of a downstream water is protected. Where water quality does not support the designated uses of a waterbody or ambient pollutant concentrations are greater than water quality criteria applicable to that waterbody, the commissioner shall not allow a lowering of water quality for the pollutant or pollutants that prevents the attainment of such uses or the water quality criterion.

(b) For high quality waters that are not designated as an outstanding state resource water, the commissioner shall ensure that no action resulting in a significant lowering of water quality occurs unless an antidegradation demonstration has been completed pursuant to subdivision (3) and the information thus provided is determined by the commissioner pursuant to subdivision (4) to adequately justify the proposed lowering of water quality. In allowing such degradation, the commissioner shall assure water quality adequate to protect existing uses fully. Further, the commissioner shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control. The following provisions apply to high quality waters that are not designated as an outstanding state resource water:

(1) A significant lowering of water quality occurs when any of the following occur:

(A) A new or increased loading of any bioaccumulative chemical of concern (BCC) is proposed from any existing or new facility, either point source or nonpoint source, for which a new permit, permit modification, or other control document would be required, as a result of any activity, including, but not limited to, the following:

(i) Construction of a new regulated facility or modification of an existing regulated facility such that a new or modified permit is required.

(ii) Modification of an existing regulated facility operating under a current permit such that the production capacity of the facility is increased.

(iii) Addition of a new source of untreated or pretreated effluent containing or expected to contain any BCC to an existing wastewater treatment works, whether public or private.

(iv) A request for an increased limit in an applicable permit.

(v) Other deliberate activities that, based on the information available, could be reasonably expected to result in an increased loading of any BCC to any waters of the Great Lakes system.

(B) There is a new or increased permit limit for a substance that is not a BCC, from any existing or new facility, either point source or nonpoint source for which there is a permit or reviewable action, as a result of any activity, and the new or increased permit limit will result in both of the following:

(i) A calculated increase (calculated decrease for dissolved oxygen) in the ambient concentration of the substance outside of the designated mixing zone or volume, where applicable, in the receiving waterbody.

(ii) A lowering of water quality that is greater than a de minimis lowering of water quality. As used in this clause, "de minimis lowering of water quality" occurs if all of the following are satisfied for the substance under consideration and such a determination is consistent with applicable requirements and limitations in section 11.4 of this rule, including appropriate margin of safety allocations:

(AA) The proposed increase in mass discharged is less than ten percent (10%) of the unused loading capacity. The proposed increase in mass discharged shall be determined as follows:

$$M_p - M_E = \text{Proposed increase in mass discharged}$$

Where: M_p = Monthly average mass effluent limitation for the parameter in the proposed discharge.

M_E = Monthly average mass effluent limitation for the parameter in the existing permit. If the existing permit does not contain a monthly average mass effluent limitation for the parameter, but does contain a weekly average or daily maximum mass limit, the existing weekly average or daily maximum permit limit shall be converted into a monthly average value to be used in this equation. If the existing permit does not contain a mass limit for the parameter, but does contain a concentration limit, this concentration limit shall be converted into a mass value, using the discharge flow determined under section 11.4(a)(9) of this rule, to be used in this equation. If the existing permit does not contain an effluent limit for the parameter, the actual monthly average mass discharged shall be used in this equation.

(BB) At least ten percent (10%) of the total loading capacity remains unused after the lowering of water quality.

(iii) The following definitions apply throughout this clause:

(AA) "Total loading capacity" means the product of the applicable water quality criterion times the sum of the existing effluent flow and the stream design flow for the waterbody in the area where the water quality is proposed to be lowered, expressed as a mass loading rate.

(BB) "Unused loading capacity" means that amount of the total loading capacity not utilized by point source and nonpoint source discharges. The unused loading capacity is established at the time the request to lower water quality is considered.

(C) Notwithstanding clauses (A) and (B), the following do not constitute a significant lowering of water quality:

(i) Changes in loadings of any substance within the existing capacity and processes, and that are covered by the existing applicable permit. These changes include, but are not limited to, the following:

(AA) Normal operational variability, including, but not limited to, intermittent increased discharges due to wet-weather conditions.

(BB) Changes in intake water pollutants not caused by the discharger.

(CC) Increasing the production hours of the facility, for example, adding a second shift.

(DD) Increasing the rate of production.

(ii) New limits for an existing permitted discharger that are not a result of changes in pollutant loading, and will not allow an increase in pollutant loading, including new limits that are a result of the following:

(AA) New or improved monitoring data.

(BB) New or improved analytical methods.

(CC) New or modified water quality criteria or values.

(DD) New or modified effluent limitations guidelines, pretreatment standards, or control requirements for POTWs.

(iii) The following actions:

(AA) Short term, temporary (weeks or months) lowering of water quality.

(BB) Bypasses that are not prohibited at 40 CFR 122.41(m) or section 8(11) of this rule.

(CC) New or increased discharges of a pollutant, when the facility withdraws intake water containing the pollutant from the same body of water, and the new or increased discharge of the pollutant is due solely to the presence of the pollutant in the intake.

(DD) New or increased discharges of a pollutant that is not a BCC, where there is a contemporaneous enforceable decrease in the actual loading of the pollutant from sources contributing to the same body of water such that there is no net increase in the loading of the pollutant to the same body of water.

(EE) New or increased discharges of a pollutant or pollutant parameter due to response actions pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (as defined in IC 13-11-2-24), as amended, corrective actions pursuant to the Resource Conservation and Recovery Act (RCRA), as amended, or similar federal or state authorities, undertaken to alleviate a release into the environment of hazardous substances, pollutants, or contaminants that may pose an imminent and substantial danger to public health or welfare.

(FF) New or increased discharges of a pollutant or pollutant parameter due to increasing the sewered area, connection of new sewers and customers, or acceptance of trucked-in wastes (such as septage and holding tank wastes) by a POTW, provided that the increase is within the design flow of the facility, there is no increased loading of BCCs from nondomestic wastes, and no significant change is expected in the characteristics of the wastewater discharged.

(GG) Increased discharges of a pollutant due to implementation of department-approved industrial or municipal controls on wet-weather flows, including combined sewer overflows and industrial storm water, when there is no net increase in the loading of the pollutant to the same body of water.

(HH) New or increased discharges of noncontact cooling water that will not increase the temperature of the receiving waterbody outside of the designated mixing zone, where applicable and will not require numeric WQBELs for toxic substances or WET as determined under section 11.5 of this rule.

(II) Discharges of storm water subject to a general permit under 327 IAC 15-5 (storm water run-off associated with construction activity) and 327 IAC 15-6 (storm water run-off associated with industrial activity).

(JJ) An action that will result in a new or increased discharge of a pollutant or pollutant parameter that is not a BCC, if the new or increased discharge is necessary to accomplish a reduction in the discharge of another pollutant or pollutant parameter and the commissioner determines the action will result in a net improvement in water quality in the waterbody. The commissioner may approve such an action only if:

(aa) the reduction in the discharge of the reduced pollutant exceeds the increase in the discharge of the new or increased pollutant;

(bb) the new or increased pollutant is determined to be significantly less bioaccumulative and toxic than the decreased pollutant; and

(cc) the applicant demonstrates that all reasonable and cost-effective methods for avoiding the new or increased discharge have been taken.

(KK) An action that will result in a new or increased discharge of a pollutant or pollutant parameter that is not a BCC, if the new or increased discharge is necessary to accomplish a reduction in the release of an air pollutant and the commissioner determines the action will result in a net environmental improvement. The commissioner may approve such an action only if:

(aa) the reduction in the discharge of the air pollutant is necessary to meet a state or federal air quality standard or will substantially reduce human exposure to hazardous air pollutants;

(bb) the reduction in the mass of air pollutant discharged represents a substantial reduction in the total mass released by the applicant; and

(cc) the applicant demonstrates that all reasonable and cost-effective methods for avoiding the new or increased discharge to the waterbody have been taken.

(LL) At the commissioner's discretion, new or increased discharges of a substance used to treat zebra mussels in an intake water pipe or structure.

(iv) As used in this clause, “same body of water” has the meaning set forth in section 11.5(b)(4)(B)(i) of this rule.

(2) The commissioner shall establish the following conditions in the permit applicable to the regulated facility:

(A) The permit shall prohibit the regulated facility from undertaking any deliberate action that would result in a new or increased discharge of a BCC or a new or increased permit limit for a pollutant or pollutant parameter that is not a BCC unless one (1) of the following is completed prior to the commencement of the action:

(i) Information is submitted to the commissioner demonstrating that the proposed new or increased discharge will not cause a significant lowering of water quality as defined under subdivision (1). Upon review of this information, the commissioner may request additional information or may determine that the proposed increase is a significant lowering of water quality and require the submittal of an antidegradation demonstration.

(ii) An antidegradation demonstration submitted and approved in accordance with subdivisions (3) through (6).

(B) For POTWs:

(i) the permit shall prohibit the POTW from allowing a new or increased discharge of a BCC from:

(AA) an existing industrial user proposing to increase or add a process wastestream; or

(BB) a proposed new industrial user will have a process wastestream; and

the process wastestream contains a BCC at concentrations detectable using the most sensitive analytical method for the BCC contained in 40 CFR 136 or approved by the commissioner;

(ii) unless one (1) of the following is completed prior to commencement of the discharge:

(AA) Information is submitted to the commissioner demonstrating that the proposed new or increased discharge will not cause a significant lowering of water quality as defined under subdivision (1). Upon review of this information, the commissioner may request additional information or may determine that the proposed increase is a significant lowering of water quality and require the submittal of an antidegradation demonstration.

(BB) An antidegradation demonstration is submitted and approved in accordance with subdivisions (3) through (6).

(C) Whether or not the permit contains a limitation for a BCC, the permit shall require monitoring for any BCC known or believed to be present in the permitted discharge, from any point or nonpoint source over which the permittee has control. If there is an increase in loading of a BCC, above normal variability and attributable to a deliberate action, the discharger shall notify the commissioner of the increase unless either:

(i) the discharger has submitted the information required under clause (A)(i) for the increase; or

(ii) an antidegradation demonstration for the increase has been approved under subdivision (5).

If the increase is determined to be a significant lowering of water quality, as defined under subdivision (1), the commissioner shall require reduction or elimination of the increase.

(D) Fact sheets prepared pursuant to 40 CFR 124.8 and 40 CFR 124.56 or 327 IAC 5-3-8 shall reflect any conditions developed under clause (A) or (B) and included in a permit.

(3) Any existing or proposed discharger seeking to significantly lower water quality in a high quality water must first submit an antidegradation demonstration for consideration by the commissioner. The antidegradation demonstration shall include the following:

(A) An identification of measures available to the existing or proposed discharger to minimize or prevent the proposed lowering, including, but not limited to, the following:

(i) For BCCs, identify any cost-effective pollution prevention alternatives and techniques that are available to the discharger that would eliminate or significantly reduce the extent to which the increased loading results in a significant lowering of water quality. As used in this item, "pollution prevention" has the meaning set forth in the federal Pollution Prevention Act of 1990 (42 USCA 13101 to 42 USCA 13109).

(ii) For all substances, the discharger shall identify alternative or enhanced treatment techniques that are available to the discharger that would eliminate or significantly reduce the extent to which the increased loading results in a significant lowering of water quality, the pollution reduction benefits associated with such techniques, and their costs relative to the cost of treatment necessary to achieve applicable effluent limitations. This submittal shall include an evaluation of the feasibility and costs of connecting to an existing publicly (or privately) owned treatment works. Pollution prevention measures may be identified as part of this process. As used in this item, "pollution prevention" means changes in production process technologies, materials, processes, operations, or procedures to reduce or eliminate the source of the pollutant.

(B) For all new or increased discharges, an identification of the positive and negative social or economic development and the benefits to the area in which the waters are located that will occur if the significant lowering of water quality is allowed. This includes, but is not limited to, the following:

(i) An evaluation of the baseline economic condition, including, but not limited to, the following:

(AA) The unemployment rate in the area.

(BB) The population in the area.

(CC) The average household income relative to state and national averages.

(DD) The percentage of the population living below the poverty level.

(ii) Information on the anticipated net positive impacts attributable to the activity that will result in the new or

increased discharge, including, but not limited to, the following:

(AA) The increase in employment, or avoidance of a reduction in employment at the facility.

(BB) The reduction in the local unemployment rate attributable to the facility.

(CC) The total annual payroll of nonofficers for the new or increased employment, and the average annual wage for the new, nonofficer employees. In lieu of this information, the applicant may provide other information that quantifies the extent of the economic benefit to be provided to the area.

(DD) The increased tax revenues.

(EE) The increase in production level.

(FF) The increase in efficiency.

(GG) The extent to which an environmental or public health problem is corrected.

(HH) Industrial, commercial, or residential growth in the community.

(II) Other social or economic benefits to the community.

(iii) Information on the potential negative economic or social impacts to the community that may occur as a result of the activity that will result in the new or increased discharge, such as making the receiving water less attractive for recreation or causing a loss in tourism dollars.

(C) For all new or increased discharges, an identification of the potential adverse environmental or public health impacts attributable to the proposed significant lowering in water quality, including, but not limited to, the following:

(i) An identification of the potential impact of the significant lowering on the aquatic community structure and function, including important commercial or recreational sport fish species, and species that are unique or rare within the locality or the state (such as a mussel bed).

(ii) An identification of endangered or threatened species potentially impacted by the significant lowering.

(iii) The increased risk to human health due to the new or increased concentration of carcinogens or bioaccumulative chemicals of concern.

(iv) An identification of characteristics of the receiving waterbody that are unique or rare within the locality or state potentially impacted by the significant lowering.

(v) The location of the nearest downstream public water supply intake, if any.

(vi) An identification of all government or privately sponsored conservation projects that have specifically targeted improved water quality or enhanced recreational opportunities on the proposed receiving waterbody in the area of the new or increased discharge.

(vii) An identification of all other environmental permits the applicant has applied or will apply for that are attributable to the activity (such as a permit from the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act).

(D) In lieu of the information required by clauses (A) through (C), dischargers proposing any of the actions listed in item (i) may submit the information required under item (ii) as follows:

(i) This clause is applicable to any of the following actions:

(AA) A response action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (as defined in IC 13-11-2-24), as amended.

(BB) A corrective action pursuant to the Resource Conservation and Recovery Act (RCRA), as amended.

(CC) An action pursuant to similar federal or state authorities, including, but not limited to, the following:

(aa) An underground storage tank (UST) corrective action under IC 13-23-13.

(bb) A remediation of petroleum releases under IC 13-24-1.

(cc) A voluntary remediation under IC 13-25-5.

(dd) An abatement or correction of any polluted condition under IC 13-18-7.

(ii) The discharger may submit information to the commissioner that demonstrates that the action minimizes the proposed lowering of water quality, including, but not limited to, the following:

(AA) For BCCs, the action will utilize the most cost effective pollution prevention techniques available. As used in this subitem, "pollution prevention" has the meaning set forth in the federal Pollution Prevention Act of 1990 (42 USCA 13101 to 42 USCA 13109).

(BB) The action will utilize the most cost-effective treatment techniques available.

(4) Upon receipt of an antidegradation demonstration, the commissioner shall provide notice, request comment, and, if requested, schedule and hold a public meeting on the application in accordance with section 11.2 of this rule.

(5) Once the commissioner determines that the information provided by the discharger proposing a new or increased discharge is administratively complete, the commissioner shall make an antidegradation decision in accordance with the following:

(A) The commissioner shall deny the request to lower water quality if cost-effective measures necessary to prevent the proposed lowering are reasonably available or the action that would cause the lowering would not support important social and economic development in the area.

(B) If the discharger has demonstrated that cost-effective measures necessary to prevent the proposed lowering are not reasonably available, the commissioner may allow all or part of the proposed lowering to the extent that:

(i) cost-effective measures necessary to reduce the proposed lowering are reasonably available; and

(ii) the action that will cause the lowering will support important social and economic development in the area.

(C) In no event may the decision reached under this subsection allow water quality to be lowered below the minimum level required to fully support existing and designated uses.

(6) When the commissioner proposes an antidegradation decision, the tentative decision shall be summarized in the public notice form and incorporated into the draft permit and the fact sheet of the draft permit that is made available for public comment under 327 IAC 5-3-9. A final antidegradation decision shall be incorporated into the final permit and the fact sheet of a final NPDES permit.

(c) For waters designated as an outstanding national resource under 327 IAC 2-1.5-4, the commissioner shall ensure, through the application of appropriate controls on pollutant sources, that water quality is maintained and protected, except that a short term, temporary (weeks or months) lowering of water quality may be permitted by the commissioner. *(Water Pollution Control Board; 327 IAC 5-2-11.3; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1436; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3378)*

327 IAC 5-2-11.4 Great Lakes system dischargers total maximum daily loads; wasteload allocations for point sources; load allocations for nonpoint sources; preliminary wasteload allocations

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 13-18-4-7; IC 13-18-4-8

Sec. 11.4. (a) This subsection applies to the establishment of TMDLs for all pollutants and pollutant parameters in the Great Lakes system. Where specified, the following conditions also apply to WLAs calculated in the absence of TMDLs and to preliminary WLAs:

(1) At a minimum, TMDLs shall be established in accordance with the listing and priority setting process established in Section 303(d) of the Clean Water Act (CWA) and at 40 CFR 130.7. Where water quality standards cannot be attained immediately, TMDLs must reflect reasonable assurances that water quality standards will be attained in a reasonable period of time. TMDLs may be based on attaining water quality standards over a period of time, with specific controls on individual sources being implemented in stages. Determining the reasonable period of time in which water quality standards will be met is a case-specific determination considering a number of factors, including, but not limited to, the following:

(A) Receiving water characteristics.

(B) Persistence, behavior, and ubiquity of pollutants of concern.

(C) Type of remediation activities necessary.

(D) Available regulatory and nonregulatory controls.

(E) Requirements for attainment of water quality standards.

(2) An assessment and remediation plan that the commissioner has certified as meeting the requirements of this section pertaining to TMDLs and public participation requirements applicable to TMDLs, and that has been approved by EPA as meeting those requirements under 40 CFR 130.6, may be used in lieu of a TMDL for purposes of this section. Assessment and remediation plans under this section may include, but are not limited to, the following:

(A) Lakewide Management Plans.

(B) Remedial Action Plans.

(C) State Water Quality Management Plans.

Also, any part of an assessment and remediation plan that also satisfies one (1) or more requirements under Section 303(d) of the CWA or implementing regulations may be incorporated by reference into a TMDL as appropriate. Assessment and remediation plans under this section shall be tailored to the level of detail and magnitude for the watershed and pollutant being assessed.

(3) TMDLs, WLAs calculated in the absence of a TMDL, and preliminary WLAs must ensure attainment of applicable water

quality standards including all numeric and narrative water quality criteria set forth in 327 IAC 2-1.5-8 and 327 IAC 2-1.5-16, and Tier I criteria and Tier II values established under 327 IAC 2-1.5-11 through 327 IAC 2-1.5-16.

(4) If a discharge contains one (1) or more substances for which a TMDL, WLA calculated in the absence of a TMDL, or preliminary WLA was based on an HCC, HCV, HNC, or HNV, human health shall be protected from the potential adverse additive effects of mixtures of substances in an effluent in accordance with the following procedures:

(A) If an effluent for a particular discharger contains more than one (1) substance for which an HCC exists or for which an HCC or an HCV can be calculated, the additivity of the mixture of carcinogens shall be addressed as follows:

(i) Except as provided in item (ii), the TMDL, WLA calculated in the absence of a TMDL, or preliminary WLA based on an HCC or HCV shall be established to protect against additive effects possibly associated with simultaneous multiple chemical human exposure to carcinogens such that the following condition is met:

$$\sum \frac{C_i}{WLA_i} \leq 1; \quad \text{For } i = 1 \text{ to } n$$

Where:

C = The adjusted TMDL, WLA calculated in the absence of a TMDL, or preliminary WLA concentration of each separate carcinogen that shall be used in the calculation of reasonable potential in section 11.5 of this rule and water quality-based effluent limitations (WQBELs) in section 11.6 of this rule.

WLA = The TMDL, WLA calculated in the absence of a TMDL, or preliminary WLA concentration based on the HCC or HCV for each respective carcinogen.

n = Number of WLAs based on an HCC or HCV.

(ii) Notwithstanding item (i):

(AA) the commissioner may consider, upon submission of the discharger, the use of an alternate, scientifically-based, procedure for ensuring the aggregate risk of the mixture of carcinogens remains below one (1) in one hundred thousand (100,000); or

(BB) if information is available to the commissioner demonstrating that available scientific information does not support the assumption of additivity, the TMDL, WLA calculated in the absence of a TMDL, or preliminary WLA shall not be adjusted for each such substance.

(B) If an effluent for a particular discharger contains more than one (1) substance for which an HNC exists or for which an HNC or HNV can be calculated, the additivity of the mixture of substances shall be addressed as follows:

(i) The incremental adverse effect of each substance shall be assumed to not be additive except as provided in item (ii).

(ii) If scientific information available to the commissioner demonstrates that the adverse effects of the components are additive, the TMDL, WLA calculated in the absence of a TMDL, or preliminary WLA based on an HNC or HNV for each additive noncarcinogenic substance shall be established to protect against additive effects possibly associated with simultaneous multiple chemical human exposure such that the following condition is met:

$$\sum \frac{N_i}{WLA_i} \leq 1; \quad \text{For } i = 1 \text{ to } n$$

Where:

N = The adjusted TMDL, WLA calculated in the absence of a TMDL, or preliminary WLA concentration of each separate additive noncarcinogenic substance that shall be used in the calculation of reasonable potential in section 11.5 of this rule and WQBELs in section 11.6 of this rule.

WLA = The TMDL, WLA calculated in the absence of a TMDL, or preliminary WLA concentration based on the HNC or HNV for each respective additive noncarcinogenic substance.

n = Number of WLAs based on an HNC or HNV for additive noncarcinogenic substances.

(C) Notwithstanding clauses (A) and (B), the toxicity equivalency factors (TEFs) and bioaccumulation equivalency factors (BEFs) for the chlorinated dibenzo-p-dioxins (CDDs) and chlorinated dibenzofurans (CDFs) shall be accounted for as follows:

(i) The TEFs and BEFs in Table 11.4-1 in item (iv) shall be used when calculating a 2,3,7,8-TCDD toxicity equivalence concentration in effluent to be used when implementing both HNC and HCC. The chemical concentration of each CDDs and CDFs in effluent shall be converted to a 2,3,7,8-TCDD toxicity equivalence concentration in effluent by:

(AA) multiplying the chemical concentration of each CDDs and CDFs in the effluent by the appropriate TEF in Table 11.4-1 in item (iv);

(BB) multiplying each product from subitem (AA) by the BEF for each CDDs and CDFs in Table 11.4-1 in item (iv); and

(CC) adding all final products from subitem (BB).

(ii) The equation for calculating the 2,3,7,8-TCDD toxicity equivalence concentration in effluent is:

$$(TEC)_{tcdd} = \sum (C)_x (TEF)_x (BEF)_x$$

Where:

$(TEC)_{tcdd}$ = 2,3,7,8-TCDD toxicity equivalence concentration in effluent.

$(C)_x$ = Concentration of total chemical x in effluent.

$(TEF)_x$ = TCDD toxicity equivalency factor for x.

$(BEF)_x$ = TCDD bioaccumulation equivalency factor for x.

(iii) The 2,3,7,8-TCDD toxicity equivalence concentration in effluent shall be used when developing TMDLs, WLAs in the absence of a TMDL, or preliminary WLAs under this section.

(iv) The following values shall be used for TEFs and BEFs for CDDs and CDFs:

Table 11.4-1
Toxicity Equivalency Factors (TEF) and
Bioaccumulation Equivalency Factors (BEF)
for CDDs and CDFs

Congener	TEF	BEF
2,3,7,8-TCDD	1.0	1.0
1,2,3,7,8-PeCDD	0.5	0.9
1,2,3,4,7,8-HxCDD	0.1	0.3
1,2,3,6,7,8-HxCDD	0.1	0.1
1,2,3,7,8,9-HxCDD	0.1	0.1
1,2,3,4,6,7,8-HpCDD	0.01	0.05
OCDD	0.001	0.01
2,3,7,8-TCDF	0.1	0.8
1,2,3,7,8-PeCDF	0.05	0.2
2,3,4,7,8-PeCDF	0.5	1.6
1,2,3,4,7,8-HxCDF	0.1	0.08
1,2,3,6,7,8-HxCDF	0.1	0.2
2,3,4,6,7,8-HxCDF	0.1	0.7
1,2,3,7,8,9-HxCDF	0.1	0.6
1,2,3,4,6,7,8-HpCDF	0.01	0.01
1,2,3,4,7,8,9-HpCDF	0.01	0.4
OCDF	0.001	0.02

(5) TMDLs shall include WLAs for point sources and LAs for nonpoint sources, including natural background, such that the sum of these allocations is not greater than the loading capacity of the water for the pollutant addressed by the TMDL, minus the sum of a specified margin of safety (MOS) and any capacity reserved for future growth. The components of the TMDL are as follows:

(A) Nonpoint source LAs that shall be based on any of the following:

(i) Existing pollutant loadings if changes in loadings are not reasonably anticipated to occur.

(ii) Increases in pollutant loadings that are reasonably anticipated to occur.

(iii) Anticipated decreases in pollutant loadings if such decreased loadings are technically feasible and are reasonably anticipated to occur within a reasonable time period as a result of implementation of BMPs or other load reduction measures. In determining whether anticipated decreases in pollutant loadings are technically feasible and can reasonably be expected to occur within a reasonable period of time, technical and institutional factors shall be considered. These decisions are case-specific and should reflect the particular TMDL under consideration.

(iv) Where appropriate and where sufficient data are available, contributions to the water column from sediments inside and outside of any applicable mixing zones.

(v) Where appropriate and where sufficient data are available, nonpoint source discharges resulting from wet weather events.

Monitoring data for these LAs shall be collected and analyzed in order to validate the TMDL's assumptions, to verify anticipated load reductions, to evaluate the effectiveness of controls being used to implement the TMDL, and to revise the WLAs and LAs as necessary to ensure that water quality criteria shall be achieved within the time period established in the TMDL.

(B) Each TMDL shall include an MOS sufficient to account for technical uncertainties in establishing the TMDL and shall describe the manner in which the MOS is determined and incorporated into the TMDL. The MOS may be provided by leaving a portion of the loading capacity unallocated or by using conservative modeling assumptions to establish WLAs and LAs. If a portion of the loading capacity is left unallocated to provide an MOS, the amount left unallocated shall be described. If conservative modeling assumptions are relied on to provide an MOS, the specific assumptions providing the MOS shall be identified.

(C) TMDLs may include reserved allocations of loading capacity to accommodate future growth and additional sources. Where such reserved allocations are not included in a TMDL, any increased loadings of the pollutant for which the TMDL was developed that are due to a new or expanded discharge shall not be allowed unless the TMDL is revised in accordance with these procedures to include an allocation for the new or expanded discharge.

(D) The sum of the WLAs is the portion of the loading capacity not assigned to nonpoint sources including background, or to an MOS, or reserved for future growth. Where appropriate and where sufficient data are available, WLAs shall also be developed for point source discharges resulting from wet weather events. Upon reissuance, NPDES permits for these point sources must include effluent limitations consistent with WLAs in EPA-approved or EPA-established TMDLs.

(6) If separate TMDLs are prepared for different segments of the same watershed, and the separate TMDLs each include WLAs for the same pollutant for one (1) or more of the same point sources, then WQBELs for that pollutant for the point sources shall be consistent with the most stringent of those WLAs in order to ensure attainment of all applicable water quality standards.

(7) TMDLs shall be sufficiently stringent so as to prevent accumulation of the pollutant of concern in sediments to levels injurious to designated or existing uses, human health, wildlife, and aquatic life.

(8) The representative background concentration of pollutants shall be established in accordance with this section to develop TMDLs, WLAs calculated in the absence of a TMDL, and preliminary WLAs. Background loadings may be accounted for in a TMDL through an allocation to a single background category or through individual allocations to the various background sources as follows:

(A) As used in this subsection, "background" represents all loadings resulting from the following:

(i) Flow from upstream waters into the specified watershed, waterbody, or waterbody segment for which a TMDL, WLA in the absence of a TMDL, or preliminary WLA for the purpose of determining the need for a WQBEL is being developed.

(ii) Atmospheric deposition or sediment release or resuspension.

(iii) Chemical reactions occurring within the watershed, waterbody, or waterbody segment.

(B) When determining what available data are acceptable for use in calculating background, the commissioner shall use best professional judgment, including consideration of the sampling location and the reliability of the data through comparison to reported analytical detection levels. Pollutant degradation and transport information may be considered when utilizing pollutant loading data. Where limited or no acceptable data exist, the commissioner may require the

permittee to supply the necessary data. Best professional judgment shall be used to select the one (1) data set that most accurately reflects or estimates background concentrations when data in more than one (1) of the following data sets or categories exist:

(i) Acceptable available water column data.

(ii) Water column concentrations estimated through use of acceptable available caged or resident fish tissue data.

(iii) Water column concentrations estimated through use of acceptable available or projected pollutant loading data.

(C) The representative background concentration for a substance in the specified watershed, waterbody, or waterbody segment shall be established as follows:

(i) If all the values in the data set selected in clause (B) are at or above the LOD, then the background concentration is the geometric mean of that data set.

(ii) If the data set consists of values above and below the LOD, the following procedure shall be used to determine the representative background concentration:

(AA) Each value in the data set with a value less than the LOD (nondetect) shall be assigned the value (V). The geometric mean of this adjusted data set is the representative background concentration. The value (V) is determined as follows:

$$V = (LOD) \times \left(1 - \frac{\text{Number of nondetects}}{\text{Total number of values}} \right)$$

(BB) If information is available that indicates an alternate methodology for evaluating the data set would result in a background concentration more representative of actual conditions, this alternative methodology may be used in place of the methodology contained in subitem (AA) upon approval of the commissioner.

(iii) When all of the acceptable available data in a data set or category, such as water column, caged or resident fish tissue, or pollutant loading data, are below the LOD for a substance, and the most sensitive approved analytical method available for that substance was used, then all the data for that pollutant in that data set shall be assumed to be zero (0).

(iv) Notwithstanding items (i) through (iii), the representative background concentration of whole effluent toxicity (WET) shall be assumed to be zero (0) unless data are available that indicates that the discharge of the WET and any background WET are additive.

(9) The effluent flow used to develop TMDLs, WLAs calculated in the absence of a TMDL, and preliminary WLAs shall be determined as follows:

(A) For municipal, semipublic, and other sanitary or domestic wastewater discharges, the average design flow of the treatment facility shall be used.

(B) For industrial dischargers, the highest monthly average flow from the previous two (2) years of monitoring shall be used.

(C) Notwithstanding clauses (A) and (B), an alternate effluent flow value may be used, upon approval by the commissioner, if the discharger provides flow data that supports the alternate value (such as when a TMDL or WLA is calculated for wet weather conditions as provided in section 11.6(g)(4) of this rule). This flow data shall be included with the application for a new permit, a renewal of an existing permit, or with a request for modification of an existing permit, or when requested by the commissioner.

(D) TMDLs, WLAs calculated in the absence of a TMDL, and preliminary WLAs shall indicate the point source effluent flows used in the analyses.

(10) The portion of the receiving waterbody allocated for mixing for TMDLs, WLAs calculated in the absence of a TMDL, and preliminary WLAs shall be determined in accordance with subsection (b).

(11) TMDLs, WLAs in the absence of a TMDL, and preliminary WLAs shall be based on the assumption that a pollutant does not degrade. However, the commissioner may take into account degradation of the pollutant if each of the following conditions are met:

(A) Scientifically valid field studies or other relevant information demonstrate that degradation of the pollutant is expected to occur under the full range of environmental conditions expected to be encountered.

(B) Scientifically valid field studies or other relevant information addresses other factors that affect the level of pollutants in the water column, including, but not limited to, the following:

(i) Resuspension of sediments.

(ii) Chemical speciation.

(iii) Biological and chemical transformation.

(C) Notwithstanding clauses (A) and (B), TMDLs, WLAs in the absence of a TMDL, and preliminary WLAs conducted for chlorine and WET shall be based on the assumption that the parameter does degrade unless data for the waterbody are available indicating otherwise.

(12) As used in this section, "loading capacity" refers to the greatest amount of loading that a water can receive without violating water quality standards. The loading capacity is initially calculated at the farthest downstream location in the watershed drainage basin. The maximum allowable loading consistent with the attainment of each applicable numeric criterion or value for a given pollutant is determined by multiplying the applicable criterion or value by the flow at the farthest downstream location in the tributary basin at the design flow condition described under subsection (b) and by using appropriate conversion factors. This loading is then compared to the loadings at sites within the basin to assure that applicable numeric criteria or values for a given pollutant are not exceeded at all applicable sites. The lowest load is then selected as the loading capacity.

(13) The ambient water quality characteristics used to develop TMDLs, WLAs calculated in the absence of a TMDL, and preliminary WLAs shall be determined as follows:

(A) For ammonia (as N), metals dependent on hardness, and pentachlorophenol, the appropriate water quality characteristics shall be obtained at a location downstream of the point of discharge, or for Lake Michigan, outside the applicable mixing zone and shall be determined as follows:

(i) For ammonia (as N), the seventy-fifth percentile of the pH and temperature. If a seasonal TMDL, WLA calculated in the absence of a TMDL, or preliminary WLA is developed for ammonia, the pH and temperature data shall be obtained from the appropriate seasonal period.

(ii) For metals dependent on hardness, the fiftieth percentile of the hardness.

(iii) For pentachlorophenol, the fiftieth percentile of the pH.

(B) If any of the data required under clause (A) are not available for the waterbody, the data shall either be obtained from similar nearby streams or the permittee will be required to obtain the necessary data. For discharges to Lake Michigan, data from Lake Michigan shall be required.

(C) The use of the data required in clause (A) is intended to determine values of those water quality characteristics that are representative of those characteristics at design conditions. If it is demonstrated that an alternate method of determining these characteristics for a specific receiving waterbody would result in values more representative of the characteristics at design conditions, then this alternate method may be used to determine the water quality characteristics.

(b) The following requirements shall be applied in establishing the portion of the receiving waterbody allocated for mixing for TMDLs, WLAs in the absence of TMDLs, and preliminary WLAs:

(1) The following procedures shall be used to establish the portion of the receiving waterbody allocated for mixing for TMDLs, WLAs in the absence of TMDLs, and preliminary WLAs for a BCC:

(A) For purposes of this subsection, new and existing discharges are determined as follows:

(i) New discharges are defined as:

(AA) discharges from new Great Lakes dischargers; or

(BB) new or expanded discharges from an existing Great Lakes discharger.

(ii) Existing discharges are defined as all discharges of BCCs not included in item (i).

(B) There shall be no mixing zone available for a new discharge of a BCC to the Great Lakes system. WLAs established through TMDLs, WLAs in the absence of TMDLs, and preliminary WLAs for a new discharge of a BCC shall be set equal to the most stringent applicable water quality criteria or values for the BCC.

(C) A mixing zone may be allocated for a BCC for an existing discharge to the Great Lakes system under subdivisions (2) and (3) until January 1, 2004, except for a discharge into the open waters of Lake Michigan. WLAs established through TMDLs, WLAs established in the absence of TMDLs, and preliminary WLAs for all discharges, both new and existing, into the open waters of Lake Michigan shall be set equal to the most stringent applicable water quality criteria or values for the BCC.

(D) Except as provided in clauses (E) and (F), NPDES permits shall not authorize mixing zones for existing discharges of a BCC to the Great Lakes system after January 1, 2004. After January 1, 2004, WLAs established through TMDLs,

WLAs established in the absence of TMDLs, and preliminary WLAs for all discharges of a BCC to the Great Lakes system shall be set equal to the most stringent applicable water quality criteria or values for the BCC.

(E) The commissioner may grant mixing zones for any existing discharge of a BCC to the Great Lakes system beyond the date specified in clause (D) where it can be demonstrated, on a case-by-case basis, that failure to grant a mixing zone would preclude water conservation measures that would lead to the overall load reduction of the BCC, even though higher concentrations of the BCC occur in the effluent. Such mixing zones must also be consistent with subdivisions (2) and (3).

(F) The commissioner may grant mixing zones, consistent with subdivisions (2) and (3), beyond the date specified in clause (D) for any existing discharge of a BCC to the Great Lakes system upon the request of a discharger subject to the following limited circumstances:

(i) The commissioner determines the following:

(AA) The discharger is in compliance with and will continue to implement all applicable technology-based treatment and pretreatment requirements of Sections 301, 302, 304, 306, 307, 401, and 402 of the CWA, and is in compliance with its existing NPDES WQBELs, including those based on a mixing zone.

(BB) The discharger has reduced and will continue to reduce the loading of the BCC for which a mixing zone is requested to the maximum extent possible.

(ii) In making the determination in item (i), the commissioner shall consider the following information submitted by the discharger:

(AA) The availability, feasibility, cost effectiveness, and environmental benefits of additional controls or pollution prevention measures for reducing and ultimately eliminating the BCC for that discharger, including those used by similar dischargers. As used in this item, "pollution prevention" has the meaning set forth in the federal Pollution Prevention Act of 1990 (42 U.S.C. 13101 et seq.).

(BB) Whether the discharger or affected communities will suffer unreasonable economic effects if the mixing zone is eliminated.

(CC) The extent to which the discharger will implement an ambient monitoring plan to ensure compliance with water quality criteria at the edge of any authorized mixing zone or to ensure consistency with any applicable TMDL or such other strategy consistent with this section.

(DD) Other information the commissioner deems appropriate.

(iii) Any exceptions to the mixing zone elimination provision for an existing discharge of a BCC granted under this clause shall comply with the following:

(AA) Not result in any less stringent limitations than those existing upon or after the effective date of this rule.

(BB) Not likely jeopardize the continued existence of any endangered or threatened species listed under Section 4 of the ESA or result in the destruction or adverse modification of such species' critical habitats.

(CC) Be limited to one (1) permit term unless the commissioner makes a new determination in accordance with this subdivision for each successive permit application in which a mixing zone for the BCC is sought.

(DD) Reflect all information relevant to the size of the mixing zone considered under item (ii).

(EE) Protect all designated and existing uses of the receiving water.

(FF) Meet all applicable aquatic life, wildlife, and human health criteria and values at the edge of the mixing zone and, as appropriate, within the mixing zone or be consistent with any appropriate TMDL or such other strategy consistent with this section.

(GG) Ensure the discharger has developed and conducted a pollutant minimization program for the BCC if required to do so under section 11.6 of this rule.

(HH) Ensure that alternative means for reducing BCCs elsewhere in the watershed are evaluated.

(G) For each draft NPDES permit that would allow a mixing zone for one (1) or more BCCs after January 1, 2004, the fact sheet or statement of basis for the draft permit, shall:

(i) specify the mixing provisions used in calculating the permit limits; and

(ii) identify each BCC for which a mixing zone is proposed.

(2) The following addresses conditions for deriving TMDLs, WLAs in the absence of TMDLs, and preliminary WLAs for open waters of Lake Michigan, inland lakes, and other waters of the Great Lakes system with no appreciable flow relative to their volumes:

(A) For discharges into the open waters of Lake Michigan, the following requirements apply:

(i) To prevent acute toxicity to aquatic life, WLAs established in a TMDL, WLAs in the absence of a TMDL, and preliminary WLAs shall be determined as follows:

(AA) For allocations based on an acute aquatic life criterion or value, the CMC or SMC shall not be exceeded outside the zone of initial dilution and the FAV shall not be exceeded in the undiluted discharge, unless a mixing zone demonstration is conducted and approved under subdivision (4), in which case the CMC or SMC shall be met outside the applicable alternate mixing zone.

(BB) For allocations implementing the narrative acute WET criterion, one and zero-tenths (1.0) TU_a shall not be exceeded in the undiluted discharge, unless a mixing zone demonstration is conducted and approved under subdivision (4), in which case three-tenths (0.3) TU_a shall be met outside the applicable alternate mixing zone.

(ii) To prevent chronic toxicity to aquatic life, human health, and wildlife, WLAs established in a TMDL, WLAs in the absence of a TMDL, and preliminary WLAs shall be determined as follows:

(AA) For allocations based on a chronic criterion or value (CCC or SCC; HNC or HNV; HCC or HCV; or WC or WV), the chronic criterion or value shall not be exceeded in the undiluted discharge unless a mixing zone demonstration is conducted and approved under subdivision (4), in which case the chronic criterion or value shall be met outside the applicable alternate mixing zone.

(BB) For allocations implementing the narrative chronic WET criterion, one and zero-tenths (1.0) TU_c shall not be exceeded in the undiluted discharge unless a mixing zone demonstration is conducted and approved under subdivision (4), in which case one and zero-tenths (1.0) TU_c shall be met outside the applicable alternate mixing zone.

(iii) WLAs established in a TMDL, WLAs in the absence of a TMDL, and preliminary WLAs based on the criterion for sulfates, total dissolved solids, fluorides, or dissolved iron under 327 IAC 2-1.5-8(j) shall ensure that the criterion not be exceeded in the undiluted discharge unless a mixing zone demonstration is conducted and approved under subdivision (4), in which case the criterion shall be met outside the applicable alternate mixing zone.

(iv) If mixing zones from two (2) or more proximate sources interact or overlap, the combined effect must be evaluated to ensure that applicable criteria and values will be met in the area where any applicable mixing zones overlap.

(v) In no case shall a mixing zone be granted that exceeds the area where discharge-induced mixing occurs.

(B) For discharges into inland lakes and other waters of the Great Lakes system with no appreciable flow relative to their volumes (other than the open waters of Lake Michigan), no mixing zone will be allowed and water quality criteria or values will apply to the undiluted discharge.

(C) Appropriate mixing zone assumptions to be used in calculating load allocations for nonpoint sources shall be determined on a case-by-case basis.

(D) In no case shall a mixing zone be granted that would likely jeopardize the continued existence of any endangered or threatened species listed under Section 4 of the ESA or result in the destruction or adverse modification of such species' critical habitats.

(3) The following describes conditions for deriving TMDLs, WLAs in the absence of TMDLs, and preliminary WLAs for tributaries of the Great Lakes system that exhibit appreciable flows relative to their volumes:

(A) The following stream design flows shall be used unless data exist to demonstrate that an alternative stream design flow is appropriate for stream-specific and pollutant-specific conditions:

(i) For purposes of calculating a TMDL, WLAs in the absence of a TMDL, or preliminary WLAs, using a steady-state model, the stream design flows shall be as follows:

(AA) For an acute aquatic life criterion or value, the one (1) day, ten (10) year stream design flow ($Q_{1,10}$).

(BB) To implement the narrative acute WET criterion, when a mixing zone demonstration is conducted and approved under subdivision (4), the one (1) day, ten (10) year stream design flow ($Q_{1,10}$).

(CC) For a chronic aquatic life criterion or value, the seven (7) day, ten (10) year stream design flow ($Q_{7,10}$).

(DD) To implement the narrative chronic WET criterion, the seven (7) day, ten (10) year stream design flow ($Q_{7,10}$).

(EE) For a drinking water human health criterion or value, the harmonic mean flow at the point of the

public water system intake.

(FF) For a nondrinking water human health criterion or value, the harmonic mean flow at the point of discharge.

(GG) For a WC or WV, the ninety (90) day, ten (10) year stream design flow ($Q_{90,10}$).

(ii) TMDLs, WLAs in the absence of TMDLs, and preliminary WLAs calculated using dynamic modelling do not need to incorporate the stream design flows specified in item (i).

(iii) TMDLs, WLAs in the absence of TMDLs, and preliminary WLAs calculated for intermittent or controlled discharges may use alternate stream design flows if these alternate design flows will ensure compliance with water quality criteria and values.

(B) To prevent acute toxicity, WLAs and LAs established in a TMDL, WLAs in the absence of a TMDL, and preliminary WLAs shall be determined as follows:

(i) For allocations based on an acute aquatic life criterion or value, the CMC or SMC shall not be exceeded outside the zone of initial dilution and the FAV shall not be exceeded in the undiluted discharge unless a mixing zone demonstration is conducted and approved under subdivision (4), in which case the CMC or SMC shall be met outside the applicable alternate mixing zone.

(ii) For allocations implementing the narrative acute WET criterion, one and zero-tenths (1.0) TU_a shall not be exceeded in the undiluted discharge unless a mixing zone demonstration is conducted and approved under subdivision (4), in which case three-tenths (0.3) TU_a shall be met outside the applicable alternate mixing zone.

(C) To protect aquatic life, wildlife, and human health from chronic effects, including chronic WET, WLAs and LAs established in a TMDL, WLAs in the absence of a TMDL, and preliminary WLAs shall be calculated using a dilution fraction no greater than twenty-five percent (25%) of the stream design flow unless a mixing zone demonstration under subdivision (4) is conducted and approved.

(D) If mixing zones from two (2) or more proximate sources interact or overlap, the combined effect must be evaluated to ensure that applicable criteria and values will be met in the area where any applicable mixing zones overlap.

(E) In no case shall a permitting authority grant a mixing zone that would likely jeopardize the continued existence of any endangered or threatened species listed under Section 4 of the ESA or result in the destruction or adverse modification of such species' critical habitats.

(4) An alternate mixing zone that is allowed under subdivision (2) or (3) may be granted upon the request of the discharger subject to the following requirements:

(A) Alternate mixing zones are granted on a pollutant-by-pollutant and criterion-by-criterion basis. Any discharger seeking a mixing zone other than that specified by subdivision (2) or (3) shall submit an application for an alternate mixing zone for consideration by the commissioner. The alternate mixing zone application must do the following:

(i) Document the characteristics and location of the outfall structure, including whether technologically-enhanced mixing will be utilized.

(ii) Document the amount of dilution occurring at the boundaries of the proposed mixing zone and the size, shape, and location of the area of mixing, including the manner in which diffusion and dispersion occur.

(iii) For sources discharging to the open waters of Lake Michigan, define the location at which discharge-induced mixing ceases.

(iv) For sources discharging to tributaries of the Great Lakes system that exhibit appreciable flows relative to their volumes and seeking an alternate mixing zone for an acute aquatic life criterion or value or for acute WET, define the location at which discharge-induced mixing ceases under stream design flow conditions.

(v) Document the physical, including substrate character and geomorphology, chemical, and biological characteristics of the receiving waterbody, including whether the receiving waterbody supports indigenous, endemic, or naturally occurring species.

(vi) Document the physical, chemical, and biological characteristics of the effluent.

(vii) Document the synergistic effects of overlapping mixing zones or the aggregate effects of adjacent mixing zones.

(viii) Show whether organisms would be attracted to the area of mixing as a result of the effluent character.

(B) The commissioner may grant the alternate mixing zone if the discharger demonstrates the following:

(i) The mixing zone would not interfere with or block passage of fish or aquatic life.

(ii) The level of the pollutant permitted in the waterbody would not likely jeopardize the continued existence of

any endangered or threatened species listed under Section 4 of the ESA or result in the destruction or adverse modification of such species' critical habitats.

(iii) The mixing zone would not extend to drinking water intakes.

(iv) The mixing zone would not impair or otherwise interfere with the designated or existing uses of the receiving water or downstream waters.

(v) The mixing zone would not promote undesirable aquatic life or result in a dominance of nuisance species.

(vi) By allowing the additional mixing:

(AA) substances will not settle to form objectionable deposits;

(BB) floating debris, oil, scum, and other matter in concentrations that form nuisances will not be produced; and

(CC) objectionable color, odor, taste, or turbidity will not be produced.

(C) In no case shall an alternate mixing zone for an acute aquatic life criterion or value or for acute WET be granted unless the discharger utilizes a submerged, high rate diffuser outfall structure (or the functional equivalent) that provides turbulent initial mixing and minimizes organism exposure time.

(D) In no case shall an alternate mixing zone for an acute aquatic life criterion or value or for acute WET be granted that exceeds the area where discharge-induced mixing occurs.

(E) In no case shall an alternate mixing zone for a discharge into the open waters of Lake Michigan be granted that exceeds the area where discharge-induced mixing occurs.

(F) Upon receipt of an application for an alternate mixing zone, the commissioner shall provide notice, request comment, and, if requested, schedule and hold a public meeting on the application in accordance with section 11.2 of this rule.

(5) Except for discharges into the open waters of Lake Michigan, notwithstanding subdivisions (2) through (4), the commissioner may deny any mixing zone for:

(A) a discharge;

(B) certain substances in a discharge; or

(C) a criterion or value for any substance in a discharge;

based upon a determination of adverse human health, aquatic life, or wildlife effects. The commissioner shall identify and document the rationale for this decision.

(6) For discharges into the open waters of Lake Michigan, if all of the conditions for approval of an alternate mixing zone are met in accordance with subdivision (4), the alternate mixing zone shall be granted unless the commissioner determines that the mixing zone should be denied based upon a consideration of harm to human health, aquatic life, or wildlife. The commissioner shall evaluate all available information, including information submitted by the public, relevant to the consideration of harm to human health, aquatic life, or wildlife. The commissioner shall identify the harm to human health, aquatic life, or wildlife, and document the rationale for this decision.

(7) The commissioner's evaluation of a mixing zone for a discharge into the open waters of Lake Michigan under subdivisions (2), (4), and (6) shall constitute the evaluation required by IC 13-18-4-7. Any decision regarding the granting or denial of a mixing zone for a discharge into Lake Michigan shall be included in the public notice of the tentative decision on the draft new, renewed, or modified permit. The basis for the tentative decision, including the commissioner's rationale for concluding whether or not the requirements of IC 13-18-4-7 are satisfied, shall be included in the briefing memo or fact sheet that accompany the tentative decision on the draft new, renewed, or modified permit.

(c) WLAs calculated in the absence of a TMDL and preliminary WLAs shall be determined using the conservation of mass equations as follows unless an alternate methodology is approved by the commissioner:

(1) For the calculations contained within this subsection, the following apply:

(A) WQC_c = The chronic water quality criterion or value. A chronic water quality criterion or value is any of the following:

(i) CCC or SCC. If the CCC or SCC for a metal is expressed in the form of dissolved metal, the CCC or SCC shall be set equal to $C_{instream}$ determined for the CCC or SCC in accordance with subdivision (6).

(ii) The numeric interpretation of the narrative chronic WET criterion (one and zero-tenths (1.0) TU_c).

(iii) HNC or HNV.

(iv) HCC or HCV.

(v) WC or WV.

(vi) The criterion for sulfates, total dissolved solids, fluorides, or dissolved iron under 327 IAC 2-1.5-8(j).

(B) WQC_a = The CMC or SMC or, if a mixing zone demonstration for acute WET is conducted and approved under subsection (b)(4), three-tenths (0.3) TU_a for WET. If the CMC or SMC for a metal is expressed in the form of dissolved metal, the CMC or SMC shall be set equal to $C_{instream}$ determined for the CMC or SMC in accordance with subdivision (8).

(C) FAV = Two (2) times the CMC or SMC. If the CMC or SMC for a metal is expressed in the form of dissolved metal, the FAV shall equal two (2) times $C_{instream}$ determined for the CMC or SMC in accordance with subdivision (8).

(D) Q_e = The facility effluent flow as determined by subsection (a)(9).

(E) Q_w = The portion of the receiving waterbody allocated for mixing under subsection (b). If C_b is greater than the water quality criterion or value, a value of zero (0) shall be used for Q_w.

(F) C_b = The representative background concentration determined by subsection (a)(8).

(G) DF = Dilution factor = $\frac{Q_w+Q_e}{Q_e}$.

(H) Q_z = The portion of the receiving waterbody allocated for mixing in the zone of initial dilution. For discharges into tributaries that exhibit appreciable flows relative to their volumes, $Q_z = Q_e$ or the $Q_{1,10}$, whichever is less. For discharges into the open waters of Lake Michigan, $Q_z = Q_e$. If C_b is greater than WQC_a, a value of zero (0) shall be used for Q_z.

(2) WLAs for discharges into tributaries that exhibit appreciable flows relative to their volumes based on protection from acute aquatic effects shall be determined as follows:

(A) For a discharge without an approved alternate mixing zone under subsection (b)(4), the equation resulting in the lesser WLA shall be used:

(i) WLA = FAV (or 1.0 TU_a for WET); or

(ii) $$WLA = \frac{WQC_a(Q_e + Q_z) - (Q_z)(C_b)}{Q_e}$$

(B) For a discharge with an approved alternate mixing zone under subsection (b)(4), the following equation shall be used:

$$WLA = (WQC_a)(DF) - (C_b)(DF-1)$$

(3) WLAs for discharges into tributaries that exhibit appreciable flows relative to their volumes based on protection from chronic effects shall be determined as follows:

$$WLA = \frac{WQC_c(Q_e + Q_w) - (Q_w)(C_b)}{Q_e}$$

(4) WLAs for discharges into the open waters of Lake Michigan based on protection from acute aquatic effects shall be determined as follows:

(A) For a discharge without an approved alternate mixing zone under subsection (b)(4), the equation resulting in the lesser WLA shall be used:

(i) WLA = FAV (or 1.0 TU_a for WET); or

(ii) $$WLA = \frac{WQC_a(Q_e + Q_z) - (Q_z)(C_b)}{Q_e}$$

(B) For a discharge with an approved alternate mixing zone under subsection (b)(4), the following equation shall be used:

$$WLA = (WQC_a)(DF) - (C_b)(DF-1)$$

(5) WLAs for discharges into the open waters of Lake Michigan based on protection from chronic effects shall be determined as follows:

(A) For a discharge without an approved alternate mixing zone under subsection (b)(4), the following equation shall be used:

$$WLA = WQC_c$$

(B) For a discharge with an approved alternate mixing zone under subsection (b)(4), the following equation shall be used:

$$WLA = (WQC_c)(DF) - (C_b)(DF-1)$$

(6) WLAs for discharges into inland lakes and other waters of the Great Lakes system with no appreciable flow relative to their volumes (other than the open waters of Lake Michigan) based on protection from acute aquatic effects shall be determined as follows:

$$WLA = WQC_a$$

(7) WLAs for discharges into inland lakes and other waters of the Great Lakes system with no appreciable flow relative to their volumes (other than the open waters of Lake Michigan) based on protection from chronic effects shall be determined as follows:

$$WLA = WQC_c$$

(8) The following procedures shall be used to calculate $C_{instream}$, the total recoverable metal concentration outside the mixing zone that equates to an acute or chronic aquatic life water quality criterion or value expressed in the form of dissolved metal:

(A) For a CMC or SMC expressed in the form of dissolved metal, $C_{instream}$ shall be calculated by dividing the CMC or SMC by the acute translator found in clause (D).

(B) For a CCC or SCC expressed in the form of dissolved metal, $C_{instream}$ shall be calculated by dividing the CCC or SCC by the chronic translator found in clause (D).

(C) If all approved analytical methods for the metal inherently measure only its dissolved form, such as hexavalent chromium, $C_{instream}$ shall not be calculated and the acute and chronic aquatic life water quality criteria or values expressed in the form of dissolved metal shall be used in the calculation of WLAs.

(D) Unless a site-specific translator is determined in accordance with clause (E), the following translators shall be used:

Table 11.4-2

Metals Translators

Dissolved to Total Recoverable

Substances	Acute Translators	Chronic Translators
Arsenic (III)	1.000	1.000
Cadmium	1.136672-[(ln hardness)(0.041838)]	1.101672-[(ln hardness)(0.041838)]
Chromium (III)	0.316	0.860
Copper	0.960	0.960
Mercury	0.85	0.85
Nickel	0.998	0.997
Selenium	0.922	0.922
Zinc	0.978	0.986

(E) A discharger or proposed discharger may request the use of an alternate translator by using site-specific data. The discharger must conduct a site-specific study to identify the ratio of the dissolved fraction to the total recoverable fraction for a metal in the receiving waterbody outside the mixing zone. If the discharger provides an acceptable study, and other provisions of 327 IAC 2-1.5 and this article are satisfied (such as antibacksliding and antidegradation), the commissioner shall use the site-specific translator. A translator derived for one (1) discharge into a waterbody segment may be applied to other discharges on the same waterbody segment if the translator would adequately represent the site-specific conditions applicable to the other discharges.

(d) Notwithstanding subsections (a) through (c), the pollutants contained in this subsection shall be addressed as follows:

(1) The pH requirements contained in 327 IAC 2-1.5-8(c)(2) and 327 IAC 2-1.5-8(j) apply to the undiluted discharge.

(2) The bacteriological criteria contained in 327 IAC 2-1.5-8(e) apply to the undiluted discharge.

(3) Models, approved by the commissioner, that ensure compliance with the applicable water quality criteria for the following parameters shall be used:

(A) Dissolved oxygen criteria contained in 327 IAC 2-1.5-8(c)(3), 327 IAC 2-1.5-8(d)(1), and 327 IAC 2-1.5-8(j).

(B) Thermal requirements contained in 327 IAC 2-1.5-8(c)(4) and 327 IAC 2-1.5-8(d)(2).

(C) Criteria for the protection of public water supplies contained under 327 IAC 2-1.5-8(f).

(D) Criteria for the protection of industrial water supplies contained in 327 IAC 2-1.5-8(g).

(Water Pollution Control Board; 327 IAC 5-2-11.4; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1441; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3379; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2102; errata filed Jul 6, 2005, 3:12 p.m.: 28 IR 3582)

327 IAC 5-2-11.5 Great Lakes system dischargers determination of reasonable potential to exceed water quality standards

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

Sec. 11.5. (a) If the commissioner determines that a pollutant or pollutant parameter (either conventional, nonconventional, a toxic substance, or whole effluent toxicity (WET)) is or may be discharged into the Great Lakes system at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any applicable narrative criterion or numeric water quality criterion or value under 327 IAC 2-1.5, the commissioner shall incorporate water quality-based effluent limitations (WQBELs) in an NPDES permit that will ensure compliance with the criterion or value. The commissioner shall exercise best professional judgment, taking into account the:

(1) source and nature of the discharge;

(2) existing controls on point and nonpoint sources of pollution;

(3) variability of the pollutant or pollutant parameter in the effluent; and

(4) where appropriate, dilution of the effluent in the receiving water.

In all cases, the commissioner shall use any valid, relevant, representative information pertaining to the discharge of the pollutant.

(b) If the commissioner determines that a substance is or may be discharged into the Great Lakes system at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any numeric criterion for a toxic substance contained in 327 IAC 2-1.5-8(b)(3), Table 8-1, 327 IAC 2-1.5-8(b)(5), Table 8-3, 327 IAC 2-1.5-8(b)(6), Table 8-4, 327 IAC 2-1.5-16(g), Table 16-1, a criterion for ammonia contained under 327 IAC 2-1.5-8(c)(5), a criterion for sulfates, total dissolved solids, fluorides, or dissolved iron under 327 IAC 2-1.5-8(j), or a Tier I criterion or Tier II value established under 327 IAC 2-1.5-11 through 327 IAC 2-1.5-16, the commissioner shall incorporate WQBELs in an NPDES permit for the discharge of that pollutant, and in all cases, the commissioner shall use any valid, relevant, representative information pertaining to the discharge of the substance as follows:

(1) When facility-specific effluent monitoring data for a substance are available, the commissioner may take into account the source and nature of the discharge, existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, and, where appropriate, the dilution of the effluent in the receiving water in making the determination whether to develop preliminary effluent limitations (PELs) and comparing those effluent limitations to the projected effluent quality (PEQ) of the discharge in accordance with the following procedures:

(A) The commissioner shall develop PELs for the discharge of a pollutant from a point source using the following procedures:

(i) The commissioner shall develop preliminary WLAs for the discharge of the pollutant from the point source to protect human health, wildlife, acute aquatic life, and chronic aquatic life, based upon the following:

(AA) Any existing numeric criterion for a toxic substance contained in 327 IAC 2-1.5-8(b)(3), Table 8-1, 327 IAC 2-1.5-8(b)(5), Table 8-3, 327 IAC 2-1.5-8(b)(6), Table 8-4, 327 IAC 2-1.5-16(g), Table 16-1, or 327 IAC 2-1.5-8(c)(5) or a site-specific modification to an existing numeric criterion established under 327 IAC 2-1.5-16.

(BB) Where there is no existing numeric criterion, the commissioner shall calculate a Tier I criterion for such substance for the protection of human health, wildlife, and aquatic life using the methodologies under 327 IAC 2-1.5-11 (aquatic life), 327 IAC 2-1.5-14 (human health), 327 IAC 2-1.5-15 (wildlife), and 327 IAC 2-1.5-16 (site-specific modifications).

(CC) Where there is insufficient data to calculate a Tier I criterion, the commissioner shall calculate a Tier II value for such substance for the protection of human health and aquatic life using the methodologies under 327 IAC 2-1.5-12 (aquatic life), 327 IAC 2-1.5-14 (human health), and 327 IAC 2-1.5-16 (site-specific modifications).

(DD) Where there is insufficient data to calculate a Tier II value, the commissioner shall apply the procedure in subdivision (3) to determine whether data must be generated to calculate a Tier II value.

(ii) The commissioner shall develop a preliminary WLA for the discharge of sulfates, total dissolved solids, fluorides, or dissolved iron, in addition to the preliminary WLAs developed for the parameter under item (i), based on the numeric criterion for the substance under 327 IAC 2-1.5-8(j) when applicable.

(iii) Section 11.4(c) of this rule shall be used as the basis for determining preliminary WLAs in accordance with items (i) and (ii).

(iv) The commissioner shall use the preliminary WLAs developed under items (i) through (iii) to develop monthly and daily PELs in accordance with the procedure for converting WLAs into WQBELs under section 11.6(c) of this rule.

(B) The commissioner shall determine the PEQ as follows:

(i) When monthly average data are available, calculated using at least two (2) data points over the period of a month, the monthly PEQ shall be determined as follows:

(AA) The commissioner shall identify the number of monthly averages of the effluent data and the coefficient of variation of the monthly averages of the effluent data.

(BB) The commissioner shall obtain the appropriate multiplying factor from subsection (h) based on the information obtained in subitem (AA).

(CC) The maximum of the monthly average values shall be multiplied by the multiplying factor determined under subitem (BB) to determine the monthly PEQ.

(ii) When monthly average data are not available, the monthly PEQ shall be identical to the daily PEQ determined under item (iii). An alternate method of calculating monthly averages may be used if the applicant demonstrates that this alternate method results in monthly averages representative of actual conditions at the facility. Monthly averages calculated under this item shall be used to determine the monthly PEQ using the procedure in item (i).

(iii) The daily PEQ shall be determined as follows:

(AA) The commissioner shall identify the number of daily effluent samples and the coefficient of variation of the daily effluent samples.

(BB) The commissioner shall obtain the appropriate multiplying factor from subsection (h) based on the information obtained in subitem (AA).

(CC) The maximum of the daily effluent samples shall be multiplied by the multiplying factor determined under subitem (BB) to determine the daily PEQ.

(iv) The coefficient of variation shall be calculated as the ratio of the standard deviation of the daily or monthly effluent data divided by the arithmetic average of the effluent data, except that where there are fewer than ten (10) data points the coefficient of variation shall be specified as six-tenths (0.6).

(v) In lieu of the procedures under items (i) through (iv), the commissioner shall allow the use of an alternate procedure for the determination of the PEQ if the applicant demonstrates that the alternate statistical procedure meets the following:

(AA) Is a scientifically defensible statistical method.

(BB) Specifies the daily PEQ as the ninety-fifth percentile of the distribution of the projected population of daily values of the facility-specific effluent monitoring data.

(CC) Specifies the monthly PEQ as the ninety-fifth percentile of the distribution of the projected population of monthly average values of the facility-specific effluent monitoring data.

(DD) Accounts for and captures the long term daily and monthly variability of the effluent quality.

(EE) Accounts for limitations associated with sparse data sets.

(FF) Assumes a lognormal distribution of the facility-specific effluent data unless otherwise shown by the effluent data set.

(C) The commissioner shall establish WQBELs in the NPDES permit for each substance that:

(i) the monthly PEQ developed under clause (B) exceeds the monthly PEL developed under clause (A); or

(ii) the daily PEQ developed under clause (B) exceeds the daily PEL developed under clause (A).

(D) If facility-specific effluent monitoring data for a metal are available in the form of dissolved metal and the PELs for the metal developed under clause (A) are based on an acute or chronic aquatic life water quality criterion or value expressed in the form of dissolved metal, the commissioner shall make the determination under clause (C) using PEQs and PELs in the form of dissolved metal if the following conditions are satisfied:

(i) The discharger provides an acceptable site-specific study that shows that the metal in the effluent does not

become more dissolved in the receiving waterbody outside the mixing zone.

(ii) Representative data are available from the receiving waterbody to calculate the background concentration of the metal in accordance with section 11.4(a)(8) of this rule and, if applicable, the hardness of the receiving waterbody in accordance with section 11.4(a)(13) of this rule.

(iii) The facility-specific effluent monitoring data in the form of dissolved metal are representative of the magnitude and variability of the metal in the effluent.

(iv) The PEQs in the form of dissolved metal are determined under clause (B) using the effluent monitoring data in item (iii).

(v) The PELs in the form of dissolved metal are developed as follows:

(AA) Preliminary WLAs in the form of dissolved metal are developed consistent with section 11.4(c) of this rule and using the receiving waterbody data in item (ii) to protect acute and chronic aquatic life.

(BB) The preliminary WLAs in subitem (AA) are used to develop monthly and daily PELs in accordance with section 11.6(c) of this rule.

(vi) A determination under clause (C) using PEQs and PELs developed under this item in the form of total recoverable metal shows that the commissioner is not required to establish WQBELs in the NPDES permit for the metal. The PEQs and PELs shall be developed as follows:

(AA) PEQs in the form of total recoverable metal shall be determined under clause (B) using facility-specific effluent monitoring data in the form of total recoverable metal that is comparable to the data in item (iii).

(BB) Monthly and daily PELs in the form of total recoverable metal shall be developed using preliminary WLAs developed under section 11.4(c) of this rule for all the applicable criteria and values for the metal that are expressed in the form of total recoverable metal and in accordance with section 11.6(c) of this rule. The preliminary WLAs shall be calculated using the receiving waterbody data in item (ii).

(2) When facility-specific effluent monitoring data for a substance are not available, the commissioner shall exercise best professional judgment, taking into account the source and nature of the discharge, existing controls on point and nonpoint sources of pollution, and, where appropriate, the dilution of the effluent in the receiving water:

(A) for a new Great Lakes discharger, to develop an estimated monthly and daily PEQ necessary to make a determination under this subsection; or

(B) for an existing Great Lakes discharger, to determine whether it is necessary to require the applicant to collect the data required to make a determination under this subsection.

(3) The commissioner shall develop the necessary data to calculate Tier II values where such data does not currently exist as follows:

(A) Except as provided in clauses (B) and (D) or subdivision (4), for each toxic substance that a permittee reports as known or believed to be present in its effluent, or that the commissioner reasonably believes may be present in the effluent, and for which pollutant data sufficient to calculate Tier II values for noncancer human health, acute aquatic life, or chronic aquatic life do not exist, the commissioner shall take the following actions:

(i) For those effects (noncancer human health, acute aquatic life, or chronic aquatic life) for which sufficient data do not exist, the commissioner shall use all available, relevant information, including QSAR information and other relevant toxicity information, to estimate ambient screening values for such pollutant that will protect humans from health effects other than cancer, and aquatic life from acute and chronic effects.

(ii) Using the procedures under subdivision (1), the commissioner shall develop PELs for the discharge of the pollutant from the point source to protect human health, acute aquatic life, and chronic aquatic life based upon the estimated ambient screening values.

(iii) The commissioner shall compare the PEQs developed according to the procedures under subdivision (1) to the PELs developed under item (ii). If the monthly or daily PEQ exceeds the respective monthly or daily PEL, the commissioner shall generate or require the permittee to generate the data necessary to derive Tier II values for noncancer human health, acute aquatic life, and chronic aquatic life.

(iv) The data generated under item (iii) shall be used in calculating a Tier II value as required under subdivision (1). The calculated Tier II value shall be used in calculating the PELs under subdivision (1). These PELs shall be used for purposes of determining whether a WQBEL must be included in the permit under subdivision (1).

(B) With the exception of BCCs, the commissioner is not required to apply the procedures under clause (A) or include

WQBELs to protect aquatic life for any pollutant discharged by an existing point source into the Great Lakes system if the following occur:

(i) There is insufficient data to calculate a Tier I criterion or Tier II value for aquatic life for the pollutant.

(ii) The permittee has demonstrated that the whole effluent does not exhibit acute or chronic toxicity.

(iii) The permittee has demonstrated, through a biological assessment, that there are no acute or chronic effects on aquatic life in the receiving water.

(C) Nothing in clause (A) or (B) shall preclude or deny the right of the commissioner to:

(i) determine, in the absence of the data necessary to derive a Tier II value, that the discharge of the pollutant will cause, have the reasonable potential to cause, or contribute to an excursion above a narrative criterion for water quality; and

(ii) incorporate a WQBEL for the pollutant into an NPDES permit.

(D) If the commissioner develops a WQBEL consistent with clause (C) that is at least as stringent as a WQBEL that would have been developed based upon the Tier II value or values for that pollutant, the commissioner may require the permittee to generate the data necessary to derive a Tier II value or values for that pollutant.

(4) The determinations under this subdivision shall be made on a pollutant-by-pollutant, outfall-by-outfall basis. This subdivision applies only in the absence of an EPA-approved TMDL applicable to the discharge or in the absence of an assessment and remediation plan submitted and approved in accordance with section 11.4(a)(2) of this rule. The following procedures shall be used in the consideration of intake pollutants in determining reasonable potential:

(A) As used in this subdivision and section 11.6(i) of this rule, "intake pollutant" means a pollutant that is present in waters of the state at the time it is withdrawn from such waters by the discharger or other facility, such as a public water system supplying the discharger with intake water.

(B) As used in this subdivision, subsection (g), and section 11.6(i) of this rule, an intake pollutant is considered to be from the same body of water as the discharge if the following conditions exist:

(i) The commissioner finds that the intake pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee. This finding may be deemed established if:

(AA) the representative background concentration of the pollutant in the receiving water, as determined under section 11.4(a)(8) of this rule, (excluding any amount of the pollutant in the facility's discharge) is similar to or greater than that in the intake water;

(BB) there is a direct hydrological connection between the intake and discharge points (the water at the point of intake naturally flows toward the water at the point of discharge); and

(CC) any difference in a water quality characteristic (such as temperature, pH, and hardness) between the intake and receiving waters does not result in an adverse impact on the receiving water.

(ii) The commissioner may also consider other site-specific factors relevant to the transport and fate of the pollutant to make the finding in a particular case that a pollutant would or would not have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee.

(iii) An intake pollutant from ground water may be considered to be from the same body of water if the commissioner determines that the pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee, except that such a pollutant is not from the same body of water to the extent that the ground water contains the pollutant partially or entirely due to human activity, such as industrial, commercial, or municipal operations, disposal actions, or treatment processes.

(iv) Notwithstanding any other provision in this clause, an intake pollutant shall be considered to be from the same body of water if the permittee's intake point is located on Lake Michigan and the outfall point is located on a tributary of Lake Michigan and the following conditions are met:

(AA) The representative background concentration of the pollutant in the receiving water, as determined under section 11.4(a)(8) of this rule (excluding any amount of the pollutant in the facility's discharge) is similar to or greater than that in the intake water.

(BB) Any difference in a water quality characteristic (such as temperature, pH, and hardness) between the intake and receiving waters does not result in an adverse impact on the receiving water.

(C) The commissioner may use the procedure to determine reasonable potential described in this subdivision in lieu of the procedures contained under subdivisions (1) through (3) provided the following conditions are met:

(i) The commissioner may determine that there is no reasonable potential for the discharge of an intake pollutant or pollutant parameter to cause or contribute to an excursion above a narrative criterion or numeric water quality criterion or value under 327 IAC 2-1.5 when a discharger demonstrates to the satisfaction of the commissioner (based upon information provided in the permit application or other information deemed necessary by the commissioner) that:

(AA) the facility does not contribute any additional mass of the intake pollutant to its wastewater;

(BB) the facility withdraws one hundred percent (100%) of the intake water containing the pollutant from the same body of water into which the discharge is made;

(CC) the facility does not alter the intake pollutant chemically or physically in a manner that would cause adverse water quality impacts to occur that would not occur if the pollutants were left in-stream;

(DD) the facility does not cause an increase in the intake pollutant concentration at the edge of the mixing zone, or at the point of discharge if a mixing zone is not allowed, as compared to the pollutant concentration in the intake waterbody unless the increased concentration does not cause or contribute to an excursion above an applicable narrative criterion or numeric water quality criterion or value; and

(EE) the timing and location of the discharge would not cause adverse water quality impacts to occur that would not occur if the intake pollutant were left in the waterbody.

(ii) If a discharge of an intake pollutant or pollutant parameter is not able to qualify under item (i), the commissioner may decide not to impose WQBELs on the discharge, if the following conditions are met:

(AA) The discharge consists of one (1) or more internal wastestreams that do qualify (qualifying wastestreams) under item (i) and one (1) or more internal wastestreams that do not qualify (nonqualifying wastestreams) under item (i).

(BB) For nonqualifying wastestreams composed entirely of storm water, the permittee accepts permit conditions for the storm water wastestream that the commissioner determines to be necessary to protect the water quality of the receiving waterbody. The requirements imposed shall be as if the storm water wastestream discharged directly into the receiving waterbody and shall be consistent with requirements imposed on other similar storm water discharges to the waterbody.

(CC) For nonqualifying wastestreams not composed entirely of storm water, the permittee accepts WQBELs on each of the nonqualifying wastestreams that have a reasonable potential for the discharge of the intake pollutant or pollutant parameter to cause or contribute to an excursion above a narrative criterion or numeric water quality criterion or value as determined using the procedures under subdivisions (1) through (3). For purposes of determining reasonable potential and developing WQBELs for these nonqualifying wastestreams, the preliminary WLAs and WLAs in the absence of a TMDL shall be determined as if these nonqualifying wastestreams discharged directly into the receiving waterbody without combining with the qualifying wastestreams.

(iii) Upon a finding under item (i) or (ii) that a pollutant in the discharge does not cause, have the reasonable potential to cause, or contribute to an excursion above an applicable narrative criterion or numeric water quality criterion or value, the commissioner is not required to include a WQBEL in the facility's permit for the intake pollutant provided:

(AA) the NPDES permit fact sheet or statement of basis includes a specific determination that there is no reasonable potential for the discharge of an intake pollutant to cause or contribute to an excursion above an applicable narrative criterion or numeric water quality criterion or value and references appropriate supporting documentation included in the administrative record;

(BB) the permit requires all influent, effluent, and ambient monitoring necessary to demonstrate that the conditions in item (i) or (ii) are maintained during the permit term; and

(CC) the permit contains a reopener clause authorizing modification or revocation and reissuance of the permit if new information indicates changes in the conditions under item (i) or (ii).

(iv) Absent a finding under item (i) or (ii) that the discharge of an intake pollutant or pollutant parameter does not cause, have the reasonable potential to cause, or contribute to an excursion above an applicable narrative criterion or numeric water quality criterion or value, the commissioner shall use the procedures contained under subdivisions (1) through (3) to determine whether the discharge of that pollutant causes, has the reasonable potential to cause, or contribute to an excursion above an applicable narrative criterion or numeric water quality

criterion or value.

(5) Notwithstanding this subsection, if the commissioner determines that the geometric mean of a pollutant in fish tissue samples collected from a waterbody exceeds the tissue basis of a water quality criterion or value, after consideration of the variability of the pollutant's bioconcentration and bioaccumulation in fish, the following provisions apply:

(A) If such pollutant is a BCC, each facility that discharges detectable levels of the BCC to that water has the reasonable potential to cause or contribute to an excursion above a water quality criterion or value for that BCC and the commissioner shall establish a WQBEL for such pollutant in the NPDES permit for each such facility.

(B) If such pollutant is not a BCC, the commissioner may determine that any or all of the facilities that discharge detectable levels of the pollutant to that water have the reasonable potential to cause or contribute to an excursion above a water quality criterion or value for that pollutant and the commissioner shall establish a WQBEL for such pollutant in the NPDES permit for each such facility.

(c) Except as provided in subdivision (3), where the commissioner determines that the WET of an effluent is or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any numeric interpretation of a narrative WET criterion contained in 327 IAC 2-1.5-8, the commissioner shall incorporate WQBELs for WET in the NPDES permit and in all cases, the commissioner shall use any valid, relevant, or representative information pertaining to the discharge of WET as follows:

(1) When facility-specific WET data are available, the commissioner may take into account the source and nature of the discharge, existing controls on point and nonpoint sources of pollution, the variability of the WET in the effluent, and, where appropriate, the dilution of the effluent in the receiving water in making the determination to develop effluent limitations for WET. The WET of an effluent is or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any applicable WET criterion contained under 327 IAC 2-1.5, when effluent-specific information demonstrates the following:

(A) The acute WET of an effluent is or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above an applicable acute WET criterion applied to the undiluted discharge, when effluent-specific information demonstrates the following:

$$(TU_a)(F) \geq 0.2$$

Where:

TU_a = The geometric mean of the measured acute toxicity values expressed in acute toxic units (TU_a or TU_c). Individual toxicity values may be estimated for the missing endpoint using a default ACR of ten (10), when data exist for chronic WET, but not for acute WET.

F = Fraction of the measured toxicity values greater than the preliminary WLA for acute WET determined under section 11.4(c) of this rule (fraction failed).

(B) The acute WET of an effluent is or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above an applicable acute WET criterion applied outside an alternate mixing zone, when effluent-specific information demonstrates the following:

$$F \geq 0.2$$

Where:

F = Fraction of the measured toxicity values greater than the preliminary WLA for acute WET determined under section 11.4(c) of this rule (fraction failed). Individual toxicity values may be estimated for the missing endpoint using a default ACR of ten (10), when data exist for chronic WET, but not for acute WET.

(C) The chronic WET of an effluent is or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above an applicable chronic WET criterion, when effluent-specific information demonstrates the following:

$$\frac{(TU_c)(Q_e)(F)}{(Q_w + Q_e)} \geq 0.2$$

Where:

TU_c = The geometric mean of the measured chronic toxicity values expressed in chronic toxic units. Individual toxicity values may be estimated for the missing endpoint using a default ACR of ten (10), when data exist for acute WET, but not for chronic WET.

Q_e = The effluent flow rate as determined under section 11.4(a)(9) of this rule.

Q_w = The portion of the receiving waterbody allocated for mixing as determined under section 11.4(b) of this rule.

F = Fraction of the measured toxicity values greater than the preliminary WLA for acute or chronic WET determined under section 11.4(c) of this rule (fraction failed).

(2) When WET data are not available, the commissioner shall exercise best professional judgment, taking into account the source and nature of the discharge, existing controls on point and nonpoint sources of pollution, and, where appropriate, the dilution of the effluent in the receiving water to determine whether it is necessary to impose WET requirements in accordance with the following:

(A) For a new Great Lakes discharger, the commissioner shall determine whether it is necessary to impose WET limitations.

(B) For an existing Great Lakes discharger, whether it is necessary to require the applicant to collect the data required to make a determination under this subsection. The commissioner may include in the NPDES permit the following conditions to generate additional data and control toxicity if found:

(i) WET testing requirements to generate the data needed to adequately characterize the toxicity of the effluent to aquatic life.

(ii) A toxicity reduction evaluation and a schedule to comply with WET limits if any toxicity testing data indicate that the WET of an effluent is or may be discharged at levels that will cause, have the reasonable potential to cause, or contribute to an excursion above any applicable WET criterion.

(iii) WET limits that become effective upon completion of the compliance schedule.

(3) Limitations on WET are not necessary where the commissioner demonstrates in the fact sheet or briefing memo of the NPDES permit that chemical-specific limits for the effluent are sufficient to attain and maintain the applicable narrative water quality criteria for WET.

(d) Once the commissioner has determined in accordance with this section that a WQBEL must be included in an NPDES permit, the commissioner shall do the following:

(1) Rely upon the WLA established for the point source either as part of any EPA-approved TMDL prepared under section 11.4 of this rule, or as part of an assessment and remediation plan developed and approved in accordance with section 11.4(a)(2) of this rule, or, in the absence of such TMDL or plan, calculate WLAs for the protection of acute and chronic aquatic life, wildlife, and human health in accordance with the provisions for developing WLAs under section 11.4 of this rule.

(2) Develop WQBELs using these WLAs in accordance with section 11.6 of this rule.

(e) The commissioner may require monitoring for a pollutant or pollutant parameter even if it is determined that a WQBEL in the NPDES permit for that pollutant or pollutant parameter is not required.

(f) In addition to this section, effluent limitations shall be established to comply with all other applicable state and federal laws and regulations, including technology-based requirements and antidegradation policies.

(g) Notwithstanding subsection (b) or (c) and only in situations where the intake and outfall points are located on the same body of water as defined in subsection (b)(4)(B), the commissioner shall not impose WQBELs for a discharge consisting solely of once-through noncontact cooling water, except in accordance with the following:

(1) The commissioner may require a WQBEL based on an acute aquatic life criterion or value for a substance or acute WET when information is available indicating that such a limit is necessary to protect aquatic life unless the discharger is able to demonstrate that the presence of the substance or WET is due solely to its presence in the intake water.

(2) The commissioner shall establish limitations or other requirements in the permit for the noncontact cooling water wastestream to prevent impairment of the receiving waterbody if a valid biological assessment of the receiving waterbody indicates that the noncontact cooling water discharge impairs an existing or designated use of the waterbody, exclusive of thermal impacts from a discharge for which alternative thermal effluent limitations have been established in accordance with Section 316(a) of the CWA and 327 IAC 5-7.

(3) If a substance is present at elevated levels in the noncontact cooling water wastestream due to improper operation or maintenance of the cooling system, and this substance is or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above a numeric criterion or value for a toxic substance as determined under subsection (b), WQBELs shall be established using the procedures in sections 11.4 and 11.6 of this rule.

(4) If the permittee uses or proposes to use additives in the noncontact cooling water wastestream, the additives shall be evaluated using the reasonable potential procedures contained under this section to determine whether WQBELs are necessary for the wastestream.

(5) If the source of the noncontact cooling water wastestream is contaminated ground water, this subsection does not apply to the discharge of the substances contaminating the ground water.

(6) If one (1) or more wastestreams consisting solely of noncontact cooling water are combined with one (1) or more wastestreams not consisting solely of noncontact cooling
water, this subsection may still be applied to the wastestreams consisting solely of noncontact cooling water if, for the wastestreams that do not consist solely of noncontact cooling water, the following requirements are imposed:

(A) For each of the wastestreams composed entirely of storm water, permit conditions that the commissioner determines to be necessary to protect the water quality of the receiving waterbody shall be imposed. The requirements imposed shall be as if the storm water wastestream discharged directly into the receiving waterbody and shall be consistent with requirements imposed on other similar storm water discharges to the waterbody.

(B) For each of the wastestreams not composed entirely of storm water, each wastestream shall be evaluated to determine if there is a reasonable potential for the discharge of a pollutant or pollutant parameter to cause or contribute to an excursion above a narrative criterion or numeric water quality criterion or value as determined using the procedures in this section. For purposes of determining reasonable potential and developing WQBELs for these wastestreams, the preliminary WLAs and WLAs in the absence of a TMDL shall be determined as if these wastestreams discharged directly into the receiving waterbody without combining with the wastestreams consisting solely of noncontact cooling water.

(7) As used in this subsection, "once-through noncontact cooling water" means water used for cooling that does not come into direct contact with any raw material, intermediate product, final product, or waste product and makes one (1) or two (2) passes for the purpose of removing waste heat.

(h) The multiplying factors to be used in subsection (b) are established in Tables 11.5-1 and 11.5-2 and shall be obtained as follows:

(1) Round the coefficient of variation (CV) identified in subsection (b) to the nearest CV in Table 11.5-1 or Table 11.5-2. If the CV identified in subsection (b) is greater than two (2.0), set the CV equal to two (2.0).

(2) Obtain the appropriate multiplying factor from Table 11.5-1 or Table 11.5-2 using the number of samples identified in subsection (b) and the CV determined under subdivision (1). If the number of samples identified under subsection (b) is greater than one hundred (100), obtain the multiplying factor using one hundred (100) samples.

Table 11.5-1
Reasonable Potential Multiplying Factors

Number of Samples	Coefficient of Variation																				
	0.05	0.1	0.2	0.3	0.4	0.5	0.6	0.7	0.8	0.9	1.0	1.1	1.2	1.3	1.4	1.5	1.6	1.7	1.8	1.9	2.0
1	1.2	1.4	1.9	2.6	3.6	4.7	6.2	8.0	10.1	12.6	15.5	18.7	22.3	26.4	30.8	35.6	40.7	46.2	52.1	58.4	64.9
2	1.1	1.3	1.6	2.0	2.5	3.1	3.8	4.6	5.4	6.4	7.4	8.5	9.7	10.9	12.2	13.6	15.0	16.4	17.9	19.5	21.1
3	1.1	1.2	1.5	1.8	2.1	2.5	3.0	3.5	4.0	4.6	5.2	5.8	6.5	7.2	7.9	8.6	9.3	10.0	10.8	11.5	12.3
4	1.1	1.2	1.4	1.7	1.9	2.2	2.6	2.9	3.3	3.7	4.2	4.6	5.0	5.5	6.0	6.4	6.9	7.4	7.8	8.3	8.8
5	1.1	1.2	1.4	1.6	1.8	2.1	2.3	2.6	2.9	3.2	3.6	3.9	4.2	4.5	4.9	5.2	5.6	5.9	6.2	6.6	6.9
6	1.1	1.1	1.3	1.5	1.7	1.9	2.1	2.4	2.6	2.9	3.1	3.4	3.7	3.9	4.2	4.5	4.7	5.0	5.2	5.5	5.7
7	1.1	1.1	1.3	1.4	1.6	1.8	2.0	2.2	2.4	2.6	2.8	3.1	3.3	3.5	3.7	3.9	4.1	4.3	4.5	4.7	4.9
8	1.1	1.1	1.3	1.4	1.6	1.7	1.9	2.1	2.3	2.4	2.6	2.8	3.0	3.2	3.3	3.5	3.7	3.9	4.0	4.2	4.3
9	1.1	1.1	1.2	1.4	1.5	1.7	1.8	2.0	2.1	2.3	2.4	2.6	2.8	2.9	3.1	3.2	3.4	3.5	3.6	3.8	3.9
10	1.0	1.1	1.2	1.3	1.5	1.6	1.7	1.9	2.0	2.2	2.3	2.4	2.6	2.7	2.8	3.0	3.1	3.2	3.3	3.4	3.6
11	1.0	1.1	1.2	1.3	1.4	1.6	1.7	1.8	1.9	2.1	2.2	2.3	2.4	2.5	2.7	2.8	2.9	3.0	3.1	3.2	3.3
12	1.0	1.1	1.2	1.3	1.4	1.5	1.6	1.7	1.9	2.0	2.1	2.2	2.3	2.4	2.5	2.6	2.7	2.8	2.9	3.0	3.0
13	1.0	1.1	1.2	1.3	1.4	1.5	1.6	1.7	1.8	1.9	2.0	2.1	2.2	2.3	2.4	2.5	2.5	2.6	2.7	2.8	2.9
14	1.0	1.1	1.2	1.3	1.4	1.4	1.5	1.6	1.7	1.8	1.9	2.0	2.1	2.2	2.3	2.3	2.4	2.5	2.6	2.6	2.7
15	1.0	1.1	1.2	1.2	1.3	1.4	1.5	1.6	1.7	1.8	1.8	1.9	2.0	2.1	2.2	2.2	2.3	2.4	2.4	2.5	2.5
16	1.0	1.1	1.1	1.2	1.3	1.4	1.5	1.6	1.6	1.7	1.8	1.9	1.9	2.0	2.1	2.1	2.2	2.3	2.3	2.4	2.4
17	1.0	1.1	1.1	1.2	1.3	1.4	1.4	1.5	1.6	1.7	1.7	1.8	1.9	1.9	2.0	2.0	2.1	2.2	2.2	2.3	2.3

18	1.0	1.1	1.1	1.2	1.3	1.3	1.4	1.5	1.6	1.6	1.7	1.7	1.8	1.9	1.9	2.0	2.0	2.1	2.1	2.2	2.2
19	1.0	1.1	1.1	1.2	1.3	1.3	1.4	1.5	1.5	1.6	1.6	1.7	1.8	1.8	1.9	1.9	2.0	2.0	2.0	2.1	2.1
20	1.0	1.1	1.1	1.2	1.2	1.3	1.4	1.4	1.5	1.5	1.6	1.6	1.7	1.7	1.8	1.8	1.9	1.9	2.0	2.0	2.0
21	1.0	1.1	1.1	1.2	1.2	1.3	1.3	1.4	1.5	1.5	1.6	1.6	1.7	1.7	1.7	1.8	1.8	1.9	1.9	1.9	2.0
22	1.0	1.1	1.1	1.2	1.2	1.3	1.3	1.4	1.4	1.5	1.5	1.6	1.6	1.7	1.7	1.7	1.8	1.8	1.8	1.9	1.9
23	1.0	1.0	1.1	1.2	1.2	1.3	1.3	1.4	1.4	1.4	1.5	1.5	1.6	1.6	1.6	1.7	1.7	1.8	1.8	1.8	1.8
24	1.0	1.0	1.1	1.1	1.2	1.2	1.3	1.3	1.4	1.4	1.5	1.5	1.5	1.6	1.6	1.6	1.7	1.7	1.7	1.8	1.8
25	1.0	1.0	1.1	1.1	1.2	1.2	1.3	1.3	1.4	1.4	1.4	1.5	1.5	1.5	1.6	1.6	1.6	1.7	1.7	1.7	1.7
26	1.0	1.0	1.1	1.1	1.2	1.2	1.3	1.3	1.3	1.4	1.4	1.4	1.5	1.5	1.5	1.6	1.6	1.6	1.6	1.7	1.7
27	1.0	1.0	1.1	1.1	1.2	1.2	1.2	1.3	1.3	1.4	1.4	1.4	1.4	1.5	1.5	1.5	1.6	1.6	1.6	1.6	1.6
28	1.0	1.0	1.1	1.1	1.2	1.2	1.2	1.3	1.3	1.3	1.4	1.4	1.4	1.4	1.5	1.5	1.5	1.5	1.6	1.6	1.6
29	1.0	1.0	1.1	1.1	1.1	1.2	1.2	1.2	1.3	1.3	1.3	1.4	1.4	1.4	1.4	1.5	1.5	1.5	1.5	1.5	1.6
30	1.0	1.0	1.1	1.1	1.1	1.2	1.2	1.2	1.3	1.3	1.3	1.3	1.4	1.4	1.4	1.4	1.5	1.5	1.5	1.5	1.5
31	1.0	1.0	1.1	1.1	1.1	1.2	1.2	1.2	1.2	1.3	1.3	1.3	1.3	1.4	1.4	1.4	1.4	1.4	1.5	1.5	1.5
32	1.0	1.0	1.1	1.1	1.1	1.2	1.2	1.2	1.2	1.3	1.3	1.3	1.3	1.3	1.4	1.4	1.4	1.4	1.4	1.4	1.5
33	1.0	1.0	1.1	1.1	1.1	1.1	1.2	1.2	1.2	1.2	1.3	1.3	1.3	1.3	1.3	1.4	1.4	1.4	1.4	1.4	1.4
34	1.0	1.0	1.1	1.1	1.1	1.1	1.2	1.2	1.2	1.2	1.3	1.3	1.3	1.3	1.3	1.3	1.4	1.4	1.4	1.4	1.4
35	1.0	1.0	1.1	1.1	1.1	1.1	1.2	1.2	1.2	1.2	1.2	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.4	1.4	1.4
36	1.0	1.0	1.0	1.1	1.1	1.1	1.1	1.2	1.2	1.2	1.2	1.2	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.4
37	1.0	1.0	1.0	1.1	1.1	1.1	1.1	1.2	1.2	1.2	1.2	1.2	1.2	1.3	1.3	1.3	1.3	1.3	1.3	1.3	1.3
38	1.0	1.0	1.0	1.1	1.1	1.1	1.1	1.1	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.3	1.3	1.3	1.3	1.3	1.3
39	1.0	1.0	1.0	1.1	1.1	1.1	1.1	1.1	1.1	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.3	1.3	1.3	1.3
40	1.0	1.0	1.0	1.1	1.1	1.1	1.1	1.1	1.1	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.3	1.3

Table 11.5-2
Reasonable Potential Multiplying Factors

Number of Samples	Coefficient of Variation																				
	0.05	0.1	0.2	0.3	0.4	0.5	0.6	0.7	0.8	0.9	1.0	1.1	1.2	1.3	1.4	1.5	1.6	1.7	1.8	1.9	2.0
41	1.0	1.0	1.0	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2
42	1.0	1.0	1.0	1.0	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2
43	1.0	1.0	1.0	1.0	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2
44	1.0	1.0	1.0	1.0	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.2	1.2	1.2	1.2	1.2	1.2	1.2
45	1.0	1.0	1.0	1.0	1.0	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.2	1.2	1.2	1.2	1.2
46	1.0	1.0	1.0	1.0	1.0	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.2	1.2
47	1.0	1.0	1.0	1.0	1.0	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
48	1.0	1.0	1.0	1.0	1.0	1.0	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
49	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
50	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
51	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
52	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
53	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.1	1.1	1.1	1.1	1.1	1.1

54 to 63	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
64	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	0.9	0.9	0.9
65	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.9	0.9
66	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9
67	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9
68	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9
69	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9
70 to 73	1.0	1.0	1.0	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9
74 to 77	1.0	1.0	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9
78	1.0	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.8	0.8
79	1.0	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.8	0.8	0.8
80 to 81	1.0	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.8	0.8	0.8	0.8	0.8	0.8
82 to 83	1.0	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.8	0.8	0.8	0.8	0.8	0.8	0.8
84	1.0	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8
85	1.0	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8
86 to 87	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8
88 to 89	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8
90 to 92	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8
93 to 96	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.9	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8
97	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.9	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.7
98 to 99	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.7	0.7
100	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.7	0.7	0.7

(Water Pollution Control Board; 327 IAC 5-2-11.5; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1450; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3379; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2112)

327 IAC 5-2-11.6 Great Lakes system dischargers establishment of water quality-based effluent limitations (WQBELs)

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

Sec. 11.6. (a) The NPDES permit shall include conditions necessary to achieve water quality standards established under 327 IAC 2-1.5, including narrative water quality criteria. The numeric water quality criteria set forth in 327 IAC 2-1.5-8 and 327 IAC 2-1.5-16 and Tier I criteria and Tier II values established under 327 IAC 2-1.5-11 through 327 IAC 2-1.5-16 shall not be enforceable against any point source discharger until translated into effluent limitations that are incorporated in NPDES permits in accordance with this article.

(b) TMDLs and WLAs developed under section 11.4 of this rule shall provide the basis for numeric water quality-based effluent limitations (WQBELs) established in NPDES permits for point sources discharging to waters within the Great Lakes system. If a variance has been granted from a water quality criterion under 327 IAC 2-1.5-17 and 327 IAC 5-3-4.1, WQBELs for the pollutant that is the subject of the variance shall be calculated on the basis of the variance rather than the water quality criterion.

(c) The following procedure shall be used to calculate WQBELs using the WLAs developed under section 11.4 of this rule:

(1) This subsection assumes that effluent data follow a log-normal distribution. If a discharger is able to demonstrate that the effluent data for a pollutant does not follow a log-normal distribution and provides an alternate distribution that more accurately describes the data, this alternate distribution may be used instead of the procedures in this subsection.

(2) For the equations contained within this subsection, the following apply:

(A) $Z_{99} = 2.326$ (99th percentile probability basis).

(B) CV = coefficient of variation = ratio of the standard deviation to the mean. A value of six-tenths (0.6) will be used

for the CV unless the discharger demonstrates that an alternate CV is more representative of the variability of the pollutant in the effluent.

(3) The first step in this procedure is to calculate a long term average (LTA) for each WLA determined for the pollutant under section 11.4 of this rule. These LTAs are calculated as follows:

(A) The LTA_A protective of acute aquatic life effects shall be calculated as follows:

$$LTA_A = \left(e^{(0.5\sigma^2 - z_{99}\sigma)}\right) WLA_A$$

Where: σ^2 = $\ln(CV^2 + 1)$.

WLA_A = WLA determined under section 11.4 of this rule using the acute aquatic life criterion or value. This WLA is expressed as a one (1) day maximum.

(B) The LTA_C protective of chronic aquatic life effects shall be calculated as follows:

$$LTA_C = \left(e^{(0.5\sigma_4^2 - z_{99}\sigma_4)}\right) WLA_C$$

Where: σ_4^2 = $\ln(CV^2/4 + 1)$.

WLA_C = For sulfates, total dissolved solids, fluorides, and dissolved iron, the more stringent WLA determined under section 11.4 of this rule using the criterion for the pollutant under 327 IAC 2-1.5-8(j), if applicable, or the chronic aquatic life criterion or value. For other pollutants, the WLA determined under section 11.4 of this rule using the chronic aquatic life criterion or value. This WLA is expressed as a four (4) day average.

(C) The LTA_H protective of human health effects shall be calculated as follows:

$$LTA_H = \left(e^{(0.5\sigma_{30}^2 - z_{99}\sigma_{30})}\right) WLA_H$$

Where: σ_{30}^2 = $\ln(CV^2/30 + 1)$.

WLA_H = The most stringent WLA determined under section 11.4 of this rule using a criterion or value for the protection of human health. This WLA is expressed as a thirty (30) day average.

(D) The LTA_W protective of wildlife effects shall be calculated as follows:

$$LTA_W = \left(e^{(0.5\sigma_{30}^2 - z_{99}\sigma_{30})}\right) WLA_W$$

Where: σ_{30}^2 = $\ln(CV^2/30 + 1)$.

WLA_W = WLA determined under section 11.4 of this rule using the WC or WV. This WLA is expressed as a thirty (30) day average.

(4) Daily maximum and monthly average WQBELs are determined using the lowest LTA calculated in subdivision (3) as follows:

(A) The daily maximum WQBEL is calculated as follows:

$$\text{Daily Maximum} = \left(e^{(Z_{99}\sigma - 0.5\sigma^2)}\right) LTA$$

Where: σ^2 = $\ln(CV^2 + 1)$.

(B) The monthly average WQBEL is calculated as follows:

$$\text{Monthly Average} = \left(e^{(Z_{95}\sigma_n - 0.5\sigma_n^2)}\right) LTA$$

Where: σ_n^2 = $\ln(CV^2/n + 1)$.

z_{95} = 1.645 (95th percentile probability basis).

n = Number of samples per month. A value of ten (10) will be used unless the discharger demonstrates that an alternate value is more appropriate.

(C) The monthly average WQBEL shall not exceed the most stringent WLA developed under section 11.4 of this rule unless calculated using the following:

(i) A CV calculated using facility-specific effluent monitoring data that is representative of the variability of the pollutant in the effluent.

(ii) A value for n based on the monitoring frequency in the NPDES permit to be issued.

(d) Notwithstanding subsection (c), WQBELs for whole effluent toxicity (WET) and WQBELs for the criteria listed in section 11.4(d) of this rule shall be developed as follows:

(1) For WET, WQBELs shall be developed using the WLAs for acute and chronic WET developed under section 11.4 of this rule as follows:

(A) The commissioner shall ensure that the WQBELs for WET established under this subdivision attain the acute and chronic WET criteria in 327 IAC 2-1.5-8 under the receiving waterbody flows and outside the mixing zones used to develop the WLAs for acute and chronic WET under section 11.4 of this rule.

(B) The commissioner shall determine, on a case-by-case basis, the following:

(i) Whether to develop a WQBEL for only acute or chronic WET or WQBELs for both acute and chronic WET.

(ii) The number of species required for WET testing.

(iii) The particular species required for WET testing.

(C) In making the determination in clause (B), the commissioner shall take into consideration available information about the discharge and receiving waterbody, including, but not limited to, the following:

(i) The ACR of the effluent.

(ii) The sensitivity of the test species to the toxicity in the effluent.

(iii) The WLAs developed for acute and chronic WET under section 11.4 of this rule.

(D) When the commissioner determines that it is necessary to develop a WQBEL for acute WET, the WQBEL shall be set equal to the WLA developed for acute WET under section 11.4 of this rule and shall be established in an NPDES permit as a daily maximum limit.

(E) When the commissioner determines that it is necessary to develop a WQBEL for chronic WET, the WQBEL shall be set equal to the WLA developed for chronic WET under section 11.4 of this rule and shall be established in an NPDES permit as a monthly average limit.

(2) For the criteria listed in section 11.4(d) of this rule, WQBELs shall be developed to be consistent with the models used in that subsection.

(e) WQBELs in an NPDES permit for a metal calculated from a water quality criterion expressed in the form of dissolved metal that is:

(1) contained in 327 IAC 2-1.5; or

(2) subsequently developed under the procedures contained in 327 IAC 2-1.5;

shall be expressed in the permit as total recoverable metal unless all approved analytical methods for the metal inherently measure only its dissolved form, such as hexavalent chromium.

(f) WQBELs for cyanide, calculated from a criterion for free cyanide contained in 327 IAC 2-1.5, shall be limited in the permit as free cyanide and monitored in the effluent using the "Cyanides Amenable to Chlorination" (CATC) method (40 CFR 136, Method 4500-CN G) or another method approved by the commissioner. The commissioner may include additional monitoring, limitations, or other requirements in a permit, on a case-by-case basis, if the additional requirements are necessary to ensure that water quality standards will be attained.

(g) Whenever a WQBEL is developed, unless otherwise provided in subdivision (3), the WQBEL in the NPDES permit shall be expressed as both a concentration value and a corresponding mass loading rate as follows:

(1) Both mass and concentration limits shall be based on the same permit averaging periods, such as daily, or monthly averages, or in other appropriate permit averaging periods.

(2) The mass loading rates shall be calculated using effluent flow rates that are the same as those used in establishing the concentration-based WQBELs.

(3) For pollutants or parameters that cannot appropriately be expressed in terms of mass (such as pH, temperature, radiation, bacteria, or dissolved oxygen) mass limits are not required.

(4) A discharger may request tiered mass limits for a discharge that increases as a result of wet weather flow. As used in this subdivision, "tiered mass limits" consists of two (2) sets of mass limits. One (1) set shall be based on the dry-weather effluent flow determined under section 11.4(a)(9) of this rule and the stream design flow under section 11.4(b) of this rule. The second set shall be based on an effluent flow and stream flow under wet weather conditions. For each mass limit developed under this subdivision, the NPDES permit shall include a corresponding concentration limit.

(h) When a WQBEL for a pollutant is calculated to be less than the LOQ, the following conditions apply:

(1) The calculated WQBEL shall be established as the limit in the NPDES permit.

(2) The analytical method, LOD, and LOQ shall be specified as follows:

(A) The commissioner shall specify in the permit the most sensitive, applicable, analytical method, specified in or approved under 40 CFR 136 or by the commissioner, to be used to monitor for the presence and amount in an effluent of the pollutant for which the WQBEL is established and shall specify in accordance with clause (B), the LOD and LOQ that can be achieved by use of the specified analytical method.

(B) The LOD and LOQ shall be determined as follows:

(i) The MDL shall be used as the LOD unless the permittee demonstrates that a higher LOD is appropriate because of effluent-specific matrix interference.

(ii) The LOQ shall be the ML specified in or approved under 40 CFR 136 for the method for that pollutant. If no such ML exists, or if the method is not specified or approved under 40 CFR 136 or by the commissioner, the LOQ shall be calculated by multiplying the LOD by three and eighteen-hundredths (3.18). The commissioner may specify a higher LOQ if the permittee demonstrates that a higher LOQ is appropriate because of effluent-specific matrix interference. Other methods for deriving an LOQ may be approved by the commissioner if the method is scientifically defensible.

(3) Compliance with the WQBELs for the pollutant shall be determined as follows:

(A) When a daily maximum WQBEL is less than the LOD specified in the permit, effluent levels:

(i) of the pollutant less than the LOD are in compliance with the maximum WQBEL; and

(ii) greater than the LOD but less than the LOQ are in compliance with the maximum WQBEL, except when confirmed by a sufficient number of analyses of multiple samples and use of appropriate statistical techniques.

(B) When a daily maximum WQBEL is greater than the LOD specified in the permit but less than the LOQ specified in the permit, effluent levels of the pollutant less than the LOQ are in compliance with the WQBEL.

(C) To determine compliance with a WQBEL expressed as a daily maximum mass limitation, the LOD and LOQ shall each be converted to a mass value, using appropriate conversion factors and the same effluent flow used to determine the mass-based WQBEL, before applying the provision of clauses (A) and (B).

(D) When a monthly or weekly average WQBEL is less than the LOQ specified in the permit, a monthly or weekly average effluent level less than or equal to the respective monthly or weekly average WQBEL is in compliance with the monthly or weekly average WQBEL. Daily effluent values that are less than the LOQ, used to determine the monthly or weekly average effluent levels less than the LOQ, may be assigned a value of zero (0), unless, after considering the number of monitoring results that are greater than the LOD, and applying appropriate statistical techniques, a value other than zero (0) is warranted.

(4) When a WQBEL is less than the LOD, the commissioner may require a period of accelerated monitoring in a permit, when the measured effluent level is between the LOD and LOQ, for the purpose of collecting additional data to apply the statistical analysis referenced in subdivision (3)(A) and (3)(D).

(5) When a WQBEL is less than the LOQ, special conditions may be included in the permit to better quantify the levels of pollutant present in the discharge. These special conditions may include, but are not limited to, the following:

(A) Fish tissue sampling.

(B) Caged-biota studies.

(C) WET tests.

(D) Limits on internal wastestreams.

(E) Monitoring requirements on internal wastestreams.

(F) Development of a more sensitive analytical procedure.

(G) Monitoring for surrogate parameters.

(H) Waterbody bioassessment.

(6) The permit shall contain reopener clauses authorizing modification or revocation and reissuance of the permit to:

(A) include more stringent monitoring requirements or conditions if new information generated as a result of accelerated monitoring conducted in accordance with subdivision (4), or special conditions included in the permit in accordance with subdivision (5) indicates the likely presence of the pollutant in the discharge at levels above the WQBEL; and

(B) specify the use of a different analytical method if a more sensitive analytical method has been specified in or approved under 40 CFR 136 or approved by the commissioner to monitor for the presence and amount in the effluent

of the pollutant for which the WQBEL is established and shall specify in accordance with subdivision (2)(B), the LOD and LOQ that can be achieved by use of the specified analytical method.

(7) The commissioner shall include a condition in the permit requiring the permittee to develop and conduct a pollutant minimization program (PMP) for each pollutant with a WQBEL below the LOQ in accordance with the following:

(A) The goal of the PMP shall be to maintain the effluent at or below the WQBEL. The PMP shall include, but is not limited to, the following:

(i) Submission of a control strategy designed to proceed toward the goal.

(ii) Implementation of appropriate cost-effective control measures consistent with the control strategy.

(iii) Monitoring necessary to monitor the progress toward the goal. This shall include, but is not limited to, the following:

(AA) Semiannual monitoring of potential sources of the pollutant.

(BB) Quarterly monitoring for the pollutant in the influent of the wastewater treatment system.

(iv) An annual status report that shall be sent to the commissioner, including the following:

(AA) All PMP monitoring results for the previous year.

(BB) A list of potential sources of the pollutant.

(CC) A summary of all actions taken to reduce or eliminate the identified sources of the pollutant.

(v) A PMP may include the submittal of pollution prevention strategies that use changes in production process technology, materials, processes, operations, or procedures to reduce or eliminate the source of the pollutant.

(B) No PMP is required if the permittee demonstrates that the discharge of a pollutant with a WQBEL below the LOQ is reasonably expected to be in compliance with the WQBEL at the point of discharge into the receiving water. This demonstration may include, but is not limited to, the following:

(i) Treatment information, including information derived from modeling the destruction or removal of the pollutant in the treatment process.

(ii) Mass balance information.

(iii) Fish tissue studies or other biological studies.

(C) In determining appropriate cost-effective control measures to be implemented in a PMP, the following factors may be considered:

(i) Significance of sources.

(ii) Economic and technical feasibility.

(iii) Treatability.

(D) The permit shall contain a reopener clause authorizing modification or revocation and reissuance of the permit to revise (such as more or less frequent monitoring) or remove the requirements of this subdivision if supported by information generated as a result of this subdivision.

(i) The determinations under this subsection regarding the consideration of intake pollutants, as defined under section 11.5(b)(4)(A) of this rule, shall be made on a pollutant-by-pollutant, outfall-by-outfall basis. This subsection applies only when the concentration of the pollutant of concern upstream of the discharge, as determined under section 11.4(a)(8) of this rule, exceeds the most stringent applicable water quality criterion or value for that pollutant. In addition, this subsection applies only in the absence of an EPA-approved TMDL applicable to the discharge, or in the absence of an assessment and remediation plan submitted and approved in accordance with section 11.4(a)(2) of this rule. The following procedures shall be used in the consideration of intake pollutants in establishing WQBELs:

(1) When an intake pollutant is from the same body of water, as defined under section 11.5(b)(4)(B) of this rule, and the discharge and the facility meet the conditions in section 11.5(b)(4)(C)(i)(BB) through 11.5(b)(4)(C)(i)(EE), the following procedures apply:

(A) The commissioner may establish effluent limitations allowing the facility to discharge a mass and concentration of the pollutant that are no greater than the mass and concentration of the pollutant identified in the facility's intake water (no net addition limitations). The permit shall specify how compliance with mass and concentration limitations shall be assessed. No permit may authorize no net addition limitations that are effective after March 23, 2007. After that date, WQBELs shall be established in accordance with section 11.5(d) of this rule.

(B) Where proper operation and maintenance of a facility's treatment system results in removal of a pollutant, the commissioner may establish limitations that reflect the lower mass or concentration, or both, of the pollutant achieved by such treatment, taking into account the feasibility of establishing such limits.

(C) For pollutants contained in intake water provided by a water system, the concentration of the intake pollutant shall be determined at the point where the raw water supply is removed from the same body of water, except that it shall be the point where the water enters the water supplier's distribution system where the water treatment system removes any of the identified pollutants from the raw water supply. Mass shall be determined by multiplying the concentration of the pollutant by the volume of the facility's intake flow received from the water system.

(2) Where the pollutant in a facility's discharge originates from a water of the state that is not the same body of water as the receiving water, as determined in accordance with section 11.5(b)(4)(B) of this rule, WQBELs shall be established based upon the most stringent applicable water quality criterion or value for that pollutant.

(3) Where a facility discharges intake pollutants that originate in part from the same body of water, and in part from a different body of water, the commissioner may apply the procedures of subdivisions (1) and (2) to derive an effluent limitation reflecting the flow-weighted average of each source of the pollutant, provided that adequate monitoring to determine compliance can be established and is included in the permit.

(Water Pollution Control Board; 327 IAC 5-2-11.6; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1457; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3379; errata, 26 IR 3884; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2120)

327 IAC 5-2-11.7 Great Lakes system dischargers interim antidegradation implementation procedures for outstanding state resource waters

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; IC 13-11-2-24; IC 13-14-8-4; IC 13-15-5-1; IC 13-18-4; IC 13-18-7; IC 13-23-13; IC 13-24-1; IC 13-25-5

Sec. 11.7. (a) In order to implement the antidegradation standard in 327 IAC 2-1.5-4(c), the commissioner shall ensure that the water quality of a waterbody designated as an outstanding state resource water (OSRW) under 327 IAC 2-1.5-19(b) is maintained and protected in its present high quality without degradation by requiring the following:

(1) This subdivision applies to an existing Great Lakes discharger discharging under a valid NPDES permit directly into a waterbody designated as an OSRW.

(A) This clause applies to a proposed discharge of a new pollutant or pollutant parameter for which the monthly average mass discharged would be greater than ten percent (10%) of the unused loading capacity, as defined in subsection (c)(5), for the pollutant or pollutant parameter.

(i) As used in this clause, "new" means a new pollutant or pollutant parameter that is proposed to be discharged and was not being discharged by an existing NPDES permittee as of the effective date of this section.

(ii) Except as provided in subsection (b), (c), (d), or (f), NPDES permit limits for the proposed new discharge of a pollutant or pollutant parameter shall be established as follows:

(AA) Determine the representative background concentration of the pollutant or pollutant parameter in the receiving waterbody using section 11.4(a)(8) of this rule. This concentration value shall be converted to a mass value using the discharge flow determined using section 11.4(a)(9) of this rule.

(BB) The mass value determined in subitem (AA) shall become the monthly average mass effluent limitation.

(B) This clause applies to a proposed increase in the discharge of any pollutant or pollutant parameter that is limited in an existing NPDES permit, which would cause an increase in the monthly average mass effluent limitation in the permit or the monthly average mass effluent limitation calculated under item (ii) when the permit contains an effluent limitation other than a monthly average mass effluent limitation for that pollutant or pollutant parameter. Except as provided in subsection (b), (c), (d), or (f), NPDES permit limits for the proposed increase in the discharge of a pollutant or pollutant parameter shall be established as follows:

(i) Determine the representative background concentration of the pollutant or pollutant parameter in the receiving waterbody using section 11.4(a)(8) of this rule. This concentration value shall be converted to a mass value using the proposed increase in the discharge flow.

(ii) Determine the monthly average mass limitation for the pollutant or pollutant parameter in the existing NPDES permit. If the existing permit does not contain a monthly average mass effluent limitation for the pollutant or pollutant parameter, the existing weekly average or daily maximum permit limit shall be converted into a monthly average value. If the existing permit does not contain a mass limit for the pollutant or pollutant parameter but

does contain a concentration limitation, the concentration limitation shall be converted to a mass value using the discharge flow determined under section 11.4(a)(9) of this rule.

(iii) Add the monthly average mass values determined in items (i) and (ii) together. This sum then becomes the new monthly average mass effluent limitation.

(iv) Notwithstanding items (i) through (iii), if the proposed increase in mass is not a result of an increase in discharge flow, the commissioner shall calculate the monthly average mass effluent limitation on a case-by-case basis.

(C) This clause applies to a proposed increase in the discharge of any pollutant or pollutant parameter that was being discharged as of the effective date of this section but is not limited in an existing NPDES permit, which would trigger the need for a monthly average mass effluent limitation for the existing discharge. Except as provided in subsection (b), (c), (d), or (f), NPDES permit limits for the proposed increase in the discharge of a pollutant or pollutant parameter shall be established as follows:

(i) Determine the representative background concentration of the pollutant or pollutant parameter in the receiving waterbody using section 11.4(a)(8) of this rule. This concentration value shall be converted to a mass value using the proposed increase in the discharge flow.

(ii) Determine the monthly average mass effluent limitation for the pollutant or pollutant parameter for the existing discharge.

(iii) Add the mass values determined in items (i) and (ii) together. This sum becomes the new monthly average mass effluent limitation for the pollutant or pollutant parameter.

(iv) Notwithstanding items (i) through (iii), if the proposed increase in mass is not a result of an increase in discharge flow, the commissioner shall calculate the monthly average mass effluent limitation on a case-by-case basis.

(D) Clauses (A) through (C) do not apply to new or increased discharges of BCCs. If there is a proposed increase in the discharge of a BCC and the proposed increase is attributable to a deliberate action by the permittee and the proposed increase does not qualify under subsection (b) or (c), the commissioner shall deny the request.

(E) The following provisions apply to existing Great Lakes dischargers proposing a new or increased discharge of a pollutant or pollutant parameter.

(i) An existing Great Lakes discharger proposing to:

(AA) discharge a new pollutant or pollutant parameter; or

(BB) increase the discharge of any pollutant or pollutant parameter unless the increase is due to one (1) or more of the reasons provided in subsection (b);

shall first provide written notice to the commissioner. The notice shall specify the new or increased pollutant or pollutant parameter proposed to be discharged and the amount.

(ii) Upon receipt of the notice, the commissioner shall provide public notice and opportunity for comment. The notice shall contain the information required in section 11.2(b)(2)(A) through 11.2(b)(2)(G) of this rule and shall be provided in accordance with the provisions of section 11.2(b)(1) of this rule.

(iii) The commissioner shall determine whether new or different permit limitations are required pursuant to the provisions of clause (A), (B), or (C) for the pollutant or pollutant parameter. The commissioner shall provide notice of the determination in accordance with the provisions under section 11.2(b)(1) of this rule and the applicable provisions of IC 4-21.5-3.

(2) For a new or increased discharge of a pollutant or pollutant parameter from a new or existing Great Lakes discharger into a tributary of an OSRW for which a new or increased permit limit would be required:

(A) section 11.3(a) and 11.3(b) of this rule apply to the new or increased discharge of a pollutant or pollutant parameter into the tributary; and

(B) the discharge shall not cause a significant lowering of water quality in the OSRW.

(C) The requirements of this subdivision will be considered to have been met when:

(i) one (1) or more of the items listed in section 11.3(b)(1)(C)(i), 11.3(b)(1)(C)(ii), 11.3(b)(1)(C)(iii)(BB), 11.3(b)(1)(C)(iii)(FF), or 11.3(b)(1)(C)(iii)(II) of this rule apply; or

(ii) all three (3) of the following are met:

(AA) one (1) or more of the subitems in section 11.3(b)(1)(C)(iii)(AA), 11.3(b)(1)(C)(iii)(CC), 11.3(b)(1)(C)(iii)(EE), 11.3(b)(1)(C)(iii)(GG), 11.3(b)(1)(C)(iii)(HH), or 11.3(b)(1)(C)(iii)(LL) of this rule

apply;

(BB) the applicant demonstrates that the increase is necessary; and

(CC) the public notice requirements in subsection (c)(6) are met; or

(iii) all four (4) of the following are met:

(AA) one (1) or more of the subitems in section 11.3(b)(1)(C)(iii)(DD), 11.3(b)(1)(C)(iii)(JJ), or 11.3(b)(1)(C)(iii)(KK) of this rule apply;

(BB) the applicant demonstrates that the increase is necessary;

(CC) the applicant demonstrates that it will result in a net environmental improvement; and

(DD) the public notice requirements in subsection (c)(6) are met.

(D) As used in this subdivision, "tributary of an OSRW" includes the upstream segments of a receiving waterbody when some or all of the downstream segments of the receiving waterbody are designated as an OSRW.

(3) For all discharges directly into an OSRW, the commissioner shall establish the following conditions in the permit applicable to the regulated facility:

(A) The permit shall prohibit the regulated facility from undertaking any deliberate action that would result in a degradation of water quality of the OSRW, unless the action complies with applicable provisions of this section.

(B) Whether or not the permit contains a limitation for a BCC, the permit shall require monitoring for any BCC known or believed to be present in the permitted discharge, from any point or nonpoint source over which the permittee has control. If there is an increase in loading of a BCC, above normal variability, attributable to a deliberate action, the permit shall require the discharger to notify the commissioner of the increase. If the increased discharge of the BCC does not qualify under at least one (1) of the exceptions under subsection (b) or (c) and is attributable to a deliberate action by the permittee, the commissioner shall require elimination of the increase.

(C) Fact sheets prepared pursuant to 40 CFR 124.8 and 40 CFR 124.56 or 327 IAC 5-3-8 shall reflect any conditions developed under clause (A) or (B) and included in a permit.

(b) Subsection (a)(1) does not apply to the following actions:

(1) Increases in loadings of any pollutant or pollutant parameter, including heat, from an existing permitted discharger, that are within the existing capacity and processes and that are covered by the existing applicable permit. These increases include, but are not limited to, the following:

(A) Normal operational variability, including, but not limited to, intermittent increased discharges due to wet-weather conditions.

(B) Changes in intake water pollutants not caused by the discharger.

(C) Increasing the production hours of the facility, for example, adding a second shift.

(D) Increasing the rate of production.

(2) New limits for an existing permitted discharger that are not a result of increases in pollutant loading and will not allow an increase in pollutant loading including new limits that are a result of the following:

(A) New or improved monitoring data.

(B) New or improved analytical methods.

(C) New or modified water quality criteria or values.

(D) New or modified effluent limitations guidelines, pretreatment standards, or control requirements for POTWs.

(3) Bypasses that are not prohibited at 40 CFR 122.41(m) or section 8(11) of this rule.

(4) Increasing the sewered area, connection of new sewers and customers, or acceptance of trucked-in wastes (such as septage and holding tank wastes) by a POTW, provided that the increase is within the existing NPDES permit limits of the facility, there is no increased loading of BCCs from nondomestic wastes, and no significant change is expected in the characteristics of the wastewater discharged.

(c) Notwithstanding subsection (a)(1), the commissioner may permit the actions in subdivision (1), (2), or (3) after providing public notice and opportunity for comment in accordance with subdivision (6). In all cases, the actions shall assure water quality adequate to protect designated and existing uses fully and shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control. In addition, the new or increased discharge shall be limited to the minimum necessary to allow the action to occur. The commissioner must approve of the following actions before the proposed new or increased discharge can occur:

(1) The commissioner may allow the following to occur if the applicant demonstrates that the increases are necessary:

(A) Short term, temporary (weeks or months) lowering of water quality.

(B) New or increased discharges of a pollutant or pollutant parameter due to response actions pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (as defined in IC 13-11-2-24), as amended, corrective actions pursuant to the Resource Conservation and Recovery Act (RCRA), as amended, or similar federal or state authorities undertaken to alleviate a release into the environment of hazardous substances, pollutants, or contaminants that may pose an imminent and substantial danger to public health or welfare.

(C) New or increased discharges of a pollutant due to implementation of department-approved industrial or municipal controls on wet-weather flows, including combined sewer overflows and industrial storm water, when there is no net increase in the loading of the pollutant to the OSRW.

(D) New or increased discharges of a wastewater or water treatment additive, as defined in subsection (f).

(E) New or increased discharges of a pollutant or pollutant parameter, when the facility withdraws intake water containing the pollutant or pollutant parameter from the same body of water, and the new or increased discharge of the pollutant or pollutant parameter is due solely to the presence of the pollutant or pollutant parameter in the intake. For the purpose of this clause, "same body of water" has the meaning set forth in section 11.5(b)(4)(B) of this rule.

(F) New or increased discharges of heat that will not result in an increase in temperature:

(i) in a stream, outside of the designated mixing zone, where applicable; or

(ii) in Lake Michigan, as allowed in 327 IAC 2-1.5-8(c)(4)(D)(iv), at the edge of a one thousand (1,000) foot arc inscribed from a fixed point adjacent to the discharge.

(2) The commissioner may allow the following proposed new or increased discharges to occur if the applicant demonstrates that the increases are necessary and that they will result in a net environmental improvement:

(A) New or increased discharges of a pollutant or pollutant parameter that is not a BCC where there is a contemporaneous enforceable decrease in the actual loading of the pollutant or pollutant parameter from sources contributing to the OSRW or to the tributaries to the OSRW such that there is no net increase in the loading of the pollutant or pollutant parameter to the OSRW. The commissioner may approve such an action only if:

(i) the reduction in the discharge of the pollutant or pollutant parameter exceeds the new or increased discharge of the pollutant or pollutant parameter;

(ii) the applicant demonstrates that all reasonable and cost-effective methods for avoiding the new or increased discharge have been taken; and

(iii) the new or increased discharge complies with subdivision (4).

(B) An action that will result in a new or increased discharge of a pollutant or pollutant parameter that is not a BCC if the new or increased discharge is necessary to accomplish a reduction in the discharge of another pollutant or pollutant parameter. The commissioner may approve such an action only if:

(i) the new or increased discharge of the pollutant or pollutant parameter is determined to be either:

(AA) less toxic and no more bioaccumulative; or

(BB) less bioaccumulative and no more toxic;

(ii) the applicant demonstrates that all reasonable and cost-effective methods for avoiding the new or increased discharge have been taken; and

(iii) the new or increased discharge complies with subdivision (4).

(C) An action that will result in a new or increased discharge of a pollutant or pollutant parameter that is not a BCC if the new or increased discharge is necessary to accomplish a reduction in the release of an air pollutant. The commissioner may approve such an action only if:

(i) the reduction in the discharge of the air pollutant is necessary to meet a state or federal air quality standard or will substantially reduce human exposure to hazardous air pollutants;

(ii) the applicant demonstrates that all reasonable and cost-effective methods for avoiding the new or increased discharge have been taken; and

(iii) the new or increased discharge complies with subdivision (4).

(3) Notwithstanding subdivisions (1) and (2), an action that will result in the new or increased discharge of a pollutant or pollutant parameter that is not a BCC into an OSRW for a facility with an existing NPDES permit for a discharge into that OSRW may be permitted in accordance with the following:

(A) The commissioner shall review and make a tentative decision on the application using the following criteria:

(i) The factors contained in IC 13-14-8-4.

(ii) The applicant has demonstrated that all economically and technically feasible measures have been undertaken

to avoid the action that will result in the new or increased discharge of the pollutant or pollutant parameter including a demonstration that it is not feasible to limit the new or increased discharge to a temporary or short term period.

(iii) The new or increased discharge complies with subdivision (4).

(B) The commissioner shall incorporate the tentative decision on the application into the draft new, renewal, or modified NPDES permit, and the draft permit shall be made available for comment under 327 IAC 5-3-9.

(C) After the close of the public comment period (including any public hearing), the commissioner shall present the tentative decision on the application and the comments received during the public comment period (and public hearing) to the board.

(D) The board shall take into account the criteria in clause (A) in making a recommendation to adopt, deny, or revise the commissioner's tentative decision.

(E) The commissioner shall, after fully considering the board's recommendation, incorporate the final decision on the new or increased discharge into the final new, renewal, or modified NPDES permit issued in accordance with 327 IAC 5-3-14.

(4) A new or increased discharge under subdivision (2) or (3) may be approved under the following conditions, as applicable:

(A) Except for heat, the sum of all previously approved new or increased discharges for the pollutant or pollutant parameter allowed under these subdivisions plus the new requested increase does not exceed ten percent (10%) of the unused loading capacity for the pollutant or pollutant parameter as determined as of the date of the first approved increase.

(B) For heat, one (1) of the following conditions is satisfied:

(i) The new or increased discharge will not result in an increase in temperature:

(AA) in a stream, outside of the designated mixing zone, where applicable; or

(BB) in Lake Michigan, as allowed in 327 IAC 2-1.5-8(c)(4)(D)(iv), at the edge of a one thousand (1,000) foot arc inscribed from a fixed point adjacent to the discharge.

(ii) The new or increased discharge will not result in an increase in waste heat:

(AA) for a stream, that is greater than the amount determined by calculating the number of British thermal units (BTUs) required to raise the temperature of the stream design flow of the receiving stream by one (1) degree Fahrenheit; or

(BB) for Lake Michigan, greater than five-tenths (0.5) billion BTUs per hour.

(5) The following definitions apply throughout this subsection:

(A) "Total loading capacity" means the product of the applicable water quality criterion times the sum of the existing effluent flow and the approved mixing volume for Lake Michigan, or the stream design flow, for the OSRW in the area where the water quality is proposed to be lowered, expressed as a mass loading rate.

(B) "Unused loading capacity" means that amount of the total loading capacity not utilized by point source and nonpoint source discharges. The unused loading capacity is established at the time the request to lower water quality is considered.

The definitions in this subdivision cannot be used to calculate the total loading capacity and unused loading capacity for total suspended solids, dissolved oxygen, heat, radioactive substances, bacteria, and pH.

(6) Upon receipt of a request for application of an antidegradation exception under this subsection, the commissioner shall provide notice, request comment, and schedule and hold a public meeting on the application. The notice, request for comments, and public meeting shall be conducted in accordance with section 11.2 of this rule.

(d) Notwithstanding this section, and in accordance with the antidegradation standard in 327 IAC 2-1.5-4(e), in those cases where the potential lowering of water quality is associated with a thermal discharge granted pursuant to Section 316 of the Clean Water Act and 327 IAC 5-7, the decision to allow such degradation shall be consistent with Section 316 of the Clean Water Act and 327 IAC 5-7.

(e) The department shall report to the board annually as to whether the increases allowed by this section have been determined to have a measurable effect on human health, aquatic life, or wildlife. The department shall use all available information to conduct the evaluation and prepare the report for the board.

(f) Notwithstanding the other provisions of this section, the permittee may use wastewater and water treatment additives, other than BCCs, that have not been approved for use by the commissioner, on an immediate basis under the following conditions:

(1) If the wastewater or water treatment additive is not a biocide, the use of the wastewater or water treatment additive is

necessary to comply with permit conditions.

(2) If the wastewater or water treatment additive is a biocide, the use of the wastewater or water treatment additive is necessary to prevent the loss of human life, personal injury, or severe property damage.

(3) The permittee shall orally report information on the use of the treatment additive to IDEM within twenty-four (24) hours of the time the permittee uses or begins using the treatment additive.

(4) The permittee shall provide written notice, which contains the information required by subsection (c)(1), to IDEM within five (5) days of the time the permittee uses or begins using the treatment additive.

(5) As used in this subsection, "wastewater treatment additive" means a chemical or mixture of chemicals added to wastewater to aid in the treatment of that wastewater.

(6) As used in this subsection, "water treatment additive" means a chemical or mixtures of chemicals added to intake water or nonprocess water, such as water used in a boiler or noncontact cooling water, for the purpose of treating the intake or nonprocess water for use in the facility. Examples of uses for water treatment additives include slimicides, biocides, molluscides, and corrosion inhibitors.

(7) The permittee may use the authorization under this section for the period of time necessary to meet the conditions in subdivision (1) or (2).

(Water Pollution Control Board; 327 IAC 5-2-11.7; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1461; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3380; filed Jul 30, 1998, 4:55 p.m.: 21 IR 4522; filed Jun 30, 1999, 2:34 p.m.: 22 IR 3380; filed Sep 26, 2000, 1:36 p.m.: 24 IR 284; errata filed Jan 2, 2001, 9:48 a.m.: 24 IR 1356)

327 IAC 5-2-12 Schedules of compliance

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

Sec. 12. (a) Where appropriate, permits shall contain schedules of compliance requiring the permittee to take specific steps to achieve expeditious compliance with applicable standards and limitations and other requirements, including water quality-based limitations and requirements in accordance with this section, except for schedules of compliance for water quality-based effluent limitations for discharges within the Great Lakes system that are governed under section 12.1 of this rule. A schedule of compliance shall require compliance as soon as reasonably possible, but not later than the earlier of the following:

(1) An applicable statutory deadline.

(2) A deadline specified in a rule establishing applicable limitations, standards, or other requirements.

(3) If no statutory or regulatory deadline is expressly applicable, three (3) years from the date applicable standards, limitations, or other requirements are incorporated into the permit.

(b) If any permit allows a time for achieving final compliance, which exceeds nine (9) months from the date of permit issuance, the schedule of compliance in the permit shall set forth interim requirements and the dates for their achievement as follows:

(1) In no event shall more than nine (9) months elapse between dates specified for interim requirements.

(2) If the time necessary for completion of any interim requirements (such as the construction of a treatment facility) is more than nine (9) months and is not readily divisible into stages for completion, the permit shall specify interim dates not more than nine (9) months apart for the submission of reports of progress toward completion of the interim requirements.

(c) A permittee may terminate its direct discharge by cessation of operation or discharge to a POTW rather than achieve applicable standards and limitations by the final date for compliance established in its permit or in the CWA as follows:

(1) If the decision to terminate a direct discharge is made after issuance of a permit:

(A) the permit shall be modified or revoked and reissued to contain a schedule of compliance leading to termination of the direct discharge by a date which is no later than the statutory deadline; or

(B) the permittee shall terminate direct discharge before noncompliance with any interim requirement specified in the schedule of compliance in the permit.

(2) If the decision to terminate a direct discharge is made before issuance of the permit, the permit shall contain a schedule leading to termination of the direct discharge by a date which is no later than the statutory deadline.

(3) In all cases, the permittee's decision to terminate its direct discharge of pollutants shall be evidenced by a board of directors' resolution which has been made public or by such other means as evidences a firm public commitment.

(d) The commissioner may, upon request of the applicant, modify a schedule of compliance in an issued permit if he determines good and valid cause (such as a natural disaster, strike, materials shortage, or other events over which the permittee has little or no

control or remedy) exists for such modification under section 16 of this rule. In no case shall the compliance schedule be modified to extend beyond an applicable statutory treatment deadline.

(e) New sources, new dischargers, sources which recommence discharging after terminating operations, and those sources which had been indirect dischargers and which commence discharging into navigable waters do not qualify for compliance schedules under this section in the initial permits issued to such dischargers. Moreover, such dischargers are subject to section 17(c)(4) of this rule. Such a discharger, however, may receive compliance schedules, where otherwise allowed under this rule, to achieve compliance with applicable standards, effluent limitations, and other requirements promulgated or otherwise established subsequent to the issuance of the initial permit. *(Water Pollution Control Board; 327 IAC 5-2-12; filed Sep 24, 1987, 3:00 p.m.: 11 IR 627; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1752; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1464)*

327 IAC 5-2-12.1 Great Lakes systems dischargers; schedules of compliance

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

Sec. 12.1. (a) When a permit issued to a new Great Lakes discharger contains a WQBEL, the permittee shall comply with such a limitation upon the commencement of the discharge.

(b) Any existing permit that is reissued or modified to contain a new or more restrictive WQBEL or a more restrictive limit of quantitation (LOQ) (when an LOQ is used as the compliance value for a WQBEL below an LOQ) may allow a reasonable period of time, up to five (5) years from the date of permit issuance or modification, for the permittee to comply with that limit in accordance with the following conditions:

(1) When the compliance schedule established under this subsection goes beyond the term of the permit, an interim permit limit effective upon the expiration date shall be included in the permit and addressed in the permit's fact sheet or statement of basis. The permit shall reflect the final limit and its compliance date.

(2) If a permit establishes a schedule of compliance under this subsection, which exceeds one (1) year from the date of permit issuance or modification, the schedule shall set forth interim requirements and dates for their achievement as follows:

(A) The time between such interim dates may not exceed one (1) year.

(B) If the time necessary for completion of any interim requirement is more than one (1) year and is not readily divisible into stages for completion, the permit shall require, at a minimum, specified dates for annual submission of progress reports on the status of any interim requirements.

(c) Whenever a limit based upon a Tier II value is included in a reissued or modified permit for an existing Great Lakes discharger, the permit may provide a reasonable period of time, up to two (2) years, in which to provide additional studies necessary to develop a Tier I criterion or to modify the Tier II value. In such cases, the permit shall require compliance with the Tier II limitation within a reasonable period of time, no later than five (5) years after permit issuance or modification, and contain a reopener clause in accordance with the following conditions:

(1) The reopener clause shall authorize permit modifications if specified studies have been completed by the permittee or provided by a third party during the time allowed to conduct the specified studies, and the permittee or a third party demonstrates, through such studies, that a revised limit is appropriate. Such a revised limit shall be incorporated through a permit modification and a reasonable time period, up to five (5) years, shall be allowed for compliance. If incorporated prior to the compliance date of the original Tier II limitation, any such revised limit shall not be considered less stringent for purposes of the antibacksliding provisions of section 10(11) of this rule and Section 402(o) of the Clean Water Act (CWA).

(2) If the specified studies have been completed and do not demonstrate that a revised limit is appropriate, the commissioner may provide a reasonable additional period of time, not to exceed five (5) years with which to achieve compliance with the original effluent limitation.

(3) Where a permit is modified to include new or more stringent limitations, on a date within five (5) years of the permit expiration date, such compliance schedules may extend beyond the term of a permit consistent with subsection (b)(1).

(4) If future studies (other than those conducted under this subsection) result in a Tier II value being changed to a less stringent Tier II value or Tier I criterion, after the effective date of a Tier II-based limit, the existing Tier II-based limit may be revised to be less stringent if:

(A) it complies with section 10(11)(B) and 10(11)(C) of this rule and Section 402(o)(2) and 402(o)(3) of the CWA;

(B) in nonattainment waters, the cumulative effect of the revised effluent limitation will assure compliance with water quality standards; or

(C) in attained waters, the revised effluent limitation complies with the antidegradation standard and procedures contained under 327 IAC 2-1.5-4 and section 11.3 of this rule.

(Water Pollution Control Board; 327 IAC 5-2-12.1; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1464; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3380)

327 IAC 5-2-13 Monitoring

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

Sec. 13. (a) To assure compliance with permit terms and conditions, all permittees shall monitor, as required in the permit, the following:

(1) The mass, concentration, or other measurement specified in sections 11, 11.1, and 11.6 of this rule for each pollutant specified in the permit.

(2) The volume of wastewater flow at monitoring points specified in the permit, including the final effluent flow from each point source.

(3) Other parameters and conditions as specifically required in the permit.

(b) A POTW shall monitor the mass, concentration, or other units of specified pollutants in the raw influent, in the discharge from intermediate unit treatment processes as specified in the permit or the applicable report of operation form, and in the final effluent, and the volume of effluent flow. For purposes of this section and sections 14 through 15 of this rule, a POTW includes a municipality or other political subdivision, such as a regional sewer district, that owns or operates a wastewater treatment plant or a water treatment plant, as defined in IC 13-11-2, or a private utility of a quasi-public nature that owns or operates a treatment plant from which a permitted discharge occurs, including a mobile home park or a residential development.

(c) For purposes of subsections (a) and (b), the commissioner shall specify the following monitoring requirements in the permit:

(1) Requirements concerning proper installation, use, and maintenance of monitoring equipment or methods (including biological monitoring methods where appropriate).

(2) Monitoring frequency, type, and intervals sufficient to yield continuing data representative of the volume of effluent flow and the quantity of pollutants discharged based on the impact of the wastestream on the receiving water, in accordance with 40 CFR 122.44.

(3) Test procedures for the analysis of pollutants meeting the requirements of subsection (d).

(d) Requirements for test procedures shall be as follows:

(1) Test procedures identified in 40 CFR 136 shall be utilized for pollutants or parameters listed in that part, unless an alternative test procedure has been approved under 40 CFR 136.5.

(2) Where no test procedure under 40 CFR 136 has been approved, analytical work shall be conducted in accordance with test procedures approved by the commissioner.

(3) Notwithstanding subdivision (1), the commissioner may specify in a permit the test procedure specified in a standard or effluent limitations guideline.

(e) The sampling frequency and other monitoring requirements specified by the commissioner under subsection (c) shall, to the extent applicable, be consistent with monitoring requirements specified in a standard or effluent limitations guideline on which the effluent limitations in the permit are based. In no case shall the sampling frequency be less than once per calendar year.

(f) Where composite samples are specified in the permit, each fraction of the composite shall be weighted in proportion to the flow corresponding to the time that sample fraction is taken unless the permittee demonstrates that such flow-weighting of sample fractions is not necessary to obtain representative monitoring results. *(Water Pollution Control Board; 327 IAC 5-2-13; filed Sep 24, 1987, 3:00 p.m.: 11 IR 628; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1753; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1465; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2125)*

327 IAC 5-2-14 Recording of monitoring results

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1; IC 13-7-16-7
Affected: IC 13-1-3; IC 13-7

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(s) who performed the sampling or measurements;
(3) the date(s) analyses were performed;
(4) the person(s) 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. 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 Board; 327 IAC 5-2-14; filed Sep 24, 1987, 3:00 pm: 11 IR 629)

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 Monitoring Report Form 30530.

(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 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 Board; 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)

327 IAC 5-2-16 Permit modification, revocation and reissuance, and termination

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. 16. (a) An issued permit may be modified, in whole or in part, revoked and reissued, or terminated during its term for cause as specified in this section. Such action may be taken at the commissioner's own initiative or upon the request of any interested person. If the commissioner determines that cause exists for modification or revocation and reissuance of a permit, an updated application or a pertinent portion of an application may be requested if needed to provide sufficient information to prepare the draft permit.

(b) Causes for modification, revocation and reissuance, or termination of a permit include the following:

(1) Violation of any term or condition of the permit.

(2) Failure of the permittee to disclose fully all relevant facts or misrepresentation of any relevant facts by the permittee in the application or during the permit issuance process.

(3) A change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit, e.g., plant closure, termination of discharge by connection to a POTW, a change in state law that requires the reduction or elimination of the discharge, or information indicating that the permitted discharge poses a substantial threat to human health or welfare.

(c) In addition to the provisions of subsection (b), causes for modification, or revocation and reissuance, but not termination, of a permit include the following:

(1) A change in ownership or control of a source which has a permit, where required by the commissioner under section 6(c) of this rule.

(2) Promulgation of an applicable toxic effluent standard or prohibition under section 307(a)(2) of the CWA for a toxic pollutant which is injurious to human health if that standard or prohibition is more stringent than any limitation in the permit on the toxic pollutant.

(3) The occurrence of circumstances which meet the conditions for invoking a reopener clause contained in the permit, such as the reopener clause specified under section 8(b)(1)(A) of this rule for primary industrial dischargers.

(d) In addition to the provisions of subsections (b) and (c), a permit may be modified for any of the following causes:

(1) Material and substantial alterations or additions to the discharger's operation which were not covered in the effective permit, e.g., production changes, relocation or combination of discharge points, changes in the nature or mix of products produced, provided that such alterations do not constitute total replacement of the process or production equipment causing the discharge which converts it into a new source.

(2) The existence of a factor or factors which, if properly and timely brought to the attention of the commissioner, would have justified the application of limitations, standards, or other requirements different from those imposed by the NPDES permit but only if the requester shows that such factor or factors arose after the permit was issued or could not reasonably have been known by the requestor prior to issuance of the permit.

(3) Suspension, withdrawal, or revision of a regulation (including an interim final regulation), promulgated by EPA or the board, establishing effluent limitation guidelines, effluent standards, water quality standards, or treatment requirements, but only when such suspension, withdrawal, or revision affects that portion of the regulation which is the basis for the permit term or condition that is requested to be modified or revoked.

(4) Judicial remand and stay of a promulgated effluent limitations guideline, effluent standard, or water quality standard, if the remand concerns that portion of the guideline or standard on which the permit term or condition was based.

(5) The granting by the commissioner of a permittee's request for a modification of, or variance from, effluent limitations as specifically authorized by the CWA, e.g., section 301(c), 301(g), 301(i), or 301(k) or for a fundamentally different factors variance under 327 IAC 5-6.

(6) Failure of the commissioner to notify another state whose waters may be affected by the discharge as required by section 402(b)(3) of the CWA.

(7) Upon request of a permittee who qualifies for effluent limitations on a net basis under section 11(f) of this rule, or upon a determination by the commissioner that a permittee is no longer eligible for net effluent limitations.

(8) When the level of discharge of any toxic pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under the CWA (see 327 IAC 5-5-2).
(9) When the permittee begins or expects to begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the permit application under 40 CFR 122.53(d)(9), except that this subdivision shall not apply to such a use or manufacture of a toxic pollutant solely under research or laboratory conditions.
(10) A determination by the commissioner that a notification level should be established under section 9(a) of this rule.
(11) A determination by the commissioner that a POTW shall be required to develop a POTW pretreatment program, under one (1) of the circumstances specified in 327 IAC 5-13-2(d) or the approval by the commissioner of:
(A) a POTW pretreatment program; or
(B) an application by the POTW for authority to revise, on the basis of consistent removal of a toxic pollutant by the POTW, discharge limits otherwise applicable to that pollutant under a categorical pretreatment standard.
(12) When otherwise authorized under this rule.
(13) The promulgation by EPA of an effluent limitation guideline that is applicable to the permittee and is less stringent than corresponding technology-based effluent limitations in the permit which were imposed under section 402(a)(1) of the CWA.
(e) The following permit modifications shall not require public notice and opportunity for hearing under 327 IAC 5-3 unless they would render the applicable standards and limitations in the permit less stringent, or unless contested by the permittee:
(1) Correction of typographical errors.
(2) A change requiring more frequent monitoring or reporting by the permittee.
(3) A change in an interim compliance date, but not more than one hundred twenty (120) days beyond the date previously established and not where the change would interfere with the attainment of a final compliance date.
(4) A change in ownership or control of a source which has a permit where no other change in the permit is necessary and where transfer is accomplished under section 6(c) of this rule.
(5) A change in the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge under section 17 of this rule.
(6) Deletion of a point source outfall, where the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.

(Water Pollution Control Board; 327 IAC 5-2-16; filed Sep 24, 1987, 3:00 p.m.: 11 IR 630; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1754)

327 IAC 5-2-17 New sources and new dischargers

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. 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 *[327 IAC 5-1-2 was repealed filed Jan 14, 1997, 12:00 p.m.: 20 IR 1479.]*.
"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) 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) 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 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 167 or 169 (or both) of the Internal Revenue Code.

(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; 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 or as hazardous substances under section 311 of the CWA 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 and any other then applicable requirements of the CWA 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 Board; 327 IAC 5-2-17; filed Sep 24, 1987, 3:00 pm: 11 IR 631)

327 IAC 5-2-18 Basic NPDES requirements; public access to information

Authority: IC 13-14-8; IC 13-14-9; IC 13-18-3
Affected: IC 5-14-3; IC 13-14-11

Sec. 18. (a) All:

(1) permit applications;

(2) effluent data;

(3) certifications issued under section 401 of the CWA;

(4) public comments (including comments of all governmental agencies) submitted under 327 IAC 5-3-9 on a draft permit;

(5) general correspondence;

(6) permits (drafts and final);

(7) statements of basis (briefing memos); and

(8) fact sheets;

shall be available to the public for inspection and copying at a reasonable charge without restriction.

(b) Public access to other information submitted to the commissioner under the NPDES program, under a claim of confidentiality, shall be governed by 327 IAC 12.1. *(Water Pollution Control Board; 327 IAC 5-2-18; filed Sep 24, 1987, 3:00 p.m.:*

11 IR 632; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1756; filed Mar 9, 2000, 7:47 a.m.: 23 IR 1630)

327 IAC 5-2-19 Transmission of information to EPA

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. 19. (a) The commissioner shall transmit to the regional administrator copies of NPDES program forms and any other relevant information to the extent and in the manner agreed to in the memorandum of agreement between the commissioner and EPA.

(b) Any other information obtained or used pursuant to the state NPDES program shall be available to EPA upon request without restriction.

(c) Any information which has been submitted to the commissioner under a claim of confidentiality and is subsequently transmitted to EPA under subsections (a) or (b) will be subject to EPA regulations concerning business confidentiality (40 CFR Part 2). *(Water Pollution Control Board; 327 IAC 5-2-19; filed Sep 24, 1987, 3:00 pm: 11 IR 632)*

327 IAC 5-2-20 Enforcement

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. 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;

(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.

(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.

(Water Pollution Control Board; 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)

327 IAC 5-2-21 Fees (Repealed)

Sec. 21. *(Repealed by Water Pollution Control Board; filed Sep 26, 1997, 3:55 p.m.: 21 IR 372)*

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 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) 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 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.

(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 Board; 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)

327 IAC 5-2-23 Primary industrial point source categories

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. 23. Primary industrial point source categories include the following:

Adhesives	Aluminum Forming
Auto and Other Laundries	Battery Manufacturing
Coal Mining	Coil Coating
Copper Forming	Electric and Electronic Components
Electroplating	Explosives Manufacturing
Foundries	Gum and Wood Chemicals
Inorganic Chemicals	Iron & Steel
Leather Tanning and Finishing	Mechanical Products
Nonferrous Metals	Ore Mining
Organic Chemicals	Paint and Ink
Pesticides	Petroleum Refining
Pharmaceuticals	Photographic Supplies
Plastic and Synthetic Materials	Plastics Processing
Porcelain Enameling	Printing and Publishing

Pulp and Paper Mills	Rubber Processing
Soaps and Detergents	Steam Electric Power Plants
Textile Mills	Timber Products

(Water Pollution Control Board; 327 IAC 5-2-23; filed Sep 24, 1987, 3:00 pm: 11 IR 634)

Rule 2.1. Combined Sewer Overflow Public Notification

327 IAC 5-2.1-1 Purpose

Authority: IC 13-14-1-5; IC 13-14-8; IC 13-14-9; IC 13-18-4-1
Affected: IC 13-18-3

Sec. 1. The purpose of this rule concerning community notification of potential health impacts resulting from a combined sewer overflow discharge is to promote and accomplish the following:

(1) Educate the public, in general, and those persons who, specifically, may come into contact with water that may be affected by a combined sewer overflow discharge as to the health implications possible from combined sewer overflow discharge tainted water.

(2) Alert members of the public who may be immediately affected by a combined sewer overflow discharge or the potential for a combined sewer overflow discharge to occur.

(3) Enable members of the public to protect themselves from possible exposure to waterborne pathogens resulting from contact with or ingestion of water from a waterway that may be affected by a combined sewer overflow discharge.

(4) Complement the combined sewer overflow discharge requirements contained in a National Pollutant Discharge Elimination System (NPDES) permit but not obviate or supersede any more stringent requirements contained in an NPDES permit.

(Water Pollution Control Board; 327 IAC 5-2.1-1; filed Apr 9, 2003, 2:55 p.m.: 26 IR 2613)

327 IAC 5-2.1-2 Applicability

Authority: IC 13-14-1-5; IC 13-14-8; IC 13-14-9; IC 13-18-4-1
Affected: IC 13-18-3

Sec. 2. Any person required to possess a National Pollutant Discharge Elimination System (NPDES) permit and having one (1) or more combined sewer overflow outfalls into waters of the state must comply with this rule. *(Water Pollution Control Board; 327 IAC 5-2.1-2; filed Apr 9, 2003, 2:55 p.m.: 26 IR 2613)*

327 IAC 5-2.1-3 Definitions

Authority: IC 13-14-1-5; IC 13-14-8; IC 13-14-9; IC 13-18-4-1
Affected: IC 13-11-2-158; IC 13-11-2-265; IC 13-18-3

Sec. 3. The following definitions apply throughout this rule:

(1) "Affected public" means those persons who may be exposed to waterborne pathogens through direct contact with or ingestion of water affected by a combined sewer overflow discharge and is limited to:

(A) residents on or adjacent to affected waters;

(B) public and private schools on or adjacent to affected waters;

(C) owners or operators of facilities that provide access to or recreational opportunities in or on affected waters; and

(D) owners or operators of public drinking water systems with surface intakes in or on affected waters.

(2) "Affected waters" means those waters where the E. coli criteria may be exceeded due to a combined sewer overflow discharge.

(3) "Combined sewage" means a combination of wastewater, including domestic, commercial, or industrial wastewater and storm water transported in a combined sewer.

(4) "Combined sewer overflow community" or "CSO community" means a recipient of a National Pollutant Discharge Elimination System (NPDES) permit that includes one (1) or more combined sewer overflow outfalls.

(5) "Combined sewer overflow discharge" or "CSO discharge" means the discharge of combined sewage from an overflow point listed in an NPDES permit.

(6) "Combined sewer overflow outfall" or "CSO outfall" means a structure that:
(A) conveys combined sewage into a receiving waterbody; and
(B) is listed in an NPDES permit.
(7) "Combined sewer system" means a system that:
(A) is designed, constructed, and used to receive and transport combined sewage to a publicly owned wastewater treatment plant; and
(B) may contain one (1) or more combined sewer overflow outfalls that discharge sewage when the hydraulic capacity of the wastewater treatment plant, combined sewer system, or part of the system is exceeded as a result of a wet weather event.
(8) "Commissioner" means the commissioner of the department of environmental management.
(9) "Department" means the department of environmental management except as specifically referenced in this rule.
(10) "Person" has the meaning set forth at IC 13-11-2-158.
(11) "Waters of the state" has the meaning set forth for "waters" at IC 13-11-2-265.
(Water Pollution Control Board; 327 IAC 5-2.1-3; filed Apr 9, 2003, 2:55 p.m.: 26 IR 2613)

327 IAC 5-2.1-4 CSO notification procedure
Authority: IC 13-14-1-5; IC 13-14-8; IC 13-14-9; IC 13-18-4-1
Affected: IC 13-18-3

Sec. 4. (a) A CSO community shall:
(1) develop a CSO notification procedure that meets the requirements of this rule; and
(2) incorporate the CSO notification procedure into its CSO operational plan.
(b) A CSO notification procedure must include the following information at a minimum:
(1) Determination of affected waters for the purpose of providing community notification according to section 5 of this rule.
(2) Locations of:
(A) the CSO outfalls;
(B) public access points including boat launches and bridges located on affected waters; and
(C) parks, school yards, parkways, and greenways on or adjacent to affected waters.
(3) Locations of drinking water suppliers having surface water intakes located within ten (10) river miles downstream of each CSO outfall within the CSO community's jurisdiction.
(4) Method, according to section 6 of this rule, that shall be used to provide notification to the affected public within the area of each affected water.
(5) Assignment of responsibilities within a CSO community for implementing the CSO notification procedure.
(c) A CSO notification procedure must be:
(1) submitted to the commissioner for review six (6) months after the effective date of this rule;
(2) included in the community's CSO operational plan;
(3) in the initial stages of implementation by the CSO community upon submission according to subdivision (1);
(4) fully implemented no later than ninety (90) days after the date of submission according to subdivision (1); and
(5) modified in order to ensure that the procedure is consistent with this rule if either of the following occurs:
(A) The commissioner requests such modification within six (6) months of the date of submission of the notification procedure.
(B) A member of the affected public requests that the department reevaluate the notification procedure.
(Water Pollution Control Board; 327 IAC 5-2.1-4; filed Apr 9, 2003, 2:55 p.m.: 26 IR 2614)

327 IAC 5-2.1-5 Notification
Authority: IC 13-14-1-5; IC 13-14-8; IC 13-14-9; IC 13-18-4-1
Affected: IC 13-18-3

Sec. 5. (a) A CSO community shall provide notification to:
(1) affected public;
(2) other persons within the CSO community who request to be notified in response to the public notice required by section

6(a)(1) of this rule; and

(3) local health departments and drinking water suppliers having surface water intakes located within ten (10) river miles downstream of each CSO outfall experiencing or about to experience a CSO discharge.

(b) The notification must be appropriately worded to explain the nature of the potential health effects of a CSO discharge and steps that affected persons can take to avoid exposure.

(c) Unless specifically required in this rule, a CSO community is not responsible for confirming that the intended recipients of the notification required by subsection (a) received the notification.

(d) Notification must be provided whenever information from a reliable source indicates that:

(1) a discharge or discharges from one (1) or more combined sewer overflow outfalls is occurring; or

(2) a discharge or discharges from one (1) or more combined sewer overflow outfalls is imminent based on predicted or actual precipitation or a related event.

(e) If a CSO discharge occurred and notification was not provided according to subsection (d), the CSO community shall report this fact on the monthly report required according to section 7(a) of this rule. *(Water Pollution Control Board; 327 IAC 5-2.1-5; filed Apr 9, 2003, 2:55 p.m.: 26 IR 2614)*

327 IAC 5-2.1-6 Community notification methods

Authority: IC 13-14-1-5; IC 13-14-8; IC 13-14-9; IC 13-18-4-1
Affected: IC 13-18-3

Sec. 6. (a) A CSO community shall do the following unless alternative procedures are identified by the community that are equivalently effective:

(1) Provide public notice in a newspaper of general circulation in March of each year to allow the following to request receipt of CSO notification:

(A) Media sources, such as newspapers, television, or radio.

(B) Affected public.

(C) Other interested persons in the CSO community.

(2) Provide notification to those identified under subdivision (1) who request receipt of CSO notification under subdivision (1):

(A) when a CSO discharge is occurring or is imminent based on predicted or actual precipitation or a related event; and

(B) in a manner that is mutually agreeable to the recipient and the CSO community.

If the recipient and CSO community do not reach agreement on an acceptable manner of notification, then the CSO community shall provide notice by a reasonable, effective means.

(b) In addition to the requirements of subsection (a), a CSO community shall post a prominent sign within the CSO community's jurisdiction:

(1) at access points to an affected water, including boat ramps, bridges, parks, and school yards;

(2) along parkways and greenways on or adjacent to affected waters at locations most likely to provide notification to persons who may come into direct contact with the water based on information available to the CSO community; and

(3) with the language printed in English or any other language common in the locale (including the language necessary to fill in the blanks) that states or is equal in meaning to the following: "Caution–Sewage or Wastewater pollution. Sewage or Wastewater may be in this water during and for several days after periods of rainfall or snow melt. People who swim in, wade in, or ingest this water may get sick. For more information, please call [insert local sewer authority, telephone number, and, if available, a Web site address].".

(c) Cautionary combined sewer overflow signs posted prior to the effective date of this rule advising that combined sewer overflows may occur at that point do not need to be replaced specifically to comply with the wording of subsection (b)(3). If, however, a cautionary combined sewer overflow sign existing prior to the effective date of this rule does need replacement due to reasons such as weathering or other reasons for replacement, then the replacement sign must comply with the language suggested in subsection (b)(3).

(d) If an access point to an affected water is located on private property or property outside a CSO community's jurisdiction, then a CSO community shall:

(1) annually offer to provide the sign required under subsection (b) for the owner or operator of the private or nonjurisdictional property; and

(2) not be required to provide the sign required under subsection (b) provided the private or nonjurisdictional property owner or operator has refused the community's offer made according to subdivision (1).

(Water Pollution Control Board; 327 IAC 5-2.1-6; filed Apr 9, 2003, 2:55 p.m.: 26 IR 2615)

327 IAC 5-2.1-7 Record keeping and reporting

Authority: IC 13-14-1-5; IC 13-14-8; IC 13-14-9; IC 13-18-4-1
Affected: IC 13-18-3

Sec. 7. (a) A CSO community shall document its public notification efforts on its monthly CSO discharge monitoring report (DMR).

(b) A CSO community shall maintain a record of reports submitted according to subsection (a) that is:

(1) kept at the wastewater treatment plant; and

(2) available to the commissioner's representatives during the department's normal working hours.

(Water Pollution Control Board; 327 IAC 5-2.1-7; filed Apr 9, 2003, 2:55 p.m.: 26 IR 2615)

Rule 3. Procedures for the Issuance of NPDES Permits

327 IAC 5-3-1 Purpose

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. 1. This rule (327 IAC 5-3) prescribes procedures for the issuance of NPDES permits by the commissioner. For purposes of this rule (327 IAC 5-3), "issuance" includes the issuance, denial, modification, revocation and reissuance, or termination of an NPDES permit. The respective roles of the agency and EPA in the issuance of permits are defined to the extent necessary for clarification. Generally, the issuance of an NPDES permit involves the following steps:

(1) the preparation and submission of an application by the person proposing a discharge;

(2) the preparation of a draft permit by the commissioner;

(3) the establishment of a public comment period during which the public may comment on the draft permit;

(4) after, or concurrent with, consideration of public comment, the submission by the commissioner of a proposed permit to EPA for concurrence where necessary;

(5) the issuance of a permit; and

(6) the conducting of an adjudicatory hearing, when properly requested, on objections to the permit.

(Water Pollution Control Board; 327 IAC 5-3-1; filed Sep 24, 1987, 3:00 pm: 11 IR 634; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

327 IAC 5-3-2 Application requirements

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. 2. (a) Persons currently discharging pollutants under an existing NPDES permit shall submit a new application:

(1) Under subsection (b) where facility expansions, production increases, or process modifications will:

(i) result in new or substantially increased discharges of pollutants or a change in the nature of the discharge of pollutants; or

(ii) violate the terms and conditions of the existing permit.

(2) At least one hundred eighty (180) days prior to the expiration date of the existing permit, unless a later date is allowed by the commissioner.

(b)(1) A person proposing a new discharge of pollutants shall submit an application at least one hundred eighty (180) days before the date on which the discharge is to commence, unless a later date is allowed by the commissioner.

(2) Persons planning to operate a facility which is a new source or a new discharger and which may fall within the coverage of an existing general permit shall submit an NPDES application under this section and state that such existing general permit may cover the facility's discharge. The commissioner will review the application and, if he concludes that the applicant's proposed

discharge falls within the coverage of the general permit, he will so notify the applicant of that fact and suspend further processing of the application. If the general permit does not apply to the applicant's proposed discharge, the commissioner shall process the application as for an individual NPDES permit.

(c) All applications required under this section shall be completed in accordance with 327 IAC 5-2-3 and applicable instructions, signed pursuant to 327 IAC 5-2-22, and submitted with the appropriate fee to the department of environmental management.

(d) Except for decisions to modify, revoke and reissue, or terminate a permit, no NPDES permit other than a general permit shall be issued until the applicant has filed a complete application that complies with the filing requirements in this rule (327 IAC 5-3). If an applicant fails or refuses to correct deficiencies in its NPDES application form, the permit may be denied or appropriate enforcement action may be taken under 327 IAC 5-2-20.

(e) If the commissioner determines that further information or a site visit is necessary in order to evaluate the discharge completely and accurately, the applicant shall be notified and a date shall be scheduled for receipt of the requested information and for any necessary site visit.

(f) Special procedures for applications for variances and statutory modifications are provided in 327 IAC 5-3-4 and 327 IAC 5-3-13.

(g) In the case of a person discharging or proposing to discharge pollutants from more than one point source, an appropriate application form shall be submitted for each point source discharge. *(Water Pollution Control Board; 327 IAC 5-3-2; filed Sep 24, 1987, 3:00 pm: 11 IR 634; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-3-3 Requests for modification, revocation and reissuance, or termination

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. 3. (a) If a discharger with a permit or an interested person believes that a modification, revocation and reissuance, or termination of a permit is justified under the standards of 327 IAC 5-2-16, he may request such action on the permit from the commissioner in writing. The request shall set forth all facts or reasons known to the requester which may be relevant to a decision thereon.

(b) If the commissioner agrees, as a result of a request, that the modification, revocation and reissuance, or termination of a permit is warranted, the commissioner shall formulate a draft permit under 327 IAC 5-3-6.

(c) If the commissioner decides that a request submitted under subsection (a) does not appear to meet the requirements of 327 IAC 5-2-16, the commissioner shall reply in writing to the discharger (and the person making the request, if different) briefly setting forth in writing the reasons for that decision. Such denials of requests for modification, revocation, and reissuance, or termination of a permit are not subject to the public notice, comment, and public hearing provisions of this rule (327 IAC 5-3). *(Water Pollution Control Board; 327 IAC 5-3-3; filed Sep 24, 1987, 3:00 pm: 11 IR 635; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-3-4 Time deadlines for applications for statutory modifications of and variances from effluent limitations

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. 4. (a) Except as provided in subsection (d), applications for variances from and modification of effluent limitations under the statutory and regulatory provisions of the CWA shall be made as provided in subsections (b) and (c).

(b) The following are requirements for dischargers other than publicly owned treatment works:

(1) A request for a variance based on the presence of factors fundamentally different (40 CFR 125.30) from those on which the effluent limitations guideline was based, shall be made by the earlier of the following dates:

(A) The close of the public comment period provided under section 9 of this rule.

(B) One hundred eighty (180) days after the date on which a national effluent limitation guideline is established or revised by the administrator.

The request shall explain why the requirements of section 9(c) of this rule and 327 IAC 5-6 have been met.

(2) A request for a variance from the BAT requirements for pollutants subject to section 301(b)(2)(F) of the CWA (commonly called nonconventional pollutants) pursuant to section 301(c) of the CWA because of the economic capability of the owner or operator or pursuant to section 301(g) of the CWA (provided however that a section 301(g) variance may only be requested

for ammonia, chlorine, color, iron, total phenols (4AAP) (when determined by the administrator to be a pollutant covered by section 301(b)(2)(F) of the CWA) and any other pollutants which the administrator lists under section 301(g)(4) of the CWA must be made as follows:

(A) Submitting an initial application to the regional administrator and the commissioner stating the name of the applicant, the permit number, the outfall number(s), the applicable effluent guideline, and whether the applicant is applying for a modification pursuant to section 301(c) or 301(g) of the CWA, or both. This application shall have been or shall be filed not later than the date established by the CWA, which is:

(i) September 25, 1978, for a pollutant which is controlled by a BAT effluent limitation guideline promulgated before December 27, 1977; or

(ii) two hundred seventy (270) days after promulgation of an applicable effluent limitation guideline for guidelines promulgated after December 27, 1977.

(B) Submitting a completed request no later than the close of the public comment period under section 9 of this rule demonstrating that the requirements of section 9(c) of this rule and the applicable requirements of 40 CFR 125, Subpart E or F, have been met. Notwithstanding this provision, the completed application for a request under section 301(g) of the CWA shall be filed one hundred eighty (180) days before EPA must make a decision (unless the regional division director establishes a shorter or longer period).

(C) For those requests for a variance from effluent limitations based on other than effluent limitation guidelines, the request shall comply only with clause (B) and need not be preceded by an initial application under clause (A).

(3) An extension under section 301(k) of the CWA from the statutory deadlines of section 301(b)(2)(A) of the CWA for BAT or section 301(b)(2)(E) of the CWA for BCT, based on the use of innovative technology may be requested no later than the close of the public comment period for the discharger's initial permit requiring compliance with best available technology or best conventional pollutant control technology. The request shall demonstrate that the requirements of section 9(c) of this rule and 40 CFR 125, Subpart C, have been met.

(4) A modification, under section 302(b)(2) of the CWA, of water quality related effluent limitations proposed under section 302(a) of the CWA may be requested no later than the close of the public comment period on the draft permit in which said effluent limitations are proposed or at the public hearing required under section 302(b)(1) of the CWA.

(5) The following are requirements for thermal effluent limitations:

(A) An original request for alternate thermal effluent limitations for the thermal component of any discharge under section 316(a) of the CWA in lieu of promulgated effluent limitation guidelines must be filed with a timely permit application required under section 2 of this rule.

(B) If thermal effluent limitations are proposed in the draft permit, pursuant to section 402(a)(1) of the CWA (see 327 IAC 5-5-2(b)(2)) or water quality standards, and the proposed limitations are in the absence of, or are more stringent than, promulgated effluent limitation guidelines, the original request for alternate thermal effluent limitations shall be filed, or modified if deemed necessary, by the close of the public comment period for the draft permit.

(C) A request for a renewal of alternate thermal effluent limitations shall, in every case, be filed with a timely application for permit reissuance.

(D) The request for alternate thermal effluent limitations shall include the information specified by 327 IAC 5-7.

(c) The following are requirements for publicly owned treatment works:

(1) Section 301(i)(1) of the CWA requires that an extension of the statutory deadlines in section 301(b)(1)(B) or 301(b)(1)(C) of the CWA based on delay in the construction of publicly owned treatment works must have been requested on or before August 3, 1987.

(2) A modification under section 302(b)(2) of the CWA of water quality related effluent limitations proposed under section 302(a) of the CWA may be requested no later than the close of the public comment period on the draft permit in which said effluent limitations are proposed or at the public hearing required under section 302(b)(1) of the CWA, whichever is earlier.

(d) Notwithstanding any later time specified in subsections (b) and (c), the commissioner may notify the applicant before a draft permit is published pursuant to section 12 of this rule that the draft permit will likely contain limitations which are eligible for variances or modifications. In such notice the commissioner may require the applicant as a condition of consideration of any potential variance request to submit, within a specified reasonable time, after receipt of the notice, a statement explaining how the criteria and other requirements of this rule applicable to the variance or modification have been met. This notice may be sent before the application under section 2 of this rule has been submitted.

(e) A discharger who cannot file a timely, complete request required under subsection (b)(2)(B), (b)(2)(C), (b)(3), (b)(4), (b)(5),

or (c)(2) may request an extension to apply. Extensions shall be limited to the time the commissioner determines is necessary to satisfy the requirements of the appropriate regulations but shall be no more than six (6) months in duration. The request may be granted or denied in the discretion of the commissioner. *(Water Pollution Control Board; 327 IAC 5-3-4; filed Sep 24, 1987, 3:00 p.m.: 11 IR 635; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1757; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-3-4.1 Determination on variances from water quality standards and effluent limitations based on such variances; procedures

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-15-4-3; IC 13-18-3
Affected: IC 4-21.5-3; IC 13-11-2-132; IC 13-15-4-1; IC 13-15-5; IC 13-15-6; IC 13-18-4; IC 13-18-7; IC 13-23-13; IC 13-24-1; IC 13-25-5

Sec. 4.1. (a) The commissioner shall consider and make a written determination on a request for a variance from a water quality standard as provided in 327 IAC 2-1-8.8 or 327 IAC 2-1.5-17.

(b) Requirements for a variance application shall be as follows:

(1) An application for a variance for a substance may be submitted at any time during the period beginning on the date an application is submitted for the issuance, reissuance, or modification of a NPDES permit and ending ninety (90) days following the effective date of the new, renewed, or modified NPDES permit, when the WQBEL for the substance will be or is more restrictive in the renewed, or modified NPDES permit than in the existing permit. The applicant may petition the commissioner for up to an additional ninety (90) day period to submit an application for a variance. If the variance application is submitted prior to the issuance, reissuance, or modification date of the permit, the permit limitations for a substance for which a variance application is submitted will not be issued until such time that the commissioner makes the variance determination. Notwithstanding these time frames and procedures, an applicant that is seeking a variance from a water quality standard used to derive a WQBEL contained in an issued or modified NPDES permit must appeal the issuance of the permit or modification in accordance with IC 4-21.5 and IC 13-15-6, if applicable, if the variance request is submitted after the issuance date of the permit to be eligible for a stay of the WQBELs for the substance for which the variance is being requested.

(2) The complete variance application shall contain the information that the commissioner determines to be necessary to satisfy the requirements contained in 327 IAC 2-1-8.8 or 327 IAC 2-1.5-17. The application shall contain the following:

(A) Except for variances governed under clause (B), the variance application shall contain the following:

(i) An identification of control methodologies in practice for similar waste streams and processes by similar facilities which achieve a level of control greater than the level currently achieved by the applicant, including those determined by the applicant not to be technically feasible for the applicant. Pollution prevention measures may be identified and submitted as part of the application. As used in this section, "pollution prevention" means changes in production process technologies, materials, processes, operations, or procedures to reduce or eliminate the source of the pollutant.

(ii) An identification, listed under item (i), of the methodologies determined by the applicant not to be technically feasible and documentation supporting infeasibility.

(iii) A ranking of those feasible methodologies from greater to lesser overall control effectiveness by:

(AA) the reduction in pollutant concentrations; and

(BB) the reduction in loadings (percent pollutant removed).

(iv) An evaluation for each feasible methodology that includes reasonably foreseeable:

(AA) adverse or beneficial environmental impacts resulting from the proposed methodology, including net impacts on the receiving water;

(BB) impacts to the aquatic community, wildlife, and plant life;

(CC) impacts on rare, threatened, or endangered species;

(DD) impacts resulting from the discharge of toxic contaminants;

(EE) energy impacts (BTU and kWH);

(FF) risks to human health; and

(GG) impacts to other media, including air or land.

(v) For a facility required to obtain a municipal permit as defined in IC 13-11-2-132, an evaluation for each feasible methodology that includes the following:

(AA) An affordability analysis of total and annualized costs that measures the financial impact of the

methodology on the user fees and taxes imposed on the residential and nonresidential users paying for the methodology, using, at a minimum, appropriate measures of debt and financial management conditions in the community.

(BB) The economic impacts, including the total cost and cost effectiveness of pollutant removal of the methodology.

(CC) The ability of ratepayers within the community to afford the added costs.

(DD) The ability of the public facility to obtain debt financing.

(vi) For a facility required to obtain a NPDES permit that is not a municipal permit as defined in IC 13-11-2-132, an evaluation for each feasible methodology that includes the following:

(AA) An affordability analysis of total and annualized costs that measures the financial impact of the methodology to determine whether the facility can afford the methodology based upon reasonable measures of financial health and available capital.

(BB) The economic impacts, including the total cost and cost effectiveness of pollutant removal of the methodology.

(CC) The impact of costs on applicant's goods or services.

(DD) Information regarding the relative price of goods or services in the same market as the applicant.

(EE) The overall impact of the application of the methodology on employment within the facility.

(vii) An explanation of why information sought under items (i) through (vi) is not necessary or appropriate for inclusion in the specific variance application.

(viii) Any other relevant information requested by the commissioner.

(B) The following procedures shall be used to evaluate variance applications for discharges that occur as a result of actions listed in item (i):

(i) The procedures in this clause apply to an applicant that requests a variance from a water quality standard used to derive a water quality-based effluent limitation (WQBEL) contained in an NPDES permit for a specific substance where the necessity for the variance is a short term, temporary discharge resulting from the dredging of contaminated sediments from a waterbody, and is any of the following:

(AA) A response action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) as amended.

(BB) A corrective action pursuant to the Resource Conservation and Recovery Act (RCRA) as amended.

(CC) An action pursuant to similar federal or state authorities, including, but not limited to, the following:

(aa) An underground storage tank (UST) corrective action under IC 13-23-13.

(bb) A remediation of petroleum releases under IC 13-24-1.

(cc) A voluntary remediation under IC 13-25-5.

(dd) An abatement or correction of any polluted condition under IC 13-18-7.

(ii) The application for a variance requested under this clause shall contain the following:

(AA) Identification of the substance for which a variance is being requested and information documenting the concentrations of the substance projected to be present in the discharge.

(BB) Document predredging environmental conditions.

(CC) Document the expected environmental benefits of the project.

(DD) Identification of the methodologies that potentially could be used to reduce the concentration of the substance in the discharge or eliminate the need for variance. Methodologies to be evaluated shall include, but not be limited to:

(aa) relocation of the discharge location;

(bb) discharge to a POTW;

(cc) alternate dredging methodologies; or

(dd) control methodologies used in practice for similar wastestreams.

(EE) An identification of the methodologies identified under subitem (DD) determined by the applicant not to be technically feasible and documentation supporting the infeasibility.

(FF) A ranking of those feasible methodologies from greater to lesser effectiveness by:

(aa) the reduction in pollutant concentrations; and

(bb) the increase in percent removal.

(GG) An evaluation for each feasible methodology that includes reasonably foreseeable adverse or beneficial environmental impacts resulting from the methodology, including the net impacts on the receiving water. This evaluation shall include:

(aa) impacts to the aquatic community, wildlife, and plant life;

(bb) impacts on rare, threatened, or endangered species;

(cc) impacts resulting from the discharge of toxic contaminants;

(dd) energy impacts (BTU and kWH);

(ee) risks to human health; and

(ff) impacts to other media, including air or land.

(HH) Documentation of the costs associated with implementing each feasible methodology.

(II) Upon request by the applicant, the commissioner may determine that one (1) or more of the requirements in subitems (AA) through (HH) is not necessary or appropriate for inclusion in the variance application. This request submitted by the applicant shall explain why such information is not necessary or appropriate for inclusion.

(JJ) Any other relevant information requested by the commissioner.

(c) Upon receipt of a variance application, the commissioner shall provide notice, request comment, and, if requested, schedule and hold a public meeting on the application in accordance with 327 IAC 5-2-11.2.

(d) After the receipt of a variance application, the commissioner shall specify in writing any additional relevant information which is deemed necessary to make a determination on the variance request. Such additional information shall be submitted by the applicant within forty-five (45) days after the receipt of the commissioner's request. The applicant may petition the commissioner for an extension of up to an additional forty-five (45) days within which to submit the additional information. Failure of an applicant to submit any additional relevant information requested by the commissioner within the applicable time period shall result in the denial of the variance application.

(e) After the commissioner has determined that a variance application is complete, the commissioner shall make a determination on the application in accordance with the following procedures:

(1) After receipt of a completed variance application, the information submitted under subsection (b)(2) will be reviewed and evaluated.

(2) The highest ranking methodology will be evaluated in accordance with:

(A) 327 IAC 2-1-8.8(b) and 327 IAC 2-1-8.8(c); or

(B) 327 IAC 2-1.5-17(b) and 327 IAC 2-1.5-17(c).

(3) If implementation of the highest ranking methodology causes an undue hardship or burden upon the applicant, the next highest ranking methodology will be evaluated as in subdivision (2).

(4) The procedures outlined in subdivisions (2) and (3) will be repeated until the highest ranking methodology that does not meet the criteria for granting a variance is identified.

(5) The variance determination will require the applicant to implement the highest ranking methodology that does not meet the criteria for granting of a variance.

(6) A variance shall not be granted that would approve the applicant's implementation of a methodology with less overall control effectiveness than the methodology currently implemented by the applicant.

(f) After the commissioner's review and consideration of a completed variance application, the commissioner shall issue a tentative determination on the variance application. The commissioner shall provide a comment period of thirty (30) days on a tentative determination to grant or deny a variance and shall provide public notice of the tentative determination and the comment period as specified under section 12 of this rule. The commissioner shall also include in this public notice, any effects of the variance on the designated use of the receiving waterbody if the tentative determination is to grant the variance.

(g) If a significant degree of interest is expressed during the comment period on the tentative determination to grant or deny the variance, and a public hearing is requested, the commissioner may hold such a hearing after giving notice thereof in accordance with section 12 of this rule. After the comment period or public hearing, the commissioner may request additional information from the applicant.

(h) The commissioner shall make a written determination on the requested variance in accordance with the conditions in 327 IAC 2-1-8.8(b) and subsection (c) or 327 IAC 2-1.5-17(b) and 327 IAC 2-1.5-17(c) within ninety (90) days of the expiration of the later of the following:

(1) The expiration of the public comment period required under subsection (f).

(2) The date of a public hearing allowed under subsection (g).

(3) The date that additional information, requested under subsection (g), is received by the commissioner.

This determination is appealable under IC 4-21.5-3.

(i) If the determination is to grant a variance, either as requested, or as modified by the commissioner, the commissioner shall issue a new or reissue or modify an existing NPDES permit to incorporate the provisions of the variance. This variance shall contain the following:

(1) The WQBELs from which the variance has been granted.

(2) The effluent limitations which are determined to be attainable during the term of the variance. These limitations shall represent the maximum degree of progress feasible during the term of the variance toward attainment of the WQBELs without causing the demonstrated adverse impact. When the duration of the variance is shorter than the duration of the permit, compliance with effluent limitations sufficient to meet the water quality criterion upon the expiration of the variance shall be required.

(3) A compliance schedule which specifies the time period in which the permittee will be required to attain the limitations specified under subdivision (2). During this period in which the compliance schedule is in effect, the permittee will be required to meet interim limitations that are no less stringent than those achieved under the previous permit. If the variance is approved for a BCC, a pollutant minimization program shall be conducted consistent with 327 IAC 5-2-11.6(h)(7).

(4) Appropriate conditions requiring reasonable progress to be made toward attaining the water quality criterion for the waterbody as a whole.

(5) Any additional monitoring that is determined to be necessary to evaluate the effects on the receiving waterbody of the variance from water quality standards. This monitoring may include, but is not limited to, the following:

(A) Whole effluent toxicity tests.

(B) Biological assessments of the receiving waterbody.

(C) Fish tissue analysis.

(D) Monitoring of the water column.

(E) Sediment toxicity testing.

(F) Chemical analysis of sediments.

(6) A requirement for the permittee to investigate treatment technologies, process changes, and other techniques which may result in further progress toward attainment of the WQBELs.

(7) A provision allowing the commissioner to reopen and modify the permit based on any revision to the variance made by the board during the next revision of the water quality standards or by EPA upon review of the variance.

(8) For variances governed under subsection (b)(2)(B), a permit condition that allows the commissioner to suspend work of the project, upon written notice to the discharger, if the commissioner determines that the discharge is not in compliance with the permit or that the discharge is causing adverse environmental impacts that were not considered in the development of the permit. This decision is appealable under IC 4-21.5-3. The issuance of a suspension order under this subsection shall not limit other enforcement actions or penalties. The department and permittee shall analyze operational deficiencies, and the department shall prescribe changes necessary to bring the discharge into conformance with the permit or revise the permit to address the unanticipated adverse environmental impacts.

(9) Other conditions that the commissioner determines to be necessary to implement the terms of the variance.

(j) The commissioner may issue a permit containing new limitations for substances not included by the applicant in the variance request. Permit limitations for a substance contained in the applicant's permit that are in effect at the time of the variance application shall remain in effect during the consideration of a variance application for that particular substance.

(k) The permittee may request a renewal of a variance in accordance with the provisions contained in 327 IAC 2-1-8.8 or 327 IAC 2-1.5-17 and this section. The renewal application shall also contain information concerning its compliance with the conditions incorporated into its permit as part of the original variance under subsection (i). Renewal of a variance may be denied if the permittee did not comply with the conditions of the original variance.

(l) All variances and supporting information shall be submitted by the commissioner to the EPA and shall include the following:

(1) Relevant permittee applications submitted under subsection (b).

(2) Public comments and records of any public hearings under subsections (f) and (g).

(3) The final decision under subsection (h).

(4) NPDES permits issued under subsection (i).

Items required in subdivisions (1) through (3) shall be submitted by the commissioner within thirty (30) days of the date of the final variance decision. The item required in subdivision (4) shall be submitted in accordance with the Memorandum of Agreement with the Regional Administrator.

(m) All variances shall be appended to the water quality standards rules, 327 IAC 2-1 or 327 IAC 2-1.5, during the triennial review process. *(Water Pollution Control Board; 327 IAC 5-3-4.1; filed Feb 1, 1990, 4:30 p.m.: 13 IR 1044; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1759; filed Feb 15, 1995, 1:30 p.m.: 18 IR 1821; errata filed Apr 21, 1995, 4:00 p.m.: 18 IR 2261; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1467; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3380; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-3-5 Permits required on a case-by-case basis

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. 5. (a) Various sections of 327 IAC 5-4 allow the commissioner to determine, on a case-by-case basis, that certain facilities, e.g., concentrated animal feeding operations and particular facilities covered by general permits may be required to obtain individual NPDES permits because of their significant contribution to water pollution or other reasons.

(b) Whenever the commissioner decides that an individual permit should be required under this section, he shall inform the discharger in writing of that decision and the reasons underlying it and shall include an application form with such notice. The discharger must apply for a permit in accordance with 327 IAC 5-3-2 and 327 IAC 5-2-3 within ninety (90) days of a receipt of such notice. *(Water Pollution Control Board; 327 IAC 5-3-5; filed Sep 24, 1987, 3:00 pm: 11 IR 637; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-3-6 Tentative permit decisions and draft 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 13-18-4

Sec. 6. (a) If a permit has been properly requested under section 2 of this rule, the commissioner, after analyzing the data and other information furnished in the permit application and any other relevant information, shall tentatively decide whether to issue or deny the permit.

(b) If the commissioner tentatively decides to issue a permit, a draft permit shall be prepared containing:

(1) all conditions, limitations, or requirements specified in 327 IAC 5-2-6, 327 IAC 5-2-8, and 327 IAC 5-2-9;

(2) all effluent limitations, standards, prohibitions, and conditions required by 327 IAC 5-2-10, including all applicable variances or other statutory modifications which have been requested and appear justified under these rules;

(3) all compliance schedules required by 327 IAC 5-2-12 and 327 IAC 5-2-12.1; and

(4) all monitoring, recording, and reporting requirements specified by 327 IAC 5-2-13, 327 IAC 5-2-14, and 327 IAC 5-2-15.

(c) A decision by the commissioner to deny a permit application shall be made through the same procedures under this rule as any other permit decision. A notice of intent to deny a permit shall be made available for public comment under section 9 of this rule.

(d) If the commissioner determines, either as a result of a request under section 3 of this rule or on the commissioner's own initiative, that the modification or the revocation and reissuance of a permit is warranted under 327 IAC 5-2-16, the commissioner shall formulate a draft permit incorporating the proposed changes in accordance with the following conditions:

(1) In the case of a permit modification:

(A) the draft permit need not include the entire permit but may be restricted to the permit provisions that are proposed to be modified; and

(B) only those terms in the existing permit that are affected by the proposed modification will be reopened, however, such terms of the existing permit remain in force until a modification is issued and becomes finally effective under this article. All other aspects of the permit will remain in force until the expiration of the permit.

(2) If the permit is proposed to be revoked and reissued, the entire permit is reopened just as if the permit had expired and was being reissued. During any proceeding for revocation and reissuance of a permit, the permittee shall comply with all conditions of the existing permit until the new permit is reissued.

(3) If needed for the preparation of a draft permit under this subsection, the commissioner may request additional information, including, in appropriate cases, a complete new permit application.

(e) If the commissioner decides, either as a result of a request or on the commissioner's own initiative, that a permit shall be terminated pursuant to 327 IAC 5-2-16, the commissioner shall prepare a notice of intent to terminate which shall be made available for public comment. The decision shall be finalized through the procedures applicable under this rule to any other permit decision. Pending issuance of a final decision to terminate a permit, the terms and conditions of the permit shall remain in full force and effect.

(f) General permits to be issued under 327 IAC 15 shall be proposed in draft form, shall contain the designation of the general permit area and, except for general permits for separate storm sewers, shall be sent to the EPA for concurrence or objection during the public comment period. No final permit shall be issued if the regional administrator or the EPA deputy assistant administrator for water enforcement objects to the general permit within ninety (90) days from the date of publication of the public notice for the draft general permit. *(Water Pollution Control Board; 327 IAC 5-3-6; filed Sep 24, 1987, 3:00 p.m.: 11 IR 637; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1471; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-3-7 Statement of basis

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. 7. A statement of basis, or briefing memo, shall be prepared for every draft permit for which a fact sheet is not required. The briefing memo shall briefly describe the derivation of the terms and conditions of the permit and the reasons for them. For instance, if effluent limitations in a permit are based upon the application of water quality standards, the briefing memo shall identify the pertinent standards and the manner in which the effluent limitations in the permit were derived from the standards. *(Water Pollution Control Board; 327 IAC 5-3-7; filed Sep 24, 1987, 3:00 p.m.: 11 IR 637; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1760; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

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 13-18-4

Sec. 8. (a) A fact sheet shall be prepared for every draft permit for a major discharger, any draft permit which incorporates a statutory variance or modification or requires explanation under subsection (b)(5), general permits, and every draft permit which 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 which 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 2-1.5, and 327 IAC 5-2-11.3.

(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 Board; 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)

327 IAC 5-3-9 Public comments and public hearings

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1
Affected: IC 4-21.5; IC 4-22-1; IC 13-1-3; IC 13-7

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 public hearing of the proposed issuance of a general permit must be given in accordance with statutorily prescribed procedures for administrative agency rulemaking as well as the provisions of this section and 327 IAC 5-3-12. *(Water Pollution Control Board; 327 IAC 5-3-9; filed Sep 24, 1987, 3:00 pm: 11 IR 638; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-3-10 Terms requested by the corps of engineers and other governmental agencies

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. 10. (a) If the district engineer of the corps of engineers advises the commissioner in writing during the public comment period that anchorage and navigation of any of the waters of the United States would be substantially impaired by the granting of a permit, the permit shall be denied and the applicant so notified. If the district engineer advises the commissioner that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the commissioner shall include the specified conditions in the permit. Review or appeal of a denial of a permit or of conditions specified

by the district engineer shall be made through the applicable procedures of the corps of engineers, and may not be made through the procedures provided in this rule (327 IAC 5-3).

(b) If during the comment period the U.S. fish and wildlife service or any state or other federal agency with jurisdiction over fish, wildlife, or public health advises the commissioner in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the commissioner may include the specified conditions in the permit to the extent the commissioner determines they are necessary to carry out the provisions of the CWA and applicable state law.

(c) In appropriate cases the commissioner may consult with one (1) or more of the agencies referred to in this section before issuing a draft permit and may reflect their views in the statement of basis, the fact sheet, or the draft permit. *(Water Pollution Control Board; 327 IAC 5-3-10; filed Sep 24, 1987, 3:00 pm: 11 IR 639; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-3-11 Reopening of the comment period

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. 11. If any information or arguments submitted during the public comment period appears to raise substantial new questions concerning a permit, the commissioner may conclude that one or more of the following actions is necessary for an informed decision:

(1) formulation of a new draft permit, appropriately modified;

(2) preparation of a fact sheet or revised fact sheet and reopening the comment period under 327 IAC 5-3-9; or

(3) Reopening or extending the comment period to give interested persons an opportunity to comment on the information or arguments submitted. In each case the notice required by 327 IAC 5-3-12 shall be given.

(Water Pollution Control Board; 327 IAC 5-3-11; filed Sep 24, 1987, 3:00 pm: 11 IR 639; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

327 IAC 5-3-12 Public notice of comment period; public hearings concerning permit determinations

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. 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 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 those 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 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.

(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 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 section 316(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 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.

In addition to the publication required by subdivision (2), the commissioner shall use all other reasonable means to notify affected dischargers of the draft and final general permit, including the mailing 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.

(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 or other appropriate publications. The commissioner may establish regional mailing lists in addition to or in place of a statewide list. *(Water Pollution Control Board; 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)*

327 IAC 5-3-13 Special procedures for decisions on thermal issues

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. 13. (a) Permit applicants who wish a final decision, prior to issuance of a final permit, on whether alternative thermal effluent limitations would be justified under section 316(a) of the CWA and whether cooling water intake structures employ the best available technology under section 316(b) of the CWA should request such an early decision and furnish supporting reasons at the time their applications are filed under 327 IAC 5-3-4(b)(5). The commissioner may, in the commissioner's discretion, grant or deny

such a request. If it is granted, both the early decision on CWA section 316(a) or (b) issues and the determination on the balance of the permit shall be considered permit issuance under these rules (327 IAC 5-3), and shall be subject to the same requirements of public notice and comment and the same opportunity for an adjudicatory hearing.

(b) If the commissioner, on review of the administrative record, determines that the information necessary to decide whether or not an alternative effluent limitation under section 316(a) of the CWA should be granted to a source is not likely to be available by the time a decision on permit issuance must be made, the commissioner may issue a permit for a term of up to five (5) years without making the CWA section 316(a) decision. This permit shall require that the point source achieve the effluent limitations initially proposed for the control of the thermal component of the discharge no later than the date otherwise required by applicable legal requirements. However, the permit shall also afford the permittee an opportunity to file a demonstration under section 316(a) of the CWA after conducting such studies as are required by 327 IAC 5-7.

(c) Whenever the commissioner defers the CWA section 316(a) determination pursuant to subsection (b), any determination under section 316(b) of the CWA may also be deferred. *(Water Pollution Control Board; 327 IAC 5-3-13; filed Sep 24, 1987, 3:00 pm: 11 IR 640; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-3-14 Issuance and effective date of a permit

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1
Affected: IC 4-21.5-3-7; IC 13-1-3; IC 13-7-10-2; IC 13-7-10-2.5

Sec. 14. (a) After the close of the public comment period (including any public hearing) required by section 9 of this rule on a draft permit, 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. 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(c) 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), 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). *(Water Pollution Control Board; 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)*

327 IAC 5-3-15 Response to comments

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. 15. Contemporaneously with the issuance of a final permit under 327 IAC 5-3-14, the commissioner shall transmit a response to each person having commented on the draft permit. This response to comments shall contain:

(1) a brief description of and response to all significant comments on the draft permit raised during the public comment period, or during any hearing;

(2) a specific indication of which provisions of the draft permit have been changed in the final permit, and the reasons for the change; and

(3) a brief explanation of the right to request an adjudicatory hearing on the final permit.

(Water Pollution Control Board; 327 IAC 5-3-15; filed Sep 24, 1987, 3:00 pm: 11 IR 641; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

327 IAC 5-3-16 Judicial review

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1
Affected: IC 4-21.5-5; IC 13-1-3; IC 13-7

Sec. 16. Any person aggrieved by final agency action on an adjudicatory hearing or affirming the denial of a request for adjudicatory hearing may seek judicial review of said action pursuant to the provisions of IC 4-21.5-5. *(Water Pollution Control Board; 327 IAC 5-3-16; filed Sep 24, 1987, 3:00 p.m.: 11 IR 642; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1763; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

Rule 3.5. Streamlined Mercury Variance Requirements and Application Process

327 IAC 5-3.5-1 Purpose

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 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-3
Affected: IC 13-18-4

Sec. 1. The purpose of this rule is to establish a streamlined process and application requirements for obtaining a variance from a water quality criterion used to establish a water quality-based effluent limitation for mercury in an NPDES permit. *(Water Pollution Control Board; 327 IAC 5-3.5-1; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2349)*

327 IAC 5-3.5-2 Applicability

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 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-3
Affected: IC 13-14-8-9; IC 13-18-4

Sec. 2. (a) An SMV shall be available for the duration of the NPDES permit issued to a wastewater discharging facility that has an NPDES permit in effect containing a discharge limitation for mercury that cannot be achieved consistently by the facility.

(b) Application for a variance under this rule meets the requirements for a variance under IC 13-14-8-9 and rules adopted by the board.

(c) An SMV is not available for the following:

(1) New or recommencing Great Lakes system dischargers except as provided under 327 IAC 2-1.5-17(a)(3).

(2) Applicants seeking an interim limit whose effluent contains mercury at an average concentration, as determined under section 8(a) of this rule, greater than thirty (30) ng/l (parts per trillion).

(Water Pollution Control Board; 327 IAC 5-3.5-2; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2349)

327 IAC 5-3.5-3 Definitions

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 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-3
Affected: IC 13-11-2; IC 13-18-4

Sec. 3. In addition to the definitions contained in IC 13-11-2 and this article, the following definitions apply throughout this rule:

(1) “Department” means the Indiana department of environmental management.

(2) “Facility” means any NPDES point source or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program. For a municipality, “facility” means a POTW.

(3) "Pollutant minimization program" or "PMP" means a program developed by an SMV applicant to identify and minimize the discharge of mercury into the environment.

(4) "Pollutant minimization program plan" or "PMPP" means the plan for development and implementation of the PMP.

(5) "Publicly owned treatment works" or "POTW" means a treatment works as defined by Section 212(2) of the Federal Water Pollution Control Act owned by the state or a municipality as defined by Section 502(4) of the Federal Water Pollution Control Act.

(6) "Streamlined mercury variance" or "SMV" means a process established under this rule for obtaining a variance from the water quality criterion used to establish a water quality-based effluent limitation (WQBEL) established for mercury in an NPDES permit.

(Water Pollution Control Board; 327 IAC 5-3.5-3; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2349; errata filed Jul 6, 2005, 3:15 p.m.: 28 IR 3582)

327 IAC 5-3.5-4 Initial SMV application

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 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-3

Affected: IC 13-18-4

Sec. 4. (a) The initial SMV application shall be submitted on forms provided by the department.

(b) An applicant for an SMV may submit the application as a part of an application for a:

(1) new;

(2) renewed; or

(3) modified;

NPDES permit.

(c) The initial SMV application must include all information, including the PMPP, required under section 9 of this rule, PMPP requirements. Applications to renew an SMV shall comply with section 7 of this rule.

(d) Upon receipt of a complete SMV application, the department will publish a notice of completeness and availability of the SMV in accordance with section 5 of this rule, public notice of SMV application. The notice of completeness and availability will be published within thirty (30) days of receipt of a complete SMV application.

(e) In order for an application to be considered complete, the application must contain all information required under section 9 of this rule, PMPP requirements. *(Water Pollution Control Board; 327 IAC 5-3.5-4; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2349)*

327 IAC 5-3.5-5 Public notice of SMV application

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 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-3

Affected: IC 4-21.5; IC 13-18-4

Sec. 5. (a) The department shall publish notice of each complete SMV application for public comment:

(1) in the newspaper with the greatest circulation in the city or county of the applicant's location; and

(2) with a thirty (30) day public comment period.

(b) Public notice may be held simultaneously with the public notice procedures of a new, renewed, or modified NPDES permit.

(c) The department may hold a public hearing on the complete SMV application if a request is received during the public comment period. The public hearing may be held simultaneously with the public hearing or a new, renewed, or modified NPDES permit.

(d) The department shall consider public comments received during:

(1) the public comment period; and

(2) the public hearing, if one is held.

(e) The department may require an applicant to modify the SMV application if it is necessary in order for the SMV application to be consistent with the requirements of this rule.

(f) If the SMV application meets the requirements of this rule, the department shall incorporate the SMV into the NPDES permit in accordance with this rule within ninety (90) days, unless the applicant agrees to a longer time frame, following the close of the later of the following:

(1) The public comment period.

(2) The public hearing.

(g) A final determination under subsection (e) is an appealable decision under IC 4-21.5. *(Water Pollution Control Board; 327 IAC 5-3.5-5; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2350)*

327 IAC 5-3.5-6 Issuance of SMV

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 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-3

Affected: IC 13-14-8-9; IC 13-18-4

Sec. 6. When an SMV is issued under this rule, the SMV shall be incorporated as a condition of the applicant's NPDES permit through issuance, renewal, or modification of the NPDES permit. The SMV remains in effect until the NPDES permit expires under IC 13-14-8-9. The NPDES permit shall include the requirements of the PMPP and any applicable interim discharge limitation. *(Water Pollution Control Board; 327 IAC 5-3.5-6; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2350)*

327 IAC 5-3.5-7 Renewal of SMV

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 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-3

Affected: IC 13-14-8-9; IC 13-18-4

Sec. 7. (a) An eligible applicant may apply for a renewal of the SMV:

(1) one hundred eighty (180) days prior to the expiration of its NPDES permit; or

(2) within one hundred eighty (180) days after issuance of a revised NPDES permit that establishes a revised mercury discharge limit based on the water quality criteria.

(b) The department may renew an initial SMV in accordance with IC 13-14-8-9 if the applicant demonstrates that implementation of the PMPP has achieved progress toward the goal of reducing mercury from its discharge except as provided in subsection (d).

(c) A renewal application shall contain the following:

(1) All information required for an initial SMV application under section 4 of this rule, including revisions to the PMPP, if applicable.

(2) A report on implementation of each provision of the PMPP.

(3) An analysis of the mercury concentrations determined through sampling at the facility's locations that have mercury monitoring requirements in the NPDES permit for the two (2) year period prior to the SMV renewal application.

(4) A proposed alternative mercury discharge limit, if appropriate, to be evaluated by the department according to section 8(b) of this rule, based on the most recent two (2) years of representative sampling information from the facility.

(d) A PMPP must be revised if implementation of the original PMPP does not lead to demonstrable progress in minimizing the discharge of mercury. If the applicant can provide information, as part of a revision to a PMPP, that demonstrates there is no known reasonable additional action that will reduce mercury, the PMPP may remain as previously approved.

(e) A renewal SMV shall be issued in a timely manner and in accordance with the requirements for the issuance of an initial SMV under this rule. If an applicant submits an application for a renewal SMV at least one hundred eighty (180) days prior to the expiration of its NPDES permit, the department shall make a final SMV decision, if requested by the applicant, concurrent with the final decision on the NPDES permit. *(Water Pollution Control Board; 327 IAC 5-3.5-7; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2350)*

327 IAC 5-3.5-8 SMV interim discharge limit

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 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-3

Affected: IC 13-18-4

Sec. 8. (a) The interim limit for mercury discharge for the duration of an SMV shall be based on representative effluent data that have been analyzed using Analytical Method 1631 or any analytical method approved by the department. The interim limit shall be expressed as the highest daily value for mercury from a data set that includes a minimum of six (6) daily values that are generally

evenly spaced over the most recent twelve (12) to twenty-four (24) month period and representative of the four (4) seasons. The highest daily value will become the value for the interim limit. Compliance with the interim limit is achieved if the average of the measured effluent daily values over the rolling twelve (12) month period is less than the interim limit. An SMV is not available to an applicant that requests an interim limit greater than thirty (30) ng/l (parts per trillion).

(b) The interim discharge limit shall be evaluated upon receipt of a renewal SMV application based upon available, valid, and representative data of the effluent levels for mercury collected and analyzed over the most recent two (2) year period. Data collection and analyses must be done according to Analytical Method 1631 or the analytical method approved by the department. *(Water Pollution Control Board; 327 IAC 5-3.5-8; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2351)*

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 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-3
Affected: IC 13-18-4

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).

(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) 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 Board; 327 IAC 5-3.5-9; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2351)*

327 IAC 5-3.5-10 Transitional mercury effluent limitation

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 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-3
Affected: IC 4-21.5-3; IC 13-14-1-9; IC 13-18-4

Sec. 10. (a) Either at the time a discharging facility applies for or when it receives a renewal of an NPDES permit with a previously established mercury limit from a prior NPDES permit for which a compliance schedule for mercury is not established in the renewed permit and the discharging facility has not had a prior SMV, then the following may be done to assure compliance with the renewed permit:

(1) In a written document to the department, the discharging facility should:

(A) indicate that the discharging facility is planning to apply for an SMV in accordance with this rule; and
(B) provide information to establish a transitional limit consistent with section 8 of this rule.

(2) The department may issue a transitional limit for the discharging facility through a permit modification or an order under IC 13-14-1-9 until the SMV is either approved or denied.

(b) If an SMV is denied, a discharger may request an individual variance, notwithstanding the time limitations set in 327 IAC 5-3-4.1, by doing the following:

(1) Requesting the commissioner's consideration and written determination on a request for a mercury variance from a water

quality standard as provided in 327 IAC 2-1-8.8 or 327 IAC 2-1.5-17.

(2) Applying for the mercury variance up to ninety (90) days after the denial of the SMV so long as all other requirements in 327 IAC 5-3-4.1 are met. The applicant may petition the commissioner for up to an additional ninety (90) day period to submit the application.

(Water Pollution Control Board; 327 IAC 5-3.5-10; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2352)

Rule 4. Special NPDES Programs

327 IAC 5-4-1 Purpose

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. 1. This rule (327 IAC 5-4) describes NPDES program requirements for certain categories of point source dischargers. *(Water Pollution Control Board; 327 IAC 5-4-1; filed Sep 24, 1987, 3:00 pm: 11 IR 642)*

327 IAC 5-4-2 Underground injection of pollutants

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. 2. (a) If an applicant for an NPDES permit proposes to dispose of pollutants by underground injection as part of the overall effort to meet the requirements of the NPDES program, the commissioner shall deny the request, as this function now lies with EPA as part of the requirements of the SWDA, unless it is determined by the commissioner to be necessary to specify additional terms and conditions in the final NPDES permit which shall:

(1) prohibit the proposed disposal; or

(2) control the proposed disposal in order to prevent pollution of ground and surface water resources of such character and degree as would endanger or threaten to endanger the public health and welfare.

(b) A person proposing a discharge of pollutants by underground injection from a facility with no other point source discharge of pollutants subject to NPDES requirements shall not be required to obtain an NPDES permit. However, the commissioner may prohibit or control such a proposed discharge through the issuance of construction and operation permits under 327 IAC 3 so as to prevent pollution of ground waters of the state of such character and degree as would endanger or threaten to endanger the public health and welfare. *(Water Pollution Control Board; 327 IAC 5-4-2; filed Sep 24, 1987, 3:00 p.m.: 11 IR 642; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1763)*

327 IAC 5-4-3 Concentrated animal feeding operations

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 13-18-4

Sec. 3. (a) Concentrated animal feeding operations or CAFOs are point sources that require NPDES permits for discharges or potential discharges. Once an operation is defined as a CAFO under this section, the NPDES requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter, and process wastewater generated by those animals or the production of those animals, regardless of the type of animal. Except as provided in subsection (d), all CAFO owners or operators must seek coverage under either an individual NPDES permit or a general NPDES permit under 327 IAC 15-15.

(b) The following definitions apply throughout this rule:

(1) "Agricultural storm water discharge" means a precipitation related discharge from a land application area where the manure, litter, or process wastewater has been applied in accordance with this rule and site-specific nutrient management practices to ensure the agronomic utilization of the nutrients in the manure, litter, or process wastewater.

(2) "Animal confinement area" means the areas of the operation where animals are housed. It includes, but is not limited to, the following areas:

(A) Open lots.

(B) Housed lots.

(C) Feedlots.

(D) Confinement houses.
(E) Stall barns.
(F) Free stall barns.
(G) Milk rooms.
(H) Milking center.
(I) Cowyards.
(J) Barnyards.
(K) Medication pens.
(L) Walkers.
(M) Animal walkways.
(N) Stables.

(3) "Animal feeding operation" or "AFO" means a lot or facility, other than an aquatic animal production facility, where both these conditions are met:

(A) animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve (12) month period; and

(B) crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over at least fifty percent (50%) of the lot or facility.

(4) "Concentrated animal feeding operation" or "CAFO" means an AFO that is one (1) of the following:

(A) A large CAFO.
(B) A medium CAFO.
(C) Designated as a CAFO by the commissioner under subsection (c).

Two (2) or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if the AFOs adjoin each other or if the AFOs use a common area or system for land application of manure, litter, or process wastewater.

(5) "CFO approval" means a valid approval issued by the commissioner under 327 IAC 16.

(6) "Land application area" means land under the control of an AFO owner or operator, whether the land is owned, rented, leased, or subject to an access agreement, to which manure, litter, or process wastewater from the production area is or may be applied.

(7) "Large concentrated animal feeding operation" or "large CAFO" means an AFO that stables or confines as many as or more than the number of animals specified in any of the following categories:

(A) Seven hundred (700) mature dairy cows, whether milked or dry.
(B) One thousand (1,000) veal calves.
(C) One thousand (1,000) cattle other than mature dairy cows or veal calves. Cattle includes, but is not limited to, heifers, steers, bulls, and cow/calf pairs.
(D) Two thousand five hundred (2,500) swine each weighing fifty-five (55) pounds or more.
(E) Ten thousand (10,000) swine each weighing less than fifty-five (55) pounds.
(F) Five hundred (500) horses.
(G) Ten thousand (10,000) sheep or lambs.
(H) Fifty-five thousand (55,000) turkeys.
(I) Thirty thousand (30,000) laying hens or broilers, if the AFO uses a liquid manure handling system.
(J) One hundred twenty-five thousand (125,000) chickens, other than laying hens, if the AFO uses other than a liquid manure handling system.
(K) Eighty-two thousand (82,000) laying hens, if the AFO uses other than a liquid manure handling system.
(L) Thirty thousand (30,000) ducks, if the AFO uses other than a liquid manure handling system.
(M) Five thousand (5,000) ducks, if the AFO uses a liquid manure handling system.

(8) "Manure" means animal feces or urine, or both, and materials such as bedding, compost, raw materials, or other materials commingled with animal feces or urine or both feces and urine.

(9) "Manure storage area" means any area where manure is kept. It includes, but is not limited to, the following areas:

(A) Lagoons.
(B) Run-off ponds.
(C) Storage sheds.

(D) Stockpiles.
(E) Under house or pit storage.
(F) Liquid impoundments.
(G) Static piles.
(H) Composting piles.

(10) "Medium concentrated animal feeding operation" or "medium CAFO" means:

(A) An AFO, where the type and number of animals that are stabled or confined at the operation falls within the following ranges:

(i) Two hundred (200) to six hundred ninety-nine (699) mature dairy cows, whether milked or dry.
(ii) Three hundred (300) to nine hundred ninety-nine (999) veal calves.
(iii) Three hundred (300) to nine hundred ninety-nine (999) cattle other than mature dairy cows or veal calves. Cattle includes, but is not limited to, heifers, steers, bulls, and cow/calf pairs.
(iv) Seven hundred fifty (750) to two thousand four hundred ninety-nine (2,499) swine each weighing fifty-five (55) pounds or more.
(v) Three thousand (3,000) to nine thousand nine hundred ninety-nine (9,999) swine each weighing less than fifty-five (55) pounds.
(vi) One hundred fifty (150) to four hundred ninety-nine (499) horses.
(vii) Three thousand (3,000) to nine thousand nine hundred ninety-nine (9,999) sheep or lambs.
(viii) Sixteen thousand five hundred (16,500) to fifty-four thousand nine hundred ninety-nine (54,999) turkeys.
(ix) Nine thousand (9,000) to twenty-nine thousand nine hundred ninety-nine (29,999) laying hens or broilers, if the AFO uses a liquid manure handling system.
(x) Thirty-seven thousand five hundred (37,500) to one hundred twenty-four thousand nine hundred ninety-nine (124,999) chickens, other than laying hens, if the AFO uses other than a liquid manure handling system.
(xi) Twenty-five thousand (25,000) to eighty-one thousand nine hundred ninety-nine (81,999) laying hens, if the AFO uses other than a liquid manure handling system.
(xii) Ten thousand (10,000) to twenty-nine thousand nine hundred ninety-nine (29,999) ducks, if the AFO uses other than a liquid manure handling system.
(xiii) One thousand five hundred (1,500) to four thousand nine hundred ninety-nine (4,999) ducks, if the AFO uses a liquid manure handling system. and

(B) One (1) of these conditions are met:

(i) Pollutants are discharged into waters of the state through a manmade ditch, flushing system, or other similar manmade device. or
(ii) Pollutants are discharged directly into waters of the state that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(11) "No potential to discharge" means, for purposes of section 3.1 of this rule, that there is no potential for any CAFO manure, litter, or process wastewater to be added to waters of the state under any circumstance or climatic condition.

(12) "Process wastewater" means the following:

(A) Water directly or indirectly used in the operation of the AFO for any or all of the following:

(i) Spillage or overflow from animal or poultry watering systems.
(ii) Washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities.
(iii) Direct contact swimming, washing, or spray cooling of animals.
(iv) Dust control.

(B) Process wastewater includes any water that comes into contact with or is a constituent of any raw materials, products, or byproducts, including manure, litter, feed, milk, eggs, or bedding.

(13) "Production area" means that part of an AFO that includes the following:

(A) The animal confinement areas.
(B) The manure storage areas.
(C) The raw materials storage areas.
(D) The waste containment areas.
(E) Egg washing or processing facility.
(F) Milking parlor.

(G) Any area used in the storage, handling, treatment, or disposal of mortalities.

(14) "Raw materials storage area" includes, but is not limited to, the following:

(A) Feed silos.

(B) Silage bunkers.

(C) Bedding materials storage sheds.

(D) Feed bins.

(E) Feedstuffs storage bunkers and sheds.

(15) "Small concentrated animal feeding operation" or "small CAFO" means an AFO that is designated as a CAFO and is not a medium CAFO or large CAFO.

(16) "Waste containment area" means an area designed to contain manure, litter, or process wastewater and includes, but is not limited to, the following:

(A) Settling basins.

(B) Areas within berms and diversions that separate uncontaminated storm water.

(c) Case-by-case designation of an AFO as a CAFO shall occur as follows:

(1) Notwithstanding any other provision of this section, any AFO may be designated as a CAFO where it is determined to be a significant contributor of pollutants to the waters of the state. In making this designation, the commissioner shall consider the following factors:

(A) The size of the AFO and the amount of wastes reaching waters of the state.

(B) The location of the AFO relative to waters of the state.

(C) The means of conveyance of manure, litter, and process wastewaters into waters of the state.

(D) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of manure, litter, and process wastewater into waters of the state.

(E) Other factors relevant to the significance of the pollution problem under consideration.

(2) In no case shall an AFO be designated as a CAFO under this subsection until there has been an on-site inspection of the operation and a determination that the operation should be regulated under the permit program.

(3) No AFO with less than the numbers of animals set forth in subsection (b)(10) shall be designated as a CAFO unless:

(A) pollutants are discharged into waters of the state through a manmade ditch, flushing system, or other similar manmade device; or

(B) pollutants are discharged directly into waters of the state that originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(d) An owner or operator of a large CAFO does not need to seek permit coverage under this rule or 327 IAC 15-15 if the owner or operator has received a notification from the commissioner of a determination that the CAFO has no potential to discharge in accordance with 327 IAC 5-4-3.1 *[section 3.1 of this rule]*.

(e) In addition to the requirements of 327 IAC 5-2-3, the owners or operators of new and existing CAFOs applying for an individual NPDES permit shall provide to the department the following:

(1) The following information on forms provided by the department:

(A) Name, telephone number, and mailing address of the owner and operator.

(B) Name, location, and address of the operation. Contact person and telephone number.

(C) Type and number of animals at the operation.

(D) Type of containment and storage and total capacity for manure, litter, and process wastewater storage (ton/gallons).

(E) Total number of acres under control of the applicant available for land application.

(F) Estimated amount of manure, litter, and process wastewater generated per year (tons/gallons).

(G) Estimated amount of manure, litter, and process wastewater transferred to other persons per year (tons/gallons).

(H) List of other environmental permits held and permit numbers including, if applicable, the CFO farm ID number provided on state CFO approval under 327 IAC 16.

(I) A soil survey map of the geographic area in which the CAFO is located showing the location of the production area facility and land application areas.

(J) SIC code for the operation.

(K) Name of waterbody receiving drainage from the production area.

(L) Telephone number and title of person signing the application.

(2) Payment of the application fee of fifty dollars ($50).

(f) The department shall process the application in accordance with the procedures specified in 327 IAC 5-3. The permit will require the applicant to comply with nutrient management and water quality standards under 327 IAC 15-15 and 327 IAC 16.

(g) The discharge of manure, litter, or process wastewater from a CAFO to waters of the state as a result of land application of manure, litter, or process wastewater by the CAFO to land application areas under the control of the CAFO owner or operator is a discharge subject to NPDES permit requirements under this rule or 327 IAC 15-15, except where it is an agricultural storm water discharge.

(h) Not later than one hundred eighty (180) days before the expiration of the permit, the permittee shall submit an application to renew the permit on forms provided by the department. The permittee need not reapply for a permit if the facility has:

(1) ceased operation and has demonstrated to the commissioner that there is no remaining potential to discharge; or

(2) reduced the number of animals such that the facility is no longer defined as a CAFO.

(i) The deadlines to either seek coverage under an individual NPDES permit pursuant to this rule or under a general NPDES permit pursuant to 327 IAC 15-15 are as follows:

(1) Operations defined as CAFOs prior to April 14, 2003, must seek coverage as of April 14, 2003, and comply with all applicable requirements at the time of coverage.

(2) The following operations, which were defined as CAFOs as of April 14, 2003, but were not defined as CAFOs prior to that date, must seek coverage no later that February 13, 2006:

(A) CAFOs with one thousand (1,000) or more heifers.

(B) CAFOs with ten thousand (10,000) or more swine weighing less than fifty-five (55) pounds.

(C) CAFOs with one hundred twenty-five thousand (125,000) or more chickens, other than laying hens, if the CAFO uses other than a liquid manure handling system.

(D) CAFOs with eighty-two thousand (82,000) or more laying hens, if the CAFO uses other than a liquid manure handling system.

(3) Operations defined as CAFOs as of April 14, 2003, that were not defined as CAFOs prior to April 14, 2003, because the operation has not discharged except in the event of a twenty-five (25) year, twenty-four (24) hour rainfall event must:

(A) maintain a CFO approval under 327 IAC 16 until an individual NPDES permit is obtained or the operation receives general permit coverage under 327 IAC 15-15;

(B) certify to the commissioner in writing within ninety (90) days of the effective date of this rule that:

(i) the AFO was not required to apply for a permit under 327 IAC 5 *[this article]*;

(ii) a discharge has not occurred from the AFO; and

(iii) the operation was constructed and is at all time maintained to prevent a discharge during dry weather and wet weather up to and including a twenty-five (25) *[sic., year]*, twenty-four (24) hour rainfall event;

(C) sign the certification in accordance with 327 IAC 15-15-5(c);

(D) seek permit coverage under an individual permit pursuant to this rule or under a general NPDES permit pursuant to 327 IAC 15-15 by April 13, 2006; and

(E) not discharge manure, litter, or process wastewater to the waters of the state. If an AFO has a discharge after submitting a certification to the commissioner, the AFO must:

(i) notify the department of the discharge within twenty-four (24) hours of the discharge; and

(ii) seek coverage within thirty (30) days of the discharge under:

(AA) an individual NPDES permit pursuant to the rule; or

(BB) a general NPDES permit pursuant to 327 IAC 15-15.

(4) Any operation that has a discharge after submitting the certification under this subsection to the commissioner shall:

(A) immediately notify the department of the discharge; and

(B) seek coverage within thirty (30) days of the discharge under:

(i) an individual NPDES permit under this rule; or

(ii) the NPDES general permit rule under 327 IAC 15-15.

(5) For operations that are newly constructed or that make changes, such that the operation becomes a CAFO as defined under this rule, after April 14, 2003, but are not new sources as defined by 327 IAC 15-15-3(4):

(A) for newly constructed operations not subject to effluent limitations guidelines in 40 CFR 412, effective April 14, 2003, one hundred eighty (180) days prior to commencement of operations; or

(B) for other operations, no later than ninety (90) days after becoming a CAFO as defined under this rule.

However, if an operational change that makes the operation a CAFO would not have made the operation CAFO prior to April

14, 2003, the operation has until April 13, 2006, or ninety (90) days from becoming defined as a CAFO, whichever is later, to seek coverage.

(6) New sources, as defined by 327 IAC 15-15-3(4), must seek permit coverage at least one hundred eighty (180) days prior to the time the CAFO is expected to commence operation. A new CAFO may commence operation at the time that the facility obtains an NPDES permit.

(7) Operations designated as a CAFO must seek permit coverage within ninety (90) days of being designated.

(j) A CAFO that obtains an individual NPDES permit under this section, or obtains a general permit under 327 IAC 15-15, is not required to obtain or renew the CFO approval under 327 IAC 16-7.

(k) Permits for CAFOs shall include conditions based on the requirements in 327 IAC 5-2-8, 5-2-10 *[327 IAC 5-2-10]*, and 5-2-12 *[327 IAC 5-2-12]*. *(Water Pollution Control Board; 327 IAC 5-4-3; filed Sep 24, 1987, 3:00 p.m.: 11 IR 642; filed Feb 23, 2004, 12:15 p.m.: 27 IR 2225)*

327 IAC 5-4-3.1 No potential to discharge determination

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1
Affected: IC 13-18-10; IC 13-30-2-1

Sec. 3.1. (a) The commissioner, upon request, may make a case-specific determination that a large CAFO has no potential to discharge pollutants to waters of the state. When making such a determination, the commissioner shall consider the following:

(1) The potential for discharges from the production area.

(2) The potential for discharges from any land application area.

(3) Any record of prior discharges by the CAFO.

(b) The commissioner shall not determine the CAFO to have no potential to discharge pollutants if the CAFO has had a discharge within the five (5) years prior to the date of the request under this section.

(c) To request a determination of no potential to discharge, the owner or operator shall submit any information that would support such a determination, including all information required under section 3 of this rule and 327 IAC 5-2-3. The commissioner may require additional information to supplement the request and may gather information through an on-site inspection of the CAFO. The information is to be submitted to the commissioner by the date required for submission of an NOI or permit application.

(d) Before making a final decision to grant a no potential to discharge determination, the commissioner shall issue a public notice of receipt of the request. The notice must be accompanied by a fact sheet, which shall include the following:

(1) A brief description of the type of facility or activity requesting the determination.

(2) A brief summary of the factual basis, upon which the request was based, for granting the determination.

(3) A description of the procedures for reaching a final decision on the determination.

(e) The commissioner must notify a CAFO of the final determination within ninety (90) days of receiving the request. If the commissioner denies the no potential for discharge determination, the owner or operator of the CAFO must seek coverage under an NPDES permit within thirty (30) days of the denial.

(f) Any unpermitted CAFO that discharges pollutants into waters of the state is in violation of the Clean Water Act and IC 13-30-2-1 even if it has received a no potential to discharge determination from the commissioner.

(g) Any CAFO that has received a no potential to discharge determination under this section but that anticipates changes in circumstances that could create the potential for a discharge shall contact the commissioner and apply for and obtain coverage under an NPDES permit prior to the change of circumstances.

(h) The commissioner retains the authority to require NPDES permit coverage for a CAFO that has received a no potential to discharge determination under this section if circumstances at the facility change, new information becomes available, or there is reason to believe that the CAFO has a potential to discharge.

(i) A determination of no potential to discharge only relates to discharges of manure, litter, and process wastewater covered by this rule.

(j) The commissioner shall base the decision to grant a no potential to discharge determination on the administrative record, which includes all information submitted in support of the determination and any other data gathered by the department. *(Water Pollution Control Board; 327 IAC 5-4-3.1; filed Feb 23, 2004, 12:15 p.m.: 27 IR 2230)*

327 IAC 5-4-4 Concentrated aquatic animal production facilities

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. 4. Concentrated aquatic animal production facilities, as defined at 40 CFR 122.24, are point sources subject to NPDES permit requirements. *(Water Pollution Control Board; 327 IAC 5-4-4; filed Sep 24, 1987, 3:00 pm: 11 IR 643)*

327 IAC 5-4-5 Aquaculture projects

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. 5. Discharges into acquaculture *[sic.]* 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 Board; 327 IAC 5-4-5; filed Sep 24, 1987, 3:00 pm: 11 IR 643)*

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 the conditions of one (1) of the six (6) cases listed in 327 IAC 15-2-9(b).

(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 entirely of storm water require an NPDES permit and are eligible for coverage under a general NPDES permit unless one (1) of the conditions in subsection (a) is 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 15-13-3(b).

(c) The commissioner shall not, under this section, require a permit for discharges of storm water run-off 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.

(d) If an individual NPDES permit is required under subsection (a), the department may consider the following in determining the requirements to be contained in the permit:

(1) The provisions in:

(A) 327 IAC 15-5, 327 IAC 15-6, and 327 IAC 15-13, as appropriate to the type of storm water discharge; or

(B) 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” (September 1, 1996)*.

(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 run-off 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.

(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 Board; 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)*

327 IAC 5-4-7 Silvicultural activities

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. 7. Silvicultural point sources, as defined in 40 CFR 122.27, are point sources subject to the NPDES permit program. *(Water Pollution Control Board; 327 IAC 5-4-7; filed Sep 24, 1987, 3:00 pm: 11 IR 644)*

327 IAC 5-4-8 General permit program (Repealed)

Sec. 8. *(Repealed by Water Pollution Control Board; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1775)*

Rule 5. NPDES Criteria and Standards for Technology-Based Treatment Requirements

327 IAC 5-5-1 Purpose and scope

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. 1. This rule (327 IAC 5-5) establishes criteria and standards for the imposition of technology-based treatment requirements in permits under 327 IAC 5-2-10, including the application of EPA-promulgated effluent limitations and standards under sections 301(b) and 306 of the CWA, and case-by-case determinations of effluent limitations under section 402(a)(1) of the CWA. *(Water Pollution Control Board; 327 IAC 5-5-1; filed Sep 24, 1987, 3:00 pm: 11 IR 645; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-5-2 Technology-based treatment requirements

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. 2. (a) Technology-based treatment requirements under sections 301(b) and 306 of the CWA represent the minimum level of control that must be imposed in an NPDES permit issued under section 402 of the CWA for an existing source and a new source, respectively. Compliance with these technology-based treatment requirements is required within the times prescribed in section 301(b)(2) of the CWA and 40 CFR 123.3(a)(2). Notwithstanding these minimum technology-based requirements, more stringent treatment requirements may be imposed under section 301(b)(1)(C), 302, or 307(a)(2) of the CWA.

(b) Technology-based treatment requirements may be imposed through one (1) of the following methods:

(1) Application of EPA-promulgated effluent limitations developed under section 304 or 306 of the CWA to discharges by

category or subcategory. These effluent limitations are not applicable to the extent that they have been remanded or withdrawn. However, in the case of a court remand, determinations underlying effluent limitations shall be binding in permit issuance proceedings where those determinations are not required to be reexamined by a court remanding the regulations. In addition, dischargers may seek fundamentally different factors variances from these effluent limitations under 327 IAC 5-6. If a fundamentally different factors variance is approved by EPA under 40 CFR 125, Subpart D, the resulting effluent limitations are technology-based treatment requirements for purposes of this article.

(2) On a case-by-case basis under section 402(a)(1) of the CWA, to the extent that EPA-promulgated effluent limitations are unavailable. Standards of performance for new sources cannot be developed on an ad hoc basis under section 402(a)(1) of the CWA. By statutory definition, a source is a new source only if standards of performance applicable to such source have been promulgated by EPA. The commissioner shall apply the appropriate factors listed in section 304 of the CWA and shall consider the following:

(A) The appropriate technology for the category or class of point sources of which the applicant is a member, based upon all available information (including EPA draft or proposed development documents or guidance).

(B) Any unique factors relating to the applicant.

(3) Through a combination of the methods in subdivisions (1) and (2). Where promulgated effluent limitations guidelines only apply to certain aspects of the discharger's operation, or to certain pollutants, other aspects or activities are subject to regulation on a case-by-case basis in order to carry out the provisions of the CWA.

(c) Technology-based treatment requirements are applied prior to or at the point of discharge.

(d) Technology-based treatment requirements cannot be satisfied through the use of nontreatment techniques such as flow augmentation and instream mechanical aerators. However, these techniques may be considered as a method of achieving water quality standards on a case-by-case basis when:

(1) the technology-based treatment requirements applicable to the discharge are not sufficient to achieve the promulgated water quality standards;

(2) the discharger agrees to waive any opportunity to request a variance under section 301(c) or 301(g) of the CWA; and

(3) the discharger demonstrates that such a technique is the preferred environmental and economic method to achieve the standards after consideration of alternatives such as advanced waste treatment, recycle and reuse, land disposal, changes in operating methods, and other available methods.

(e) Technology-based effluent limitations shall be established under this rule for solids, sludges, filter backwash, and other pollutants removed in the course of treatment or control of wastewaters in the same manner as for other pollutants if such pollutants are proposed to be discharged.

(f) Other provisions of this rule notwithstanding, the commissioner may do the following:

(1) Set a permit limit for conventional pollutants at a level more stringent than the best conventional pollution control technology (BCT), or a limit for a nonconventional pollutant which shall not be subject to modification under section 301(c) or 301(g) of the CWA, where:

(A) effluent limitations guidelines specify the pollutant as an indicator for a toxic pollutant; or

(B)(i) the limitation reflects BAT level control of discharges of one (1) or more toxic pollutants which are present in the waste stream, and a specific BAT limitation upon the toxic pollutants is not feasible for economic or technical reasons;

(ii) the permit identifies which toxic pollutants are intended to be controlled by use of the limitation; and

(iii) the fact sheet required by 327 IAC 5-3-8 sets forth the basis for the limitation, including a finding that compliance with the limitation will result in BAT level control of the toxic pollutant discharges identified in item (ii), and a finding that it would be economically or technically infeasible to directly limit the toxic pollutants.

(2) Set a permit limit for a conventional pollutant at a level more stringent that *[sic., than]* BCT when any of the following occur:

(A) Effluent limitations guidelines specify the pollutant as an indicator for a hazardous substance.

(B) The following are established:

(i) The limitation reflects BAT level control of discharges (or an appropriate level determined under section 301(c) or 301(g) of the CWA) of one (1) or more hazardous substances which are present in the waste stream, and a specific BAT (or other appropriate) limitation upon the hazardous substances is not feasible for economic or technical reasons.

(ii) The permit identifies which hazardous substances are intended to be controlled by use of the limitation.

(iii) The fact sheet sets forth the basis for the limitation, including a finding that compliance with the limitations will result in BAT level (or appropriate level) control of the hazardous substances discharges identified in item (ii), and a finding that it would be economically or technically infeasible to directly limit the hazardous substances.

(C) Hazardous substances which are also toxic pollutants are subject to subdivision (1).

(3) Not set a more stringent limit under subdivision (1) or (2) if the method of treatment required to comply with the limit differs from that which would be required if the toxic pollutants or hazardous substances controlled by the limit were limited directly.

(g) Toxic pollutants identified under subsection (f)(1) remain subject to the requirements of 327 IAC 5-2-9, concerning notification of increased discharges of toxic pollutants above levels reported in the application form.

(h) In setting case-by-case limitations pursuant to subsection (b), the permit writer must consider the following factors:

(1) The following are requirements for BPT:

(A) The total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application.

(B) The age of equipment and facilities involved.

(C) The process employed.

(D) The engineering aspects of the application of various types of control techniques.

(E) Process changes.

(F) Nonwater quality environmental impact, including energy requirements.

(2) The following are requirements for BCT:

(A) The reasonableness of the relationship between the costs of attaining a reduction in effluent and the effluent reduction benefits derived.

(B) The comparison of the cost and level of reduction of such pollutants from the discharge from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources.

(C) The age of equipment and facilities involved.

(D) The process employed.

(E) The engineering aspects of the application of various types of control techniques.

(F) Process changes.

(G) Nonwater quality environmental impact, including energy requirements.

(3) The following are requirements for BAT:

(A) The age of equipment and facilities involved.

(B) The process employed.

(C) The engineering aspects of the application of various types of control techniques.

(D) Process changes.

(E) The cost of achieving such effluent reduction.

(F) Nonwater quality environmental impact, including energy requirements.

(Water Pollution Control Board; 327 IAC 5-5-2; filed Sep 24, 1987, 3:00 p.m.: 11 IR 645; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1765; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

327 IAC 5-5-3 Secondary treatment requirements for POTWs

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. 3. (a) Secondary treatment and corresponding effluent limitations applicable to discharges from POTWs under section 301(b)(1)(B) of the CWA are defined by EPA at 40 CFR 133.

(b) Notwithstanding subsection (a), attainment of the following alternative effluent limitations shall be deemed as compliance with secondary treatment requirements under section 301(b)(1)(B) of the CWA for POTWs where a waste stabilization pond constitutes the sole means of providing secondary treatment and the design population equivalent is less than ten thousand (10,000):

Parameter	Monthly Average	Weekly Average

Carbonaceous BOD_5	25 mg/l (or 85% removal, whichever is more stringent)	40 mg/l
Total suspended solids	70 mg/l	105 mg/l

(c) For purposes of this section, "POTWs" also includes semipublic entities, which are defined as public and private entities that provide sewage treatment to a group of people having a quasi-public character, e.g., municipal school corporations, private utilities serving mobile home parks and residential developments, etc. *(Water Pollution Control Board; 327 IAC 5-5-3; filed Sep 24, 1987, 3:00 p.m.: 11 IR 647; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1767; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

Rule 6. Criteria and Standards for Determining Fundamentally Different Factors

327 IAC 5-6-1 Purpose

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. 1. (a) This rule establishes the criteria and standards to be used in determining whether ad hoc effluent limitations or standards alternative to those required by effluent limitations guidelines or standards promulgated under sections 301, 304, and 307(b) of the CWA (hereinafter referred to as national limits) should be imposed on a discharger because factors relating to the discharger's facilities, equipment, processes, or other matters affecting the discharge are fundamentally different from the factors considered by EPA in development of the national limits. This rule applies to all national limits promulgated under sections 301, 304, and 307(b) of the CWA, except for those contained in 40 CFR 423 concerning steam electric generating point source category.

(b) Such a fundamentally different factor variance may be requested by a permit applicant in accordance with 327 IAC 5-3-4(b) or may be proposed by the commissioner on his own initiative in the draft permit. *(Water Pollution Control Board; 327 IAC 5-6-1; filed Sep 24, 1987, 3:00 p.m.: 11 IR 647; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1768; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-6-2 Criteria

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. 2. (a) A variance from national limits shall be proposed by the commissioner to EPA for approval, whether at the commissioner's own initiative or upon the request of the permit applicant, only if:

(1) there is an applicable national limit which specifically controls the pollutant for which alternative effluent limitations or standards have been proposed;

(2) the factors relating to the discharge upon which the variance request is based are fundamentally different from those considered by EPA in establishing the national limits and were in existence prior to EPA's promulgation of such national limits; and

(3) the request for alternative effluent limitations or standards is made in accordance with the procedural requirements of 327 IAC 5-3.

(b) A request for the establishment of effluent limitations less stringent than applicable national limits shall be recommended by the commissioner only if:

(1) the alternative effluent limitation or standard to be established is no less stringent than justified by the fundamental difference; and

(2) the alternative effluent limitation or standard will ensure compliance with sections 208(e) and 301(b)(1)(C) of the CWA; and

(3) compliance with the national limits (either by using the technologies upon which the national limits are based or by other control alternatives) would result in:

(A) a removal cost wholly out of proportion to the removal cost considered during development of the national limits; or

(B) an environmental impact not affecting water quality (including energy requirements) which is fundamentally more adverse than the impact considered during development of the national limits.

(c) A request for alternative limits more stringent than required by national limits shall be recommended by the commissioner only if:

(1) the alternative effluent limitation or standard to be established is no more stringent than justified by the fundamental difference; and

(2) compliance with the alternative effluent limitation or standard can be achieved using the technologies upon which the national limits are based or other reasonably available control alternatives and would not result in:

(A) a removal cost wholly out of proportion to the removal cost considered during development of the national limits; or

(B) an environmental impact not affecting water quality (including energy requirements) which is fundamentally more adverse than the impact considered during development of the national limits.

(d) Factors which may be considered fundamentally different are:

(1) the nature or quality of pollutants contained in the raw waste load of the applicant's process wastewater;

(2) the volume of the discharger's process wastewater and the volume of effluent discharged;

(3) nonwater quality environmental impact of the control and treatment of the discharger's raw waste load (however, this factor will be considered pertinent, generally, only if such nonwater quality impact would result in the violation of another applicable federal or state law);

(4) energy requirements of the application of control and treatment technology;

(5) age, size, land availability, and configuration as they relate to the discharger's equipment or facilities; processes employed; process changes; and engineering aspects of the application of control technology.

(e) Alternative effluent limitations shall not be established under this section on any of the following grounds:

(1) the infeasibility of installing the required waste treatment equipment within the time the CWA allows;

(2) the assertion that the national limits cannot be achieved with the appropriate waste treatment facilities installed, if such assertion is not based on factor(s) listed in subsection (d);

(3) the discharger's ability to pay for the required waste treatment; or

(4) the impact of a discharge on local receiving water quality.

(f) Nothing in this section shall be construed to abridge the right of the commissioner under section 510 of the CWA to impose more stringent limitations than the minimum technology-based effluent limitations applicable under the CWA. *(Water Pollution Control Board; 327 IAC 5-6-2; filed Sep 24, 1987, 3:00 pm: 11 IR 647; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-6-3 Burden of persuasion

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. 3. The burden is on the person requesting the variance to explain that:

(1) factor(s) listed in 327 IAC 5-6-2(d) regarding the discharger's facility are fundamentally different from the factors EPA considered in establishing the national limits;

(2) the alternative limitations requested are justified by the fundamental difference alleged in subdivision (1); and

(3) the appropriate requirements of 327 IAC 5-6-2 have been met.

(Water Pollution Control Board; 327 IAC 5-6-3; filed Sep 24, 1987, 3:00 pm: 11 IR 648; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

Rule 7. Alternative Thermal Effluent Limitations; Determination

327 IAC 5-7-1 Purpose

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. 1. This rule (327 IAC 5-7) describes the factors, criteria and standards for the establishment of alternative thermal effluent limitations under section 316(a) of the CWA. *(Water Pollution Control Board; 327 IAC 5-7-1; filed Sep 24, 1987, 3:00 pm: 11 IR 648; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-7-2 Definitions

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. 2. For the purpose of this rule (327 IAC 5-7):

"Alternative effluent limitations" means all effluent limitations or standards of performance for the control of the thermal component of any discharge which are established under section 316(a) of the CWA and this rule (327 IAC 5-7).

"Balanced, indigenous community" is synonymous with the term "balanced, indigenous population" in the CWA and means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species and by a lack of domination by pollution tolerant species. Such a community may include historically nonnative species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial, irreversible environmental modifications. Normally, however, such a community will not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance by all sources with section 301(b)(2) of the CWA, and may not include species whose presence or abundance is or would be attributable to the imposition of alternative effluent limitations pursuant to section 316(a) of the CWA in place of otherwise applicable effluent limitations under section 301 or section 306 of the CWA.

"Representative important species" means species which are representative, in terms of their biological needs, of a balanced, indigenous community of shellfish, fish and wildlife in the body of water into which a discharge of heat is made. *(Water Pollution Control Board; 327 IAC 5-7-2; filed Sep 24, 1987, 3:00 pm: 11 IR 648; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-7-3 Early screening of applications

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. 3. (a) Any initial application for a CWA section 316(a) variance shall include the following early screening information:

(1) A description of the alternative effluent limitations requested.

(2) A general description of the method by which the discharger proposes to demonstrate that the otherwise applicable thermal discharge effluent limitations are more stringent than necessary.

(3) A general description of the type of data, studies, experiments, and other information which the discharger intends to submit for the demonstration.

(4) Such data and information as may be available to assist the commissioner in selecting the appropriate representative important species.

(b) After submitting the early screening information under subsection (a), the discharger shall consult with the commissioner at the earliest practicable time to discuss the discharger's early screening information. Within ninety (90) days after the application is filed, the discharger shall submit for the commissioner's approval a detailed plan of study which the discharger will undertake to support its demonstration under section 316(a) of the CWA. The discharger shall specify the nature and extent of the following type of information to be included in the plan of study:

(1) Biological.
(2) Hydrographical and meteorological data.
(3) Physical monitoring data.
(4) Engineering or diffusion models.
(5) Laboratory studies.
(6) Representative important species.
(7) Other relevant information.

In selecting representative important species, special consideration shall be given to species mentioned in applicable water quality standards. After the discharger submits its detailed plan of study, the commissioner shall either approve the plan or specify any necessary revisions to the plan. The discharger shall provide any additional information or studies which the commissioner subsequently determines necessary to support the demonstration, including such studies or inspections as may be necessary to select representative important species. The discharger may provide any additional information or studies which the discharger feels are appropriate to support the demonstration.

(c) Any application for the renewal of a CWA section 316(a) variance need include only such information described in

subsections (a) and (b) as the commissioner requests not later than one (1) year prior to the date on which the renewal application is due unless the commissioner can demonstrate good cause for making such a request at a later date.

(d) The commissioner shall promptly notify the Secretary of Commerce, the Secretary of the Interior, and any affected state of the filing of the request and shall consider any timely recommendations they submit.

(e) In making the demonstration, the discharger shall consider any information or guidance published by EPA to assist in making such demonstrations.

(f) If an applicant desires a ruling on a CWA section 316(a) application before the ruling on any other necessary permit terms and conditions, it shall so request upon filing its application under subsection (a). This request shall be granted or denied at the discretion of the commissioner. *(Water Pollution Control Board; 327 IAC 5-7-3; filed Sep 24, 1987, 3:00 p.m.: 11 IR 649; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1768; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-7-4 Criteria and standards for granting alternate thermal effluent limitations

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. 4. (a) If the discharger demonstrates to the satisfaction of the commissioner that thermal effluent limitations required under section 301 or 306 of the CWA are more stringent than necessary to assure the protection and propagation of a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is made, less stringent alternative thermal limitations may be established for the discharge. This demonstration must show that the alternative effluent limitations desired by the discharger, considering the cumulative impact of its thermal discharge together with all other significant impacts on the species affected, will assure the protection and propagation of a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is to be made.

(b) In determining whether or not the protection and propagation of the affected species will be assured, the commissioner may consider any information contained or referenced in any applicable thermal water quality criteria and supplemental information published by the administrator under section 304(a) of the CWA, or any other information he deems relevant.

(c)(1) Existing dischargers may base their demonstration upon the absence of prior appreciable harm in lieu of predictive studies. Any such demonstrations shall show:

(A) that no appreciable harm has resulted from the thermal component of the discharge (taking into account the interaction of such thermal component with other pollutants, such as oxygen-demanding pollutants and toxic pollutants, and the additive effect of other thermal sources) to a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge has been made; or

(B) that, despite the occurrence of such previous harm, the desired alternative effluent limitations (or appropriate modifications thereof) will nevertheless preclude the occurrence of further appreciable harm and, thus, assure the protection and propagation of a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is made.

(2) In determining whether or not prior appreciable harm has occurred, the commissioner shall consider length of time in which the applicant has been discharging and the nature of the discharge. *(Water Pollution Control Board; 327 IAC 5-7-4; filed Sep 24, 1987, 3:00 pm: 11 IR 649; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

Rule 8. Extension of Compliance Dates Under Section 301(i) of the CWA (Repealed)

(Repealed by Water Pollution Control Board; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1479; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3380)

Rule 8.5. Criteria for Extending Compliance Dates under Section 301(k) of the CWA (Repealed)

(Repealed by Water Pollution Control Board; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1479)

Rule 9. Best Management Practices; Establishment

327 IAC 5-9-1 Purpose

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. 1. This rule (327 IAC 5-9) describes how best management practices (BMPs) for ancillary industrial activities under section 304(e) of the CWA shall be reflected in permits, including best management practices promulgated in effluent limitations guidelines under section 304 of the CWA or established on a case-by-case basis in permits under section 402(a)(1) of the CWA. *(Water Pollution Control Board; 327 IAC 5-9-1; filed Sep 24, 1987, 3:00 pm: 11 IR 651; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-9-2 Applicability of best management practices (BMPs)

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. 2. (a) Dischargers who use, manufacture, store, handle, or discharge any pollutant listed as toxic under section 307(a)(1) of the CWA, any pollutant listed as hazardous under section 311 of the CWA, or on a case-by-case basis, other materials which may cause pollution if they are discharged are subject to the requirements of this rule for all activities which may result in significant amounts of those pollutants reaching waters of the state. These activities are ancillary manufacturing operations including the following:

(1) Materials storage areas.
(2) In-plant transfer.
(3) Process and material handling areas.
(4) Loading and unloading operations.
(5) Plant site runoff.
(6) Sludge and waste disposal areas.

(b) For purposes of this rule, "manufacture" means to produce as an intermediate or final product or byproduct.

(c) BMP programs shall be developed in accordance with good engineering practices.

(d) The BMP program shall:

(1) be documented in narrative form, and shall include any necessary plot plans, drawings, or maps;

(2) establish specific objectives for the control of toxic and hazardous pollutants as follows:

(A) Each facility component or system shall be examined for its potential for causing a release of significant amounts of toxic or hazardous pollutants to waters of the United States due to equipment failure, improper operation, or natural phenomena such as rain or snowfall, etc.

(B) Where experience indicates a reasonable potential for equipment failure, for example, a tank overflow or leakage, natural condition, for example, precipitation, or other circumstances to result in significant amounts of toxic or hazardous pollutants reaching surface waters, the program should include a prediction of the direction, rate of flow, and total quantity of toxic or hazardous pollutants which could be discharged from the facility as a result of each condition or circumstance; and

(3) establish specific best management practices to meet the objectives identified under subdivision (2), addressing each component or system capable of causing a release of significant amounts of toxic or hazardous pollutants to the waters of the state.

(e) Also, the BMP program:

(1) may reflect requirements for Spill Prevention Control Countermeasure (SPCC) plans under section 311 of the CWA and may incorporate any part of such plans into the BMP program by reference;

(2) shall assure the proper management of solid and hazardous waste in accordance with regulations promulgated under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA) (40 U.S.C. 6901 et seq.). Management practices required under RCRA regulations shall be expressly incorporated into the BMP program; and

(3) shall address the following points for the ancillary activities:

(A) Statement of policy.
(B) Spill control committee.
(C) Material inventory.
(D) Material compatibility.
(E) Employee training.
(F) Reporting and notification procedures.
(G) Visual inspections.

(H) Preventive maintenance.
(I) Housekeeping.
(J) Security.

(f) The BMP program must be clearly described and submitted as part of the permit application. An application which does not contain a BMP program shall be considered incomplete. Upon receipt of the application, the commissioner shall approve or modify the program in accordance with the requirements of this section. The BMP program as approved or modified shall be included in the draft permit. The BMP program shall be subject to the applicable permit issuance requirements of this rule, resulting in the incorporation of the program (including any modifications of the program resulting from the permit issuance procedures) into the final permit.

(g) Proposed modifications to the BMP program which affect the discharger's permit obligations shall be submitted to the commissioner for approval. If the commissioner approves the proposed BMP program modification, the permit shall be modified in accordance with this rule, provided that the commissioner may waive the requirements for public notice and opportunity for hearing on such modification if it is determined that the modification is not significant. The BMP program, or modification thereof, shall be fully implemented as soon as possible but not later than one (1) year after permit issuance, modification, or revocation and reissuance unless the commissioner specifies a later date in the permit.

(h) The discharger shall maintain a description of the BMP program at the facility and shall make the description available to the commissioner upon request.

(i) The owner or operator of a facility subject to this section shall amend the BMP program whenever there is a change in facility design, construction operation, or maintenance which materially affects the facility's potential for discharge of significant amounts of hazardous or toxic pollutants into the waters of the state.

(j) If the BMP program proves to be ineffective in achieving the general objective of preventing the release of significant amounts of toxic or hazardous pollutants to those waters and the specific objectives and requirements under subsections (d) and (e), the permit and/or the BMP program shall be subject to modification to incorporate revised BMP requirements. *(Water Pollution Control Board; 327 IAC 5-9-2; filed Sep 24, 1987, 3:00 p.m.: 11 IR 651; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1771; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-9-3 Permit terms and conditions

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. 3. (a) BMPs specified by an applicable EPA-promulgated regulation under section 304(e) of the CWA shall be expressly incorporated into an NPDES permit.

(b) In establishing BMP requirements in an NPDES permit on a case-by-case basis as the commissioner determines to be necessary to carry out the provisions under section 402(a)(1) of the CWA, the commissioner shall consider the following factors:

(1) toxicity of the pollutant(s);
(2) quantity of the pollutant(s) used, produced, or discharged;
(3) history of NPDES permit violations;
(4) history of significant leaks or spills of toxic or hazardous pollutants;
(5) potential for adverse impact on public health, e.g., proximity to a public water supply or the environment, e.g., proximity to a sport or commercial fishery; and
(6) any other factors determined to be relevant to the control of toxic or hazardous pollutants.

BMP requirements which may be imposed under this subsection include, without limitation, dikes and other containment structures, stormwater diversion structures, and similar measures as well as operational practices such as periodic plant inspections, preventive maintenance, and plant housekeeping.

(c) Best management practices may be established in permits under subsection (b) alone or in combination with those required under subsection (a). *(Water Pollution Control Board; 327 IAC 5-9-3; filed Sep 24, 1987, 3:00 pm: 11 IR 651; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

Rule 10. Additional Treatment Requirements

327 IAC 5-10-1 Purpose

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. 1. This rule (327 IAC 5-10) establishes treatment requirements which are applicable to certain discharges of pollutants in addition to any other treatment requirements and effluent limitations imposed under this article (327 IAC 5). Where applicable, such additional treatment requirements shall be implemented through the inclusion of effluent limitations and other appropriate terms and conditions in the discharger's NPDES permit pursuant to section 301(b)(1)(C) of the CWA and 327 IAC 5-2-10(e). *(Water Pollution Control Board; 327 IAC 5-10-1; filed Sep 24, 1987, 3:00 pm: 11 IR 652; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-10-2 Phosphorus removal

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. 2. (a) Phosphorus removal or control facilities shall be required for a point source discharge where:

(1)(A) the daily discharge, as a monthly average, contains ten (10) pounds or more of total phosphorus (calculated as elemental phosphorus – P); and

(B)(i) the discharge is located within the Lake Michigan or Lake Erie Basins; or

(ii) the discharge directly enters a lake or reservoir or enters a tributary within forty (40) miles upstream of a lake or reservoir; or

(2) the commissioner determines, irrespective of the quantitative total phosphorus content of the discharge, that phosphorus reduction is needed to protect downstream water uses or to insure that water quality standards applicable to the affected waters of the state are met.

(b) Where phosphorus removal is required under subsection (a) for a POTW, the treatment facility shall achieve a degree of reduction in total phosphorus in the discharge (calculated as elemental phosphorus) as prescribed in Table I below, or produce an effluent containing no more than 1.0 mg/l of elemental phosphorus as a monthly average, whichever is more stringent.

Table I

Phosphorus (P) Level in Raw Sewage (In mg/l)	Required % Removed (%)
greater than or equal to 4	80%
less than 4, greater than or equal to 3	75%
less than 3, greater than or equal to 2	70%
less than 2, greater than or equal to 1	65%
less than 1	60%

(c) Where phosphorus removal is required under subsection (a) for a point source other than a POTW, the amount of total phosphorus (calculated as elemental phosphorus) in the discharge from said source shall be reduced by at least ninety (90) percent, unless the person owning or operating the point source can affirmatively demonstrate that such degree of phosphorus reduction is technologically infeasible and that an alternate reduction rate is warranted because of factors unique to his facility.

(d) Notwithstanding subsection (b) or (c), a point source shall achieve the degree of phosphorus reduction necessary to comply with an applicable water quality standard for phosphorus. *(Water Pollution Control Board; 327 IAC 5-10-2; filed Sep 24, 1987, 3:00 pm: 11 IR 652; errata, 15 IR 1393; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-10-3 Controlled discharges

Authority: IC 13-13-5; 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

Sec. 3. (a) For all new and existing municipal-type wastewater treatment plants (including POTWs, state owned facilities, and semipublic facilities) with multiple cell waste stabilization ponds operating as controlled discharges (facilities which provide treatment by use of constructed wetlands may be included with this group, so long as other requirements are met), a discharge may occur at any time, provided a minimum dilution ratio with the receiving stream of 10:1 (ten (10) parts stream water to one (1) part

effluent) is maintained. Dilution ratio is to be determined by measuring actual flow of the receiving stream upstream of the treatment plant discharge and then regulating the plant's discharge flow such that the discharge rate does not exceed one-tenth ($^1/_{10}$) of the measured stream flow. Plants operated in this manner are subject to the alternative effluent limitations contained in 327 IAC 5-5-3(b). In addition, water quality-based limitations for ammonia or any other toxic substance may be included in the permit if ammonia or the toxic substance is or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any applicable narrative or numeric water quality criteria or value promulgated under 327 IAC 2-1 or 327 IAC 2-1.5.

(b) Upstream flow is to be measured using a gauging station which is calibrated at least annually. If a USGS gauging station is not available, the permittee is required to install and maintain a gauging station which is calibrated by a temporary or permanent flow measuring device.

(c) Treatment facilities which are designed and operated as controlled discharge plants (multicelled) and which are not either hydraulically or organically overloaded are not required to provide disinfection of their effluent due to the natural attrition of fecal-type bacteria resulting from the long retention time.

(d) The construction of any new controlled discharge waste stabilization pond-type treatment plant with a discharge either directly to a lake or reservoir (either natural or manmade impoundments) or within two (2) miles upstream of such generally will not be approved.

(e) It is understood, however, that there may be cases in which there is no other treatment alternative within the financial capability of the prospective discharger and a controlled discharge must be considered. In these cases an in-depth review by the office of water management will be necessary to determine which conditions are applicable and what effects the discharge will have in each individual case. *(Water Pollution Control Board; 327 IAC 5-10-3; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1772; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1472; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-10-4 Lake dischargers and sinkhole dischargers

Authority: IC 13-13-5; 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

Sec. 4. (a) The following effluent limitations apply to all POTWs or other sanitary discharges directly to lakes or reservoirs (either natural or manmade impoundments) or within two (2) miles upstream from such a waterbody, and to discharges of sanitary wastewater directly to sinkholes, underground streams, or to surface streams within two (2) miles upstream of such features (where a discharge of industrial process wastewater contains a sanitary component, these standards apply only to the sanitary component of such discharges):

(1) Concentrations table as follows:

Pollutant	Monthly Average Concentrations (mg/l)	Weekly Average Concentrations (mg/l)
$CBOD_5$	10	15
Total Suspended Solids (TSS)	12	18
T. Ammonia, as N		
Summer (May through November)	1.1	1.6
Winter (December through April)	1.6	2.4

(2) Ammonia nitrogen limitations are derived using conservation of mass principles, assuming no stream flow dilution ($Q_{7,10}$) and using the criteria contained in 327 IAC 2-1-6(b)(5)(A), using year-round stream pH of seven and eight-tenths (7.8) s.u., instream temperature of twenty-five degrees Celsius (25°C) summer, ten degrees Celsius (10°C) winter, with the results rounded to the nearest one-tenth (0.1) milligram per liter. If the receiving stream is regulated by criteria contained in 327 IAC 2-1-6(b)(5)(B) through 327 IAC 2-1-6(b)(5)(D) or 327 IAC 2-1.5-8, these criteria will be used to determine water quality-based effluent limitations for ammonia in lieu of the criteria in subdivision (1) to derive appropriate ammonia nitrogen limitations.

(3) Dissolved oxygen in the effluent from any facility deemed to be a lake discharger or sinkhole discharger shall not fall below six (6.0) milligrams per liter minimum daily average.

(4) Notwithstanding the provisions of section 2(a) of this rule, effluent phosphorus for any lake discharger shall not exceed one (1.0) milligram per liter.

(5) In addition, water quality-based limitations for any other toxic substance may be included in the permit if the toxic substance is or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an

excursion above any applicable narrative or numeric water quality criteria or value promulgated under 327 IAC 2-1 or 327 IAC 2-1.5.

(b) If deemed necessary to comply with water quality standards, such as discharges to streams which are classified for cold water aquatic life, more stringent limitations may be applied on a case-by-case basis.

(c) Additional requirements for sinkhole dischargers include the following:

(1) Disinfection is required on a year-round basis. Where chlorine or bromine compounds are used as the disinfectant, dechlorination is required in accordance with section 6(c)(3) of this rule.

(2) Effluent limitations, monitoring, and reporting requirements for E. coli will be included in the NPDES permit.

(3) As part of any initial application and as part of any subsequent application for renewal, the following information shall be included:

(A) A statement as to why a direct discharge to surface waters is impractical. This statement should address the proximity of surface waters and the cost associated with locating or relocating the discharge to such waters.

(B) The results of two (2) dye-tracing studies, one (1) conducted during low flow conditions and one (1) conducted during high flow conditions. This study shall be signed by a qualified hydrologist and shall include a review and identification of all ground water users (private wells) within a five (5) mile radius and demonstrate to the extent possible the direction of movement and ultimate fate of ground water in the area. Sampling shall also be conducting of any readily accessible cave streams and at any rises. A diligent effort to notify all potentially affected ground water users in the area of the intent to discharge and the dye-tracing study shall be made, which may include a public notice.

(4) If a dye-tracing study conducted as required by subdivision (3) indicates the presence of effluent in private wells (or the probability of such for new discharges):

(A) the permittee (or applicant) shall conduct routine (a minimum of twice annually, once during high flow and once during low flow conditions) monitoring of each such well for nitrates and E. coli and shall report the results to the private users and the department of environmental management, office of water management; and

(B) permit limitations may be imposed based on drinking water standards from 327 IAC 8-2.

(5) If the well sampling required by subdivision (4) demonstrates that bacterial or nitrate contamination (above the values prescribed by 327 IAC 8-2) of private wells is occurring:

(A) the commissioner may require that the discharger supply potable water to any and all such affected parties; and

(B) the permit may be reopened to include revised effluent limitations.

(6) Before a NPDES permit is issued for any planned new discharge, all possible alternative methods of disposal shall be considered and evaluated. This NPDES permit will not be issued unless no alternative disposal method is feasible. Alternatives may include, but not be limited to, land application, connection with an existing POTW not discharging to a sinkhole, piping to surface waters, or off-site transport and disposal.

(Water Pollution Control Board; 327 IAC 5-10-4; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1772; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1473; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3380; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

327 IAC 5-10-5 Small sanitary discharge

Authority: IC 13-13-5; 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

Sec. 5. (a) All discharges from continuous discharge sanitary wastewater treatment facilities with a design flow of five-hundredths (0.05) MGD or less (which are not considered to be lake or sinkhole dischargers as defined under section 4 of this rule) are subject to the following effluent limitations in the absence of a site-specific water quality modeled waste load allocation:

(1) Effluent limitations for $CBOD_5$, TSS, and dissolved oxygen (DO):

	Summer	Winter
Dilution Ratio (DR)	$CBOD_5$/TSS/DO	$CBOD_5$/TSS/DO
DR less than or equal to 1	15 /18 / 6	25 /30 / 5
DR greater than 1, less than or equal to 3	20 /24 / -	25 /30 / -
DR greater than 3	25 /30 / -	25 /30 / -

(2) Limitations for ammonia nitrogen shall be determined as follows:

(A) Effluent limitations for NH_3-N (ammonia nitrogen), calculated in accordance with subdivision (5)(C):

Summer (May–November)	Winter (December–April)
Ammonia nitrogen	Ammonia nitrogen
1.06 + 0.43 DR	1.58 + 0.69 DR

(B) When a properly designed and operated treatment facility qualifying for these limitations, which is not hydraulically or organically overloaded is of the type that is inherently capable of achieving the water quality standards for ammonia nitrogen, and ammonia nitrogen will not be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above a water quality criterion for ammonia under 327 IAC 2-1 or 327 IAC 2-1.5, the commissioner, based on cost and other considerations, may exclude the ammonia nitrogen effluent limitations or monitoring requirements from the permit. Such action is not considered to be a variance from the applicable water quality standards.

(C) When DR exceeds 16:1 for the summer period and 10:1 for the winter period, ammonia nitrogen limitations will not be included in the permit, unless the commissioner can demonstrate that ammonia will be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above a water quality criterion for ammonia under 327 IAC 2-1 or 327 IAC 2-1.5.

(3) The alternative limitations for total suspended solids applicable to waste stabilization lagoons as described under 327 IAC 5-5-3(b) may be applied to small sanitary discharges from properly designed, operated, and loaded waste stabilization lagoon treatment facilities in lieu of the limitations for TSS contained in subdivision (1).

(4) If deemed necessary to comply with water quality standards contained under 327 IAC 2-1 or 327 IAC 2-1.5, such as discharges to streams which are classified for cold water aquatic life, more stringent limitations for dissolved oxygen and ammonia nitrogen may be applied on a case-by-case basis.

(5) The following conditions apply within this subsection:

(A) All effluent limitations in subdivisions (1) and (2) are expressed in milligrams per liter.

(B) $CBOD_5$, TSS, and ammonia nitrogen limitations are monthly average concentrations. Weekly average limitations are one and five-tenths (1.5) multiplied by monthly average limitations, except where $CBOD_5$ equals twenty-five (25) milligrams per liter, in which case the weekly average is forty (40) milligrams per liter.

(C) Ammonia nitrogen limitations are derived using conservation of mass principles, applying one-half (½) stream flow ($Q_{7,10}$) and using the criteria contained in 327 IAC 2-1-6(b)(5)(A), using year-round stream pH of seven and eight-tenths (7.8) s.u., instream temperature of twenty-five degrees Celsius (25°C) summer, ten degrees Celsius (10°C) winter, and two-tenths (0.2) milligrams per liter background ammonia nitrogen year-round. If the discharge is in the Great Lakes system, ammonia nitrogen limitations shall be derived using the criteria for ammonia nitrogen contained in 327 IAC 2-1.5-8, the stream design flow, mixing zone, and background determined in accordance with 327 IAC 5-2-11.4, and the procedures to calculate WQBELs under 327 IAC 5-2-11.6.

(D) DR is calculated as $Q_{7,10}$ of receiving stream divided by the design flow of the discharge.

(6) In addition, water quality-based limitations for any other toxic substance may be included in the permit if the toxic substance is or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any applicable narrative or numeric water quality criteria or value promulgated under 327 IAC 2-1 or 327 IAC 2-1.5.

(b) Continuous discharges include all discharges not designed, approved, and operated as controlled discharges from multicelled waste stabilization ponds.

(c) Industrial plants with small sanitary discharges mixing with other nontoxic, nonorganic, nonnutrient containing wastewaters, such as cooling water, ash sluicing, etc. prior to discharge may use the other wastewaters as dilution in applying the criteria of subsection (a). *(Water Pollution Control Board; 327 IAC 5-10-5; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1773; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1474; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3380; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-10-6 Disinfection requirements

Authority: IC 13-13-5; 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

Sec. 6. (a) Disinfection is required of all sanitary discharges for the annual period of April 1 through October 31 except multicelled waste stabilization ponds which are adequately designed and operated and are not either hydraulically or organically

overloaded and as provided in sections 3(b) and 4(d) of this rule.

(b) Disinfection is not required and is not expected to be practiced during the annual period of November 1 through March 31, except as necessary to comply with ORSANCO requirements (for discharges directly to the Ohio River), the requirements of other states for interstate waters, or the provision of section 4(d) of this rule. In cases where chlorination must be practiced during this period (such as to maintain sand filters), the maximum effluent limitation for chlorine and monitoring requirements for such remain in effect.

(c) The following are requirements for facilities using chlorine or other halogenated compounds as a disinfectant:

(1) For those sanitary dischargers designated as minor facilities (generally those with a population equivalent (PE) of less than ten thousand (10,000)), the residual chlorine concentration after disinfection (but prior to dechlorination) is to be maintained at a minimum of five-tenths (0.5) milligram per liter.

(2) For those sanitary dischargers designated as major facilities (those with a PE of ten thousand (10,000) or greater), no minimum residual chlorine limitation is applied, so long as the final effluent complies with bacteriological standards based on 327 IAC 2-1-6 or 327 IAC 2-1.5-8.

(3) For all sanitary discharges using chlorine or bromine compounds as a disinfectant or for filter or other equipment maintenance at any time, dechlorination is to be practiced such that the concentration of total residual chlorine (TRC), or where bromine is used TRO, in the final effluent does not exceed water quality-based effluent limitations. If these water quality-based limitations are below the LOQ, compliance with such limitations will be determined using the applicable procedures contained under 327 IAC 5-2-11.1 or 327 IAC 5-2-11.6.

(d) Facilities using a disinfectant other than chlorine or other halogen compounds may not contain E. coli in excess of one hundred twenty-five (125) per one hundred (100) milliliters as a geometric mean nor two hundred thirty-five (235) per one hundred (100) milliliters maximum during the disinfection season. *(Water Pollution Control Board; 327 IAC 5-10-6; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1774; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1475; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 5-10-7 Connection and regionalization

Authority: IC 13-7-15-1
Affected: IC 13-7-15-1

Sec. 7. (a) If the commissioner finds it is in the interest of the health, safety, convenience, and welfare of the residents of any area, any person, publicly or semipublicly owned sewage teratment *[sic., treatment]* systems may be ordered to connect to and/or receive and treat sewage from any other person or from an industry, shopping center, mobile home park, school, or housing development when such service and use will not result in irreparable injury to the receiving equipment or make impossible the rendering of the service previously rendered to the users of such equipment. The persons involved shall negotiate the terms for such connection and service, in accordance with the terms of IC 13-7-15-1.

(b) Any new school, mobile home park, motel, motor court, or motor hotel shall dispose of sewage through the use of a public sewerage system if the sewerage system is available within a reasonable distance from the facility.

(c) Any existing school, mobile home park, motel, motor court, or motor hotel with a direct discharge of sewage, as authorized by an NPDES permit shall connect to a public sewerage system, discontinue the direct discharge, and abandon their wastewater treatment plant if a public sewerage system becomes available at any time within a reasonable distance from the facility. In this instance, "reasonable distance" is related to cost. The intent of this provision is to encourage the entities mentioned in this section to compare the cost of connecting to a sewerage system against the cost to build or upgrade and operate a sewage treatment plant. *(Water Pollution Control Board; 327 IAC 5-10-7; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1775; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

Rule 11. Pretreatment Program; General Provisions (Repealed)

(Repealed by Water Pollution Control Board; filed Oct 10, 2000, 3:02 p.m.: 24 IR 317)

Rule 12. Applicable Pretreatment Standards and Other Pretreatment Requirements (Repealed)

(Repealed by Water Pollution Control Board; filed Oct 10, 2000, 3:02 p.m.: 24 IR 317)

Rule 13. POTW Pretreatment Programs (Repealed)

(Repealed by Water Pollution Control Board; filed Oct 10, 2000, 3:02 p.m.: 24 IR 317)

Rule 14. Revision of Categorical Pretreatment Standards to Reflect Consistent Removal of Pollutants by a POTW (Repealed)

(Repealed by Water Pollution Control Board; filed Oct 10, 2000, 3:02 p.m.: 24 IR 317)

Rule 15. Industrial Waste Pretreatment Permit Program (Repealed)

(Repealed by Water Pollution Control Board; filed Oct 10, 2000, 3:02 p.m.: 24 IR 317)

Rule 16. General Provisions

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 13-18-4

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 Board; 327 IAC 5-16-1; filed Oct 10, 2000, 3:02 p.m.: 24 IR 290)*

327 IAC 5-16-2 Local authority

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 13-18-4

Sec. 2. Nothing in the pretreatment rules is intended to affect any pretreatment requirements, including any standards or prohibitions, established by local ordinance of any political subdivision of the state as long as the local requirements are not less stringent than any set forth in national pretreatment standards or any other requirements or prohibitions established under the Clean Water Act or the pretreatment rules. *(Water Pollution Control Board; 327 IAC 5-16-2; filed Oct 10, 2000, 3:02 p.m.: 24 IR 290)*

327 IAC 5-16-3 Public access to information and confidentiality claims

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 5-14-3-8; IC 13-11-2; IC 13-13-5-1; IC 13-18-4

Sec. 3. (a) The following shall be available to the public for inspection and copying without restriction during normal hours of operation and the fee assessed for copying costs shall be in accordance with the uniform copying fee authorized under IC 5-14-3-8(c):

(1) Applications for IWP permits.

(2) Permits (draft and final).

(3) Statements of basis.

(4) Effluent data from industrial users.

(5) Submissions from POTWs transmitted to the department under this article.

(6) Public comments on requests for POTW pretreatment program approval or for authority to revise discharge limits for

pollutants consistently removed by the POTW.

(b) Public access to other information, including information submitted to the department under claim of confidentiality, shall be governed by 327 IAC 12.1. *(Water Pollution Control Board; 327 IAC 5-16-3; filed Oct 10, 2000, 3:02 p.m.: 24 IR 290)*

327 IAC 5-16-4 Enforcement

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 13-14-10; IC 13-18-4; IC 13-30-3; IC 13-30-4

Sec. 4. (a) A violation of the pretreatment rules may:

(1) subject a person causing or contributing to the violation to administrative or judicial enforcement proceedings, under IC 13-30-3, and the penalties provided under IC 13-30-4;

(2) be cause for:

(A) modification;

(B) revocation and reissuance; or

(C) termination;

of an industrial waste pretreatment permit or an NPDES permit; and

(3) warrant the invocation of emergency procedures under IC 13-14-10.

(b) The initiation of any action in response to a violation of the pretreatment rules does not preclude initiation of any other response.

(c) As used in this section, a violation of the pretreatment rules includes the following:

(1) The indirect discharge of pollutants in contravention of an applicable pretreatment standard or other applicable discharge limitation.

(2) The indirect discharge of pollutants without a permit from a significant industrial discharger as determined by the control authority.

(3) A violation of discharge limitations or other terms and conditions of the permit where an IWP permit is required under the pretreatment rules.

(4) Failure to comply with any other applicable pretreatment requirement.

(5) Failure of a POTW subject to 327 IAC 5-19 to develop a POTW pretreatment program or implement and enforce an approved POTW pretreatment program in compliance with the terms and conditions of its NPDES permit.

(6) Failure to:

(A) allow entry, inspection, and monitoring by representatives of the commissioner when requested in accordance with applicable law; or

(B) carry out monitoring, recording, and reporting required under this article.

(d) With respect to an industrial user of a POTW with an approved POTW pretreatment program, initiation of enforcement proceedings by the POTW against the industrial user shall not preclude the commissioner from independently taking appropriate enforcement measures against the industrial user for a violation of the pretreatment rules. *(Water Pollution Control Board; 327 IAC 5-16-4; filed Oct 10, 2000, 3:02 p.m.: 24 IR 290)*

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 13-18-4; IC 13-18-11

Sec. 5. (a) All POTWs and industrial users shall comply with the applicable reporting requirements of 40 CFR 403.12. Additionally, reporting of spills into a POTW or of upsets in pretreatment facilities may be required of an industrial user by its control authority.

(b) 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 subdivision, "responsible corporate officer" means:

(A) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

(B) the manager of one (1) or more manufacturing, production, or operation 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 authority to sign documents has been assigned or delegated to the manager 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 is made in writing by the individual described in either subdivision (1) or (2);

(B) the authorization 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

(C) 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.

(c) An industrial user subject to the reporting requirements of this section shall maintain records of the monitoring activities in accordance with 327 IAC 5-2-14. These records shall be made available, upon request, to the commissioner, the regional administrator, and the POTW to which the industrial user discharges its wastewater.

(d) A POTW to which reports are submitted by an industrial user under this section shall retain such reports for a minimum of three (3) years and shall make such reports available for inspection and copying by the commissioner and the 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.

(e) 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.

(f) 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 if that employee is responsible for the overall operation of the POTW. If an employee is authorized to submit such reports, a copy of the written authorization designating the employee must be submitted to the commissioner.

(g) 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.

(h) An industrial user must report incidents of bypass or intent to bypass in accordance with section 7 of this rule. *(Water Pollution Control Board; 327 IAC 5-16-5; filed Oct 10, 2000, 3:02 p.m.: 24 IR 291)*

327 IAC 5-16-6 Upset

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 13-18-4

Sec. 6. (a) As used in this section, "upset" means an exceptional incident in which there is unintentional and temporary noncompliance with any pretreatment standards or requirements in 327 IAC 5-2 because of factors beyond the reasonable control of the industrial user. An upset does not include:

(1) noncompliance to the extent caused by operational error;

(2) improperly designed treatment facilities;

(3) inadequate treatment facilities;

(4) lack of preventive maintenance; or

(5) careless or improper operation.

(b) An upset shall constitute an affirmative defense to an action brought for noncompliance with the pretreatment standards or requirements if the requirements of subsection (c) are met.

(c) In order to establish an affirmative defense of upset, an industrial user must provide properly signed, contemporaneous operating logs, or other relevant evidence of the following facts:

(1) An upset occurred and the industrial user can identify the cause of the upset.

(2) The facility was being operated at the time in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures.

(3) The industrial user submitted a report, to the POTW and control authority, within twenty-four (24) hours of becoming aware of the upset or within five (5) days, if an initial verbal report of the information is given to the required authority, and the report contained the following information:

(A) A description of the indirect discharge and cause of noncompliance.

(B) The period of noncompliance, including exact dates and times or the anticipated time the noncompliance is expected to continue if it is not corrected.

(C) Steps being taken or planned for reducing, eliminating, and preventing recurrence of the noncompliance.

(d) In any enforcement proceeding, an industrial user seeking to establish the occurrence of an upset shall have the burden of proof.

(e) In the usual exercise of prosecutorial discretion, the control authority may review any claims that noncompliance was caused by an upset. No determinations made in the course of the review constitute the commissioner's final action subject to judicial review. Industrial users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with the pretreatment standards or requirements.

(f) An industrial user shall control production or all discharges to the extent necessary to maintain compliance with the pretreatment standards or requirements upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies when, among other things, the primary source of power of the treatment facility is reduced, is lost, or has failed. *(Water Pollution Control Board; 327 IAC 5-16-6; filed Oct 10, 2000, 3:02 p.m.: 24 IR 292)*

327 IAC 5-16-7 Bypass

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 13-18-4

Sec. 7. (a) The following definitions apply throughout this section:

(1) "Bypass" means the intentional diversion of waste streams from any portion of an industrial user's treatment facility.

(2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that 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) An industrial user may allow a bypass to occur if:

(1) it does not cause a violation of any pretreatment standard or requirement under 327 IAC 5-2; and

(2) it is for essential maintenance to assure efficient operation.

These bypasses are not subject to the provisions of subsections (c) and (d).

(c) The reporting requirements for a bypass are as follows:

(1) If an industrial user knows in advance of the need for a bypass, it shall submit prior notice to the control authority, if possible, at least ten (10) days before the date of the bypass.

(2) If an unanticipated bypass exceeds a pretreatment standard or requirement under 327 IAC 5-2, the industrial user shall give oral notice to the control authority within twenty-four (24) hours from the time the industrial user becomes aware of the bypass. A written submission shall also be provided to the control authority within five (5) days of the time the industrial user becomes aware of the bypass. The written submission must contain the following:

(A) A description of the bypass and its cause.

(B) The duration of the bypass, including exact dates and times and the anticipated time it is expected to continue if the bypass has not been corrected.

(C) The steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass.

(d) Bypass is prohibited, and the control authority may take enforcement action against an industrial user for a bypass unless the following are demonstrated:

(1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage.

(2) There were no feasible alternatives to the bypass, such as any of the following:

(A) The use of auxiliary treatment facilities.

(B) Retention of untreated wastes.

(C) Maintenance during normal periods of equipment downtime. 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 downtime or preventative maintenance.

(3) The industrial user submitted notices as required under subsection (c).

(4) A planned bypass is approved in advance by the control authority after determining that the bypass will not violate subdivisions (1) through (3).

(Water Pollution Control Board; 327 IAC 5-16-7; filed Oct 10, 2000, 3:02 p.m.: 24 IR 292)

Rule 17. Definitions; Pretreatment Rules

327 IAC 5-17-1 Applicability

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 13-18-4

Sec. 1. In addition to the applicable definitions contained in 327 IAC 5-1.5 and 327 IAC 5-2-11(a), the definitions in this rule apply to the pretreatment rules. *(Water Pollution Control Board; 327 IAC 5-17-1; filed Oct 10, 2000, 3:02 p.m.: 24 IR 293)*

327 IAC 5-17-2 "Approved POTW pretreatment program" defined

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 13-18-4

Sec. 2. "Approved POTW pretreatment program" means a program administered by a publicly owned treatment works that meets the criteria established in 327 IAC 5-19-3 and that has been approved by the regional administrator or the commissioner in accordance with 327 IAC 5-19-5. *(Water Pollution Control Board; 327 IAC 5-17-2; filed Oct 10, 2000, 3:02 p.m.: 24 IR 293)*

327 IAC 5-17-3 "Categorical pretreatment standards" defined

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 13-18-4

Sec. 3. "Categorical pretreatment standards" means national pretreatment standards, specifying quantities or concentrations of pollutants or pollutant properties that may be discharged or introduced to a POTW by an existing or new industrial user in a specific industrial subcategory, that are established by EPA, under Section 307(b) or 307(c) of the Clean Water Act (33 U.S.C. 1317(b) or 33 U.S.C. 1317(c)) as separate regulations under the appropriate subpart of 40 CFR Chapter I, Subchapter N. *(Water Pollution Control Board; 327 IAC 5-17-3; filed Oct 10, 2000, 3:02 p.m.: 24 IR 293)*

327 IAC 5-17-4 "Commissioner" defined

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 13-18-4

Sec. 4. "Commissioner" means the commissioner of the Indiana department of environmental management. *(Water Pollution Control Board; 327 IAC 5-17-4; filed Oct 10, 2000, 3:02 p.m.: 24 IR 293)*

327 IAC 5-17-5 "Control authority" defined

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 13-18-4

Sec. 5. "Control authority" means the commissioner or, in the case of a POTW with an approved POTW pretreatment program, the POTW. *(Water Pollution Control Board; 327 IAC 5-17-5; filed Oct 10, 2000, 3:02 p.m.: 24 IR 294)*

327 IAC 5-17-6 "Discharge" defined

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 13-18-4

Sec. 6. "Discharge" means the introduction of pollutants into a POTW from any nondomestic source regulated under Section 307(b), 307(c), or 307(d) of the Clean Water Act (33 U.S.C. 1317(b), 33 U.S.C. 1317(c), or 33 U.S.C. 1317(d)). *(Water Pollution Control Board; 327 IAC 5-17-6; filed Oct 10, 2000, 3:02 p.m.: 24 IR 294)*

327 IAC 5-17-7 "Existing source" defined

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 13-18-4

Sec. 7. "Existing source" means an industrial user that is not a new source. *(Water Pollution Control Board; 327 IAC 5-17-7; filed Oct 10, 2000, 3:02 p.m.: 24 IR 294)*

327 IAC 5-17-8 "Four (4) day average discharge" defined

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 13-18-4

Sec. 8. "Four (4) day average discharge" means the calculated result of totaling the mass or average concentration of all daily discharges sampled or measured during four (4) consecutive sampling days, though not necessarily consecutive calendar days, divided by the number of daily discharges sampled or measured. *(Water Pollution Control Board; 327 IAC 5-17-8; filed Oct 10, 2000, 3:02 p.m.: 24 IR 294)*

327 IAC 5-17-9 "Industrial user" defined

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 13-18-4

Sec. 9. "Industrial user" means an indirect discharger pursuant to 327 IAC 5-1.5-25. *(Water Pollution Control Board; 327 IAC 5-17-9; filed Oct 10, 2000, 3:02 p.m.: 24 IR 294)*

327 IAC 5-17-10 "Industrial wastewater pretreatment permit" or "IWP permit" defined

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 13-18-4

Sec. 10. "Industrial wastewater pretreatment permit" or "IWP permit" means a permit issued directly by the commissioner to an industrial user. An IWP permit is not a permit issued by a POTW to an industrial user. *(Water Pollution Control Board; 327 IAC 5-17-10; filed Oct 10, 2000, 3:02 p.m.: 24 IR 294)*

327 IAC 5-17-11 "Interference" defined

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 13-18-4

Sec. 11. "Interference" means a discharge that, alone or in conjunction with a discharge or discharges from other sources, does one (1) of the following:

(1) Inhibits or disrupts the POTW, its treatment processes or operations, its sludge processes, or its selected sludge use or disposal methods.

(2) Causes a violation of any requirement of the POTW's NPDES permit, including an increase in the magnitude or duration of a violation.

(3) Prevents the use of the POTW's sewage sludge or its sludge disposal method selected in compliance with the following statutory provisions, regulations, or permits issued thereunder or more stringent state or local regulations:

(A) Section 405 of the Clean Water Act (33 U.S.C. 1345).
(B) The Solid Waste Disposal Act (SWDA) (42 U.S.C. 6901), including:
(i) Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA); and
(ii) the rules contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA (42 U.S.C. 6941).
(C) The Clean Air Act (42 U.S.C. 7401).
(D) The Toxic Substances Control Act (15 U.S.C. 2601).
(Water Pollution Control Board; 327 IAC 5-17-11; filed Oct 10, 2000, 3:02 p.m.: 24 IR 294)

327 IAC 5-17-12 "National pretreatment standard" defined
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 13-18-4

Sec. 12. "National pretreatment standard" means any regulation that applies to industrial users and contains pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and 307(c) of the federal Clean Water Act (33 U.S.C. 1317(b) and 33 U.S.C. 1317(c))*.

*33 U.S.C. 1317(b) and 33 U.S.C. 1317(c) are incorporated by reference. Copies of these publications 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 Board; 327 IAC 5-17-12; filed Oct 10, 2000, 3:02 p.m.: 24 IR 294; errata filed Feb 6, 2006, 11:15 a.m.: 29 IR 1936)*

327 IAC 5-17-13 "New source" defined
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 13-18-4

Sec. 13. (a) "New source" means any building, structure, facility, or installation that is discharging or may discharge pollutants, and its construction commenced after the publication of proposed pretreatment standards under Section 307(c) of the Clean Water Act (33 U.S.C. 1317(c)) that will be applicable to the source, if those standards are thereafter promulgated in accordance with Section 307(c) of the Clean Water Act, provided one (1) of the following conditions is met:
(1) The building, structure, facility, or installation is constructed at a site where no other source is located.
(2) The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source.
(3) The production of wastewater generating processes of the building, structure, facility, or installation is substantially independent of an existing source at the same site. In determining whether these processes are substantially independent, the following factors will be considered:
(A) The extent to which the new facility is integrated with the existing plant.
(B) The extent to which the new facility is engaged in the same general type of activity as the existing source.
(b) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of subsection (a)(2) or (a)(3) but otherwise alters, replaces, or adds to existing process or production equipment.
(c) Construction of a new source as defined in this section has commenced if the owner or operator has:
(1) begun, or caused to begin, as part of a continuous on-site construction program:
(A) any placement, assembly, or installation of facilities or equipment; or
(B) significant site preparation work, including clearing, excavation, or removal of existing buildings, structures, or facilities that is necessary for the placement, assembly, or installation of new source facilities or equipment; or
(2) entered into a binding contractual obligation for the purchase of facilities or equipment that are intended to be used in its operation within a reasonable time.
Options to purchase, contracts that can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this section. *(Water Pollution Control Board; 327 IAC 5-17-13; filed Oct 10, 2000, 3:02 p.m.: 24 IR 294)*

327 IAC 5-17-14 "Overflow" defined

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 13-18-4

Sec. 14. "Overflow" means the intentional or unintentional diversion of wastewater flow from a POTW prior to the wastewater entering the POTW treatment plant. *(Water Pollution Control Board; 327 IAC 5-17-14; filed Oct 10, 2000, 3:02 p.m.: 24 IR 295)*

327 IAC 5-17-15 "Pass through" defined

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 13-18-4

Sec. 15. "Pass through" means a discharge proceeding through a POTW into waters of the state in quantities or concentrations that, alone or in conjunction with a discharge or discharges from other sources, are a cause of a violation of any requirement of the POTW's NPDES permit, including an increase in the magnitude or duration of a violation. *(Water Pollution Control Board; 327 IAC 5-17-15; filed Oct 10, 2000, 3:02 p.m.: 24 IR 295)*

327 IAC 5-17-16 "Pollutant removal" defined

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 13-18-4

Sec. 16. "Pollutant removal" means, with respect to a pollutant in the influent to a POTW, reduction in the amount of the pollutant or alteration in the nature of the pollutant to a less toxic or a more harmless state in the effluent. The reduction or alteration can be obtained by physical, chemical, or biological means and may be the result of specifically designed POTW capabilities or it may be incidental to the operation of the treatment system. Removal shall not mean dilution or volatilization of a pollutant in the POTW or its sewer system. *(Water Pollution Control Board; 327 IAC 5-17-16; filed Oct 10, 2000, 3:02 p.m.: 24 IR 295)*

327 IAC 5-17-17 "POTW" or "publicly owned treatment works" defined

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 13-18-4

Sec. 17. "POTW" or "publicly owned treatment works" means a treatment works as defined by Section 212(2) of the Clean Water Act owned by the state or a municipality (as defined by Section 502(4) of the Clean Water Act), except that it does not include pipes, sewers, or other conveyances not connected to a facility providing treatment. The term includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or compatible industrial wastes. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality, as defined by Section 502(4) of the Clean Water Act, that has jurisdiction over the indirect discharges to and the discharges from such a treatment works. *(Water Pollution Control Board; 327 IAC 5-17-17; filed Oct 10, 2000, 3:02 p.m.: 24 IR 295)*

327 IAC 5-17-18 "Pretreatment" defined

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 13-18-4

Sec. 18. "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to, or in lieu of, discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration can be obtained by physical, chemical, or biological processes, process changes, or by other means, except dilution, as prohibited by 327 IAC 5-18-4(f). *(Water Pollution Control Board; 327 IAC 5-17-18; filed Oct 10, 2000, 3:02 p.m.: 24 IR 296)*

327 IAC 5-17-19 "Pretreatment requirements" defined

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 13-18-4

Sec. 19. "Pretreatment requirements" means any substantive or procedural requirement related to pretreatment, other than a pretreatment standard, imposed on an industrial user. *(Water Pollution Control Board; 327 IAC 5-17-19; filed Oct 10, 2000, 3:02 p.m.: 24 IR 296)*

327 IAC 5-17-20 "Pretreatment rules" defined

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 13-18-4

Sec. 20. "Pretreatment rules" means the rules contained in 327 IAC 5-16, this rule, and 327 IAC 5-18 through 327 IAC 5-21. *(Water Pollution Control Board; 327 IAC 5-17-20; filed Oct 10, 2000, 3:02 p.m.: 24 IR 296)*

327 IAC 5-17-21 "Pretreatment standards" defined

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 13-18-4

Sec. 21. "Pretreatment standards" means:
(1) state pretreatment standards as established in 327 IAC 5-18-8;
(2) pretreatment standards for prohibited discharges, as established in 327 IAC 5-18-2; and
(3) national categorical pretreatment standards incorporated by reference in 327 IAC 5-18-10.
(Water Pollution Control Board; 327 IAC 5-17-21; filed Oct 10, 2000, 3:02 p.m.: 24 IR 296)

327 IAC 5-17-22 "Removal credit" defined

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 13-18-4

Sec. 22. "Removal credit" means a revision in a discharge limit from a categorical standard to reflect consistent removal of a pollutant under the pretreatment rules. *(Water Pollution Control Board; 327 IAC 5-17-22; filed Oct 10, 2000, 3:02 p.m.: 24 IR 296)*

327 IAC 5-17-23 "Significant industrial user" or "SIU" defined

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 13-18-4

Sec. 23. (a) Except as provided in subsection (b), "significant industrial user" or "SIU" means the following:
(1) Industrial users subject to categorical pretreatment standards under 327 IAC 5-18-10.
(2) An industrial user that:
(A) discharges an average of twenty-five thousand (25,000) gallons per day or more of process wastewater (excluding sanitary, noncontact cooling and boiler blowdown wastewater) to the POTW;
(B) contributes a process wastestream that makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or
(C) is designated as a significant industrial user by the control authority on the basis that the industrial user has a reasonable potential to:
(i) adversely affect the POTW's operation;
(ii) violate a pretreatment standard; or
(iii) violate a requirement of 327 IAC 5-19-3.

(b) A control authority may, on its own initiative or in response to a petition received from an industrial user or a POTW and in accordance with 327 IAC 5-19-3(6), determine that an industrial user is not a significant industrial user if it does not meet subsection (a)(2)(C). *(Water Pollution Control Board; 327 IAC 5-17-23; filed Oct 10, 2000, 3:02 p.m.: 24 IR 296)*

327 IAC 5-17-24 "Significant noncompliance" defined

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 13-18-4

Sec. 24. "Significant noncompliance" means the status of an industrial user that has caused or allowed a violation that meets one (1) or more of the following criteria:

(1) Chronic violations of wastewater discharge limits, defined as those in which sixty-six percent (66%) or more of all of the measurements taken during a six (6) month period exceed, by any magnitude, the daily maximum limit or the average limit for the same pollutant parameter.

(2) Technical review criteria (TRC) violations, defined as those in which thirty-three percent (33%) or more of all of the measurements for each pollutant parameter taken during a six (6) month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC equals one and four-tenths (1.4) for biochemical oxygen demand, total suspended solids, fats, oil, and grease and one and two-tenths (1.2) for all other pollutants except pH).

(3) Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the control authority determines has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of POTW personnel or the general public.

(4) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare, or to the environment or has resulted in the POTW's exercise of its emergency authority under 327 IAC 5-19-3(1)(G) to halt or prevent such a discharge.

(5) Failure to meet, within ninety (90) days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance.

(6) Failure to provide, within thirty (30) days after the due date, required reports such as:

(A) baseline monitoring reports;

(B) ninety (90) day compliance reports;

(C) periodic self-monitoring reports; and

(D) reports on compliance with compliance schedules.

(7) Failure to accurately report noncompliance.

(8) Any other violation or group of violations that the control authority determines will adversely affect the operation or implementation of the approved POTW pretreatment program.

(Water Pollution Control Board; 327 IAC 5-17-24; filed Oct 10, 2000, 3:02 p.m.: 24 IR 296)

327 IAC 5-17-25 "Sludge requirements" defined

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 13-18-4

Sec. 25. "Sludge requirements" means statutory provisions, regulations, or permits issued under the following (or more stringent state or local) regulations:

(1) Section 405 of the Clean Water Act (33 U.S.C. 1345).

(2) Solid Waste Disposal Act (SWDA) (42 U.S.C. 6901), including Title II, also known as the Resource Conservation Recovery Act.

(3) Rules contained in a state sludge management plan prepared pursuant to subtitle D of SWDA (42 U.S.C. 6941).

(4) Clean Air Act (42 U.S.C. 7401).

(5) Toxic Substances Control Act (15 U.S.C. 2601).

(6) Marine Protection, Research and Sanctuaries Act (16 U.S.C. 1431 and 33 U.S.C. 1401).

(Water Pollution Control Board; 327 IAC 5-17-25; filed Oct 10, 2000, 3:02 p.m.: 24 IR 297)

Rule 18. Applicable Pretreatment Standards and Other Pretreatment Requirements

327 IAC 5-18-1 Purpose

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 13-18-4

Sec. 1. This rule establishes the pretreatment requirements that apply to discharges of pollutants from industrial users to POTWs, including the following:

(1) Pretreatment standards for prohibited discharges.

(2) National pretreatment standards for specific industrial subcategories, established by 40 CFR 403.6.
(3) State pretreatment standards.
(4) More stringent limitations where necessary to protect a POTW from interference or to protect applicable water quality standards.

(Water Pollution Control Board; 327 IAC 5-18-1; filed Oct 10, 2000, 3:02 p.m.: 24 IR 297)

327 IAC 5-18-2 Pretreatment standards for prohibited discharges

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 13-18-4

Sec. 2. (a) A user of a POTW, whether or not the user is subject to national categorical standards or state, local, or any other national pretreatment standard or requirement, shall not allow the introduction of the following into the POTW:

(1) A pollutant from any source of nondomestic wastewaters that could pass through or cause interference with the operation or performance of the POTW.
(2) A pollutant that could create a fire or explosion hazard in the POTW, including waste streams with a closed cup flashpoint of less than one hundred forty (140) degrees Fahrenheit (sixty (60) degrees Celsius) using the test methods in 40 CFR 261.21.
(3) A pollutant that could cause corrosive structural damage to the POTW, including a discharge with pH lower than five (5.0), unless the POTW is specifically designed to accommodate such a discharge.
(4) A solid or viscous pollutant in an amount that could cause obstruction to the flow in a sewer or other interference with the operation of the POTW.
(5) A pollutant, including an oxygen demanding pollutant (such as biochemical oxygen demand) released in a discharge at a flow rate or pollutant concentration that could cause interference in the POTW.
(6) Heat in an amount that could:
    (A) inhibit biological activity in the POTW and result in interference or damage to the POTW; or
    (B) exceed forty (40) degrees Celsius or one hundred four (104) degrees Fahrenheit at the POTW treatment plant unless the commissioner, upon request of the POTW, approves alternate temperature limits.
(7) Petroleum, oil, nonbiodegradable cutting oil, or products of mineral oil origin in an amount that could cause interference or pass through.
(8) A pollutant that could result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems.
(9) A trucked or hauled pollutant, except:
    (A) with the permission of the POTW; and
    (B) when introduced to the POTW at a discharge point designated by the POTW.

(b) Specific limits on the prohibited substances listed in subsection (a) must:
    (1) be developed and effectively enforced by a POTW required to develop a POTW pretreatment program under 40 CFR 403.8 and 327 IAC 5-19;
    (2) continue to be developed, as necessary, and effectively enforced by a POTW with an approved POTW pretreatment program; or
    (3) be developed and enforced by a POTW, not included in subdivision (1) or (2), so as to limit:
        (A) a pollutant contributed by an industrial user that has caused or is likely to cause interference or pass through at the receiving POTW; and
        (B) the recurrence of the contributed pollutant's affect on the POTW.

    A POTW affected by this subdivision shall make appropriate changes in the POTW treatment facilities or operation, as necessary, to prevent occurrences of interference or pass through.

Individual notice shall be made in writing to persons or groups who have requested to be notified and given an opportunity to comment about the development and enforcement of specific effluent limits as required by this subsection.

(c) When specific prohibitions or limits on pollutants or pollutant parameters are developed by a POTW in accordance with subsection (b), the prohibitions or limits are pretreatment standards for the purposes of the pretreatment rules and Section 307(d) of the Clean Water Act (33 U.S.C. 1317(d)). *(Water Pollution Control Board; 327 IAC 5-18-2; filed Oct 10, 2000, 3:02 p.m.: 24 IR 297)*

327 IAC 5-18-3 Affirmative defense

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 13-18-4

Sec. 3. An industrial user shall have an affirmative defense in any action brought against the industrial user alleging a violation of the prohibitions established in section 2 of this rule if the industrial user can demonstrate that:

(1) it did not know or have reason to know that its discharge, alone or in conjunction with a discharge from another source, would cause pass through or interference; and

(2) a local limit designed to prevent pass through or interference in accordance with section 2 of this rule:

(A) was developed for each pollutant in the industrial user's discharge that caused pass through or interference, and the industrial user was in compliance with each such local limit directly prior to and during the pass-through or interference; or

(B) was not developed for the pollutant that caused the pass through or interference, and the industrial user's discharge, directly prior to and during the pass through or interference, had not changed substantially in nature or constituents from its usual discharge condition when the POTW was regularly in compliance with the applicable:

(i) NPDES permit requirements; and

(ii) requirements for sewage sludge use or disposal, in the case of interference.

(Water Pollution Control Board; 327 IAC 5-18-3; filed Oct 10, 2000, 3:02 p.m.: 24 IR 298)

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 13-18-4

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 such 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:

(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; and

(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 such 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)*.

(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 becomes an industrial user subsequent to promulgation of an applicable categorical pretreatment standard and is thenceforth 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, an equivalent mass limit will be provided as an alternative to the standard and 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 such 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 such 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) 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 subsection (d)(3) and (d)(4) shall be 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. Industrial users are required to 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 one (1) limit for calculating a maximum daily discharge limitation and 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 types of equivalent limitations.

(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.

(f) 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.

*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 Board; 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)*

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 13-18-4

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*. 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 Board; 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)*

327 IAC 5-18-6 Intake water pollutant credits

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 13-18-4

Sec. 6. Categorical pretreatment standards may be adjusted to reflect the presence of pollutants in the industrial user's intake water in accordance with the following provisions:

(1) An industrial user wishing to obtain a credit for intake pollutants must file an application with the control authority. Upon request of the industrial user, the applicable categorical standard shall be calculated on a net basis, meaning that it shall be adjusted to reflect credit for pollutants in the intake water if the requirements of this subdivision and subdivision (2) are met.

(2) To qualify for adjustments to an applicable standard to reflect credit for pollutants in the intake water, the applicant must demonstrate the following:

(A) The control system the industrial user proposes or uses to meet applicable categorical pretreatment standards would, if properly installed and operated, meet the standards in the absence of pollutants in the intake waters.

(B) Credit for generic pollutants, such as:

(i) biochemical oxygen demand;

(ii) total suspended solids; and

(iii) oil and grease;

should not be granted unless the industrial user demonstrates that the constituents of the generic measure in the user's effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

(C) Credit shall be granted only to the extent necessary to meet the applicable categorical pretreatment standard, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with standard adjusted under this section.

(D) Credit shall be granted only if the user demonstrates that the intake water is drawn from the same body of water as that into which the POTW discharges. The control authority may waive this requirement if it finds that no environmental degradation will result.

(3) The applicable categorical pretreatment standards contained in 40 CFR, Chapter I, Subchapter N specifically provide that they shall be applied on a net basis.

(4) Adjustments under this section to categorical pretreatment standards otherwise applicable to pollutants in the discharger's effluent shall be calculated as follows:

(A) The amount of pollutants present in the intake water shall be reduced:

(i) to reflect removal of such pollutants by any treatment of the intake water performed by or for the discharger; and

(ii) to reflect any further removal of such pollutants by the wastewater treatment technology employed by the discharger.

(B) The amount of such pollutants remaining after the reductions may be applied as an adjustment to the categorical standards otherwise applicable to such pollutants.

(Water Pollution Control Board; 327 IAC 5-18-6; filed Oct 10, 2000, 3:02 p.m.: 24 IR 301)

327 IAC 5-18-7 Combined wastestreams

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 13-18-4

Sec. 7. The combined wastestream formula is derived as follows:

(1) Where process effluent is mixed prior to treatment with wastewaters other than those generated by the regulated process, alternative discharge limits may be derived by the control authority or by the industrial user with the written concurrence of the control authority and applied to the mixed effluent. When deriving alternative categorical limits, the control authority or industrial user shall calculate both an alternative daily maximum value using the daily maximum value specified in the appropriate categorical pretreatment standard and an alternative consecutive sampling day average value using the long term average value specified in the appropriate categorical pretreatment standard. The industrial user shall comply with the alternative daily maximum and long term average limits fixed by the control authority until the control authority modifies the limits or approves an industrial user modification request. Modification is authorized whenever there is a material or significant change in the values used in the calculation to fix alternative limits for the regulated pollutant. An industrial user must immediately report any such material or significant change to the control authority. Where appropriate, new alternative categorical limits shall be calculated within thirty (30) days.

(2) As used in this section, "average daily flow" means a reasonable measure of the average daily flow for a thirty (30) day period. For new sources, flows shall be estimated using projected values. The alternative discharge limit for a specific pollutant shall be calculated by either of the following formulas:

(A) Alternative concentration limits:

$$C_T = \left[\frac{\sum_{i=1}^{N} C_i F_i}{\sum_{i=1}^{N} F_i}\right] \bullet \left[\frac{F_T - F_D}{F_T}\right]$$

Where: C_T = The alternative concentration limit for the combined wastestreams.

C_i = The categorical pretreatment standard concentration limit for a pollutant in the regulated stream i.

F_i = The average daily flow (at least a thirty (30) day average) of stream i to the extent that it is regulated for such pollutant.

F_D = The average daily flow (at least a thirty (30) day average) from any of the following:

(i) Boiler blowdown streams, noncontact cooling streams, storm water streams, and demineralizer backwash streams; provided, however, that where such streams contain a significant amount of a pollutant, and the combination of such streams, prior to treatment, with an industrial user's regulated process wastestream will result in a substantial reduction of that pollutant, the control authority, upon application of the industrial user, may exercise its discretion to determine whether such stream should be classified as diluted or unregulated. In its application to the control authority, the industrial user must provide engineering, production, sampling and analysis, and such other information so that the control authority can make its determination.

(ii) Sanitary wastestreams where such streams are not regulated by a categorical pretreatment standard.

(iii) Any process wastestreams that were or could have been entirely exempted from categorical pretreatment

standards pursuant to paragraph 8 of the NRDC v. Costle Consent Decree (12 ERC 1833) for one (1) or more of the following reasons:

(AA) The pollutants of concern are not detectable in the effluent from the industrial user.

(BB) The pollutants of concern are present only in trace amounts and are neither causing or likely to cause toxic effects.

(CC) The pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the administrator.

(DD) The wastestream contains only pollutants that are compatible with the POTW.

F_T = The average daily flow (at least a thirty (30) day average) through the combined treatment facility (includes F_i, F_D, and unregulated streams).

N = The total number of regulated streams.

(B) Alternative mass limits:

$$M_T = \left[\sum_{i=1}^{N} M_i\right] \bullet \left[\frac{F_T - F_D}{\sum_{i=1}^{N} F_i}\right]$$

Where: M_T = The alternative mass limit for a pollutant in the combined wastestream.

M_i = The categorical pretreatment standard mass limit for a pollutant in the regulated stream i (the categorical pretreatment mass limit multiplied by the appropriate measure of production).

F_i, F_D, F_T, and N are defined in clause (A).

(3) An alternative pretreatment limit may not be used if the alternative limit is below the analytical detection limit for any of the regulated pollutants.

(4) Self-monitoring required to assure compliance with the alternative categorical limit shall be as follows:

(A) The type and frequency of sampling, analysis, and flow measurement must be determined by reference to the self-monitoring requirements of the appropriate categorical pretreatment standard or 40 CFR 403.12(e) and 40 CFR 403.12(h).

(B) Where the self-monitoring schedules as determined by the control authority for the appropriate standards differ, monitoring must be done according to the most frequent schedule.

(C) Where flow determines the frequency of self-monitoring in a categorical pretreatment standard, the sum of all regulated flows (F_i) is the flow that shall be used by the control authority to determine self-monitoring frequency.

(Water Pollution Control Board; 327 IAC 5-18-7; filed Oct 10, 2000, 3:02 p.m.: 24 IR 301)

327 IAC 5-18-8 State 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 13-11-2; IC 13-13-5-1; IC 13-14-8-7; IC 13-18-4

Sec. 8. (a) An industrial user shall comply with applicable pretreatment standards and requirements adopted by the board under IC 13-14-8-7(a)(8). If state pretreatment standards and national pretreatment standards are applicable to an industrial user, the industrial user shall comply with the more stringent standards.

(b) Compliance with a state pretreatment standard that does not expressly state a final date for compliance must be attained no later than three (3) years from the effective date of the standard. *(Water Pollution Control Board; 327 IAC 5-18-8; filed Oct 10, 2000, 3:02 p.m.: 24 IR 303)*

327 IAC 5-18-9 Other pretreatment requirements

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 13-18-4

Sec. 9. In addition to applicable pretreatment standards, an industrial user shall comply with the following:

(1) An effluent limitation more stringent than the applicable pretreatment standard that is necessary to prevent:

(A) interference in the POTW receiving the discharge; or

(B) violation of a provision of section 2(a) of this rule or a state or federal water quality standard that is applicable to the state waters ultimately receiving the discharge from the industrial user after discharge from the POTW.

(2) Any requirement by the commissioner to implement appropriate best management practices (BMPs) and to develop a BMP plan in accordance with 327 IAC 5-9 if the industrial user uses, manufactures, stores, handles, or discharges any pollutant listed as toxic under Section 307(a)(1) of the Clean Water Act (33 U.S.C. 1317(a)(1)) or any pollutant listed as hazardous under Section 311 of the Clean Water Act (33 U.S.C. 1321) that may cause or allow significant amounts of that pollutant to reach waters of the state, whether directly or after discharge from the POTW, from certain ancillary manufacturing operations, including:

(A) materials storage areas;
(B) in-plant transfer;
(C) process and materials handling areas;
(D) loading and unloading operations;
(E) plant site run-off; and
(F) sludge and waste disposal areas.

(Water Pollution Control Board; 327 IAC 5-18-9; filed Oct 10, 2000, 3:02 p.m.: 24 IR 303)

327 IAC 5-18-10 Categorical pretreatment standards incorporated by reference

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 13-18-4

Sec. 10. The following federal categorical pretreatment standards are incorporated by reference:

Category	Code of Federal Regulations or Federal Register Citation
Dairy products	40 CFR 405*
Grain mills	40 CFR 406*
Canned and preserved fruits and vegetables	40 CFR 407*
Sugar processing	40 CFR 409*
Textile mills	40 CFR 410*
Cement manufacturing	40 CFR 411*
Feedlots	40 CFR 412*
Electroplating	40 CFR 413*
Organic chemicals, plastics, and synthetic fibers	40 CFR 414*
Inorganic chemicals manufacturing	40 CFR 415*
Soap and detergent manufacturing	40 CFR 417*
Fertilizer manufacturing	40 CFR 418*
Petroleum refining	40 CFR 419*
Iron and steel manufacturing	40 CFR 420*
Nonferrous metals manufacturing	40 CFR 421*
Steam electric power	40 CFR 423*
Ferroalloy manufacturing	40 CFR 424*
Leather tanning and finishing	40 CFR 425*
Glass manufacturing	40 CFR 426*
Asbestos manufacturing	40 CFR 427*
Rubber manufacturing	40 CFR 428*
Timber products processing	40 CFR 429*
Pulp, paper, and paperboard	40 CFR 430*
Builder’s paper and board mills	40 CFR 431*
Metal finishing	40 CFR 433*
Pharmaceutical manufacturing	40 CFR 439*
Paving and roofing	40 CFR 443*
Paint formulating	40 CFR 446*

Ink formulating	40 CFR 447*
Pesticide chemicals manufacturing, formulating, and packaging	40 CFR 455*
Carbon black manufacturing	40 CFR 458*
Battery manufacturing	40 CFR 461*
Plastics molding and forming	40 CFR 463*
Metal molding and casting	40 CFR 464*
Coil coating	40 CFR 465*
Porcelain enameling	40 CFR 466*
Aluminum forming	40 CFR 467*
Copper forming	40 CFR 468*
Electrical and electronic components	40 CFR 469*
Nonferrous metals forming and metal powders	40 CFR 471*

*These federal categorical pretreatment standards are incorporated by reference. Copies of these publications 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 Board; 327 IAC 5-18-10; filed Oct 10, 2000, 3:02 p.m.: 24 IR 303; errata filed Feb 6, 2006, 11:15 a.m.: 29 IR 1936)*

Rule 19. POTW Pretreatment Programs

327 IAC 5-19-1 POTWs required to have a pretreatment program

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 13-18-4

Sec. 1. (a) A POTW, or a combination of POTWs operated by the same authority, that meets at least one (1) of the following conditions must establish a POTW pretreatment program:

(1) Has a total design flow greater than five (5) million gallons per day (mgd) and receives pollutants, from one (1) or more industrial users, that may pass through or interfere with the operation of the POTW.

(2) Receives flow subject to pretreatment standards or requirements under 327 IAC 5-18.

(b) A POTW with a design flow of five (5) mgd or less may also be required to develop a POTW pretreatment program if the commissioner determines that a pretreatment program to prevent interference or pass through at the POTW is warranted due to the nature or volume of one (1) or more of the following:

(1) Industrial influent.

(2) Treatment process upset.

(3) Violations of POTW effluent limitations.

(4) Contamination of municipal sludge.

(5) Other circumstances.

(c) A POTW desiring to modify categorical pretreatment standards under 327 IAC 5-20 must have an approved POTW pretreatment program. *(Water Pollution Control Board; 327 IAC 5-19-1; filed Oct 10, 2000, 3:02 p.m.: 24 IR 304)*

327 IAC 5-19-2 Development of a POTW pretreatment program

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 13-18-4

Sec. 2. (a) The purpose of a POTW pretreatment program is to provide the POTW with the administrative and technical capability to ensure that industrial users of the POTW comply with applicable pretreatment standards and requirements specified in 327 IAC 5-18.

(b) For a POTW required to develop a POTW pretreatment program under section 1 of this rule, a compliance schedule specifying the program development will be incorporated into the POTW's NPDES permit. The compliance schedule shall not extend more than twelve (12) months after notification of the requirement to the POTW.

(c) In addition to any other provisions of this article, any of the following circumstances shall be considered adequate cause

to modify or revoke and reissue a POTW's NPDES permit to incorporate a compliance schedule for development of a POTW pretreatment program as described in subsection (b):

(1) The addition of pollutants into a POTW by an industrial user or combination of industrial users presents a substantial hazard to the functioning of the treatment works, quality of the receiving waters, human health, or the environment.

(2) The permit must be reissued or modified to coordinate the issuance of a construction grant under Section 201 of the Clean Water Act (33 U.S.C. 1281) with the incorporation into the NPDES permit of a compliance schedule for a POTW pretreatment program.

(3) A modification of the NPDES permit is approved under Section 301(i)(1) of the Clean Water Act (33 U.S.C. 1311(i)(1)).

(d) Upon the approval by the commissioner of a POTW pretreatment program, the NPDES permit of the POTW must be modified or revoked and reissued to incorporate conditions of the approved POTW pretreatment program, including a requirement that the POTW implement and enforce the approved POTW pretreatment program with respect to the industrial users of the POTW. *(Water Pollution Control Board; 327 IAC 5-19-2; filed Oct 10, 2000, 3:02 p.m.: 24 IR 304)*

327 IAC 5-19-3 POTW pretreatment program requirements

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 13-18-4

Sec. 3. An approved POTW pretreatment program shall fully and effectively exercise and implement the following requirements:

(1) The POTW must operate under legal authority, enforceable in federal or state court, that authorizes or enables the POTW to apply and enforce the requirements of Section 307(b) and 307(c) of the Clean Water Act (33 U.S.C. 1317(b) and 33 U.S.C. 1317(c)), including national pretreatment standards as well as applicable state pretreatment standards and requirements described in 327 IAC 5-18. Such authority may be contained in an ordinance, series of contracts, or joint power agreements, that the POTW is authorized to enact, enter into, or implement, and that are authorized by state law. At a minimum, this legal authority must enable the POTW to do the following:

(A) Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by industrial users where such contributions do not meet applicable pretreatment standards and requirements.

(B) Require compliance with all applicable pretreatment standards and requirements by industrial users.

(C) Control, through permit, order, or similar means, the contribution of each industrial user to the POTW to ensure compliance with all applicable pretreatment standards and requirements. In the case of significant industrial users, this control must be achieved through permits or equivalent individual control mechanisms issued to each user.

(D) Control mechanisms described in clause (C) must be enforceable and contain, at a minimum, the following:

(i) Statement of duration, that may not be more than five (5) years.

(ii) Statement of nontransferability that requires, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator.

(iii) Effluent limits based on applicable general pretreatment standards in 327 IAC 5-18, categorical pretreatment standards, local limits, and state and local law.

(iv) Self-monitoring, sampling, reporting, notification, and record keeping requirements, including an identification of the pollutants to be monitored, sampling location, sampling frequency, and sample type, based on the applicable general pretreatment standards in 327 IAC 5-18, categorical pretreatment standards, local limits, and state and local law.

(v) Statement of applicable, potential civil and criminal penalties for violation of pretreatment standards and requirements and any applicable compliance schedule. Such schedules may not extend the compliance date beyond applicable federal deadlines.

(E) Carry out all inspection, surveillance, and monitoring procedures necessary to determine, independent of information supplied by industrial users, compliance or noncompliance with applicable pretreatment standards and requirements by industrial users. Representatives of the POTW shall be authorized to enter any premises of any industrial user that is the location of an effluent source or treatment system that is subject to this article or to records which are required to be kept under 40 CFR 403.12(o). Such authority shall be at least as extensive as the authority provided under Section 308 of the Clean Water Act (33 U.S.C. 1318).

(F) Secure remedies for noncompliance through the following means:

(i) Obtain remedies for noncompliance by an industrial user with any applicable pretreatment standard or requirement, including injunctive relief and civil penalties as appropriate. The POTW must also have authority to seek or assess civil or criminal penalties in an amount of not less than one thousand dollars ($1,000) per day for each violation by industrial users of pretreatment standards and requirements.

(ii) Pretreatment requirements, in addition to those specified in 327 IAC 5-18, that shall be enforceable through the remedies described in item (i), shall include:

(AA) the duty to allow or carry out inspections, entry, or monitoring activities;

(BB) any ordinances, rules, or orders issued by the POTW;

(CC) any requirements set forth in individual control mechanisms issued by the POTW or the pretreatment rules; and

(DD) any reporting requirements imposed by the POTW or the pretreatment rules.

The commissioner shall have authority to seek judicial relief and may also use administrative penalty authority when the POTW has sought a monetary penalty that the commissioner believes to be insufficient.

(G) Have the authority and procedures to:

(i) give informal notice to the discharger and then immediately and effectively halt or prevent any discharge of pollutants to the POTW that may reasonably appear to present an imminent endangerment to the health or welfare of any person; and

(ii) give notice to the affected industrial users, with an opportunity to respond, and then halt or prevent any discharge to the POTW that threatens to interfere with the operation of the POTW or that may present an endangerment to the environment.

(H) Comply with the confidentiality requirements set forth in 40 CFR 403.14.

(2) The POTW shall have procedures to ensure compliance with the requirements of an approved POTW pretreatment program. At a minimum, these procedures must enable the POTW to do the following:

(A) Identify and locate all possible industrial users that may be subject to the approved POTW pretreatment program. Any compilation, index, or inventory of industrial users made under this rule must be made available to the commissioner upon request.

(B) Identify the character and volume of pollutants contributed to the POTW by the industrial users identified under clause (A). This information must be made available to the commissioner upon request.

(C) Notify industrial users identified under clause (A) of applicable pretreatment standards and any applicable requirements under Sections 204(b) and 405 of the Clean Water Act (33 U.S.C. 1284(b) and 33 U.S.C. 1345) and Subtitles C and D of RCRA (42 U.S.C. 6921 and 42 U.S.C. 6941).

(D) Notify each significant industrial user (SIU) of its status as an SIU and of the requirements that apply as such within thirty (30) days after the commissioner approves the list of SIUs as required by subdivision (6).

(E) Institute control measures to ensure compliance with all applicable pretreatment standards and requirements. Control measures include permits or administrative orders for the discharge of pollutants into a POTW by industrial users.

(F) Receive and analyze self-monitoring reports and other notices submitted by industrial users in accordance with self-monitoring requirements in 327 IAC 5-16-5.

(G) Randomly sample and analyze the effluent from industrial users and conduct surveillance and inspection activities in order to identify, independent of information supplied by industrial users, occasional and continuing noncompliance with pretreatment standards and requirements.

(H) Inspect and sample significant industrial users at least once a year.

(I) Evaluate and document, at least once every two (2) years, whether each significant industrial user needs a plan to control slug discharges. As used in this clause, "slug discharge" means any discharge of a nonroutine, episodic nature, including, at a minimum, an accidental spill or noncustomary batch discharge. The results of these activities shall be made available to the regional administrator or commissioner upon request; if the POTW decides that a slug control plan is needed, the plan shall contain, at a minimum, the following:

(i) A description of discharge practices, including nonroutine batch discharges.

(ii) A description of stored chemicals.

(iii) Procedures for immediately notifying the POTW of slug discharges, including any discharge that would violate a prohibition under 327 IAC 5-18, with procedures for follow-up written notification within five (5) days.

(iv) If necessary, procedures to prevent adverse impact from accidental spills, including, but not limited to, the

following:

(AA) Inspection and maintenance of storage areas.

(BB) Handling and transfer of materials.

(CC) Loading and unloading operations.

(DD) Control of plant site run-off.

(EE) Worker training.

(FF) Building of containment structures or equipment.

(GG) Measures for containing toxic organic pollutants including solvents.

(HH) Measures and equipment necessary for response.

(J) Investigate instances of noncompliance with pretreatment standards and requirements as indicated:

(i) in the reports and notices required under 327 IAC 5-16-5; or

(ii) by analysis, inspection, and surveillance activities described in clause (F).

Sample taking and analysis and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions.

(K) Initiate and effectively prosecute enforcement actions, where appropriate, against industrial users that are violating applicable pretreatment standards or other pretreatment requirements.

(L) Comply with the public participation requirements of 40 CFR 25 in the enforcement of national pretreatment standards. These procedures shall include provision for at least annually providing public notification, in the largest daily newspaper published in the municipality in which the POTW is located, of industrial users that, at any time during the previous twelve (12) months, were in significant noncompliance with applicable pretreatment standards or other pretreatment requirements.

(3) The POTW must have sufficient resources and qualified personnel to carry out the approved POTW pretreatment program as described in subdivisions (1) and (2). However, conditional approval of the POTW's pretreatment program may be requested under section 4(b) of this rule pending acquisition of the required funding.

(4) The POTW must develop local limits as required in 327 IAC 5-18-2(b) or demonstrate that they are not necessary.

(5) The POTW must develop and implement an enforcement response plan. This plan must contain detailed procedures demonstrating how a POTW will investigate and respond to instances of industrial user noncompliance. The plan must, at a minimum:

(A) describe how the POTW will investigate instances of noncompliance;

(B) describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;

(C) identify, by title, the official responsible for each type of response; and

(D) adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment standards and requirements as detailed in subdivisions (1) and (2).

(6) The POTW shall prepare a list of its industrial users meeting the criteria in 327 IAC 5-17-22. The list must identify the criteria in 327 IAC 5-17-22(a) applicable to each industrial user and, for industrial users meeting the criteria in 327 IAC 5-17-22(a)(2), must also indicate whether the POTW has made a determination under 327 IAC 5-17-22(b) that the industrial user should not be considered a significant industrial user. This list, and any subsequent modifications thereto, must be submitted to the commissioner as a nonsubstantial modification of the approved POTW pretreatment program under 40 CFR 403.18(d).

(Water Pollution Control Board; 327 IAC 5-19-3; filed Oct 10, 2000, 3:02 p.m.: 24 IR 305)

327 IAC 5-19-4 Requests for approval of POTW pretreatment programs

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 13-18-4

Sec. 4. (a) A POTW requesting approval of a POTW pretreatment program shall develop and submit to the commissioner three (3) copies of the POTW pretreatment program description, including the following:

(1) A statement from the municipal attorney or the attorney for those POTW's that have independent legal counsel providing the following:

(A) Proof that the POTW has authority adequate to carry out the approved POTW pretreatment program described in section 3 of this rule, including identification of the legal authority that provides the basis for each procedure specified

in subdivision (2).

(B) A copy of any ordinances, regulations, agreements, or other authorities relied upon by the POTW for its administration of the approved POTW pretreatment program.

(2) A description of the manner in which the POTW will implement the approved POTW pretreatment program requirements, including:

(A) whether pretreatment standards will be applied to individual industrial users by order or permit; and

(B) how the POTW intends to ensure compliance with pretreatment standards and requirements, for example, an industrial monitoring plan to:

(i) enable the POTW to monitor discharges from its industrial users, including necessary monitoring and analytical equipment; and

(ii) enforce them in the event of noncompliance by industrial users.

This submission must include a statement reflecting the endorsement or approval of the local boards or bodies responsible for supervising and funding the POTW pretreatment program if the POTW pretreatment program is approved.

(3) A brief description, including organizational charts, of the POTW organization that will administer the approved POTW pretreatment program. If more than one (1) agency is responsible for the administration of the approved POTW pretreatment program, this description must include:

(A) identification of the responsible agencies;

(B) delineation of the responsibilities for each agency; and

(C) the procedures for coordination among the agencies.

(4) The information specified in section 3(2)(A) and 3(2)(B) of this rule concerning:

(A) the identity of industrial users subject to the approved POTW pretreatment program; and

(B) the identity and quantity of pollutants discharged to the POTW by each identified industrial user.

This information shall also be made available to the regional administrator upon request.

(5) A description of the funding levels and the full-time and part-time manpower available to implement the approved POTW pretreatment program.

(b) A POTW may request conditional approval of a POTW pretreatment program pending the acquisition of funding and personnel for certain elements of the program. The request for conditional approval must meet the requirements set forth in subsection (a), except that the submission must demonstrate the following:

(1) A limited aspect of the POTW pretreatment program does not need to be implemented immediately.

(2) The POTW has adequate legal authority and procedures to carry out those aspects of the POTW pretreatment program that will not be implemented immediately.

(3) Funding and personnel for the POTW pretreatment program aspects to be implemented at a later date will be available when needed. The POTW must describe the mechanism by which this funding will be acquired.

Upon receipt of a request for conditional approval, the commissioner shall establish a fixed date for the acquisition of the needed funding and personnel. If funding is not acquired by this date, the conditional approval of the POTW pretreatment program, and any removal allowances granted to the POTW, may be modified or withdrawn.

(c) The requirements for consistency with water quality management plans shall be as follows:

(1) In order to be approved, a POTW pretreatment program shall be consistent with any approved water quality management plan developed in accordance with 40 CFR 130 and 40 CFR 131, where the water quality management plan, pursuant to Section 208 of the Clean Water Act (33 U.S.C. 1288), includes management agency designations and addresses pretreatment in a manner consistent with 40 CFR 403. In order to assure such consistency, the commissioner, upon receipt of a request for approval of a POTW pretreatment program, shall solicit the review and comment of the appropriate planning agency prior to approval or disapproval of the POTW pretreatment program.

(2) Where no Section 208 plan has been approved or where a plan has been approved but lacks management agency designations or does not address pretreatment in a manner consistent with 40 CFR 403, the commissioner shall nevertheless solicit the review and comment of the appropriate planning agency.

(Water Pollution Control Board; 327 IAC 5-19-4; filed Oct 10, 2000, 3:02 p.m.: 24 IR 307)

327 IAC 5-19-5 Approval procedures for POTW pretreatment programs or requests for authority to revise categorical pretreatment standards due to POTW consistent removal

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 13-18-4

Sec. 5. (a) The commissioner shall review each submission for a POTW pretreatment program approval or request to revise a categorical pretreatment standard to preliminarily determine whether the submission complies with the requirements of section 3, 4(a), or 4(b) of this rule or this section. After preliminary review, the commissioner shall act according to the following:

(1) If the submission meets the applicable requirements, the commissioner shall notify the POTW and commence permit procedures set forth in 327 IAC 5-3.

(2) If the submission does not comply with applicable requirements, the commissioner shall provide written notice to the POTW and to each person who has requested individual notice. This notification shall identify any defects in the submission and advise the POTW how it can comply with the applicable requirements.

(b) A POTW with an approved POTW pretreatment program shall promptly inform the commissioner of any change in legal authority, staffing, or funding that may significantly affect the ability of the POTW to operate its approved POTW pretreatment program. Whenever this information is submitted and whenever the POTW's NPDES permit is under consideration for reissuance, the commissioner shall review the POTW's ongoing capability to operate its approved POTW pretreatment program. If the commissioner determines that the POTW no longer possesses the capability to adequately run its approved POTW pretreatment program, the commissioner shall promptly notify the POTW of the deficiencies identified. *(Water Pollution Control Board; 327 IAC 5-19-5; filed Oct 10, 2000, 3:02 p.m.: 24 IR 308)*

327 IAC 5-19-6 Revision of an existing approved POTW pretreatment program

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 13-18-4

Sec. 6. The criteria and procedures in 40 CFR 403.18* shall govern the revisions to an existing approved POTW pretreatment program.

*40 CFR 403.18 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 Board; 327 IAC 5-19-6; filed Oct 10, 2000, 3:02 p.m.: 24 IR 308; errata filed Feb 6, 2006, 11:15 a.m.: 29 IR 1936)*

327 IAC 5-19-7 POTWs not required to have an approved POTW pretreatment program

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 13-18-4

Sec. 7. A POTW not required to develop an approved POTW pretreatment program shall be required to meet the following:

(1) Comply with a decision of the commissioner who has the responsibility of implementing a POTW pretreatment program that will achieve the objectives stated in 327 IAC 5-16-1(b) if the commissioner determines that a need exists for such a POTW pretreatment program. Generally, such a state pretreatment program will be implemented at the local POTW through the use of procedures comparable to those described under section 3(2) of this rule and, ultimately, the issuance of appropriate industrial wastewater pretreatment permits under 327 IAC 5-21.

(2) Develop, adopt, and enforce a sewer use ordinance that implements the standards for prohibited discharges in accordance with 327 IAC 5-18-2.

(3) Comply with any requirements of the commissioner specified in the POTW's NPDES permit to perform certain elements of an approved POTW pretreatment program, such as monitoring for industrial pollutants in the discharges from the POTW's industrial users.

(Water Pollution Control Board; 327 IAC 5-19-7; filed Oct 10, 2000, 3:02 p.m.: 24 IR 308)

Rule 20. Removal Credits

327 IAC 5-20-1 Prerequisites for revision of categorical pretreatment standards by a POTW

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 13-18-4

Sec. 1. (a) Any POTW receiving wastewater from an industrial user that is required to meet a categorical pretreatment standard may revise the discharge limits specified by the standard for any specific pollutant or pollutants so long as the POTW has:

(1) applied for and received authorization from the commissioner to revise the discharge limits for a specific pollutant in accordance with this rule and 327 IAC 5-19-5; and

(2) a POTW pretreatment program approved under 327 IAC 5-19.

(b) The revised discharge limit for a specific pollutant must be:

(1) based upon the POTW's capability to consistently remove that pollutant, as demonstrated in accordance with section 2(b) of this rule; and

(2) calculated as provided in section 2(b)(4) of this rule.

A discharge limit revision for a toxic pollutant, that is listed pursuant to Section 307(a) of the Clean Water Act (33 U.S.C. 1317(a)), must be based on the POTW's ability to remove that toxic pollutant and not the ability to remove indicator or surrogate pollutants.

(c) A POTW with a combined sewer overflow or systems that overflow untreated wastewater into a receiving water at least once annually shall not be able to claim consistent removal of a pollutant unless achieving compliance with one (1) of the following:

(1) The industrial user provides containment, reduction, or otherwise ceases all discharges from the regulated processes of a pollutant for which a removal allowance is requested during all circumstances in which a overflow event can reasonably be expected to occur. Discharges must cease or be reduced or pretreatment must be increased to the extent necessary to compensate for the removal not being provided by the POTW. Allowances under this rule will not be granted unless the POTW submits to the commissioner evidence of the following:

(A) All industrial users to which the POTW proposes to apply this rule have demonstrated the ability to contain, reduce, or otherwise cease, during circumstances in which an overflow event can reasonably be expected to occur, all discharges from the regulated processes that contain pollutants for which a removal allowance is requested.

(B) The POTW has identified circumstances in which an overflow event can reasonably be expected to occur and has a notification procedure or other viable plan to ensure that industrial users will learn of an impending bypass in sufficient time to contain, reduce, or cease its discharge to prevent untreated overflow from occurring. The POTW must also demonstrate that it will monitor and verify the data required in clause (C) to ensure that industrial users are containing, reducing, or ceasing operations during POTW overflows.

(C) All industrial users to which the POTW proposes to apply this rule have demonstrated the ability and commitment to collect and make available upon request by the POTW, commissioner, or EPA regional administrator daily flow reports or other data sufficient to demonstrate that all discharges from regulated processes containing the pollutant for which the removal allowance is requested were contained, reduced, or otherwise terminated during all circumstances in which a overflow event was reasonably expected to occur.

(2) The proposed revised discharge limit for a specific pollutant is calculated under section 2(b)(4)(B) of this rule to account for the reduction in POTW removal due to overflows, except as follows:

(A) If an industrial user can demonstrate that overflows do not occur in the POTW's system between the industrial user's discharge and the treatment plant, the POTW may calculate revised discharge limits for the industrial user under section 2(b)(4)(A) of this rule.

(B) After April 19, 1994, consistent removal may be claimed only if efforts to correct the conditions resulting in untreated discharges by a POTW are underway in accordance with the policy and procedures set forth in the EPA Combined Sewer Overflow (CSO) Control Policy (FRL-4732-7)*, published in the Federal Register on April 19, 1994. Revision to discharge limits in categorical pretreatment standards may not be made if a POTW has not committed to efforts to minimize pollution from combined sewer overflows. At a minimum, a POTW must have completed an analysis of combined sewer overflow alternatives in accordance with the requirements of the CSO Control Policy and be making a good faith effort to implement the plan.

(d) A discharge limit revision shall not cause or contribute to a violation of the following:

(1) Applicable water quality standards in the state waters receiving the POTW's effluent.

(2) The POTW's ability to comply with its NPDES permit limitations and conditions.

(3) Any sludge requirements that apply to the sludge management method chosen by the POTW.

Alternatively, the POTW can demonstrate to the commissioner that even though it is not presently in compliance with applicable sludge requirements, it will be in compliance when the industrial user to whom the removal credit would apply is required to meet its categorical pretreatment standard as modified by the removal credit. If granting removal credits forces a POTW to incur greater sludge management costs than would be incurred in the absence of granting removal costs, the additional sludge management costs will not be eligible for EPA grant assistance.

(e) If a POTW has received a construction grant under Section 201(g) of the Clean Water Act (33 U.S.C. 1281(g)) from funds authorized for any fiscal year beginning after September 30, 1978, the POTW shall have completed the analysis required by Section 201(g)(5) of the Clean Water Act (33 U.S.C. 1281(g)(5))** and demonstrated that the revised discharge limits will not preclude the use of innovative or alternative technology otherwise available to the POTW.

(f) An industrial user that wishes to receive a removal allowance shall:

(1) submit to the POTW the information required in 40 CFR 403.12(b)***, including the specification of what additional treatment or process facilities, if any, will be needed to comply with applicable categorical pretreatment standards as approved for revision under this rule;

(2) enter into a compliance schedule agreement with the POTW to install the needed facilities within the time period provided by the applicable categorical standards; and

(3) have the POTW submit to the commissioner, within sixty (60) days of the effective date of revision of discharge limits for a particular industrial user, the name and address of the industrial user and the specific discharge limits that were revised.

*The Combined Sewer Overflow (CSO) Control Policy (FRL-4732-7) 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.

**Section 201(g)(5) of the Clean Water Act (33 U.S.C. 1281(g)(5)) 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.

***40 CFR 403.12(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. *(Water Pollution Control Board; 327 IAC 5-20-1; filed Oct 10, 2000, 3:02 p.m.: 24 IR 309; errata filed Feb 6, 2006, 11:15 a.m.: 29 IR 1936)*

327 IAC 5-20-2 Application for authorization to revise categorical 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 13-11-2; IC 13-13-5-1; IC 13-18-4

Sec. 2. (a) An application to revise discharge limits for specific pollutants for an industrial user that is, or in the future may be, subject to categorical pretreatment standards must be submitted to the commissioner by a POTW pursuant to this section. The initial application must be submitted after or concurrently with the POTW's request for approval of its POTW pretreatment program. Subsequent applications, if needed, may be submitted by a POTW no more than once every six (6) months upon the occurrence of one (1) or more of the following:

(1) Promulgation of a categorical pretreatment standard since the previous application.

(2) An industrial user with new or modified facilities or production changes results in the discharge of a pollutant to the POTW that was not previously discharged and is subject to a categorical standard.

(3) Any significant increase in removal efficiency attributable to specific identifiable circumstances or corrective measures, such as:

(A) improvements in operation and maintenance practices;

(B) new treatment or treatment capacity; or

(C) a significant change in the influent to the POTW treatment plant.

(b) An application for authorization to revise discharge limits must include the following information:

(1) A list of pollutants proposed for discharge limit revisions.

(2) Influent and effluent operational data demonstrating consistent removal or other information, as permitted by the

commissioner, that demonstrates consistent removal of the pollutants for which a removal allowance is proposed. These data must meet the following requirements:

(A) The data must be representative of yearly and seasonal conditions to which the POTW is subjected for each pollutant proposed for a discharge limit revision.

(B) The data must be representative of the quality and quantity of normal effluent and influent flow of the system if such data can be obtained. If such data are unobtainable, alternate data or information may be presented for approval to demonstrate consistent removal.

(C) The influent and effluent operational data must be obtained through a minimum of twelve (12) composite samples taken at approximately equal intervals throughout one (1) calendar year and meeting the following requirements:

(i) Each composite sample must consist of discrete flow-proportional samples taken at equal time intervals not to exceed two (2) hours.

(ii) The sampling period must be a minimum of twenty-four (24) hours and each effluent sample must be taken approximately one (1) detention time later than the corresponding influent sample except that, if the commissioner determines that such a sampling schedule will not be representative of the actual operation of the POTW treatment plant, an alternative sampling schedule will be required. The detention time shall be determined from the flow at the time sampling begins.

(iii) If a particular pollutant is measurable in the influent but not in the effluent, the effluent level may be assumed to be the limit of quantitation, and those data may be used by the POTW in its discretion subject to approval by the commissioner.

(iv) If the pollutant is not measurable in the influent, the data must not be used.

(v) If there are less than eight (8) samples with influent concentrations equal to or above the limit of quantitation, the commissioner may approve alternate means, such as a mass balance, for demonstrating consistent removal. The samples must be evenly distributed over the days of the week so as to include nonworkdays as well as workdays. If the commissioner determines that this schedule will not be most representative of the actual operation of the POTW, an alternative sampling schedule will be approved.

(vi) In addition, upon the commissioners approval, a POTW may utilize an historical data base amassed prior to the effective data of this rule provided that the data meets the requirements of this subdivision. In order for the historical data base to be approved, it must present a statistically valid description of daily, weekly, and seasonal sewage treatment plant loadings and performance for at least one (1) year.

(D) Where composite sampling is not an appropriate sampling technique, a grab sample shall be taken to obtain influent and effluent operational data and shall meet the following requirements:

(i) A grab sample shall be required, for example, where the parameters being evaluated are those that may not be held for any extended period because of biological, chemical, or physical interactions that take place after sample collection and affect the results.

(ii) A grab sample is an individual sample collected over a period of time not exceeding fifteen (15) minutes.

(iii) Collection of influent grab samples should precede collection of effluent samples by approximately one (1) detention period.

(E) The sampling and analysis required by clause (C) and this clause must be performed in accordance with the following:

(i) Techniques prescribed in one (1) of the following:

(AA) 40 CFR 136 and its amendments.

(BB) Applicable categorical standards.

(ii) Applicable sampling and analytical procedures approved by EPA if one (1) of the following situations exists to make the techniques listed in item (i) inapplicable:

(AA) There is no sampling or analytical technique for the pollutant in question.

(BB) The administrator determines that the 40 CFR 136 sampling and analytical techniques are inappropriate for the pollutant in question.

(F) Consistent removal for a specific pollutant shall be determined as follows:

(i) For each sample, the difference between the pollutant concentrations in the influent and effluent must be calculated and expressed as a percentage of the influent concentration.

(ii) Removal for the pollutant shall be calculated as the average of the lowest fifty percent (50%) of the individual

sample removal results. If the number of samples with quantifiable results is between eight (8) and twelve (12), the removal shall be calculated as the average of the lowest six (6) sample results.

(iii) All sample data obtained for the measured pollutant according to clause (C) must be reported and used in calculating consistent removal.

(iv) If an alternate means is approved by the commissioner under clause (C) for demonstrating consistent removal, then removal shall be calculated as specifically provided by the commissioner.

(3) A list of the industrial subcategories for which discharge limits in categorical pretreatment standards would be revised, including the number of industrial users in each subcategory and an identification of which of the pollutants on the list prepared under subdivision (1) are discharged by each subcategory.

(4) The proposed revised discharge limits for each of the subcategories of industrial users identified in subdivision (3) calculated in the following manner:

(A) The proposed revised discharge limit for the specified pollutant must be calculated using the following formula:

$$Y = \frac{X}{1 - r}$$

Where:

X = Pollutant discharge limit specified in the applicable categorical pretreatment standard (expressed in milligrams per liter).

r = POTW's consistent removal rate for that pollutant as established under this rule (percentage expressed as a decimal).

Y = Revised discharge limit for the specified pollutant (expressed in milligrams per liter).

(B) In the case of a POTW that either has combined sewers or has bypassed untreated wastewater into the receiving water at least once annually and that claims consistent removal of a pollutant under section 1(c)(1) of this rule, the proposed revised discharge limits for the specific pollutant must be calculated using the following formula:

$$r_c = r_m \frac{8760 - Z}{8760}$$

Where:

r_m = POTW's consistent removal rate for a specific pollutant.

r_c = Removal corrected by the overflow factor.

Z = Hours per year that overflow occurred between the industrial user and the POTW treatment plant, the hours either to be shown in the POTW's current NPDES permit application or the hours, as demonstrated by verifiable techniques, that a particular industrial user's discharge overflows between the industrial user and the POTW treatment plant.

(5) Data showing the concentrations and amounts in a POTW's sludge of the pollutants proposed for discharge limit revisions and for which sludge disposal or use criteria applicable to the POTW's current method of sludge use or disposal have been published by EPA or the department. This data must meet the following requirements:

(A) The data must be obtained through a composite sample taken during each of the sampling periods selected to measure consistent removal in accordance with the requirements of subdivision (2)(C). Each composite sample must contain a minimum of twelve (12) discrete samples taken at equal time intervals over a twenty-four (24) hour period. Where a composite sample is not an appropriate sampling technique, grab samples must be taken.

(B) Sampling and analysis of the samples referred to in clause (A) must be performed in accordance with the sampling and analytical techniques described in subdivision (2)(E).

(6) A specific description of the following:

(A) The POTW's current method of use or disposal of its sludge.

(B) Data certifying that the current sludge use or disposal methods comply and will continue to comply with section 1(d) of this rule.

(7) A certification that the POTW has an approved POTW pretreatment program or qualifies for the exception to this requirement found at section 1(c) of this rule.

(8) A certification that the granting of removal credits will not cause a violation of the POTW's NPDES permit limits or conditions.

(c) The application to revise categorical standards must contain the following:

(1) Signature of one (1) of the following:

(A) A principal executive officer.

(B) A ranking elected official.

(C) A duly authorized employee of the POTW, if the employee is responsible for overall operation of the POTW.

(2) A certification by the signatory or an independent consulting engineer, if retained by the POTW to prepare the application, stating, "I have personally examined and am familiar with the information submitted in the attached document, and I hereby certify under penalty of law that this information was obtained in accordance with the requirements of 327 IAC 5-20-2(b). Moreover, based upon my inquiry of those individuals immediately responsible for obtaining the information reported herein, I believe that the submitted information is true, accurate, and complete.".

(d) An application to revise categorical standards, upon its submittal by a POTW, will be reviewed, approved, or denied by the commissioner in accordance with the procedures of 327 IAC 5-19-5. Approval of an application shall empower the POTW to revise only the specific discharge limits proposed under subsection (b)(4).

(e) If the state has an approved pretreatment program, the regional administrator may agree in the Memorandum of Agreement under 40 CFR 123.24(d)* to waive the right to review and object to submissions for authority to grant removal credits. Such an agreement shall not restrict the regional administrator's right to comment upon or object to permits issued to POTW's except to the extent 40 CFR 123.24(d) allows such restriction.

(f) Nothing in this rule precludes an industrial user or other interested party from assisting the POTW in preparing and presenting the information necessary to apply for authorization.

*40 CFR 123.24(d) 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 Board; 327 IAC 5-20-2; filed Oct 10, 2000, 3:02 p.m.: 24 IR 310; errata filed Feb 6, 2006, 11:15 a.m.: 29 IR 1937)*

327 IAC 5-20-3 Conditional and provisional authorization to revise categorical 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 13-11-2; IC 13-13-5-1; IC 13-18-4

Sec. 3. (a) The requirements for conditional and provisional authorization to revise categorical standards are as follows:

(1) A POTW may submit an application to the commissioner for conditional authority to revise discharge limits contained in categorical pretreatment standards prior to approval of its POTW pretreatment program. The application must conform to the requirements of section 2 of this rule.

(2) The commissioner may approve an application for conditional authority to revise discharge limits if the commissioner determines that consistent removal has been adequately demonstrated for the specific pollutant proposed for discharge limit revision. The public notice and comment procedures of 327 IAC 5-19-5 may be omitted by the commissioner in approving an application under this section. However, at the time the commissioner gives public notice of the POTW's request for approval of its POTW pretreatment program, the commissioner shall also give public notice of the intent to ratify or not ratify the conditional authorization to revise discharge limits.

(3) If the commissioner approves the application for conditional authorization, the POTW may proceed to revise the discharge limits for the specific pollutants identified in the application subject to the following conditions:

(A) Except for section 1(a)(2) of this rule, the conditions specified by section 1 of this rule.

(B) The POTW must submit to the commissioner an application for a POTW pretreatment program approval meeting the requirements of 327 IAC 5-19-2, 327 IAC 5-19-3, and 327 IAC 5-19-4 in a timely manner, not to exceed the time limitation set forth in a compliance schedule for development of a POTW pretreatment program included in the POTW's NPDES permit.

(C) If a POTW grants a conditional revision and the commissioner subsequently makes a final determination, after notice and an opportunity for a hearing, that the POTW failed to comply with the conditions stated in this section, the following shall occur:

(i) The conditional revision shall be terminated by the commissioner.

(ii) An industrial user to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical pretreatment standard within a reasonable time, though not in excess of the time period prescribed in the applicable categorical pretreatment standard, as specified by the commissioner.

(b) For pollutants that are not currently being discharged, including pollutants expected from new or modified facilities or

production changes, application may be made for provisional authorization to revise discharge limits in the applicable categorical pretreatment standard prior to initial discharge of the pollutant. Consistent removal may be based provisionally on data from treatability studies or demonstrated removal at other comparable treatment facilities where the quality and quantity of influent are similar. The procedures and conditions for provisional authorization shall be those set forth in subsection (a), except as follows:

(1) The information required for the application under section 2(b)(2) and 2(b)(5) of this rule shall be temporarily waived and the treatability data or other alternate basis for projecting removal submitted instead.

(2) Within eighteen (18) months after discharge of the pollutants granted for provisional authorization, the data specified in section 2(b)(2) and 2(b)(5) of this rule shall be gathered and submitted to the commissioner. If the data fail to demonstrate consistent removal of the pollutant, the following shall occur:

(A) The provisional revision shall be terminated by the commissioner.

(B) An industrial user that had been given revised discharge limits shall achieve compliance with the applicable categorical standards within a reasonable time, though not in excess of the time period prescribed in the applicable standards, as specified by the commissioner.

Conversely, if the data confirm consistent removal of the pollutants in question, the commissioner shall ratify the provisional authorization.

(Water Pollution Control Board; 327 IAC 5-20-3; filed Oct 10, 2000, 3:02 p.m.: 24 IR 312)

327 IAC 5-20-4 Continuation or withdrawal of authorization to revise categorical 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 13-11-2; IC 13-13-5-1; IC 13-18-4

Sec. 4. (a) After a POTW has received authorization to grant removal credits for a particular pollutant regulated in a categorical pretreatment standard, it may automatically extend that removal credit to the same pollutant when it is regulated in other categorical standards, unless granting the removal credit will cause the POTW to violate its sludge requirements or its NPDES permit limits and conditions. If a POTW elects at a later time to extend removal credits to a certain categorical pretreatment standard, industrial subcategory, or one (1) or more industrial users that initially were not granted removal credits, it must notify the control authority.

(b) Following authorization to revise discharge limits from categorical pretreatment standards, the POTW shall continue to monitor and report on the POTW's removal capabilities for all pollutants for which authority to revise limits has been granted. The report shall contain the information required by section 2(b)(2)(A), 2(b)(2)(B), 2(b)(5), and 2(b)(6) of this rule. The data obtained for purposes of this report must be obtained through a composite sample taken on three (3) consecutive days during the reporting period and meet the requirements of section 2(b)(2)(C) of this rule. If no categorical pretreatment standards are yet promulgated relative to the industrial users of a POTW receiving authorization to revise discharge limits or if the POTW has received provisional authorization to revise limits under section 3(b) of this rule, the initial report shall be submitted to the commissioner within sixty (60) days after the earliest date of promulgation of an applicable categorical standard or the date the discharge of pollutants for which provisional authorization was granted commences. In all other cases, the initial report shall be submitted within six (6) months after the date authorization to revise limits was granted. Subsequent reports shall be submitted at six (6) month intervals unless required more frequently by the commissioner.

(c) Approval of authority to revise categorical pretreatment standards will be reexamined whenever the POTW's NPDES permit is reissued or whenever the categorical pretreatment standard is revised by EPA unless the commissioner determines the need to reevaluate the authority earlier as required by subsection (e). In addition, where overflows of untreated waste by the POTW continue to occur, the commissioner may condition continued authorization to revise discharge limits upon the POTW performing additional analysis or implementing additional control measures as is consistent with departmental policy toward POTW bypasses.

(d) After authority to revise discharge limits for a specified pollutant is granted, the revised discharge limits for industrial users of the POTW's system, as well as the consistent removal documented by the POTW for that pollutant, and the other conditions of section 1 of this rule shall be included in the POTW's NPDES permit upon the earliest reissuance or modification (at or following the POTW pretreatment program approval) and shall become enforceable requirements of the POTW's NPDES permit. The removal credits will remain in effect for the term of the POTW's NPDES permit, provided the POTW maintains compliance with the conditions of this rule.

(e) If, on the basis of pollutant removal capability reports received as required by subsection (b) or other information available to it, the commissioner determines that:

(1) one (1) or more of the discharge limit revisions made by the POTW or the POTW itself no longer meets the requirements

of section 1 of this rule; or

(2) such discharge limit revisions are causing or significantly contributing to a violation of any conditions or limits contained in the POTW's NPDES permit;

then the commissioner shall notify the POTW and, if appropriate corrective action is not taken within a reasonable time, not to exceed sixty (60) days (unless the POTW or the affected industrial users demonstrate that a longer time period is reasonably necessary to undertake the appropriate corrective action), either withdraw or require modifications in the revised discharge limits.

(f) The commissioner shall not withdraw or modify revised discharge limits according to subsection (e) without doing the following:

(1) Notifying the POTW and all industrial users to whom revised discharge limits have been applied of the information required by subdivision (2).

(2) Giving written notice of the following:

(A) The reasons for such withdrawal or modification.

(B) The time to be allowed for new compliance dates.

(3) Providing an opportunity for a hearing.

(g) After receiving notice of withdrawal or modification from the commissioner according to subsections (e) and (f), all industrial users to whom revised discharge limits had been applied shall be subject to the modified limits or the discharge limits prescribed in the applicable categorical pretreatment standards, as appropriate, and shall achieve compliance with such limits within a reasonable time, though not in excess of the time period prescribed in the applicable categorical pretreatment standard, as may be specified by the commissioner. *(Water Pollution Control Board; 327 IAC 5-20-4; filed Oct 10, 2000, 3:02 p.m.: 24 IR 313)*

Rule 21. Industrial Wastewater Pretreatment Permit Program

327 IAC 5-21-1 Purpose

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 13-18-4

Sec. 1. The purpose of this rule is to establish an administrative program for the issuance of a permit that specifies a minimum acceptable degree of pretreatment required for the discharge of certain industrial wastewater into a POTW. The applicability of these permits and the procedures for their issuance are defined. *(Water Pollution Control Board; 327 IAC 5-21-1; filed Oct 10, 2000, 3:02 p.m.: 24 IR 314)*

327 IAC 5-21-2 Applicability of industrial wastewater pretreatment permits

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 13-18-4

Sec. 2. (a) An industrial user shall be required to obtain an IWP permit for a discharge of wastewater into a POTW if one (1) of the following situations exists:

(1) The discharge is from a significant industrial user as defined in 327 IAC 5-17-22 and is discharged into a POTW that is not required to have an approved POTW pretreatment program under 327 IAC 5-19-1.

(2) The commissioner determines that an IWP permit is needed for effective control of an industrial discharge.

(b) An industrial user subject to the terms of subsection (a) shall submit an application for an IWP permit to the commissioner prior to commencing the discharge of industrial wastewater to a POTW.

(c) An existing industrial user that intends to add a pollutant not limited by the valid IWP permit or increase discharge of a pollutant limited by the IWP permit must apply for an IWP permit modification from the commissioner prior to commencing discharge containing the additional pollutant. *(Water Pollution Control Board; 327 IAC 5-21-2; filed Oct 10, 2000, 3:02 p.m.: 24 IR 314)*

327 IAC 5-21-3 Permit application submission requirements

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 13-18-4

Sec. 3. An application for an IWP permit must conform to the following:

(1) Be completed on a form prescribed by the commissioner.

(2) Be signed in accordance with 327 IAC 5-2-22(a).

(3) Be submitted to the commissioner according to the following time requirements:

(A) No later than one hundred eighty (180) days prior to the expiration date of an existing permit if the industrial user intends to continue discharging to the POTW.

(B) No later than one hundred eighty (180) days prior to the date when a new industrial discharger intends to commence discharging to a POTW.

(C) In the case of an initial issuance of an IWP permit to a significant industrial user or to an industrial user determined by the commissioner to be subject to the IWP permit requirements, no later than one hundred twenty (120) days after the latter of:

(i) the promulgation of an applicable categorical pretreatment standard; or

(ii) the date of notification by the commissioner of a determination made according to section 2(a)(2) of this rule.

(D) No later than one hundred twenty (120) days prior to a planned expansion or modification of production or treatment facilities or processes that are likely to cause a significant increase in quantity of pollutants or a change in the nature of pollutants discharged to the POTW by an industrial user with an existing IWP permit.

(Water Pollution Control Board; 327 IAC 5-21-3; filed Oct 10, 2000, 3:02 p.m.: 24 IR 315)

327 IAC 5-21-4 Effect of permit issuance

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 13-18-4

Sec. 4. An IWP permit holder shall comply with the requirements of the following:

(1) The IWP permit as issued or modified.

(2) The POTW receiving the permitted industrial discharge.

(3) The local government having jurisdiction over the industrial discharge or the construction or operation of the discharging facility.

(Water Pollution Control Board; 327 IAC 5-21-4; filed Oct 10, 2000, 3:02 p.m.: 24 IR 315)

327 IAC 5-21-5 Duration and transferability of an IWP permit

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 13-18-4

Sec. 5. The provisions of 327 IAC 5-2-6 concerning the duration, continuation, and transferability of NPDES permits also apply to IWP permits issued under this rule. *(Water Pollution Control Board; 327 IAC 5-21-5; filed Oct 10, 2000, 3:02 p.m.: 24 IR 315)*

327 IAC 5-21-6 Conditions applicable to all permits

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 13-18-4

Sec. 6. (a) The following conditions apply to all IWP permits and must be expressly incorporated into the permit or incorporated by reference:

(1) Permit conditions specified in 327 IAC 5-2-8(1) through 327 IAC 5-2-8(3), 327 IAC 5-2-8(7) through 327 IAC 5-2-8(9), and 327 IAC 5-2-8(13).

(2) The upset provision according to 327 IAC 5-16-6.

(3) The bypass provision according to 327 IAC 5-16-7.

(4) The enforcement provision according to 327 IAC 5-16-4.

(b) An IWP permit may be modified in whole or in part, revoked and reissued, or terminated during its term for cause in accordance with the pertinent provisions of 327 IAC 5-2-16. An IWP permittee must:

(1) report to the commissioner plans for or information about any activity that has occurred or will occur that would constitute

cause for modification or revocation and reissuance under this section;

(2) comply with the existing IWP permit until it is modified or reissued; and

(3) abide by the commissioner's decision:

(A) to modify or revoke and reissue the permit; and

(B) require submission of a new application as required by section 3 of this rule.

(c) If the permittee does not or will not be able to comply for any reason with any discharge limitation specified in the IWP permit, the permittee shall provide the commissioner with the following information within twenty-four (24) hours of an event of permit noncompliance:

(1) A description of the discharge and cause of noncompliance.

(2) The period of noncompliance, including exact dates and times of the noncomplying event and the anticipated time when the discharge will return to compliance.

(3) Steps being taken to reduce, eliminate, and prevent recurrence of the noncomplying discharge.

(d) The permittee shall take all reasonable steps to minimize any adverse impact to the POTW or to waters of the state resulting from noncompliance with the IWP permit. *(Water Pollution Control Board; 327 IAC 5-21-6; filed Oct 10, 2000, 3:02 p.m.: 24 IR 315)*

327 IAC 5-21-7 Applicable discharge limitations and related conditions

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 13-18-4

Sec. 7. Permits issued under this rule must ensure compliance with the following as applicable:

(1) The most stringent pretreatment standards and requirements specified in 327 IAC 5-18 that are applicable to a particular discharge. For purposes of this section, a pretreatment standard or requirement is applicable if it applies by its terms to the discharge and becomes effective prior to final issuance of an IWP permit.

(2) With respect to an IWP permit to be issued to an industrial user within one (1) of the industrial categories or subcategories listed in 327 IAC 5-18-10, if an applicable categorical pretreatment standard has not yet been promulgated under Section 307(b) or 307(c) of the Clean Water Act (33 U.S.C. 1317(b) or 33 U.S.C. 1317(c)), the permit shall include a condition stating that if such a categorical pretreatment standard is subsequently promulgated that is more stringent than any discharge limit in the permit or controls a pollutant not limited in the permit, the permit shall be promptly modified or revoked and reissued in accordance with such categorical pretreatment standard.

(3) The alternative discharge limitations or standards where warranted by fundamentally different factors under 327 IAC 5-18-5(a).

(4) The best management practices to control or abate the discharge of pollutants where:

(A) numeric effluent limitations are infeasible; or

(B) the practices are reasonably necessary to achieve discharge limitations and standards or to carry out the purposes of the Clean Water Act (33 U.S.C. 1251).

(5) No permit shall be issued for the discharge of any radiological, chemical, or biological warfare agent or high level radioactive waste.

(6) If the promulgated pretreatment standards, listed in 327 IAC 5-18-10, are based on production or equivalent concentration limitations, then equivalent mass limitations may be applied in place of the standard where appropriate in the permit. If equivalent limitations are applied, the permit limitations shall be calculated in accordance with 327 IAC 5-18-4(d).

(7) Discharges that are not continuous shall be particularly described and limited, considering the following factors, as appropriate:

(A) Frequency.

(B) Total mass.

(C) Maximum rate of discharge of pollutants during the discharge.

(D) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure.

(8) If permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, then effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams prior to mixing with other waste streams or cooling water streams with the following requirements applied:

(A) The monitoring required by section 9 of this rule shall also be applied to the internal waste streams.

(B) The effluent limitations on internal waste streams shall be developed in accordance with the provisions of 327 IAC 5-2-11(h).

(Water Pollution Control Board; 327 IAC 5-21-7; filed Oct 10, 2000, 3:02 p.m.: 24 IR 316)

327 IAC 5-21-8 Schedules of compliance

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 13-18-4

Sec. 8. If necessary, an IWP permit shall contain a schedule of compliance established in accordance with 327 IAC 5-2-12(a), 327 IAC 5-2-12(b), 327 IAC 5-2-12(d), 327 IAC 5-2-12.1, 327 IAC 5-18-4(c), and 327 IAC 5-18-8. *(Water Pollution Control Board; 327 IAC 5-21-8; filed Oct 10, 2000, 3:02 p.m.: 24 IR 316)*

327 IAC 5-21-9 Monitoring

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 13-18-4

Sec. 9. Monitoring requirements shall be specified in an IWP permit:

(1) to assure compliance with discharge limitations and other terms and conditions of the permit;

(2) in accordance with the provisions of 327 IAC 5-2-13(c) through 327 IAC 5-2-13(e); and

(3) may include monitoring for one (1) or more of the following:

(A) Pollutant mass.

(B) Pollutant concentration.

(C) Other appropriate measurement for each pollutant as well as other parameters and conditions specified in the permit.

(Water Pollution Control Board; 327 IAC 5-21-9; filed Oct 10, 2000, 3:02 p.m.: 24 IR 316)

327 IAC 5-21-10 Recording and reporting of monitoring results

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 13-18-4

Sec. 10. An IWP permittee shall record and report the results of monitoring required under section 9 of this rule according to the requirements:

(1) specified in the IWP permit; and

(2) of 327 IAC 5-2-14 and 327 IAC 5-2-15.

(Water Pollution Control Board; 327 IAC 5-21-10; filed Oct 10, 2000, 3:02 p.m.: 24 IR 317)

327 IAC 5-21-11 Public notice procedures for IWP permit issuance

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 13-18-4

Sec. 11. An IWP permit shall be issued by the commissioner in accordance with the following:

(1) Prior to permit issuance, a public notice containing the information specified in 327 IAC 5-3-12(a) through 327 IAC 5-3-12(c) and a copy of the briefing memo shall be provided to the following:

(A) The permit applicant.

(B) The POTW receiving the discharge.

(C) Any interested person who has:

(i) specifically requested the notice and statement of basis for a particular draft permit; or

(ii) requested to be placed on a mailing list for receipt of such information on all IWP permits proposed for issuance.

(2) A thirty (30) day comment period on the draft permit shall be opened by the commissioner who shall duly consider comments received during this period in the final determination on the issuance of the permit.

(3) 327 IAC 5-3-14 concerning permit issuance and effective date of the permit.

(4) 327 IAC 5-3-15 concerning response to comments received pursuant to subdivision (1).
(5) 327 IAC 5-3-16 concerning judicial review of a IWP permit issued pursuant to this rule.
(Water Pollution Control Board; 327 IAC 5-21-11; filed Oct 10, 2000, 3:02 p.m.: 24 IR 317)

Rule 22. Classification of Wastewater Treatment Plants; Examination and Certification of Operators

327 IAC 5-22-1 Purpose

Authority: IC 13-14-8; IC 13-18-11-13
Affected: IC 13-18-11

Sec. 1. The purpose of this rule is to establish:
(1) a classification system of wastewater treatment plants; and
(2) the criteria by which a person may become a certified wastewater treatment operator.
The intended result of this rule is to promote excellence among wastewater treatment operators for the ultimate goal of protecting Indiana waters receiving treated wastewater discharged from wastewater treatment plants. *(Water Pollution Control Board; 327 IAC 5-22-1; filed Nov 20, 2000, 4:07 p.m.: 24 IR 963)*

327 IAC 5-22-2 Applicability

Authority: IC 13-14-8; IC 13-18-11-13
Affected: IC 13-18-11

Sec. 2. The requirements of this rule apply to a person who works at a wastewater treatment plant in the capacity of a wastewater treatment operator. *(Water Pollution Control Board; 327 IAC 5-22-2; filed Nov 20, 2000, 4:07 p.m.: 24 IR 963)*

327 IAC 5-22-3 Definitions

Authority: IC 13-14-8; IC 13-18-11-13
Affected: IC 13-11-2; IC 13-18-11

Sec. 3. In addition to the definitions contained in IC 13-11-2 and 327 IAC 1, the following definitions apply throughout this rule:

(1) "Acceptable experience" means employment in the actual hands-on operation of a wastewater treatment plant. Experience in wastewater treatment plant maintenance will be given fifty percent (50%) credit for operational experience for those employed solely in this area. Experience in wastewater laboratory will be given full credit for operational experience for those employed solely in this area.
(2) "Applicant" means a person seeking certification as a wastewater treatment operator, whether or not the person is currently employed as an operator.
(3) "Application" means a written request for certification under this rule addressed to the commissioner.
(4) "Certificate" means an appropriate document containing the following information:
    (A) Affirmation that the named person has fulfilled the requirements, including receiving a passing examination grade, necessary for the operation of the wastewater treatment plant or collection system for which application was made.
    (B) The treatment plant classification that may be operated under the issued certificate.
    (C) The date of issuance.
    (D) An identification number unique to each certificate document.
(5) "Certification card" means a card issued to a person who has fulfilled the requirements to be a wastewater certified operator and contains the following information:
    (A) The name and certificate number of the person.
    (B) The classification of wastewater treatment plant that the named person may operate.
    (C) An expiration date.
(6) "Certified operator" means a person who has:
    (A) met the requirements of this rule; and
    (B) a valid certificate for wastewater treatment.

(7) "Contact hour" means a fifty (50) to sixty (60) minute instructional session involving a qualified instructor or lecturer. Ten (10) contact hours equals one (1) continuing education unit (CEU).

(8) "Design population equivalent" means the PE for which the plant is designed.

(9) "Population equivalent" or "PE" means the calculated population that would contribute the same amount of biochemical oxygen demand (BOD) per day using the base of seventeen-hundredths (0.17) pound of five (5) day BOD per capita per day.

(10) "Responsible charge" means the person responsible for the overall daily operation, supervision, or management of a water or wastewater facility. In Class III, IV, C, or D plants, the individual supervising and responsible for a major section of the plant or an operating shift may be credited with responsible charge experience.

(11) "Training provider" means a person or organization that conducts or presents a course training session approved under this rule.

(Water Pollution Control Board; 327 IAC 5-22-3; filed Nov 20, 2000, 4:07 p.m.: 24 IR 963)

327 IAC 5-22-4 Classification of wastewater treatment plants; nonindustrial treatment plants

Authority: IC 13-14-8; IC 13-18-11-2; IC 13-18-11-13
Affected: IC 13-18-11

Sec. 4. A nonindustrial wastewater treatment plant shall be classified into one (1) of five (5) classifications based on the design population equivalent of the plant according to the following:

(1) Class I-SP includes all waste stabilization ponds, whether controlled discharge or continuous discharge, regardless of flow.

(2) Class I includes plants having a design population equivalent of less than two thousand (2,000).

(3) Class II includes plants having a design population equivalent equal to or greater than two thousand (2,000) and less than ten thousand (10,000).

(4) Class III includes plants having a design population equivalent equal to or greater than ten thousand (10,000) and less than forty thousand (40,000).

(5) Class IV includes plants having a design population equivalent greater than forty thousand (40,000).

(Water Pollution Control Board; 327 IAC 5-22-4; filed Nov 20, 2000, 4:07 p.m.: 24 IR 964)

327 IAC 5-22-5 Classification of wastewater treatment plants; industrial treatment plants

Authority: IC 13-14-8; IC 13-18-11-2; IC 13-18-11-13
Affected: IC 13-18-11

Sec. 5. (a) An industrial wastewater treatment plant shall be classified into one (1) of five (5) classifications based on the type of treatment provided, design population equivalent, and the average daily flow according to the following:

(1) Class A-SO includes industrial treatment plants having the following:

(A) Primary solids removal facilities, such as settling tanks, settling ponds, sand filters, or screens, used only for removal of settleable inorganic solids.

(B) Tanks, ponds, centrifuges, or other facilities used to separate floatable oils and solids.

(C) Simple pH neutralization may be included.

Wastewater flow is not a limiting factor in the classification of this type of industrial treatment plant.

(2) Class A includes industrial treatment plants having the following:

(A) Secondary treatment facilities, such as:

(i) waste stabilization ponds whether anaerobic or aerobic;

(ii) trickling filter;

(iii) activated sludge-type treatment plants;

(iv) aerated lagoons; or

(v) other biological treatment facilities that treat wastewater loads of less than two thousand (2,000) design population equivalent.

(B) Spray, broad, or ridge and furrow irrigation facilities that treat a wastewater flow of less than two hundred thousand (200,000) gallons per day.

(3) Class B includes industrial treatment plants having the following:

(A) Secondary treatment facilities, such as:

(i) waste stabilization ponds whether anaerobic or aerobic;
(ii) trickling filter;
(iii) activated sludge-type treatment plants;
(iv) aerated lagoons; or
(v) other biological treatment facilities that treat wastewater loads equal to or greater than two thousand (2,000) design population equivalent and less than ten thousand (10,000) design population equivalent.

(B) Spray, broad, or ridge and furrow irrigation facilities that treat a wastewater flow equal to or greater than two hundred thousand (200,000) gallons per day and less than one million (1,000,000) gallons per day.

(C) Chemical treatment facilities that process or treat wastewater flow of less than fifty thousand (50,000) gallons per day using one (1) of the following methods:
(i) Cyanide destruction.
(ii) Chromium reduction.
(iii) Acid or alkali neutralization.
(iv) Coagulation and flocculation.
(v) Air flotation.
(vi) Air stripping.
(vii) Wet air oxidation.
(viii) Ion exchange.
(ix) Ultrafiltration.
(x) Reverse osmosis.
(xi) Activated carbon filtration.

(4) Class C includes industrial treatment plants having the following:

(A) Secondary treatment facilities such as:
(i) waste stabilization ponds whether anaerobic or aerobic;
(ii) trickling filter;
(iii) activated sludge-type treatment plants;
(iv) aerated lagoons; or
(v) other biological treatment facilities that treat wastewater loads equal to or greater than ten thousand (10,000) design population equivalent and less than forty thousand (40,000) design population equivalent.

(B) Spray, broad, or ridge and furrow irrigation facilities that treat a wastewater flow equal to or greater than one million (1,000,000) gallons per day and less than four million (4,000,000) gallons per day.

(C) Chemical treatment facilities that process or treat wastewater flow equal to or greater than fifty thousand (50,000) gallons per day and less than two hundred thousand (200,000) gallons per day using one (1) of the following methods:
(i) Cyanide destruction.
(ii) Chromium reduction.
(iii) Acid or alkali neutralization.
(iv) Coagulation and flocculation.
(v) Air flotation.
(vi) Air stripping.
(vii) Wet air oxidation.
(viii) Ion exchange.
(ix) Ultrafiltration.
(x) Reverse osmosis.
(xi) Activated carbon filtration.

(5) Class D includes industrial treatment plants having the following:

(A) Secondary treatment facilities such as:
(i) waste stabilization ponds whether anaerobic or aerobic;
(ii) trickling filter;
(iii) activated sludge-type treatment plants;
(iv) aerated lagoons; or
(v) other biological treatment facilities that treat wastewater loads equal to or greater than forty thousand (40,000)

design population equivalent.

(B) Chemical treatment facilities that process or treat a wastewater flow equal to or greater than two hundred thousand (200,000) gallons per day using one (1) of the following methods:

(i) Cyanide destruction.
(ii) Chromium reduction.
(iii) Acid or alkali neutralization.
(iv) Coagulation and flocculation.
(v) Air flotation.
(vi) Air stripping.
(vii) Wet air oxidation.
(viii) Ion exchange.
(ix) Ultrafiltration.
(x) Reverse osmosis.
(xi) Activated carbon filtration.

(C) Deep well disposal systems, thermal evaporators, or incinerators used in conjunction with liquid waste disposal.

(D) Two (2) or more wastewater treatment plants at one (1) industrial site if each independent wastewater treatment plant is classified as a Class B or C wastewater treatment plant.

(E) An industry utilizing a highly complex wastewater treatment method.

(b) If an industrial wastewater treatment plant has more than one (1) treatment process despite having only one (1) wastewater treatment plant, that industrial wastewater treatment plant shall be classified into the classification of the most complex component of wastewater treatment performed in relation to the following factors:

(1) Secondary treatment PE.
(2) Spray irrigation volume.
(3) Chemical treatment volume.

(Water Pollution Control Board; 327 IAC 5-22-5; filed Nov 20, 2000, 4:07 p.m.: 24 IR 964)

327 IAC 5-22-6 Classification of wastewater treatment plants; reclassification

Authority: IC 13-14-8; IC 13-18-11-2; IC 13-18-11-13
Affected: IC 13-18-11

Sec. 6. (a) A wastewater treatment plant may be reclassified by the commissioner if a change occurs to the wastewater treatment plant's operation, treatment process, or influent wastewater. The commissioner shall do the following:

(1) Consider reclassification of a wastewater treatment plant based upon information supplied by the governing body or owner in a construction permit application for modification.

(2) Give written notice of a reclassification to the governing body or owner and to the certified operator in responsible charge indicating the following:

(A) The classification of certified operator that is necessary to supervise the reclassified wastewater treatment plant.

(B) A date by which time a certified operator required according to clause (A) must be in responsible charge of the reclassified wastewater treatment plant.

(b) A wastewater treatment plant may be reclassified by the commissioner if one (1) of the following situations exists:

(1) The wastewater treatment plant utilizes special or complex equipment or features of design requiring more difficult operation.

(2) The wastewater is unusually difficult to treat.

(3) More than ordinary chemical or bacteriological controls are required.

(4) An unusually high degree of skill is required in the operation of the wastewater treatment plant to assure continuous production of effluent that meets the water quality requirements of the receiving stream and the national pollutant discharge elimination system (NPDES) permit limitations.

(Water Pollution Control Board; 327 IAC 5-22-6; filed Nov 20, 2000, 4:07 p.m.: 24 IR 965)

327 IAC 5-22-7 Qualifications of a certified operator

Authority: IC 13-14-8; IC 13-18-11-13
Affected: IC 13-18-11

Sec. 7. (a) In order to become a wastewater treatment plant certified operator, a person must:

(1) meet the minimum qualifications specified in subsection (b); and

(2) pass the wastewater treatment certification examination required by the commissioner unless exempted by statute or rule.

(b) Prior to applying to take the commissioner's wastewater treatment certification examination, a person must have the following qualifications:

(1) The educational skills necessary to:

(A) cipher fractions and decimals;

(B) read a linear scale;

(C) calculate volumes of simple shapes;

(D) make simple computations of multiplication and division;

(E) keep records;

(F) read and write the English language to the extent of interpreting service manuals and work orders and submitting written reports; and

(G) understand basic principles of science and sanitation.

(2) Experience acceptable to the commissioner in the field of wastewater treatment that:

(A) demonstrates the examination applicant's technical knowledge;

(B) can be verified based on information from available sources, primarily the applicant's wastewater treatment plant employer; and

(C) is the result of satisfactory accomplishment of wastewater treatment plant work measured from the date of employment of the applicant to the end of the thirty (30) day grading period following the examination.

(c) In accordance with 327 IAC 8-12-3.2(e), a grade WT3, WT4, and WT5 operator is qualified to apply for the appropriate wastewater treatment certification to treat wastewater from a water treatment plant provided the operator is certified to operate that classification of water treatment plant. *(Water Pollution Control Board; 327 IAC 5-22-7; filed Nov 20, 2000, 4:07 p.m.: 24 IR 965)*

327 IAC 5-22-8 Classification of certified operators

Authority: IC 13-14-8; IC 13-18-11-3; IC 13-18-11-13
Affected: IC 13-18-11

Sec. 8. A wastewater treatment certified operator may possess a valid certification in one (1) or more of the following eleven (11) classes of certified operators:

(1) Class operator-in-training (O.I.T.) is a class for both industrial and nonindustrial wastewater treatment plant operators to whom a certificate shall be issued for a nonrenewable, one (1) year period. In order to be an eligible examination applicant for this operator class, a person must have attained the following:

(A) A high school diploma or equivalent education.

(B) Three (3) months of acceptable experience in a wastewater treatment plant or completion of an approved training course.

(2) Class A-SO is a class for industrial wastewater treatment plant operators of Class A-SO wastewater treatment plants. In order to be an eligible examination applicant for this operator class, a person must have attained the following:

(A) Completion of high school or equivalent education.

(B) One (1) year of acceptable experience in a wastewater treatment plant.

(3) Class I and Class I-SP are classes for nonindustrial wastewater treatment plant operators and Class A is a class for industrial wastewater treatment plant operators. In order to be an eligible examination applicant for these operator classes, a person must have attained the following:

(A) A high school diploma or equivalent education.

(B) One (1) year of acceptable experience at a wastewater treatment plant.

(4) Class II is a class for nonindustrial wastewater treatment plant operators, and Class B is a class for industrial wastewater treatment plant operators. In order to be an eligible examination applicant for these operator classes, a person must have

attained the following:

(A) A high school diploma or equivalent education.

(B) Three (3) years of acceptable experience at a wastewater treatment plant.

(5) Class III is a class for nonindustrial wastewater treatment plant operators, and Class C is a class for industrial wastewater treatment plant operators. In order to be an eligible examination applicant for these operator classes, a person must have attained the following:

(A) A high school diploma or equivalent education.

(B) Three (3) years of acceptable experience at a wastewater treatment plant of one (1) of the following types:

(i) Class II.

(ii) Class III.

(iii) Class IV.

(iv) Class B.

(v) Class C.

(vi) Class D.

(C) Two (2) years of the three (3) years experience required by clause (B) must be in a position of responsible charge at a wastewater treatment plant of one (1) of the following types:

(i) Class II.

(ii) Class III.

(iii) Class IV.

(iv) Class B.

(v) Class C.

(vi) Class D.

(6) Class IV is a class for nonindustrial wastewater treatment plant operators, and Class D is a class for industrial wastewater treatment plant operators. In order to be an eligible examination applicant for these operator classes, a person must have attained the following:

(A) A college degree with a major in a science curriculum or an associate's degree in a curriculum related to wastewater treatment.

(B) At least five (5) years of acceptable experience at a wastewater treatment plant of one (1) of the following types:

(i) Class III.

(ii) Class IV.

(iii) Class C.

(iv) Class D.

(C) Two (2) years of the five (5) years experience required by clause (B) must be in a position of responsible charge at a wastewater treatment plant of one (1) of the following types:

(i) Class III.

(ii) Class IV.

(iii) Class C.

(iv) Class D.

(Water Pollution Control Board; 327 IAC 5-22-8; filed Nov 20, 2000, 4:07 p.m.: 24 IR 966)

327 IAC 5-22-9 Substitution of qualifications

Authority: IC 13-14-8; IC 13-18-11-13
Affected: IC 13-18-11

Sec. 9. Education and experience qualifications required by section 8 of this rule may be fulfilled through substitutions based on the following table:

		Experience		Substitution of Experience for	Substitution of Experience for
Class	Education	Total Required	Substitutable	Responsible Charge	Education
O.I.T.	High school diploma or G.E.D.	3 months	3 months See Note (4)	____	See Note (2)

A-SO, A, I, and I-SP	High school diploma or G.E.D.	1 year	0	____	See Note (2)
B and II	High school diploma or G.E.D.	3 years	1 year See Note (1)	____	See Note (2)
C and III	High school diploma or G.E.D.	3 years at Class B, II, or higher and 2 years responsible charge	1 year See Note (1)	See Note (5)	See Note (2)
D and IV	College degree See Note (3)	5 years at Class C, III, or higher and 2 years responsible charge	2 years See Note (1)	See Note (5)	See Note (2)

Note (1): Sixteen (16) semester hours, twenty-four (24) credit hours, or twenty-four (24) continuing education units equals one (1) year of experience. There is no substitution of education for responsible charge experience. The portion of education that is applied toward substitution for experience cannot be used for the education requirement.

Note (2): One (1) year of experience equals two (2) years of high school or six (6) months of college. One (1) year of responsible charge experience equals one (1) year of college. The portion of experience that is applied toward substitution for education cannot be used for the experience requirement.

Note (3): One (1) year of college equals thirty-two (32) semester hours, forty-eight (48) credit hours, or four hundred eighty (480) contact hours.

Note (4): Three (3) months of experience may be substituted with the completion of a comprehensive course in wastewater treatment approved by the commissioner.

Note (5): Operational, responsible charge, and educational experience are interchangeable at the following ratios: Two (2) years of operational experience equals one (1) year of responsible charge experience. Two (2) years of operational experience equals one (1) year of college education or two (2) years of high school education. One (1) year of responsible charge experience equals one (1) year of college education or two (2) years of high school education. The portion of experience that is interchanged for another may not be used to satisfy any remaining experience requirement.

(Water Pollution Control Board; 327 IAC 5-22-9; filed Nov 20, 2000, 4:07 p.m.: 24 IR 967)

327 IAC 5-22-10 Responsibilities

Authority: IC 13-14-8; IC 13-18-11-13
Affected: IC 13-18-11

Sec. 10. (a) The owner or governing body of a wastewater treatment plant shall notify the commissioner when there is a change of the person serving as the certified operator in responsible charge of the wastewater treatment facility. The notification shall be made no later than thirty (30) days after a change in the operator.

(b) A certified operator may be designated as being in responsible charge of more than one (1) wastewater treatment plant if it can be demonstrated that the certified operator will give adequate supervision to all units involved. As used in this section, "adequate supervision" means that sufficient time is spent at the wastewater treatment plant on a regular basis to assure that the certified operator is knowledgeable of the actual operations and that test reports and results are representative of the actual operational conditions. *(Water Pollution Control Board; 327 IAC 5-22-10; filed Nov 20, 2000, 4:07 p.m.: 24 IR 968)*

327 IAC 5-22-11 Examination of applicants to become a certified wastewater treatment operator

Authority: IC 13-14-8; IC 13-18-11-13
Affected: IC 13-18-11

Sec. 11. (a) A standardized examination prepared to reflect the duties and responsibilities required of each classification of wastewater treatment operator shall be:

(1) used to test knowledge, ability, and judgment of an applicant to become a certified wastewater treatment operator;
(2) conducted at least annually; and
(3) held at places and times established by the commissioner:
    (A) with at least sixty (60) days advanced announcement; and
    (B) except in such cases as may be declared necessary exceptions by the commissioner.

(b) A person wishing to be examined for wastewater treatment certification shall fulfill the following requirements:

(1) Complete an application on a form approved by the commissioner that:

(A) contains true and accurate information to the best of the applicant's knowledge; and

(B) is free of omissions and misrepresentations, either of which may result in rejection of the application or revocation of any certificate previously granted.

(2) Submit a completed application, with the necessary fee, to the commissioner not later than forty-five (45) days preceding the date of the examination.

(c) The commissioner shall:

(1) review an application and supporting documents concerning the eligibility of an applicant for wastewater treatment certification examination; and

(2) issue a written notification in the form of an admission slip providing the time and place of the examination to be presented by an applicant deemed eligible for examination.

(d) A person who has been notified and scheduled to take an examination:

(1) may submit a written request to the commissioner for a postponement to take the examination one (1) offering later than the examination granted by the commissioner if:

(A) the postponement for a nonemergency reason is requested no later than fourteen (14) days prior to the examination date noticed to the applicant under subsection (c)(2);

(B) the postponement request for an emergency reason is submitted as soon as conditions of the emergency warrant;

(C) the applicant provides the commissioner an explicit description of extenuating circumstances necessitating the requested postponement; and

(D) the applicant understands that only one (1) postponement shall be allowed; or

(2) will be considered to have failed that examination if one (1) of the following occurs:

(A) The person does not attend the examination and has not requested a postponement according to subdivision (1).

(B) The person is caught cheating on an examination, an occurrence that will make an applicant ineligible to take any operator certification examination for a period of two (2) years following the examination date of the incidence of cheating.

(e) Completed examinations shall be managed by the commissioner according to the following:

(1) Graded in a manner prescribed by the commissioner with a minimum result of seventy percent (70%) needed in order to pass the examination.

(2) The commissioner shall notify an applicant of the examination result:

(A) in writing; and

(B) no later than two (2) months after the date of the examination.

(3) Examination papers shall be retained by the commissioner with an opportunity afforded to an applicant notified of having failed the examination for review of the graded examination until a date ninety (90) days prior to the next scheduled examination if the applicant submits the following to the commissioner:

(A) A written request for review of the graded examination.

(B) A statement affirming the applicant's understanding that examination review does not include the right to copy, by any means, the examination or any portion of it.

(f) A person previously certified as a wastewater treatment operator under this rule but who has failed to meet the renewal requirements according to section 14 of this rule must fulfill the following:

(1) Retake an examination.

(2) Successful completion of continuing education requirements in the amount required for one (1) renewal period as specified in section 15 of this rule.

(g) The following exceptions may allow a person to receive wastewater treatment certification without taking an examination:

(1) A person seeking wastewater treatment operator's certification by reciprocal recognition or on a provisional basis according to section 13 of this rule may file an application required by subsection (b) at the applicant's convenience, subject to expiration dates delineated in other sections of this rule.

(2) A certified operator holding a valid nonindustrial wastewater treatment certificate for Class I, Class II, Class III, or Class IV may obtain a Class A industrial certificate without examination by submitting an application required by subsection (b) for the Class A certificate.

(3) A certified operator holding a valid industrial certificate for Class A, Class B, Class C, or Class D may obtain a Class I

nonindustrial certificate without examination by submitting an application required by subsection (b) for the Class I certificate.
(Water Pollution Control Board; 327 IAC 5-22-11; filed Nov 20, 2000, 4:07 p.m.: 24 IR 968)

327 IAC 5-22-12 Wastewater treatment operator certification fees

Authority: IC 13-14-8; IC 13-18-11-6; IC 13-18-11-13
Affected: IC 13-18-11-15

Sec. 12. (a) Fees for wastewater treatment operator certification shall be as follows:

(1) Certification, including certificate	$30
(2) Certification by examination for a new classification	$30
(3) Biennial renewal fee	$30

(b) An application fee will not be returned to an applicant who:
(1) is deemed by the commissioner to be ineligible for wastewater certification examination;
(2) does not receive a minimum score of seventy percent (70%) according to section 11(e)(1) of this rule; or
(3) has violated section 11(d)(2)(B) of this rule by cheating on the operator certification examination.
(Water Pollution Control Board; 327 IAC 5-22-12; filed Nov 20, 2000, 4:07 p.m.: 24 IR 969)

327 IAC 5-22-13 Certification; reciprocity; provisional certificate

Authority: IC 13-14-8; IC 13-18-11-13
Affected: IC 13-18-11-9

Sec. 13. (a) The commissioner shall issue a certificate designating competency in the appropriate certified operator's classification to each person who makes proper application if the applicant meets the necessary requirements of education and experience and has successfully completed a class appropriate examination. Upon successful completion of examination according to section 11 of this rule, the commissioner shall issue a certificate in the wastewater treatment operator classification for which the applicant was examined.

(b) The commissioner may issue a certificate by reciprocity as outlined in IC 13-18-11-9 if the following conditions are met:
(1) A person seeking reciprocal certification submits an application for such a certificate that includes the following:
(A) Proof of current certification.
(B) Classification of the applicant.
(2) A person from another state seeking a certificate by reciprocity earns the number of continuing education contact hours for future renewal periods in the time period required by section 15 of this rule though no continuing education contact hours shall be required at the time of conferring the reciprocal certification.

(c) The commissioner may issue a provisional wastewater treatment operator's certificate if the following occur:
(1) The governing body or owner of a wastewater treatment plant submits a written request specifying a reason necessitating the provisional certification, including one (1) of the following:
(A) To fill a vacancy created by death.
(B) Resignation of the certified operator in responsible charge.
(C) Extended illness of the certified operator in responsible charge.
(2) The written request required by subdivision (1) provides the name, education, and experience of the person for whom the provisional certificate is requested.
(3) The provisional certificate nominee named under subdivision (2) submits, simultaneously with the request submitted under subdivision (1), an application as required by section 11(b) of this rule requesting examination and certification.
(4) The provisional certificate nominee named under subdivision (2) is eligible for the next scheduled wastewater certification examination.

(d) A provisional certificate shall be:
(1) issued by the commissioner in the form of a letter that specifies the conditions of the certification; and
(2) valid for the shorter of the following lengths of time:
(A) The period between the date of application and the end of the thirty (30) day grading period following the next examination that is available to the provisional certificate nominee.
(B) One (1) year.

(Water Pollution Control Board; 327 IAC 5-22-13; filed Nov 20, 2000, 4:07 p.m.: 24 IR 969)

327 IAC 5-22-14 Certificates and certification cards; renewal; duplicates

Authority: IC 13-14-8; IC 13-18-11-4; IC 13-18-11-13
Affected: IC 13-18-11-6

Sec. 14. (a) A wastewater treatment operator's certificate shall:

(1) be issued after an applicant's successful completion of the classification appropriate examination;

(2) specify the month and year that the applicant qualified and the issuance date of the certificate;

(3) be permanent in nature but will be effective only when validated by a current certification card; and

(4) not be valid if obtained through fraud, deceit, or the submission of inaccurate data on the examination application.

(b) A certificate, issued on the basis of the applicant's having been in responsible charge of a wastewater treatment plant prior to July 1, 1968, shall remain valid until one (1) of the following occurs:

(1) A change in the classification of the wastewater treatment plant for one (1) of the following reasons:

(A) Increased capacity.

(B) An increase in population served.

(C) A basic change in the method of wastewater treatment.

(D) Other change in conditions which requires a more difficult operation.

(2) The operator is no longer in direct responsible charge.

(c) A wastewater treatment certified operator must:

(1) provide permanent and visible display of his or her certificate at the wastewater treatment plant office; and

(2) obtain a duplicate certificate to display in the office of each wastewater treatment plant supervised, if the certified operator supervises more than one (1) wastewater treatment plant.

(d) A certification card shall:

(1) be issued for a time period of no more than twenty-four (24) months; and

(2) expire on the last day of June nearest the end of the biennial period following the certification card issuance.

(e) A wastewater treatment certified operator needing a replacement or duplicate certificate must submit a written request to the commissioner, including the following information:

(1) The class of wastewater treatment operator.

(2) The name and classification of the wastewater treatment plant to be operated.

(3) The date of issuance of the original certificate, if known.

(4) The certificate number.

(f) The commissioner shall accomplish the following:

(1) Issue a renewal notification to each certified wastewater treatment plant operator stating the following:

(A) The expiration date of the certified operator's certification card.

(B) The amount of fee required for certification card renewal.

(2) Mail certification card renewal notifications:

(A) at least thirty (30) days prior to expiration of the certification card; and

(B) to the last known address filed with the commissioner.

(3) Renew a certification card if:

(A) the continuing education requirements of section 15 of this rule are met;

(B) a renewal fee is submitted on or before the first day of July of the biennial period for which a certification card is to be issued; and

(C) the notice is signed and returned by the certified operator to the commissioner.

(4) Reinstate certification if the certified operator:

(A) submits payment of any arrearage of fees;

(B) submits payment of the current renewal fee;

(C) fulfills arrearage of continuing education credit requirements; and

(D) is current in meeting continuing education credit requirements.

(5) Deny renewal of a certification card that is not renewed within the time limit established in this section and IC 13-18-11-6(c) unless the operator pursues reinstatement through reapplication and reexamination following the requirements of section

11 of this rule.

(Water Pollution Control Board; 327 IAC 5-22-14; filed Nov 20, 2000, 4:07 p.m.: 24 IR 970)

327 IAC 5-22-15 Continuing education requirements

Authority: IC 13-14-8; IC 13-18-11-13
Affected: IC 13-18-11

Sec. 15. (a) A certified wastewater treatment operator shall fulfill continuing education requirements in amounts specified in Table 15(b) during each two (2) year period following the issuance of the certification card and prior to having that certification card renewed.

(b) Continuing education credits required for certification card renewal in the following classifications of certified wastewater treatment operators are listed in the following table:

Table 15(b)

Certified Wastewater Treatment Operator Classification	Continuing Education Credits Required for Renewal
Class O.I.T.	No continuing education required; certification card not renewable
Class I-SP	5 contact hours
Class A-SO	5 contact hours
Class I	10 contact hours
Class A	10 contact hours
Class II	10 contact hours
Class B	10 contact hours
Class III	20 contact hours
Class C	20 contact hours
Class IV	20 contact hours
Class D	20 contact hours

(c) Continuing education credits required according to Table 15(b) must adhere to a distribution of subject matter according to the following:

(1) A minimum of seventy percent (70%) of the required continuing education contact hours shall be obtained from the technical category of approved continuing education courses.

(2) No more than thirty percent (30%) of the required continuing education contact hours shall be obtained from nontechnical subject matter of approved continuing education courses.

(d) A person having a valid certification card in more than one (1) wastewater treatment operator classification:

(1) may be given duplicate continuing education credit from a single approved continuing education course for each wastewater treatment certification to which the subject matter is applicable; and

(2) must obtain the greatest number of continuing education contact hours required by the various certifications held within the shared one (1) year of certification overlap in order not to be required to obtain continuing education for each certificate held.

(Water Pollution Control Board; 327 IAC 5-22-15; filed Nov 20, 2000, 4:07 p.m.: 24 IR 970)

327 IAC 5-22-16 Continuing education credit; criteria for approval

Authority: IC 13-14-8; IC 13-18-11-13
Affected: IC 13-18-11

Sec. 16. (a) Continuing education contact hour credit shall be given only for completed course work that has been approved by the commissioner according to the following:

(1) A training provider has submitted an application and received continuing education course approval from the commissioner prior to publicly offering a wastewater treatment continuing education course. The application must:

(A) be submitted on a form approved by the commissioner;

(B) be submitted no less than sixty (60) days before the first date when the course is conducted;

(C) be accompanied by a written course outline or brochure; and

(D) contain:

(i) name, address, and telephone number of a course sponsor, training provider, or other contact person;

(ii) name of course;

(iii) specific topics that are included in the course presentations;

(iv) amount of time devoted to each topic;

(v) instructor's name and qualifications, including:

(AA) educational background;

(BB) professional experience; and

(CC) current professional affiliation; and

(vi) dates and locations where the course will be offered.

(2) The wastewater treatment continuing education course meets the following requirements:

(A) The course deals with one (1) or more of the following as determined by the commissioner:

(i) Technical matters related directly to wastewater treatment.

(ii) General matters related to the responsibilities of a certified operator.

(B) Each instructor and speaker is qualified by academic work or practical experience to teach the proposed wastewater treatment continuing education course.

(b) A certified wastewater treatment operator may petition the commissioner for approval of a wastewater treatment continuing education course if the following procedures are met:

(1) An application of petition is submitted to the commissioner prior to or within thirty (30) days of course completion.

(2) The application must contain the information required by subsection (a)(1)(A), (a)(1)(C), and (a)(1)(D).

(3) The certified operator must supply written proof of attendance at the wastewater treatment continuing education course within thirty (30) days following course completion.

(c) A certified operator who is an instructor or speaker at a wastewater treatment continuing education course shall be credited the same number of contact hours as the students of the course.

(d) Continuing education contact hours earned in another state, whether that state has reciprocity with Indiana for the purpose of transferring a certificate of wastewater treatment operator competency, may be eligible for credit if the following are met:

(1) The commissioner is provided the information required by subsection (a)(1)(A), (a)(1)(C), and (a)(1)(D) for the course work from which the contact hours were earned.

(2) The information required by subdivision (1) is submitted to the commissioner.

(3) The commissioner approves the course work from which the contact hours were earned.

(e) Partial credit shall not be given to instructors, speakers, or students participating in less than a complete wastewater treatment continuing education course. *(Water Pollution Control Board; 327 IAC 5-22-16; filed Nov 20, 2000, 4:07 p.m.: 24 IR 971)*

327 IAC 5-22-17 Continuing education credit; training provider responsibilities

Authority: IC 13-14-8; IC 13-18-11-13
Affected: IC 13-18-11

Sec. 17. (a) A training provider shall generate records of each wastewater treatment continuing education course conducted that include the following:

(1) The date of the wastewater treatment continuing education course.

(2) The name of each person in attendance at the wastewater treatment continuing education course.

(3) The length of time of the course.

(4) The instructor's name.

(5) The course content.

(6) The name of the organization sponsoring the course.

(b) Records required by subsection (a) shall be maintained for a five (5) year period following the presentation of each wastewater treatment continuing education course.

(c) A training provider must submit the information required by subsection (a) to the commissioner according to the following:

(1) On a form approved by the commissioner.

(2) Within thirty (30) days of the conclusion of the wastewater treatment continuing education course.

(Water Pollution Control Board; 327 IAC 5-22-17; filed Nov 20, 2000, 4:07 p.m.: 24 IR 972)

327 IAC 5-22-18 Suspension or revocation of certification

Authority: IC 13-14-8; IC 13-18-11-13
Affected: IC 4-21.5; IC 13-18-11-8

Sec. 18. The commissioner may suspend or revoke the wastewater treatment certificate of a wastewater treatment certified operator, following a hearing pursuant to IC 4-21.5, if it is found that the certified operator has violated any provision of IC 13-18-11-8. *(Water Pollution Control Board; 327 IAC 5-22-18; filed Nov 20, 2000, 4:07 p.m.: 24 IR 972)*

*