

Final Rules

TITLE 11 CONSUMER PROTECTION DIVISION OF THE OFFICE OF THE ATTORNEY GENERAL

LSA Document #01-265(F)

DIGEST

Adds 11 IAC to implement IC 24-4.7 concerning telephone solicitation of consumers. Adds 11 IAC 1-1-2 defining “contract made under a telephone sales call”, 11 IAC 1-1-4 defining “express request”, 11 IAC 1-1-6 defining “residential telephone number”, and 11 IAC 1-1-7 defining “residential telephone subscriber”. Adds 11 IAC 1-2-1 requiring telephone solicitors to keep certain information regarding telephone solicitations as part of the solicitors’ business records. Adds 11 IAC 1-2-3 providing for the consumer protection division’s access to telephone solicitors’ records regarding telephone solicitations. Adds 11 IAC 1-3-1 establishing mitigating factors that may be considered by the attorney general in deciding whether to seek civil penalties for violations of IC 24-4.7. Adds 11 IAC 1-4-1 clarifying when the attorney general will consider certain persons to have sufficiently complied with the disclosure requirements of IC 24-4.7-4-2. Adds 11 IAC 2-2 describing the manner in which consumers may register with the telephone privacy list, describing the minimum information consumers must provide to register with the list, establishing deadlines for inclusion of new registrations on the next quarterly publication of the list, and providing the manner in which consumers may revoke the consumer’s registration with the list. Adds 11 IAC 2-3 allowing certain persons who are not consumers to register residential telephone numbers with the telephone privacy list, and prohibiting such persons from registering telephone numbers that are not residential telephone numbers. Adds 11 IAC 2-5 providing for the removal of telephone numbers from the telephone privacy list. Adds 11 IAC 2-6-1 setting the fee for obtaining the telephone privacy list. Adds 11 IAC 2-6-3 requiring the division to make the telephone privacy list available for purchase in printed form. Adds 11 IAC 2-6-4 allowing the division to make the telephone privacy list available for purchase in other than printed form. Adds 11 IAC 2-6-5 establishing the information provided in the telephone privacy list. Adds 11 IAC 2-8 limiting the use of the telephone privacy list by telephone solicitors and persons generally. Incorporates by reference definitions set forth at IC 24-4.7-2. Effective 30 days after filing with the secretary of state.

11 IAC

SECTION 1. 11 IAC IS ADDED TO READ AS FOLLOWS:

TITLE 11 CONSUMER PROTECTION DIVISION OF THE OFFICE OF THE ATTORNEY GENERAL

ARTICLE 1. TELEPHONE SOLICITATIONS

Rule 1. Definitions

11 IAC 1-1-1 Applicability

Authority: IC 4-6-9-8; IC 24-4.7-3-7

Affected: IC 24-4.7-2

Sec. 1. The definitions set forth at IC 24-4.7-2, as supplemented in this rule, apply throughout this title. (*Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-1; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1854*)

11 IAC 1-1-2 “Contract made under a telephone sales call” defined

Authority: IC 4-6-9-8; IC 24-4.7-3-7

Affected: IC 24-4.7-4-4; IC 24-4.7-4-5

Sec. 2. For the purposes of IC 24-4.7-4-4 and IC 24-4.7-4-5, a “contract made under a telephone sales call” does not include a contract for the sale, purchase, or mortgage of real estate if:

(1) the sale, purchase, or mortgage of real estate is not completed; and

(2) the payment or authorization of payment is not required;

solely as a result of the telephone sales call. (*Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-2; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1854*)

11 IAC 1-1-3 “Division” defined

Authority: IC 4-6-9-8; IC 24-4.7-3-7

Affected: IC 24-4.7-2-4

Sec. 3. As used in this title, “division” refers to the consumer protection division of the office of the attorney general. (*Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-3; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1854*)

11 IAC 1-1-4 “Express request” defined

Authority: IC 4-6-9-8; IC 24-4.7-3-7

Affected: IC 24-4.7-1-1

Sec. 4. For the purposes of IC 24-4.7-1-1, “express request” means a specific grant of authority made by a residential telephone subscriber at a verifiable date and time authorizing a telephone solicitor to make a telephone sales call to the residential telephone subscriber’s residential telephone number. The grant of authority:

(1) shall not be included as a condition of a contract for the sale of consumer goods or services;

(2) shall not be given by a person other than the residential telephone subscriber to whom the call will be made; and

(3) if in writing, must be set forth in a document that:

(A) is separate from any written contract between the residential telephone subscriber and the telephone solicitor authorized to make the telephone sales call;

(B) is printed in 12-point boldface type or larger; and

(C) contains only the grant of authority.

(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-4; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1854)

11 IAC 1-1-5 “Person” defined

Authority: IC 4-6-9-8; IC 24-4.7-3-7
 Affected: IC 4-6-9-8; IC 24-4.7-3-7

Sec. 5. As used in this title, “person” means an individual, an incorporated or unincorporated organization, an association, or any other legal entity. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-5; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1855)*

11 IAC 1-1-6 “Residential telephone number” defined

Authority: IC 4-6-9-8; IC 24-4.7-3-7
 Affected: IC 24-4.7

Sec. 6. As used in this title and for the purposes of IC 24-4.7, “residential telephone number” means a number held or used by a residential telephone subscriber that terminates at that subscriber’s place of residence. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-6; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1855)*

11 IAC 1-1-7 “Residential telephone subscriber” defined

Authority: IC 4-6-9-8; IC 24-4.7-3-7
 Affected: IC 24-4.7

Sec. 7. As used in this title and for the purposes of IC 24-4.7, “residential telephone subscriber” means an individual: (1) who has subscribed to telephone service terminating at that individual’s residence, or the individual’s spouse; or (2) for whose use another person subscribes to telephone service terminating at the individual’s place of residence. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-7; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1855)*

11 IAC 1-1-8 “Telephone privacy list” defined

Authority: IC 4-6-9-8; IC 24-4.7-3-7
 Affected: IC 24-4.7-3

Sec. 8. As used in this title, “telephone privacy list” refers to the no telephone sales solicitation listing published by the division under IC 24-4.7-3. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-1-8; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1855)*

Rule 2. Telephone Solicitors’ Maintenance of Records Related to Telephone Sales Solicitations

11 IAC 1-2-1 Telephone solicitors’ required records

Authority: IC 4-6-9-8; IC 24-4.7-3-7
 Affected: IC 24-4.7

Sec. 1. A telephone solicitor subject to IC 24-4.7 shall keep the following information as part of its business records:

- (1) the name and telephone number of each consumer contacted by a telephone sales call;
- (2) all substantially different advertising, brochures, telemarketing scripts, and promotional materials used in its solicitation of the consumer;
- (3) all express requests authorizing the telephone solicitor to contact the consumer; and
- (4) for all current and former employees directly involved in telephone sales, the employee’s:
 - (A) name;
 - (B) last known home address;
 - (C) last known telephone number; and
 - (D) job title(s).

(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-2-1; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1855)

11 IAC 1-2-2 Length of time telephone solicitors must retain records

Authority: IC 4-6-9-8; IC 24-4.7-3-7
 Affected: IC 24-4.7

Sec. 2. A telephone solicitor shall keep the information in section 1 of this rule for two (2) years following the date the information first becomes part of its records. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-2-2; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1855)*

11 IAC 1-2-3 Attorney general’s access to solicitor’s records

Authority: IC 4-6-9-8; IC 24-4.7-3-7
 Affected: IC 24-4.7

Sec. 3. Within ten (10) days of an oral or written request by the division, a telephone solicitor shall make the records it keeps pursuant to this rule available for inspection and copying by the attorney general during normal business hours. This section does not limit the attorney general’s ability to inspect and copy material pursuant to any other means authorized by law. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-2-3; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1855)*

Rule 3. Enforcement of Violations of IC 24-4.7

11 IAC 1-3-1 Mitigating factors

Authority: IC 4-6-9-8; IC 24-4.7-3-7
 Affected: IC 24-4.7-3-2; IC 24-4.7-4; IC 24-4.7-5

Sec. 1. In any proceeding brought against a telephone solicitor by the attorney general under IC 24-4.7-5, the attorney general may consider the following as mitigating factors in the attorney general’s decision to seek civil penalties under IC 24-4.7-5:

- (1) That the defendant has obtained, from the division or the agent with which the division has contracted under IC 24-4.7-3-2, the most recently published telephone privacy list.

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(2) That the defendant has maintained the records required by 11 IAC 1-2-1.

(3) That the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of IC 24-4.7-4.

(4) That the defendant has not previously been found to have violated IC 24-4.7.

(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-3-1; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1855)

Rule 4. Charitable Solicitor's Disclosure

11 IAC 1-4-1 Charitable solicitor's disclosure

Authority: IC 4-6-9-8; IC 24-4.7-3-7

Affected: IC 23-7-8-1; IC 24-4.7-4-2

Sec. 1. The attorney general shall consider a person engaged in noncommercial speech, including a professional fundraiser consultant or solicitor as defined at IC 23-7-8-1 who calls on behalf of such charitable organization, to have sufficiently complied with IC 24-4.7-4-2 if the person makes the disclosures required by IC 24-4.7-4-2 before requesting a donation. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 1-4-1; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1856)*

ARTICLE 2. PROVISION OF LISTING OF TELEPHONE NUMBERS NOT TO BE SOLICITED

Rule 1. Applicability

11 IAC 2-1-1 Applicability

Authority: IC 4-6-9-8; IC 24-4.7-3-7

Affected: IC 24-4.7-3

Sec. 1. This article governs the division's provision of the telephone privacy list. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-1-1; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1856)*

Rule 2. Consumer Registration with the Telephone Privacy List

11 IAC 2-2-1 Manner of consumer registration

Authority: IC 4-6-9-8; IC 24-4.7-3-7

Affected: IC 24-4.7-3-2

Sec. 1. A consumer who resides in Indiana may request that his or her residential telephone number or numbers be added to the telephone privacy list by submitting a request in any manner provided by the division, or by the agent with which the division has contracted under IC 24-4.7-3-2, which may include any of the following:

(1) Completing a written form designed by the division, or the agent with which the division has contracted under

IC 24-4.7-3-2, for the purpose of recording a consumer's request to be placed on the telephone privacy list.

(2) Calling a toll-free number established by the division, or by the agent with which the division has contracted under IC 24-4.7-3-2, for the purpose of recording a consumer's request to be placed on the telephone privacy list, and providing all the information requested.

(3) Accessing the appropriate Internet site established by the division, or by the agent with which the division has contracted under IC 24-4.7-3-2, for the purpose of recording a consumer's request to be placed on the telephone privacy list and inputting the proper data requested by the Web site prompts.

(4) Submitting a request in any other format that the division or the agent with which the division has contracted under IC 24-4.7-3-2 may from time to time establish.

(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-2-1; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1856)

11 IAC 2-2-2 Required information for consumer registration

Authority: IC 4-6-9-8; IC 24-4.7-3-7

Affected: IC 24-4.7-3

Sec. 2. Any method of registering with the telephone privacy list shall require the consumer to provide, at a minimum, the following information:

(1) The consumer's name.

(2) The residential telephone number or numbers the consumer wishes to register with the telephone privacy list.

(3) The consumer's address.

(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-2-2; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1856)

11 IAC 2-2-3 Deadline for telephone numbers' inclusion in next quarterly publication of telephone privacy list

Authority: IC 4-6-9-8; IC 24-4.7-3-7

Affected: IC 24-4.7-3-1

Sec. 3. The telephone numbers of properly completed requests for registration with the telephone privacy list shall become part of the telephone privacy list in the quarter following the deadline for receipt of registration requests according to the following schedule:

<u>Calendar Quarter</u>	<u>Receipt Deadline</u>
January–March	November 1
April–June	February 1
July–September	May 1
October–December	August 1

(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-2-3; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1856)

11 IAC 2-2-4 Consumers' revocation of registration

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7-3-2

Sec. 4. A consumer may remove his or her residential telephone number or numbers from the telephone privacy list by submitting a revocation notice for the number or numbers to the division or the agent with which the division has contracted under IC 24-4.7-3-2. Such request may be submitted in any manner established by the division as described in section 1 of this rule, and must contain at least the information required in section 2 of this rule. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-2-4; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1857)*

Rule 3. Registration with the Telephone Privacy List by Persons Not Consumers, but Holding or Controlling Residential Telephone Numbers Used by Consumers

11 IAC 2-3-1 Registration by persons not consumers

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7-3

Sec. 1. A person who is not a consumer, but who subscribes to residential telephone numbers used by consumers, may register such numbers with the telephone privacy list in any manner established by the division as described in 11 IAC 2-2-1. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-3-1; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1857)*

11 IAC 2-3-2 Prohibition against registration of nonresidential telephone numbers

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7-3-1; IC 24-4.7-3-2

Sec. 2. A person described in section 1 of this rule may not register telephone numbers that are not residential telephone numbers. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-3-2; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1857)*

Rule 4. Consumers and Persons Submitting More than 10 Residential Telephone Numbers for Registration with the Telephone Privacy List

11 IAC 2-4-1 Registration of more than 10 telephone numbers

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7-3-1; IC 24-4.7-3-2

Sec. 1. A consumer, or a person described in 11 IAC 2-3-1, may register more than ten (10) residential telephone numbers with the telephone privacy list if the consumer or person provides:

- (1) the consumer's or person's name;
- (2) the residential telephone numbers the consumer or person wants to register with the telephone privacy list; and

(3) the consumer's or person's address; in any manner established by the division for registering more than ten (10) such numbers. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-4-1; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1857)*

Rule 5. Removal of Telephone Numbers from the Telephone Privacy List

11 IAC 2-5-1 Division's authority to purge nonresidential telephone numbers

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7-3-1; IC 24-4.7-3-2

Sec. 1. The division may purge or may direct the agent with which it has contracted pursuant to IC 24-4.7-3-2 to purge from the telephone privacy list any number that is not a residential telephone number. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-5-1; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1857)*

11 IAC 2-5-2 Division's authority to purge telephone numbers no longer assigned to consumer

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7-3-1; IC 24-4.7-3-2

Sec. 2. The division may purge or may direct the agent with which it has contracted pursuant to IC 24-4.7-3-2 to purge from the telephone privacy list a residential telephone number if the division learns that the number is no longer assigned to the consumer who registered the number. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-5-2; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1857)*

11 IAC 2-5-3 Purging registered telephone number upon consumer's revocation notice

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7-3-1; IC 24-4.7-3-2

Sec. 3. The division shall purge or shall direct the agent with which it has contracted pursuant to IC 24-4.7-3-2 to purge a residential telephone number of a consumer who submits the revocation notice described in 11 IAC 2-2-4. Upon receiving such revocation notice, the division will remove the relevant telephone number from the telephone privacy list according to the same schedule used for adding residential telephone numbers to the telephone privacy list. *(Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-5-3; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1857)*

Rule 6. Access to the Telephone Privacy List

11 IAC 2-6-1 Fee for obtaining telephone privacy list

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7-3-1

Sec. 1. The fee for obtaining the telephone privacy list is

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three hundred dollars (\$300). The person paying this fee is entitled to four (4) quarterly publications of the telephone privacy list. (*Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-6-1; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1857*)

11 IAC 2-6-2 Requirements for obtaining telephone privacy list

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7-3-1; IC 24-4.7-3-2

Sec. 2. A person may obtain a copy of the telephone privacy list established under IC 24-4.7-3 by:

- (1) paying the fee set forth at section 1 of this rule; and
- (2) providing the information requested by the division or by the agent with which the division has contracted pursuant to IC 24-4.7-3-2.

(*Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-6-2; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1858*)

11 IAC 2-6-3 Division's provision of telephone privacy list in printed form

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7-3-1; IC 24-4.7-3-2

Sec. 3. The division shall make a printed copy of the telephone privacy list available for purchase by persons complying with section 2 of this rule. (*Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-6-3; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1858*)

11 IAC 2-6-4 Division's provision of telephone privacy list in nonprinted form

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7-3-1; IC 24-4.7-3-2; IC 24-4.7-4

Sec. 4. The division may make the telephone privacy list available for purchase in other forms by persons complying with section 2 of this rule if the division determines that such additional forms will further the efficient dissemination of the telephone privacy list and encourage compliance with IC 24-4.7-4 or this title. (*Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-6-4; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1858*)

11 IAC 2-6-5 Information contained in published telephone privacy list

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7-3-1; IC 24-4.7-3-2

Sec. 5. The telephone privacy list published by the division shall, regardless of its form, contain only the residential telephone numbers that telephone solicitors are prohibited from calling under IC 24-4.7-4. (*Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-6-5; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1858*)

Rule 7. Inclusion of National Database into Telephone Privacy List

11 IAC 2-7-1 Inclusion of national database into telephone privacy list

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7-3-1; IC 24-4.7-3-2; IC 24-4.7-4-3

Sec. 1. If, pursuant to 42 U.S.C. 227(c)(3), the Federal Communications Commission establishes a single national data base of telephone numbers of subscribers who object to receiving telephone solicitations, the division shall include the part of such single national data base that relates to Indiana in the data base established under IC 24-4.7-4-3. (*Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-7-1; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1858*)

Rule 8. Use of the Telephone Privacy List

11 IAC 2-8-1 Telephone solicitors' use of the telephone privacy list

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7

Sec. 1. A telephone solicitor shall not use the telephone privacy list, or the information accepted by the division in compiling it, for any purpose other than complying with IC 24-4.7, in a proceeding or action brought under IC 24-4.7, or with this title. (*Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-8-1; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1858*)

11 IAC 2-8-2 Limits to commercial use of telephone privacy list

Authority: IC 4-6-9-8; IC 24-4.7-3-7
Affected: IC 24-4.7

Sec. 2. A person shall not use the telephone privacy list, or the information accepted by the division in compiling it, for any commercial purpose other than telephone solicitations made in compliance with IC 24-4.7 and this title. (*Consumer Protection Division of the Office of the Attorney General; 11 IAC 2-8-2; filed Jan 18, 2002, 5:00 p.m.: 25 IR 1858*)

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**TITLE 50 DEPARTMENT OF LOCAL GOVERNMENT
FINANCE**

NOTE: Under IC 6-1.1-31-1, the name of the State Board of Tax Commissioners is changed to Department of Local Government Finance, effective January 1, 2002.

LSA Document #01-347(F)

DIGEST

Adds 50 IAC 5.2 for the assessment of public utility owned property. Repeals 50 IAC 5.1. Partially effective 30 days after filing with the secretary of state and partially effective March 1, 2002.

50 IAC 5.1

50 IAC 5.2

SECTION 1. 50 IAC 5.2 IS ADDED TO READ AS FOLLOWS:

ARTICLE 5.2. PUBLIC UTILITY ASSESSMENT

Rule 1. Definitions

50 IAC 5.2-1-1 Applicability

Authority: IC 6-1.1-31-1

Affected: IC 6-1.1-8-2

Sec. 1. Unless otherwise indicated, the definitions contained in 50 IAC 4.3-1-1 also apply to this article. However, if a definition in 50 IAC 4.3-1-1 conflicts with a definition contained in this article, the definition under this article controls with respect to the assessment and taxation of public utility property. The definitions in this rule apply throughout this article. All references to the United States Code in this article refer to the version in effect on December 21, 2001. (Department of Local Government Finance; 50 IAC 5.2-1-1; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1859)

50 IAC 5.2-1-2 “Annual report” defined

Authority: IC 6-1.1-31-1

Affected: IC 6-1.1-8-2; IC 6-1.1-8-19

Sec. 2. “Annual report” means the statement required by IC 6-1.1-8-19. (Department of Local Government Finance; 50 IAC 5.2-1-2; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1859)

50 IAC 5.2-1-3 “Base year value” defined

Authority: IC 6-1.1-31-1

Affected: IC 6-1.1-8-2

Sec. 3. (a) The base year value of the leased property, plus freight and installation costs, must be used in determining the value of leased personal property subject to assessment.

(b) “Base year value” means the dollar amount that a willing buyer would pay the owner in an arm’s-length transaction to acquire the personal property encumbered by the lease at the beginning of the lease term.

(c) Determining base year value. For purposes of applying this definition to a specific situation, “base year value” shall be computed in the following order of preference:

(1) The alternative acquisition cost, which is the amount stated in the lease the lessee would have had to pay to purchase the leased property instead of leasing it. This will be deemed to be the base year value, provided that the local assessor or state board does not determine that such amount is not reflective of the market value of the leased property.

(2) The factory delivered price for the personal property subject to the lease plus freight, installation costs, and a profit factor.

(3) The present value of the lease payments at the inception of the lease computed in accordance with Section 10 [50 IAC 5.2-10].

(4) The insurable value in the year the lease was first consummated. or

(5) The capitalized value of the annual lease payments over the term of the lease.

(d) If the state board issues an instructional bulletin or administrative adjudication prescribing the base year value of certain property pursuant to this article, such prescribed value shall be the base year value of the property. (Department of Local Government Finance; 50 IAC 5.2-1-3; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1859)

50 IAC 5.2-1-4 “Bridge company” defined

Authority: IC 6-1.1-31-1

Affected: IC 6-1.1-8-2

Sec. 4. “Bridge company” has the meaning set forth in IC 6-1.1-8-2. (Department of Local Government Finance; 50 IAC 5.2-1-4; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1859)

50 IAC 5.2-1-5 “Bus company” defined

Authority: IC 6-1.1-31-1

Affected: IC 6-1.1-8-2; IC 6-1.1-8-7

Sec. 5. “Bus company” has the meaning set forth in IC 6-1.1-8-2. The term does not include a company that exclusively operates charter buses that do not have any scheduled routes, because such companies are not considered to be public utility companies. (Department of Local Government Finance; 50 IAC 5.2-1-5; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1859)

50 IAC 5.2-1-6 “Capital lease” defined

Authority: IC 6-1.1-31-1

Affected: IC 6-1.1-8-2

Sec. 6. “Capital lease” means a financing instrument and includes sales-type leases, direct financing leases, and leveraged leases. These leases must meet one (1) or more of the following conditions to be so classified:

(1) Ownership of the property is transferred to the lessee at or before the end of the lease term.

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(2) The lease permits the lessee to purchase the property or renew the lease at a price or rental that is substantially less than the estimated market value or fair rental of the leased property at the time the option to purchase or renew the lease is exercised.

(3) The lease term is equal to seventy-five percent (75%) or more of the estimated economic life of the leased property.

(4) The present value of the minimum lease payments equals or exceeds ninety percent (90%) of the fair market value of the leased property at the inception of the lease.

In addition, the leases are or should be capitalized by the lessee for federal income tax purposes. (*Department of Local Government Finance; 50 IAC 5.2-1-6; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1859*)

50 IAC 5.2-1-7 "Construction in process" defined

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-8-2

Sec. 7. "Construction in process" means tangible personal property not placed in service. It includes tangible personal property that has not been depreciated and is not yet eligible for federal income tax depreciation. It does not include inventory, leased property, or returnable containers. (*Department of Local Government Finance; 50 IAC 5.2-1-7; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1860*)

50 IAC 5.2-1-8 "Definite situs" defined

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-8-2

Sec. 8. "Definite situs" has the meaning set forth in IC 6-1.1-8-2. (*Department of Local Government Finance; 50 IAC 5.2-1-8; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1860*)

50 IAC 5.2-1-9 "Distributable property" defined

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-8-2

Sec. 9. "Distributable property" means property owned or used by a public utility company that is not locally assessed real property or locally assessed personal property. Distributable property is that property used to furnish the public utility service. It consists of the public utility company's transportation system, production plant, transmission system, distribution system, and right-of-way. The state board shall distribute the assessed value of such property to the appropriate taxing district. (*Department of Local Government Finance; 50 IAC 5.2-1-9; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1860*)

50 IAC 5.2-1-10 "Express company" defined

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-8-2

Sec. 10. "Express company" has the meaning set forth in

IC 6-1.1-8-2. (*Department of Local Government Finance; 50 IAC 5.2-1-10; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1860*)

50 IAC 5.2-1-11 "Fixed property" defined

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-8-2

Sec. 11. "Fixed property" means property that is assessed by an assessing official in the taxing district where it is located. The term may include both locally assessed personal property and locally assessed real property. Fixed property is also known as locally assessed property. (*Department of Local Government Finance; 50 IAC 5.2-1-11; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1860*)

50 IAC 5.2-1-12 "Inventory" defined

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-3-11; IC 6-1.1-8-2

Sec. 12. "Inventory" means the following:

(1) Property defined under IC 6-1.1-3-11, and includes the aggregate of those elements of cost incurred to acquire or produce items of tangible personal property as defined in 50 IAC 4.3-1-1(11), that are:

- (A) held for sale in the ordinary course of business;
- (B) currently in the process of production for subsequent sale;
- (C) ultimately to be consumed in the production of the goods or services to be available for sale;
- (D) used in marketing or distribution activities; or
- (E) critical spare parts.

(2) The term includes the following:

- (A) Goods or commodities awaiting sale, which include, but are not limited to, the following:
 - (i) The merchandise of a retail or wholesale concern.
 - (ii) The finished goods of a manufacturer.
 - (iii) Commodities from farms, mines, and quarries.
 - (iv) Goods that are used or trade-in merchandise and byproducts of a manufacturer.
- (B) Goods or commodities that are in the course of production at the Indiana location, that is, items needing further processing to be considered finished or ready for shipment.
- (C) Goods that will be consumed or used in either the Indiana manufacturing process or in any other manner by the taxpayer, directly or indirectly. This category would include, but not be limited to, the following:
 - (i) Raw materials.
 - (ii) Supplies.
 - (iii) Repair parts.
 - (iv) Critical spare parts.
 - (v) Expendable tools.
 - (vi) Samples.
- (D) To the extent that critical spare parts are depreciated for federal tax purposes, they shall be treated as such and subject to 50 IAC 5.2-6.

(Department of Local Government Finance; 50 IAC 5.2-1-12; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1860)

50 IAC 5.2-1-13 “Leased property” defined

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-8-2

Sec. 13. “Leased property” means those units of tangible personal property defined in 50 IAC 4.3-1-1(11), excluding inventory and returnable containers as defined in 50 IAC 4.3-1-1(7) and 50 IAC 4.3-6-3, which are leased, rented, or otherwise made available to a person other than the owner under a bailment agreement, written or unwritten, on the assessment date. The term includes, but is not limited to:

- (1) business machines;
- (2) postage meters;
- (3) machinery;
- (4) equipment;
- (5) furniture;
- (6) fixtures;
- (7) coin-operated devices;
- (8) tools;
- (9) burglar alarms;
- (10) signs and other advertising devices; and
- (11) motor vehicles;

to the extent taxable as personal property that are loaned, leased, used, or otherwise held in the possession of a person other than the owner on the assessment date whether or not any fees are charged. *(Department of Local Government Finance; 50 IAC 5.2-1-13; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1861)*

50 IAC 5.2-1-14 “Light, heat, or power company” defined

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-8-2

Sec. 14. “Light, heat, or power company” has the meaning set forth in IC 6-1.1-8-2. Light, heat, and power companies may be:

- (1) investor-owned electric and steam heat companies;
- (2) rural electric membership corporations or cooperatives; or
- (3) natural gas distribution companies.

(Department of Local Government Finance; 50 IAC 5.2-1-14; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1861)

50 IAC 5.2-1-15 “Locally assessed personal property” defined

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-8-2

Sec. 15. “Locally assessed personal property” means tangible personal property owned or used by the public utility company (except for a railroad company) that is not used as part of the company’s production plant, transmission system, or distribution system. For a railroad com-

pany, “locally assessed personal property” means tangible personal property owned or used by the railroad company that is not used in the operation of the railroad. *(Department of Local Government Finance; 50 IAC 5.2-1-15; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1861)*

50 IAC 5.2-1-16 “Locally assessed property” defined

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-8-2

Sec. 16. “Locally assessed property” means property that is assessed by an assessing official in the taxing district where it is located. The term includes both locally assessed personal property and locally assessed real property. Locally assessed property is also known as fixed property. *(Department of Local Government Finance; 50 IAC 5.2-1-16; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1861)*

50 IAC 5.2-1-17 “Locally assessed real property” defined

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-8-2

Sec. 17. “Locally assessed real property” means fixed real property owned or used by a public utility company that is assessed by an assessing official in the taxing district where it is located. Real property may include both land and improvements. It does not include the right-of-way of a public utility company. For a railroad company, it includes the right-of-way land and buildings leased to commercial tenants, the land adjoining the right-of-way devoted to industrial parks, any abandoned right-of-way, and railroad land and buildings not being used for railroad operations. *(Department of Local Government Finance; 50 IAC 5.2-1-17; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1861)*

50 IAC 5.2-1-18 “Materials and supplies” defined

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-8-2

Sec. 18. “Materials and supplies” shall have the meaning set forth in 50 IAC 4.3-1-1(7)(B)(iii). *(Department of Local Government Finance; 50 IAC 5.2-1-18; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1861)*

50 IAC 5.2-1-19 “Operating lease” defined

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-8-2

Sec. 19. “Operating lease” means a lease other than a capital lease. *(Department of Local Government Finance; 50 IAC 5.2-1-19; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1861)*

50 IAC 5.2-1-20 “Original return” defined

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-8-2

Sec. 20. “Original return” means a return filed with the state board by the statutory due date or, if an extension is

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granted, the extended filing date. (*Department of Local Government Finance; 50 IAC 5.2-1-20; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1861*)

50 IAC 5.2-1-21 "Pipeline company" defined

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-8-2

Sec. 21. "Pipeline company" has the meaning set forth in IC 6-1.1-8-2. (*Department of Local Government Finance; 50 IAC 5.2-1-21; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1862*)

50 IAC 5.2-1-22 "Public utility company" defined

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-8

Sec. 22. "Public utility company" means a company that is subject to taxation under IC 6-1.1-8 regardless of whether the company is operated by an individual, a partnership, an association, a corporation, a fiduciary, or any other entity. (*Department of Local Government Finance; 50 IAC 5.2-1-22; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1862*)

50 IAC 5.2-1-23 "Public utility property" defined

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-8-2

Sec. 23. "Public utility property" means property owned or used by a public utility company. (*Department of Local Government Finance; 50 IAC 5.2-1-23; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1862*)

50 IAC 5.2-1-24 "Railroad car company" defined

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-8-2

Sec. 24. "Railroad car company" has the meaning set forth in IC 6-1.1-8-2. (*Department of Local Government Finance; 50 IAC 5.2-1-24; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1862*)

50 IAC 5.2-1-25 "Railroad company" defined

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-8-2

Sec. 25. "Railroad company" has the meaning set forth in IC 6-1.1-8-2. (*Department of Local Government Finance; 50 IAC 5.2-1-25; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1862*)

50 IAC 5.2-1-26 "Returnable containers" defined

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-8-2

Sec. 26. "Returnable containers" means those reusable items of tangible personal property which are used to package inventory or other property while in transit. Returnable containers include, but are not limited to, cooperage, skids, bottles, cases, and other reusable packaging devices. (*Department of Local Government Finance; 50 IAC 5.2-1-26; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1862*)

50 IAC 5.2-1-27 "Sewage company" defined

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-8-2

Sec. 27. "Sewage company" means a company that is engaged in the business of operating a sewage system or a sewage treatment plant directly or indirectly to or for the public. (*Department of Local Government Finance; 50 IAC 5.2-1-27; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1862*)

50 IAC 5.2-1-28 "Sleeping car company" defined

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-8-2

Sec. 28. "Sleeping car company" has the meaning set forth in IC 6-1.1-8-2. (*Department of Local Government Finance; 50 IAC 5.2-1-28; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1862*)

50 IAC 5.2-1-29 "State board" defined

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-8-2

Sec. 29. "State board" means the state board of tax commissioners. (*Department of Local Government Finance; 50 IAC 5.2-1-29; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1862*)

50 IAC 5.2-1-30 "Street railway company" defined

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-8-2

Sec. 30. "Street railway company" has the meaning set forth in IC 6-1.1-8-2. (*Department of Local Government Finance; 50 IAC 5.2-1-30; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1862*)

50 IAC 5.2-1-31 "System" defined

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-8-2

Sec. 31. "System" has the meaning set forth in IC 6-1.1-8-2. The term does not include generating facilities collectively owned by multiple Rural Electric Membership Corporations (REMCs) and the controlling REMCs' individually owned transmission facilities. (*Department of Local Government Finance; 50 IAC 5.2-1-31; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1862*)

50 IAC 5.2-1-32 "Telephone, telegraph, or cable company" defined

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-8-2

Sec. 32. "Telephone, telegraph, or cable company" has the meaning set forth in IC 6-1.1-8-2. The term does not include a cable television company, tower leasing company, or a company owning fiber optic cable which is not being used by the owner to communicate by electrical transmission. The term does include a company that is principally

engaged in the business of communicating by electrical transmission using fiber optic cable. (*Department of Local Government Finance; 50 IAC 5.2-1-32; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1862*)

50 IAC 5.2-1-33 “Tunnel company” defined

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-8-2

Sec. 33. “Tunnel company” has the meaning set forth in IC 6-1.1-8-2. (*Department of Local Government Finance; 50 IAC 5.2-1-33; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1863*)

50 IAC 5.2-1-34 “Unit value” defined

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-8-2

Sec. 34. “Unit value” has the meaning set forth in IC 6-1.1-8-2. (*Department of Local Government Finance; 50 IAC 5.2-1-34; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1863*)

50 IAC 5.2-1-35 “Water distribution company” defined

Authority: IC 6-1.1-31-1
Affected: IC 6-1.1-8-2

Sec. 35. “Water distribution company” has the meaning set forth in IC 6-1.1-8-2. (*Department of Local Government Finance; 50 IAC 5.2-1-35; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1863*)

Rule 2. Introduction; Companies Subject to Assessment

50 IAC 5.2-2-1 Purpose

Authority: IC 6-1.1-8-42
Affected: IC 6-1.1-3-1; IC 6-1.1-8

Sec. 1. (a) The purpose of this rule is to provide rules for the assessment of public utility property. This rule applies to all public utility companies.

(b) Under IC 6-1.1-8, the state board makes an annual assessment of each public utility company.

(c) The valuation made by the state board includes all real, personal, and distributable property of the public utility company, wherever located. The value of locally assessed real and personal property is deducted from the unit valuation to calculate the value of distributable property. The state board subtracts the value of locally assessed property, as reported by the county assessor from the unit valuation. The state board allocates the remainder, the distributable property, to the various taxing districts. (*Department of Local Government Finance; 50 IAC 5.2-2-1; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1863*)

50 IAC 5.2-2-2 Property subject to assessment

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
Affected: IC 6-1.1-8-2

Sec. 2. The property owned or used by a public utility

company is subject to assessment according to this rule. Property that is used by the public utility company under an agreement whereby the public utility company exercises the beneficial rights of ownership for a major part of a year is assessed to the public utility company. Leased property may be subject to assessment to the public utility company, see **50 IAC 5.2-10.** (*Department of Local Government Finance; 50 IAC 5.2-2-2; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1863*)

50 IAC 5.2-2-3 Companies subject to assessment

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
Affected: IC 6-1.1-8-2; IC 6-1.1-8-3

Sec. 3. The public utility companies subject to assessment and taxation under these rules are those listed in IC 6-1.1-8-3. (*Department of Local Government Finance; 50 IAC 5.2-2-3; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1863*)

50 IAC 5.2-2-4 Companies excluded

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
Affected: IC 6-1.1-8-2

Sec. 4. The companies not subject to assessment and taxation as public utility companies under this article are listed in IC 6-1.1-8-2(c). For purposes of these rules, the term “television companies” includes cable television companies. Accordingly, cable television companies are not subject to assessment and taxation as public utility companies under this article. (*Department of Local Government Finance; 50 IAC 5.2-2-4; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1863*)

Rule 3. Reporting Requirements

50 IAC 5.2-3-1 Who must file

Authority: IC 6-1.1-8; IC 6-1.1-31-1
Affected: IC 6-1.1-8-19

Sec. 1. (a) Each year a public utility company shall file an annual report with the state board concerning the value and description of the property which is either owned or used by the public utility company.

(b) In completing a report or statement, a public utility company shall make a complete disclosure of all information, required by the state board, that is related to the value, nature, and location of property:

- (1)** which the public utility company owned; or
- (2)** which the public utility company held, possessed, controlled, or occupied.

(c) The public utility company shall certify the truth of all information appearing in the report or statement and all data accompanying the report or statement. (*Department of Local Government Finance; 50 IAC 5.2-3-1; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1863*)

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50 IAC 5.2-3-2 What to file; annual report to state board

Authority: IC 6-1.1-8; IC 6-1.1-31-1
Affected: IC 6-1.1-8-19; IC 6-1.1-8-21

Sec. 2. (a) The state board has designated Form UD-45, Annual Report of Public Utility Company, as the annual report to be filed with the state board by all public utility companies, other than railroad companies and railroad car companies.

(b) Railroad companies shall annually file Form UD-32, Annual Report of Railroad Company, with the state board.

(c) Railroad car companies shall annually file Form RC-1, Railcar Tax Report, with the state board.

(d) Along with the required filings listed in subsections (a) and (b), a public utility, including railroad companies, shall submit to the state board information requested by the state board, including:

- (1) the most recent financial statements;
- (2) information concerning depreciation records; and
- (3) the most recent annual report to shareholders or members;

to the extent that such reports, records, or statements exist.

(e) Railroad companies shall also submit to the state board the annual return filed with the Surface Transportation Board, if the railroad company is required to file such a return.

(f) A public utility company may submit a substitute computer or machine generated annual report form or schedule that is a part of the annual report, in lieu of using the actual annual report form or schedule, provided that the report or schedule:

- (1) contains all of the required information as set forth in the actual report or schedule;
- (2) properly and clearly identifies the report or schedule being substituted; and
- (3) is approved by the state board under 50 IAC 4.3-1-6 prior to its use.

(Department of Local Government Finance; 50 IAC 5.2-3-2; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1864)

50 IAC 5.2-3-3 What to file; local reporting requirement

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
Affected: IC 6-1.1-8-23

Sec. 3. (a) In addition to Form UD-45, public utility companies shall also file Form 1, Annual Return of Local Personal Property, with the assessor of each township in which the public utility company's locally assessed personal property is subject to assessment. If a public utility company has locally assessed personal property in two (2) or more taxing districts within the same township, the public utility company shall file a separate Form 1 reporting the locally assessed personal property in each taxing district.

(b) A substitute computer or machine generated Form 1 may be used in lieu of the actual Form 1, if such form is approved by the state board under 50 IAC 4.3-1-6 prior to its use. *(Department of Local Government Finance; 50 IAC 5.2-3-3; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1864)*

50 IAC 5.2-3-4 Time to file

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
Affected: IC 6-1.1-8-19

Sec. 4. (a) A public utility company, except a railroad car company, shall file its annual report with the state board on or before March 1 of each year unless a filing extension has been granted by the state board under section 6 of this rule.

(b) A railroad car company shall file its annual report with the state board on or before May 1 of each year unless a filing extension has been granted by the state board under section 6 of this rule.

(c) A public utility company shall also file Form 1, Annual Return of Local Personal Property, with the assessor of each township in which the public utility company's locally assessed personal property is subject to assessment on or before March 1 of each year unless a filing extension has been granted by the state board under section 6 of this rule. *(Department of Local Government Finance; 50 IAC 5.2-3-4; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1864)*

50 IAC 5.2-3-5 Duty to file

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
Affected: IC 6-1.1-8-19

Sec. 5. (a) It is the responsibility of the public utility company to obtain the necessary report forms and timely file the required reports with the state board.

(b) The state board will furnish each public utility company with the appropriate forms to complete their respective annual reports. However, the obligation to file the required report is not diminished or affected by the failure of the state board to deliver or mail forms to the public utility company.

(c) It is also the responsibility of the public utility company to file the required report (Form 1) with each of the assessors of the townships in which the public utility company has locally assessed personal property subject to assessment. *(Department of Local Government Finance; 50 IAC 5.2-3-5; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1864)*

50 IAC 5.2-3-6 Extension of time

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
Affected: IC 6-1.1-8-19

Sec. 6. (a) The state board may extend the due date for the forms identified under section 4 of this rule.

(b) The state board may grant a general extension to all public utility companies or classes of public utility companies. The state board will notify the public utility companies of any general extension. A written request is not necessary to exercise a general extension, at the time returns are mailed to the public utility companies, the state board will notify the public utility companies of any general extension.

(c) The state board may grant a specific extension of the due date to an individual public utility company or a specific extension beyond the general extension granted under subsection (b). Specific extensions shall be considered by the state board if:

- (1) the public utility company submits a written request for an extension at least ten (10) days prior to the due date; and
- (2) the public utility company cannot file on or before the due date because of extraordinary and unusual circumstances.

(d) An extension granted by the state board under subsection (c) shall be in writing. A copy of the extension shall accompany the taxpayer's annual report. (*Department of Local Government Finance; 50 IAC 5.2-3-6; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1864*)

50 IAC 5.2-3-7 Disclosure of information

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
 Affected: IC 6-1.1-2-4; IC 6-1.1-3-9; IC 6-1.1-8-21

Sec. 7. (a) In completing the annual report, a public utility company shall make a complete disclosure of all information required by the state board.

(b) A public utility company that holds, possesses, controls, or occupies property that it does not own must make a full disclosure of the not-owned property. The required information shall include the name and address of the owner, model, description, location, quantities on hand, date of installation, value (if known) as required by this article, and any other information requested. (See special instructions in 50 IAC 5.2-10-3 for reporting leased personal property.)

(c) Failure to properly disclose property that a public utility company holds, possesses, or controls shall result in the assessment of the property to the public utility company.

(d) Information is required to be submitted by the holder, possessor, or controller even if the owner is liable for the taxes under a contract to ensure that the assessing official has the necessary information to correctly assess the property in question. (*Department of Local Government Finance; 50 IAC 5.2-3-7; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1865*)

50 IAC 5.2-3-8 Penalty

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
 Affected: IC 6-1.1-2-4; IC 6-1.1-8-20

Sec. 8. (a) If a public utility company does not file the annual report as required by this rule, the company shall pay a penalty pursuant to IC 6-1.1-8-20.

(b) An annual report is not considered to be complete unless the report contains the information required by the state board and is signed under the penalty for perjury by an authorized person. (*Department of Local Government Finance; 50 IAC 5.2-3-8; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1865*)

50 IAC 5.2-3-9 Authorized forms

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
 Affected: IC 6-1.1-2-4; IC 6-1.1-3-9; IC 6-1.1-8-21; IC 6-1.1-35-9

Sec. 9. (a) The state board is required by statute to adopt tax return forms and schedules for public utility assessment purposes.

(b) The following are the authorized return forms and schedules for public utility assessment purposes pursuant to this article:

Form #	Form Description
RC-1	Report of Railcar Tax
UD 32	Annual Report—Railroad Property
UD 45	Annual Report
A-3	Schedule for Air Pollution Control Equipment
A-4	Schedule for Water Pollution Control Equipment
A-5	REMC schedule (optional)
A-6	Schedule for Pipe Valuation
A-7	Schedule for Utility Distributable Property of Pipeline Companies
A-8	Schedule for Value of Buses and Tires
1	Tax Return—Fixed Personal Property of Public Utilities (locally assessed)
1-N	Information Return of Not Owned Locally Assessed Personal Property

(c) Substituted tax return forms. In lieu of using the actual return form prescribed in subsection (b), a taxpayer may use a computer or machine prepared substitute tax return form or schedule provided that the substitute:

- (1) contains all of the information as set forth in the prescribed form;
- (2) properly identifies the form or schedule being substituted; and
- (3) is approved by the state board.

(d) Administrative forms. The following are authorized administrative forms provided for public utility property assessment purposes pursuant to this article:

Form Number	Form Description
11A	Certification of Distributable Assessment
34C	Certification by County Assessor (of railroad and public utility assessments)
34T	Certification by Township Assessor (of railroad and public utility assessments)

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(e) Confidential returns. Prescribed Forms RC-1, UD32, UD45, Form 1, and all attachments, together with any schedules or other information attached thereto, are confidential in that no local assessing official or employee or official of the state board of tax commissioners shall disclose it to any person unless specifically authorized by law. For further information on confidentiality, see IC 6-1.1-35-9.

(f) Public utility property is a self-assessment method of taxation requiring the taxpayer to complete the assessment return in accordance with the rules prescribed by the state board. The taxpayer is responsible for the accuracy of the information on the return and for assuring that it is a complete return that has been prepared in accordance with the law and rules of the state board. (*Department of Local Government Finance; 50 IAC 5.2-3-9; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1865*)

Rule 4. Assessment Information

50 IAC 5.2-4-1 Tentative assessment

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
Affected: IC 6-1.1-8-12

Sec. 1. (a) Each year the state board shall determine the true tax value of the property of each public utility company. Except for railroad car companies, the state board shall determine the true tax value by first determining the value of each public utility company's Indiana property. The value of the distributable property of a public utility company, other than a railroad car company, equals the remainder of:

- (1) the value of the company's Indiana property; minus
- (2) the value of the company's Indiana fixed property.

(b) The value of the distributable property of a railroad car company equals the unit value of all of the company's distributable property multiplied by the allocation factor provided in IC 6-1.1-8-12(b).

(c) In order to determine the value of a public utility company, the state board may consider the following:

- (1) Book value.
- (2) The cost of replacement or reproduction, less depreciation.
- (3) The cost of establishing and developing the business.
- (4) The amount and market value or sales price of outstanding securities.
- (5) Valuations determined by another governmental agency or indicated by a judicial decision, including, but not limited to, determinations made for rate making purposes.
- (6) Statistics and reports prepared or filed by the company.
- (7) Statistics and reports prepared by another governmental agency or by a private organization if the organi-

zation is considered reliable by investors and investment dealers.

(8) Earnings capitalized at a reasonable rate.

(9) Any other information which the state board considers relevant.

(d) Except for railroad car companies, the state board shall notify each public utility company of its tentative assessment on or before June 1. The state board shall notify each railroad car company of its tentative assessment on or before September 1. (*Department of Local Government Finance; 50 IAC 5.2-4-1; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1866*)

50 IAC 5.2-4-2 Annual report not on file

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
Affected: IC 6-1.1-8-39

Sec. 2. If a public utility company owning, holding, possessing, or controlling any property which is subject to taxation fails to file a return with the state board or township assessor, the appropriate township assessor shall make assessments of fixed property and the state board shall make assessments of distributable property. However, the state board and township assessor may not assess such distributable or fixed property after the expiration of ten (10) years from the last day of the year in which the assessment should have been made. (*Department of Local Government Finance; 50 IAC 5.2-4-2; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1866*)

Rule 5. Use of Other Factors

50 IAC 5.2-5-1 Value as a going concern; adjustments; use of other factors

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
Affected: IC 6-1.1-8-26

Sec. 1. (a) The state board or Indiana board, on its own motion or on petition of a public utility company, may, in determining the just value of a public utility company, authorize or require the use of factors other than those normally used in determining a unit value of a company as a going concern.

(b) The use of other factors is permitted only in situations where the use of other factors is necessary to:

- (1) ensure equal and nondiscriminatory treatment of all public utility companies within the same classification; or
- (2) provide for a unit value that is not clearly unreasonable or unfair to the state or the public utility company.

(*Department of Local Government Finance; 50 IAC 5.2-5-1; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1866*)

50 IAC 5.2-5-2 Readily ascertainable values

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
Affected: IC 6-1.1-8-26

Sec. 2. In the case of certain types of property which the state board determines have readily ascertainable values, e.g., certain types of petroleum products, the state board may determine the true tax value of such property. The state board will issue instructional bulletins listing the unit values of such property. These bulletins will be published in the *Indiana Register* as nonrule policy statements. (*Department of Local Government Finance; 50 IAC 5.2-5-2; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1866*)

50 IAC 5.2-5-3 Uniform useful life

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
 Affected: IC 6-1.1-8-26

Sec. 3. (a) The state board may prescribe the useful life of certain items of personal property if the state board determines that a uniform useful life should be required for all affected public utility companies in order to obtain uniformity of assessment.

(b) If the state board prescribes a uniform useful life for a certain item of personal property, the state board shall notify all affected taxpayers. (*Department of Local Government Finance; 50 IAC 5.2-5-3; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1867*)

Rule 6. Valuation of Depreciable Personal Property

50 IAC 5.2-6-1 Definitions

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
 Affected: IC 6-1.1-8-26; IC 6-6-6.5

Sec. 1. The definitions in this section apply throughout this rule:

- (1) "Adjusted cost of depreciable personal property" has the meaning set forth in 50 IAC 4.3-4-5.
- (2) "Cost of depreciable personal property" has the meaning set forth in 50 IAC 4.3-4-2.
- (3) "Depreciable personal property" has the meaning set forth in 50 IAC 4.3-1-1-5 and 50 IAC 4.3-4-1.
- (4) "Permanently retired depreciable personal property" has the meaning set forth in 50 IAC 4.3-4-3(c).

(*Department of Local Government Finance; 50 IAC 5.2-6-1; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1867*)

50 IAC 5.2-6-2 Book cost determinative

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
 Affected: IC 6-1.1-8-26; IC 6-1.1-31

Sec. 2. (a) The cost of depreciable property, both real and personal, as recorded on the public utility company's books and records, must be utilized in determining the value of the depreciable personal property subject to assessment.

(b) The cost of all depreciable personal property of a public utility company shall be the total amount reflected on the books and records of the company as of the assessment date except as otherwise provided in this rule.

(c) Property may be depreciable personal property regardless of the account in which the property is carried on the books and records of the public utility company. For example, property classified on the public utility company's books and records as real property may nevertheless be depreciable personal property within the meaning of this article. This treatment is necessary to ensure the proper assessment of property, regardless of the accounting system used by the public utility company.

(d) Except as otherwise provided in this article, property is deemed to be depreciable personal property when a depreciation deduction is allowable for federal income tax purposes.

(e) The cost of additions and betterments is added to the original cost of the depreciable personal property. If an additional part is added or some other change is made in the fixed asset that increases its estimated useful life, production, or efficiency, or converts the property to a different use, it is a betterment. The expenditure is capitalized by adding it to the original cost of the asset. If a part is replaced with a similar part, the new part is shown as a new acquisition while the part replaced is deducted from the original cost of the asset.

(f) In the event a taxpayer cannot determine from its books and records the cost of the depreciable property on the assessment date, it must use:

- (1) the cost per books as of the close of its annual financial period immediately prior to the assessment date and so indicate on its return;
- (2) the book cost as of the close of its last financial period will then be adjusted to reflect all acquisitions and disposals of depreciable property which have occurred between the acquisition or disposal date and the assessment date; and
- (3) installation costs and foundations applicable to machinery and equipment shall be reported and assessed on the same basis as the asset to which they apply.

(*Department of Local Government Finance; 50 IAC 5.2-6-2; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1867*)

50 IAC 5.2-6-3 Mandatory adjustment

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
 Affected: IC 6-1.1-8-26; IC 6-1.1-31

Sec. 3. (a) The cost of depreciable personal property as computed in section 2 of this rule must be reported at the tax basis of such property as defined in 26 U.S.C. § 1012. The cost of depreciable personal property shall not be reduced by 26 U.S.C. § 167 (depreciation) or 26 U.S.C. § 179 (expense election deduction) or any credits (such as investment tax credit) which would otherwise diminish the cost basis of the property.

(b) If the tax basis of the depreciable personal property is different from the cost reflected on the books and records of the taxpayer, an adjustment must be made to the cost per books of the assessable depreciable personal property. The cost reflected on the books and records must be adjusted to the tax basis of the property.

(c) The adjustment of the cost of depreciable personal property to its tax basis is required to be made regardless of whether it is an increase or decrease to the cost recorded on the books and records. (*Department of Local Government Finance; 50 IAC 5.2-6-3; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1867*)

50 IAC 5.2-6-4 Fully depreciated property

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
Affected: IC 6-1.1-8-26

Sec. 4. Depreciable personal property that has not been retired from use is reported for assessment purposes whether or not the cost of the property has been removed from the taxpayer's books and records. (*Department of Local Government Finance; 50 IAC 5.2-6-4; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1868*)

50 IAC 5.2-6-5 Nominally valued depreciable personal property

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
Affected: IC 6-1.1-8-26

Sec. 5. Depreciable personal property recorded on the books and records at a nominal value or at no value must be valued at its actual acquisition cost determined by reference to the insurable value in the year of acquisition. This category of property includes, but is not limited to:

- (1) bulk purchases; or
- (2) the acquisition of a going business concern.

(*Department of Local Government Finance; 50 IAC 5.2-6-5; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1868*)

50 IAC 5.2-6-6 Computer equipment

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
Affected: IC 6-1.1-8-26

Sec. 6. (a) Definition of computer equipment. Computer equipment is made up of the following elements:

- (1) "Hardware" means physical equipment used for input, processing, and output activities in an information system. It is composed of mechanical, magnetic, and electronic devices and other components which constitute the physical computer assembly.
- (2) "System software" means a set of generalized programs that manage the computer's resources, such as the central processor, communication links, and peripheral devices. It is not normally accessible or modifiable by the user. Also system software may be referred to as the operating system.

(3) "Application software" means programs written for a specific application to perform functions specified by end users.

(b) Computer hardware and system software must be reported at the actual acquisition cost regardless of how it may be valued on the taxpayers books and records.

(c) If the value for computer equipment recorded on the books and records reflects charges for customer support services such as educational services, maintenance, or application software that relate to future periods and not to the value of the tangible personal property, such charges may be deducted as intangible personal property to the extent that a separate charge or value can be identified. (*Department of Local Government Finance; 50 IAC 5.2-6-6; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1868*)

50 IAC 5.2-6-7 Valuation

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
Affected: IC 6-1.1-8-26

Sec. 7. (a) Except as provided in section 8 of this rule, the value of depreciable personal property is computed by subtracting depreciation as used for federal income tax purposes from the adjusted cost of the depreciable personal property.

(b) Depreciation shall be computed using the method or methods of depreciation that the public utility company has used for federal income tax purposes for that property. If depreciable personal property is acquired prior to the establishment of the first reporting year for federal income tax purposes, depreciation shall be computed in the same manner as the public utility contemplates using for federal income tax purposes.

(c) The amount of depreciation computed in subsection (b) shall be increased by any expense election deduction or investment tax credit claimed on the property by the public utility company for federal income tax purposes. (*Department of Local Government Finance; 50 IAC 5.2-6-7; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1868*)

50 IAC 5.2-6-8 Minimum value

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
Affected: IC 6-1.1-8-26

Sec. 8. (a) The total value of the distributable depreciable personal property cannot be less than nine percent (9%) of the adjusted cost of the distributable personal property.

(b) The total value of the locally assessed depreciable personal property in a single taxing district cannot be less than nine percent (9%) of the adjusted cost of the locally assessed personal property in that taxing district.

(c) The nine percent (9%) minimum value test shall be applied prior to any adjustment for abnormal obsolescence or permanently retired depreciable personal property. The limitation does not apply to special tooling under 50 IAC 5.2-9-2. (*Department of Local Government Finance; 50 IAC 5.2-6-8; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1868*)

50 IAC 5.2-6-9 Valuation of permanently retired depreciable personal property

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
Affected: IC 6-1.1-8-26

Sec. 9. (a) Permanently retired depreciable personal property that is on hand on the assessment date is subject to an adjustment at the election of the taxpayer.

(b) The value of permanently retired depreciable personal property is the net scrap or net sale value of such property.

(c) In order to qualify for this adjustment, a taxpayer will need to substantiate that the depreciable personal property was permanently retired and not in use.

(d) The adjustment for permanently retired depreciable personal property is computed as the difference between the true tax value of such property (computed under sections 6 through 8 of this rule) and its net scrap or net sale value.

(e) The adjustment for permanently retired depreciable personal property may not exceed the true tax value of such property. (*Department of Local Government Finance; 50 IAC 5.2-6-9; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1869*)

50 IAC 5.2-6-10 Abnormal obsolescence

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
Affected: IC 6-1.1-8-26

Sec. 10. (a) An adjustment for abnormal obsolescence, as defined in 50 IAC 5.2-11, may be permitted in accordance with 50 IAC 5.2-11.

(b) No adjustment will be allowed for normal obsolescence as defined in 50 IAC 5.2-11.

(c) The dollar amount of the adjustment for the depreciable personal property under this section may not exceed the tentative true tax value as computed in sections 7 and 8 of this rule for the specific unit or units of such property on which the taxpayer claims the adjustment. (*Department of Local Government Finance; 50 IAC 5.2-6-10; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1869*)

Rule 7. Valuation of Nondepreciable Property

50 IAC 5.2-7-1 Definitions

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
Affected: IC 6-1.1-8-26

Sec. 1. The definitions in this section apply throughout this rule:

(1) "Contributions in aid of construction" or "CIAC" means donated or contributed property, other than locally assessed real property, of a public utility company that is used by such company in providing the utility service.

(2) "Nondepreciable personal property" means any property, other than locally assessed real property, of a public utility company that is not subject to depreciation for federal income tax purposes. It does not include inventory, but may include both locally assessed personal property (excluding inventory) and distributable property.

(*Department of Local Government Finance; 50 IAC 5.2-7-1; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1869*)

50 IAC 5.2-7-2 Book cost determinative

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
Affected: IC 6-1.1-8-26

Sec. 2. (a) The cost of nondepreciable property, both real and personal, as recorded on the public utility company's books and records, must be utilized in determining the value of the nondepreciable property subject to assessment.

(b) A public utility company is subject to assessment for property owned or used by it. Contributions in aid of construction are used by the public utility company to deliver its service. Therefore, contributions in aid of construction are subject to assessment. The public utility company may not reduce the cost of property shown on its books and records by the amount of contributions in aid of construction or customer advances. (*Department of Local Government Finance; 50 IAC 5.2-7-2; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1869*)

50 IAC 5.2-7-3 Mandatory adjustment

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
Affected: IC 6-1.1-8-26

Sec. 3. The cost of nondepreciable property as computed under section 2 of this rule must be reported at the tax basis of such property as defined in 26 U.S.C. § 1012. (*Department of Local Government Finance; 50 IAC 5.2-7-3; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1869*)

50 IAC 5.2-7-4 Valuation

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
Affected: IC 6-1.1-8-26

Sec. 4. (a) Except as provided in subsection (b), the value of nondepreciable property shall be the tax basis of such property as defined in 26 U.S.C. § 1012.

(b) Contributions in aid of construction that would be subject to depreciation for federal income tax purposes if owned by the public utility company are eligible for depre-

ciation. Depreciation for contributions in aid of construction shall be computed using the method of depreciation that the owner would have used for federal income tax purposes. Depreciation is computed over the useful life of the contributions in aid of construction. For purposes of this subsection, useful life is the life that would have been used for federal income tax purposes by the owner. (*Department of Local Government Finance; 50 IAC 5.2-7-4; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1869*)

Rule 8. Valuation of Inventories

50 IAC 5.2-8-1 Valuation

Authority: IC 6-1.1-8; IC 6-1.1-31-1
 Affected: IC 6-1.1-8-26

Sec. 1. Inventory, materials, and supplies shall be valued in accordance with 50 IAC 4.3-5. (*Department of Local Government Finance; 50 IAC 5.2-8-1; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1870*)

Rule 9. Valuation of Other Tangible Personal Property

50 IAC 5.2-9-1 Construction in process

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
 Affected: IC 6-1.1-8-26

Sec. 1. (a) The starting point for the valuation of construction in process is the cost recorded on the public utility company's books and records which is attributable to such property, excluding locally assessed real property, including all expenses incurred in acquiring or producing the assets not yet placed in service.

(b) In the event the cost as recorded on the regular books and records of the public utility company does not reflect acquisitions and transfers since the end of the financial period immediately preceding the assessment date, such acquisitions and transfers are required to be included.

(c) If the cost as recorded on the regular books and records of the public utility company reflects advance payments or deposits, and if such amounts were attributable to property other than locally assessed real property, such amounts shall be allowed as a deduction from book cost.

(d) The true tax value of construction in process is eighty-seven percent (87%) of the cost of such property. (*Department of Local Government Finance; 50 IAC 5.2-9-1; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1870*)

50 IAC 5.2-9-2 Special tools

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
 Affected: IC 6-1.1-8-26

Sec. 2. (a) "Special tools", as used in this section, means depreciable tangible personal property acquired or made for the production of products or product models that are

of such specialized nature that their utility generally ceases with the modification or discontinuance of such products or product models. Special tools include, but are not limited to, tools, dies, jigs, fixtures, gauges, molds, and patterns. Depreciable tangible personal property shall qualify as special tools only if properly claimed as a special tool on a federal income tax return and depreciated as special tools for federal income tax purposes. Those items of special tools being manufactured or built for sale or lease to another person must be valued as inventory pursuant to 50 IAC 5.2-8-1.

(b) Special tools must be reported where located on the assessment date by the taxpayer owning the special tools on Schedule A-1 of the Annual Report Form, as an attachment to Schedule A. In addition, the owner is required to furnish a complete listing on Schedule A-2 of the Annual Report Form of all their special tools in the possession of another person. The person holding, possessing, or controlling special tools, not owned, is required to furnish a complete listing on Schedule A-2 of the Annual Report Form of all not owned personal property.

(c) The cost and adjustments to cost of special tools are determined in the same manner as other depreciable tangible personal property under 50 IAC 5.2-6-2 and calculated on Schedule A-1 of the Annual Report Form; however, the depreciation of special tools is calculated using the following percentage good factors:

Year of Acquisition (as detailed on Schedule A-1)	Special Tools Percent Good Factors
1	42%
2	14%
3	2%
Over 3	2%

(Department of Local Government Finance; 50 IAC 5.2-9-2; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1870)

50 IAC 5.2-9-3 Leasehold improvements

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
 Affected: IC 6-1.1-8-26

Sec. 3. (a) Whenever a public utility company makes any expenditure for an improvement to locally assessed real property, locally assessed personal property, or distributable property not owned by the public utility company, such expenditure shall be assessable as locally assessed personal property or distributable property to the extent it is not locally assessed real property.

(b) The following are examples of leasehold improvements which are personal property:

(1) Foundations and pilings related to the installation and use of personal property.

(2) Personal property attached to the real property, if such items are related to activities or processes conducted in or on the real property, if the personal property is an integral part of such activity. For example, improvements to real property that would be assessable as either locally assessed personal property or as distributable property may include:

- (A) shelving, bins, counters, and related items;
- (B) nonpermanent partitions;
- (C) supplemental heating and air conditioning;
- (D) extraordinary lighting;
- (E) extraordinary electrical and plumbing facilities; and
- (F) carpeting and draperies.

(c) Leasehold improvements are reported and valued in the same manner as other locally assessed personal property or distributable property which the public utility company may own. (*Department of Local Government Finance; 50 IAC 5.2-9-3; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1870*)

50 IAC 5.2-9-4 Returnable containers

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
 Affected: IC 6-1.1-8-26

Sec. 4. (a) Returnable containers must be reported for property assessment purposes at the tax situs where located on the assessment date by the person owning the returnable containers.

(b) The owner of any personal property subject to assessment and taxation on the assessment date has the responsibility for reporting such property for assessment and taxation. Returnable containers must be reported on the appropriate form on the public utility company's annual report to the state board. If the returnable containers are locally assessed personal property, the returnable containers must also be reported to the township assessor.

(c) The possessor of not-owned returnable containers has the responsibility for disclosing such property to the local assessing officials and the state board.

(d) The cost of returnable containers is computed by extending the quantity of such property on hand by:

- (1) the amount of deposit required for such item;
- (2) the refund entitled thereto when such returnable containers are returned to the owner;
- (3) the sales price of the returnable property; or
- (4) the cost of such returnable containers in the hands of the owner since the owner is liable for assessment.

(e) The value of returnable containers is computed in the same manner as other locally assessed personal property or distributable property which the public utility company may own. (*Department of Local Government Finance; 50 IAC 5.2-9-4; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1871*)

Rule 10. Valuation of Leased Property

50 IAC 5.2-10-1 Valuation

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
 Affected: IC 6-1.1-8-26

Sec. 1. (a) Leased property reported for assessment by a public utility company shall be valued in the same manner as property owned by the public utility company. The value is computed by subtracting depreciation from the base year value.

(b) Depreciation for leased property shall be computed using the method of depreciation that the owner would have used for federal income tax purposes. Depreciation is computed over the useful life of the leased property. For purposes of this subsection, useful life is that which would have been used for federal income tax purposes by the owner. (*Department of Local Government Finance; 50 IAC 5.2-10-1; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1871*)

50 IAC 5.2-10-2 General reporting requirements

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
 Affected: IC 6-1.1-8-26

Sec. 2. (a) In completing the annual report, a public utility company shall make a complete disclosure of all information relating to leased property that it owns, holds, possesses, or controls.

(b) If a public utility company holds, possesses, controls, or occupies leased property, the public utility company shall make a full disclosure, on the forms provided by the state board, of such property and information relating to that property. The required information shall include the name and address of the owner, model, description, location, quantities on hand, date of installation, value (if known) as required by this article, and any other information requested on the appropriate form. If the leased property is:

- (1) distributable property, the public utility company shall disclose such property on the appropriate form in its annual report to the state board; or
- (2) locally assessed personal property, the public utility company shall disclose such property on the appropriate form in its annual report to the state board and shall also disclose such property on Form 1, Annual Report of Local Personal Property.

(c) Failure by a public utility company to properly disclose property that it holds, possesses, or controls will result in the assessment of the property to the public utility company.

(d) Information is required to be submitted by the holder, possessor, or controller even if the owner is liable for the taxes under a contract to assure that the assessing official has the necessary information to correctly assess the property in question.

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(e) Both the lessor (the owner) and the lessee (the holder, possessor, or controller) have specific reporting requirements. The purpose of these dual reporting requirements is to assure that property is disclosed to the local assessing officials who will ensure that the property is assessed. (*Department of Local Government Finance; 50 IAC 5.2-10-2; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1871*)

50 IAC 5.2-10-3 Leased distributable property; specific reporting requirements

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
Affected: IC 6-1.1-8-26

Sec. 3. (a) The public utility company is primarily responsible for the reporting of the leased distributable property for assessment and taxation, whether such lease is a capital lease or an operating lease.

(b) The holder, possessor, or controller of leased distributable property (lessee) shall disclose the leased property on the designated form included with its annual report to the state board. In completing the designated form, the holder, possessor, or controller shall include all of the information required by the form.

(c) The owner (lessor) of leased distributable property is required to disclose the existence of the leased property to the state board. In completing the form designated for such disclosure, the owner shall include all of the information required by the form. (*Department of Local Government Finance; 50 IAC 5.2-10-3; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1872*)

50 IAC 5.2-10-4 Locally assessed property subject to operating leases; specific reporting requirements

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
Affected: IC 6-1.1-8-26

Sec. 4. (a) The owner (lessor) of locally assessed leased property subject to an operating lease is primarily responsible for the reporting of the locally assessed leased property for assessment and taxation.

(b) If the owner of the locally assessed leased property is a public utility company and the locally assessed leased property is subject to an operating lease, the locally assessed leased property shall be assessed in the following manner:

(1) The owner shall disclose and report the locally assessed leased property on the designated form included with its annual report to the state board. In completing the designated form, the owner shall include all of the information required by the form. The owner shall also complete Form 1, Annual Report of Local Personal Property, disclosing and reporting the locally assessed leased property for assessment and taxation.

(2) The holder, possessor, or controller (lessee) of locally assessed leased property subject to an operating lease is required to disclose the existence of the leased property to the state board and local assessing officials. The holder, possessor, or controller shall disclose the locally assessed leased property on the designated form included with its annual report to the state board. In completing the designated form, the holder, possessor, or controller shall include all of the information required by the form. The holder, possessor, or controller shall also disclose the locally assessed leased property on Form 1, Annual Report of Local Personal Property.

(*Department of Local Government Finance; 50 IAC 5.2-10-4; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1872*)

50 IAC 5.2-10-5 Locally assessed property subject to capital leases; specific reporting requirements

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
Affected: IC 6-1.1-8-26

Sec. 5. (a) The holder, possessor, or controller (lessee) of locally assessed leased property subject to a capital lease is primarily responsible for the reporting of the locally assessed leased property for assessment and taxation.

(b) If the holder, possessor, or controller of the locally assessed leased property is a public utility company and the locally assessed leased property is subject to a capital lease, the locally assessed leased property shall be assessed in the following manner:

(1) The holder, possessor, or controller shall disclose and report the locally assessed leased property on the designated form included with its annual report to the state board. In completing the designated form, the holder, possessor, or controller shall include all of the information required by the form. The holder, possessor, or controller shall also complete Form 1, Annual Report of Local Personal Property, disclosing and reporting the locally assessed leased property for assessment and taxation.

(2) The owner (lessor) of locally assessed leased property subject to a capital lease is required to disclose the existence of the leased property to the state board and local assessing officials. The owner shall disclose the locally assessed leased property on the designated form. In completing the designated form, the owner shall include all of the information required by the form.

(*Department of Local Government Finance; 50 IAC 5.2-10-5; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1872*)

Rule 11. Obsolescence

50 IAC 5.2-11-1 "Obsolescence" defined

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
Affected: IC 6-1.1-8-26

Sec. 1. (a) “Obsolescence” means a loss in value caused by inutility within the property or by changes in demand for the goods produced by the property. Obsolescence may be caused by:

- (1) defects in:**
 - (A) design;**
 - (B) style;**
 - (C) capacity; or**
- (2) a deficiency; or**
- (3) a superadequacy; or**
- (4) by changes in the tastes of buyers in the market place.**

(b) Functional obsolescence is a loss in value due to impairment of functional capacity as a result of inadequacy, over capacity, or changes in the state of the art.

(c) External obsolescence is a loss in value arising from forces outside the property itself. (Department of Local Government Finance; 50 IAC 5.2-11-1; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1872)

50 IAC 5.2-11-2 “Normal obsolescence” defined

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
Affected: IC 6-1.1-8-26

Sec. 2. “Normal obsolescence” means the anticipated or expected reduction in the value of property that can be foreseen by a reasonable, prudent businessperson when property is acquired and placed into service. In general, it includes the expected gradual decline in value because of expected technological innovations and the general assumption that such property will have a minimum value at the end of its useful life. The depreciation allowed pursuant to 50 IAC 5.2-6 accounts for normal obsolescence as well as physical deterioration. (Department of Local Government Finance; 50 IAC 5.2-11-2; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1873)

50 IAC 5.2-11-3 “Abnormal obsolescence” defined

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
Affected: IC 6-1.1-8-26

Sec. 3. (a) “Abnormal obsolescence” means obsolescence that occurs as a result of factors over which the taxpayer has no control and is unanticipated, unexpected, and cannot reasonably be foreseen by a prudent businessperson before the occurrence. It is of a nonrecurring nature and includes unforeseen changes in market values and exceptional technological innovations that have a direct effect upon the value of the property. Any abnormal obsolescence that affects the property must be considered separately since it has not been accounted for in normal obsolescence or physical deterioration. Abnormal obsolescence is calculated using different methodologies depending upon the type of inutility it represents. There are numerous methodologies, and, as a general rule, common appraisal concepts and methods may be used to determine abnormal obsolescence.

However, any method used must qualify and quantify any abnormal obsolescence claimed. The invention of newer, more productive personal property that produces a better quality item, utilizes state-of-the-art technology, or produces more efficiently at a lower cost of production does not cause an older, currently used asset to be considered abnormally obsolete unless the change was unanticipated, unexpected, or could not have reasonably been foreseen by a prudent business person.

(b) An example of unforeseen change in market value (external obsolescence) is a government restriction on the amount of pollutants released into the atmosphere. In this case, the equipment producing the pollutants may be eligible for abnormal obsolescence.

(c) An example of exceptional technological innovation (functional obsolescence) is the development of digital switches that replace mechanical switches. Functional obsolescence should be recognized to the extent that it causes the subject property to be incapable of use for current production or adaptation to a different use. (Department of Local Government Finance; 50 IAC 5.2-11-3; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1873)

50 IAC 5.2-11-4 Abnormal obsolescence claim

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
Affected: IC 6-1.1-8

Sec. 4. (a) Abnormal obsolescence should be recognized to the extent that the taxpayer can demonstrate that the property qualifies for abnormal obsolescence and can quantify the amount. This must be done through a presentation of the facts, circumstances, and methodology used in calculating the amount of the abnormal obsolescence.

(b) The adjustment for abnormal obsolescence must be computed in accordance with this article for each respective item of property or portion of the utility system. (Department of Local Government Finance; 50 IAC 5.2-11-4; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1873)

50 IAC 5.2-11-5 Limitation

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
Affected: IC 6-1.1-8

Sec. 5. (a) The availability of abnormal obsolescence is limited to that which is not already reflected on the books and records of the taxpayer.

(b) The adjustment for abnormal obsolescence may not exceed the true tax value of the property without consideration of the abnormal obsolescence adjustment.

(c) A taxpayer may not claim an adjustment for abnormal obsolescence as defined in 50 IAC 5.2-11-3 [section 3 of this rule] for inventory. Adjustments provided in 50 IAC 4.3

with respect to the valuation of inventory allow the taxpayer to account for all forms of obsolescence. (*Department of Local Government Finance; 50 IAC 5.2-11-5; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1873*)

50 IAC 5.2-11-6 Reporting of abnormal obsolescence

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
Affected: IC 6-1.1-8

Sec. 6. The taxpayer may claim an adjustment for abnormal obsolescence on the form prescribed in this article when filing the tax return for the year in question. The adjustment, if requested, must specifically:

- (1) identify all property for which an adjustment is requested;
- (2) indicate the original cost of the property;
- (3) indicate the true tax value of the property as if no adjustment would be allowed;
- (4) indicate the true tax value of the property as a result of the requested adjustment; and
- (5) provide sufficient detail in order to effectively qualify and quantify the claim.

(*Department of Local Government Finance; 50 IAC 5.2-11-6; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1874*)

50 IAC 5.2-11-7 Full disclosure

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
Affected: IC 6-1.1-8-26

Sec. 7. A public utility company shall disclose any claim for an adjustment for abnormal obsolescence in the annual report filed with the state board under 50 IAC 5.2-3-2. (*Department of Local Government Finance; 50 IAC 5.2-11-7; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1874*)

50 IAC 5.2-11-8 Administrative adjudication on adjustment for abnormal obsolescence

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
Affected: IC 6-1.1-8-26

Sec. 8. A public utility company may, prior to the filing of the property tax return for the year in question, request, under 50 IAC 4.3-1-6, an administrative adjudication determination regarding an abnormal obsolescence adjustment. (*Department of Local Government Finance; 50 IAC 5.2-11-8; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1874*)

Rule 12. Exemptions, Deductions, and Credits

50 IAC 5.2-12-1 Introduction

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
Affected: IC 6-1.1-8-2; IC 6-1.1-8-28; IC 6-1.1-10; IC 6-1.1-11; IC 6-1.1-12; IC 6-1.1-12.1; IC 6-1.1-20.7; IC 6-1.1-20.8; IC 6-1.1-40; IC 6-1.1-42

Sec. 1. A public utility company may qualify for certain exemptions, deductions, or credits. For specific information on exemptions, deductions, and credits, see IC 6-1.1-10, IC

6-1.1-11, IC 6-1.1-12, IC 6-1.1-12.1, IC 6-1.1-20.7, IC 6-1.1-20.8, IC 6-1.1-40, and IC 6-1.1-42. (*Department of Local Government Finance; 50 IAC 5.2-12-1; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1874*)

50 IAC 5.2-12-2 Air pollution control exemption

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
Affected: IC 6-1.1-8-2; IC 6-1.1-8-28; IC 6-1.1-10-12; IC 6-1.1-10-13; IC 6-1.1-11

Sec. 2. (a) Generally, personal property, such as paint spray booths or dust collectors, do not qualify for the air pollution control exemption under 6-1.1-10-12 [*sic.*, IC 6-1.1-10-12], since they are primarily used to remove particulates, dust, or fumes from the work area and/or in the production of property for sale. Dust collecting baghouses or stack scrubbers which are primarily designed and used to prevent or eliminate pollutant contamination of the air outside of, or away from, the production plant generally would qualify for exemption since such systems primarily benefit the general public. The specific facts and circumstances of each taxpayer's equipment and operations must be considered in determining whether each item of property qualifies under this section.

(b) The amount of the exemption claimed is specifically limited to the value of the personal property that is attributable to the stationary or unlicensed mobile industrial air purification system. (*Department of Local Government Finance; 50 IAC 5.2-12-2; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1874*)

50 IAC 5.2-12-3 Air pollution control exemption; claim

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
Affected: IC 6-1.1-8; IC 6-1.1-10-12; IC 6-1.1-10-13; IC 6-1.1-11

Sec. 3. A public utility company that wishes to obtain an exemption for an air pollution control system must annually claim the exemption on the appropriate form included in its annual report. The public utility company must disclose such information about the property claimed to be exempt as an air pollution control system as required on the form. (*Department of Local Government Finance; 50 IAC 5.2-12-3; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1874*)

50 IAC 5.2-12-4 Waiver of exemption

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
Affected: IC 6-1.1-8-2; IC 6-1.1-8-28; IC 6-1.1-11-1

Sec. 4. An exemption is a privilege which may be waived by a person who owns tangible property that would qualify for the exemption. If the owner does not comply with statutory procedures for obtaining an exemption, the exemption is waived. If the exemption is waived, the property is subject to taxation. (The complete text of the statute is contained in IC 6-1.1-11-1.) (*Department of Local Government Finance; 50 IAC 5.2-12-4; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1874*)

Rule 13. Severability

50 IAC 5.2-13-1 Severability

Authority: IC 6-1.1-8-42; IC 6-1.1-31-1
Affected: IC 6-1.1-8-42

Sec. 1. If any part of this article, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect any other parts of this article or the application thereof which can be given effect without the invalid part, and to this end the provisions of this article are severable. (*Department of Local Government Finance; 50 IAC 5.2-13-1; filed Jan 28, 2002, 1:30 p.m.: 25 IR 1875*)

SECTION 2. 50 IAC 5.1 IS REPEALED.

SECTION 3. SECTION 2 of this document takes effect **March 1, 2002.**

LSA Document #01-347(F)
Notice of Intent Published: 25 IR 125
Proposed Rule Published: November 1, 2001; 25 IR 417
Hearing Held: November 29, 2001
Approved by Attorney General: January 23, 2002
Approved by Governor: January 28, 2002
Filed with Secretary of State: January 28, 2002, 1:30 p.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

LSA Document #01-9(F)
DIGEST

Amends 170 IAC 1-1.1-1 to clarify which cases and other matters under commission jurisdiction are governed by the new rules of practice and procedure and which are governed by the former rules of practice and procedure. Effective 30 days after filing with the secretary of state.

170 IAC 1-1.1-1

SECTION 1. 170 IAC 1-1.1-1 IS AMENDED TO READ AS FOLLOWS:

170 IAC 1-1.1-1 Application and scope

Authority: IC 8-1-1-3; IC 8-1-2-47
Affected: IC 8-1-1-5; IC 8-1-1.1-5.1

Sec. 1. This rule shall govern the practice and procedure in matters before the commission arising under the acts of the general assembly conferring powers upon the commission. This rule supersedes 170 IAC 1-1 in its entirety.

(1) Cases and all other matters arising under the jurisdiction of the Indiana utility regulatory commission initiated

on or after November 29, 2000, shall be governed in totality by this rule (170 IAC 1-1.1).

(2) Any case or other matter arising under the jurisdiction of the Indiana utility regulatory commission initiated prior to November 29, 2000 (the effective date of this rule) shall be governed in totality by the former rules of practice and procedure found at 170 IAC 1-1.

(Indiana Utility Regulatory Commission; 170 IAC 1-1.1-1; filed Oct 30, 2000, 2:10 p.m.: 24 IR 654; filed Feb 4, 2002, 1:00 p.m.: 25 IR 1875)

LSA Document #01-9(F)
Notice of Intent Published: 24 IR 1377
Proposed Rule Published: March 1, 2001; 24 IR 1690 and September 1, 2001; 24 IR 4055
Hearing Held: October 16, 2001
Approved by Attorney General: January 17, 2002
Approved by Governor: February 1, 2002
Filed with Secretary of State: February 4, 2002, 1:00 p.m.
Incorporated Documents Filed with Secretary of State: None

TITLE 327 WATER POLLUTION CONTROL BOARD

LSA Document #99-263(F)

DIGEST

Adds 327 IAC 2-11 to establish ground water quality standards in response to the requirements of the Ground Water Protection Act of 1989 (IC 13-18-17-5) that requires the water pollution control board to adopt rules under IC 4-22-2 concerning ground water quality standards. Repeals 327 IAC 2-1-7 and 327 IAC 2-1.5-9. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: July 1, 1994, Indiana Register (17 IR 2467) and October 1, 1997, Indiana Register (21 IR 260).

Second Notice of Comment Period and Notice of First Hearing: April 1, 1999, Indiana Register (22 IR 2350).

Rescheduled Notice of First Hearing: June 1, 1999, Indiana Register (22 IR 2894).

Rescheduled Notice of First Hearing: August 1, 1999, Indiana Register (22 IR 3499).

Rescheduled Notice of First Hearing: September 1, 1999, Indiana Register (22 IR 3944).

Date of First Hearing: October 13, 1999.

Third Notice of Comment Period: January 1, 2000, Indiana Register (23 IR 848).

Continuation of Comment Period: March 1, 2000, Indiana Register (23 IR 1419).

Notice of Second Hearing: May 1, 2000, Indiana Register (23 IR 2017).

Date of Second Hearing: July 12, 2000.

Notice of Third Hearing: June 1, 2001, Indiana Register (24 IR 2723).

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Date of Third Hearing: June 13, 2001.

Notice of Fourth Hearing: August 1, 2001, Indiana Register (24 IR 3658).

Date of Fourth Hearing: August 8, 2001.

Date of Final Adoption: August 8, 2001.

327 IAC 2-1-7

327 IAC 2-1.5-9

327 IAC 2-11

SECTION 1. 327 IAC 2-11 IS ADDED TO READ AS FOLLOWS:

Rule 11. Ground Water Quality Standards

327 IAC 2-11-1 Goal

Authority: IC 13-18-3-1; IC 13-18-4-1; IC 13-18-4-3; IC 13-18-4-4; IC 13-18-4-5; IC 13-18-17-5

Affected: IC 13-18-4; IC 13-18-17

Sec. 1. The goal of this rule is to maintain and protect the quality of Indiana's ground water and ensure that exposure to the ground water will not pose a threat to human health, any natural resource, or the environment. (*Water Pollution Control Board; 327 IAC 2-11-1; filed Feb 4, 2002, 11:00 a.m.: 25 IR 1876*)

327 IAC 2-11-2 Applicability

Authority: IC 13-18-3-1; IC 13-18-4-1; IC 13-18-4-3; IC 13-18-4-4; IC 13-18-4-5; IC 13-18-17-5

Affected: IC 4-22-2; IC 13-18-4; IC 13-18-17; IC 13-22; IC 13-23; IC 13-24; IC 13-25-4; IC 13-25-5-8.5; IC 13-30

Sec. 2. (a) The following agencies shall adopt rules under IC 4-22-2 to apply the standards established in this rule to the facilities, practices, and activities they regulate:

- (1) The department of environmental management.
- (2) The department of natural resources.
- (3) The Indiana state department of health.
- (4) The state chemist of the state of Indiana.
- (5) The office of the state fire marshal.

(b) An agency shall use its regulatory authority when adopting rules to ensure the criteria established in sections 5, 6, 7, and 8 of this rule will not be exceeded in ground water at or beyond the boundary of a ground water management zone established according to section 9 of this rule. When adopting rules, an agency shall, to the extent consistent with its regulatory authority, ensure that facilities, practices, and activities are designed and managed to eliminate or minimize, to the extent feasible, potential adverse impacts to the existing ground water quality by applying preventative action levels, design standards, a monitoring framework, or other regulatory methods. An agency may consider technological and economic reasonableness and other appropriate factors in determining a feasible approach.

(c) The standards established in this rule shall not

limit nor expand the authority of an agency.

(d) The standards established in this rule shall allow the following to be consistent with the remediation objectives set forth in IC 13-25-5-8.5:

(1) Ground water remediations conducted under:

- (A) IC 13-22;
- (B) IC 13-23; or
- (C) IC 13-25-5.

(2) Ground water remediations that:

- (A) are not emergency or nontime-critical activities; and
- (B) are conducted under:
 - (i) IC 13-24; or
 - (ii) IC 13-25-4.

(3) Ground water remediations conducted under any other provision of IC 13, as appropriate.

(e) No person shall cause the ground water in a drinking water supply well to have a contaminant concentration that creates one (1) or more of the following:

(1) An exceedance of the numeric criteria established for drinking water class ground water in Tables [section] 6(a)(1) and 6(a)(2) of this rule.

(2) A level sufficient to be acutely or chronically toxic, carcinogenic, mutagenic, teratogenic, or otherwise injurious to human health based on best scientific information.

(3) An exceedance of one (1) or more of the following indicator levels:

- (A) Chloride at two hundred fifty (250) milligrams per liter.
- (B) Sulfate at two hundred fifty (250) milligrams per liter.
- (C) Total dissolved solids at five hundred (500) milligrams per liter.
- (D) Total coliform bacteria at nondetect.

(4) Renders the well unuseable for normal domestic use.

(f) No person shall cause the ground water in a nondrinking water supply well, including an industrial, commercial, or agricultural supply well, to have a contaminant concentration that, based on best scientific information, renders the well unuseable for its current use.

(g) The criteria established in subsections (e) and (f) are immediately enforceable on the effective date of this rule under IC 13-30 to protect ground water quality in water supply wells.

(h) Except as provided in subsection (g), the criteria established in this rule shall not be enforceable under IC 13-30 until subsequent rules are adopted to apply the standards established in this rule pursuant to subsections (a) and (b). (*Water Pollution Control Board; 327 IAC 2-11-2; filed Feb 4, 2002, 11:00 a.m.: 25 IR 1876*)

327 IAC 2-11-3 Definitions

Authority: IC 13-18-3-1; IC 13-18-4-1; IC 13-18-4-3; IC 13-18-4-4; IC 13-18-4-5; IC 13-18-17-5
 Affected: IC 13-11-2-71; IC 13-18-4; IC 13-18-17; IC 14-34

Sec. 3. The following definitions apply throughout this rule:

- (1) "Agency" means one (1) or more of the following:
 - (A) The department of environmental management.
 - (B) The department of natural resources.
 - (C) The Indiana state department of health.
 - (D) The state chemist of the state of Indiana.
 - (E) The office of the state fire marshal.
- (2) "Commissioner" means the commissioner of the department of environmental management.
- (3) "Contaminant" means any solid, semisolid, liquid, or gaseous matter, or any odor, radioactive material, pollutant (as defined by the federal Water Pollution Control Act (33 U.S.C. 1362(6)), as amended on December 16, 1996)*, hazardous waste (as defined in the federal Solid Waste Disposal Act (42 U.S.C. 6903(5)), as amended on March 26, 1996)**, any constituent of a hazardous waste, or any combination of the items described in this subdivision, from whatever source, that:
 - (A) is injurious to human health, plant or animal life, or property;
 - (B) interferes unreasonably with the enjoyment of life or property; or
 - (C) otherwise violates:
 - (i) environmental management laws; or
 - (ii) rules adopted under environmental management laws.
- (4) "Criterion" means a numeric value or a narrative statement established to maintain and protect the quality of ground water.
- (5) "Drinking water well" means a bored, drilled, or driven shaft or a dug hole that meets the following:
 - (A) Supplies ground water for human consumption.
 - (B) Has a depth greater than its largest surface dimension.
 - (C) Is not permanently abandoned in accordance with 310 IAC 16-10-2 [310 IAC 16 was repealed filed Nov 22, 1999, 3:34 p.m.: 23 IR 776.].
- (6) "Environmental management laws" has the meaning set forth in IC 13-11-2-71.
- (7) "Ground water" means water located below the ground surface in interconnected voids and pore spaces in the zone of saturation.
- (8) "Ground water management zone" means a three (3) dimensional region of ground water around a potential or existing contaminant source where a contaminant is or was managed to prevent or mitigate deterioration of ground water quality such that the criteria established in this rule are met at and beyond the boundary of the region.
- (9) "Naturally occurring concentration" means a constit-

uent concentration in ground water that is not attributable to human activity.

- (10) "Preventative action level" means a measured concentration of a chemical constituent that is:
 - (A) established on a site-specific or program-specific basis;
 - (B) used to evaluate sample analysis data from ground water monitoring systems;
 - (C) statistically measurable using standard laboratory analyses; and
 - (D) used to determine if further action is necessary to ensure the standards established in this rule are not violated.
- (11) "Property boundary" means the edge of a contiguous parcel of land owned or leased by a common owner or lessee. Contiguous land shall include land separated by a public right-of-way, if that land would otherwise be contiguous.
- (12) "Standards", when used without qualification, means:
 - (A) the numeric and narrative criteria;
 - (B) the classification plan; and
 - (C) the method of determining where the criteria must apply;
 established by this rule.
- (13) "Surface water quality standards" means the water quality standards established in 327 IAC 2-1 and 327 IAC 2-1.5.

*33 U.S.C. 1362(6) 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 1255, Indianapolis, Indiana 46206.

**42 U.S.C. 6903(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 1255, Indianapolis, Indiana 46206. (*Water Pollution Control Board; 327 IAC 2-11-3; filed Feb 4, 2002, 11:00 a.m.: 25 IR 1877; errata filed Feb 5, 2002, 1:52 p.m.: 25 IR 1906*)

327 IAC 2-11-4 Ground water classification plan

Authority: IC 13-18-3-1; IC 13-18-4-1; IC 13-18-4-3; IC 13-18-4-4; IC 13-18-4-5; IC 13-18-17-5
 Affected: IC 4-22-2; IC 13-11-2-82; IC 13-18-4; IC 13-18-17; IC 14-34-4-7; IC 14-34-6; IC 14-37

Sec. 4. (a) All ground water shall be classified, under rules adopted under IC 4-22-2 that apply the standards established in this rule, to determine the appropriate narrative

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and numeric criteria and level of protection to be applied to ground water.

(b) Ground water shall be classified as drinking water class ground water unless it is classified as:

- (1) limited class ground water under subsection (c), (d), (e), or (f); or
- (2) impaired drinking water class ground water under subsection (g) or (h).

(c) Ground water shall be limited if it is in accordance with one (1) of the following conditions:

- (1) Contains hydrocarbons that are producible considering their quantity and location, as has been demonstrated to an agency.
- (2) Located in the injection zone of or within the physical influence of a Class I, II, or III injection well operating under a valid underground injection control permit issued under the Safe Drinking Water Act (42 U.S.C. 300) and its implementing regulations.
- (3) Located in a zone within the physical influence of a gas storage well operating under a valid permit issued under IC 14-37.

(d) Ground water shall be limited if it has constituent concentrations that are the result of natural processes acting on post mine hydrology and is located within one (1) of the following:

- (1) A coal mine area that:
 - (A) has satisfied the requirements of IC 14-34 and is fully released from the performance bond required by IC 14-34-6; and
 - (B) is within a zone defined by the coal mine permit as it was formerly approved and regulated by the department of natural resources unless it is within a demonstrated zone of influence of a coal mine area as determined by the commissioner in consultation with the department of natural resources.
- (2) The zone of influence, as determined by the commissioner in cooperation with the department of natural resources, of a coal mine area mined prior to August 4, 1977.

(e) Ground water shall be limited if it is located within an agricultural crop root zone. A limited classification under this subsection shall extend no deeper than ten (10) feet below the land surface.

(f) The commissioner may classify ground water as limited class ground water if a person requesting classification demonstrates, in a written submission, that the following conditions are met:

- (1) The ground water requested to be classified is as follows:
 - (A) Described in three (3) dimensions.
 - (B) Limited in one (1) of the following ways:

(i) The potential ground water yield is less than two hundred (200) gallons per day.

(ii) The naturally occurring total dissolved solids concentration is greater than or equal to ten thousand (10,000) milligrams per liter.

(C) Not currently used nor reasonably expected to be used for drinking water in the future, including the combined use of multiple low yield water bearing zones.

(D) Not in a state-approved wellhead protection area established pursuant to 327 IAC 8-4.1.

(2) Notification, using certified mail, was given, at least forty-five (45) days prior to the submission of the request, to the following:

(A) An owner and, if one exists, a lessee of property within or adjacent to the land area above the ground water requested to be classified.

(B) Any person reasonably expected to be aggrieved or adversely affected by the classification.

(C) City and county health officers having jurisdiction within the land area above the ground water requested to be classified.

(g) Ground water is impaired drinking water when the following conditions are met:

(1) The ground water is not in a state-approved wellhead protection area established pursuant to 327 IAC 8-4.1.

(2) The ground water has one (1) or more contaminant concentrations above the numeric criteria established in section 6(a) or 6(d) of this rule.

(3) The commissioner has approved a ground water remediation, closure, cleanup, or corrective action plan that describes the nature and extent of contaminants exceeding the criteria established in section 6(a) or 6(d), and one (1) of the following applies:

(A) A restrictive covenant has been placed on the property or properties overlying the ground water, and it prohibits the use of the untreated ground water.

(B) An alternate institutional control, such as a local ordinance, prohibits the use of the untreated ground water as a source of residential drinking water, and the commissioner has approved the alternate institutional control as an effective means of preventing exposure to the untreated ground water.

(h) The commissioner may classify ground water as impaired drinking water class ground water if it has one (1) or more contaminant concentrations above the numeric criteria established in section 6(a) or 6(d) of this rule and the person requesting classification demonstrates to the commissioner's satisfaction, in a written submission, that the following conditions are met:

(1) The ground water requested to be classified is as follows:

(A) Described, to the commissioner's satisfaction, in a hydrogeologic report that must, at a minimum, contain the following:

(i) A three (3) dimensional description of ground water flow and direction.

(ii) A description that includes the concentration of each contaminant that exceeds the criteria established in section 6(a) or 6(d) of this rule.

(iii) A map indicating the property or properties overlying the ground water requested to be classified.

(B) Not currently used nor reasonably expected to be used for drinking water in the future unless the following apply:

(i) The ground water is treated to reduce the contaminant concentration to less than the numeric criterion established in section 6(a) or 6(d) of this rule.

(ii) A mechanism is in place to prevent untreated ground water from being used as drinking water for as long as a contaminant concentration is above the numeric criterion established in section 6(a) or 6(d) of this rule.

(C) Not in a state-approved wellhead protection area established pursuant to 327 IAC 8-4.1.

(2) Notification, using certified mail, was given, at least forty-five (45) days prior to the submission of the request, to the following:

(A) An owner and, if one exists, a lessee of property within or adjacent to the land area above the ground water requested to be classified.

(B) The following city and county positions having jurisdiction within the land area above the ground water requested to be classified:

(i) Government officials.

(ii) Planners.

(iii) Health officers.

(C) Any person reasonably expected to be aggrieved or adversely affected by the classification.

(i) The commissioner may deny a request to classify ground water as impaired drinking water class ground water if the exceedance of the numeric criterion established in section 6(a) or 6(d) of this rule was caused by an unlawful action of the person seeking the classification. Notwithstanding the impaired drinking water class ground water classification, a facility, practice, or activity or a ground water contamination assessment or remediation located within the land area above the ground water classified as impaired drinking water class ground water must comply with all otherwise applicable laws, rules, and standards.

(j) The commissioner may reevaluate and change a ground water classification determination upon the receipt of new or additional information pertaining to a classification requirement. *(Water Pollution Control Board; 327 IAC 2-11-4; filed Feb 4, 2002, 11:00 a.m.: 25 IR 1877)*

327 IAC 2-11-5 Criteria for all ground water

Authority: IC 13-18-3-1; IC 13-18-4-1; IC 13-18-4-3; IC 13-18-4-4; IC 13-18-4-5; IC 13-18-17-5

Affected: IC 13-18-4; IC 13-18-17

Sec. 5. Each class of ground water described in section 4 of this rule shall meet the following protective criteria:

(1) Ground water quality shall be maintained, at a minimum, to protect the current and reasonably expected future use of the ground water.

(2) Ground water shall be maintained and protected to ensure that a contaminant concentration attributable to human activity does not increase in a drinking water well.

(3) For waters of the state, surface water quality standards shall be met in the surface water at the ground water-surface water interface.

(Water Pollution Control Board; 327 IAC 2-11-5; filed Feb 4, 2002, 11:00 a.m.: 25 IR 1879)

327 IAC 2-11-6 Criteria for drinking water class ground water

Authority: IC 13-18-3-1; IC 13-18-4-1; IC 13-18-4-3; IC 13-18-4-4; IC 13-18-4-5; IC 13-18-17-5

Affected: IC 4-22-2; IC 13-14-9; IC 13-18-4; IC 13-18-17

Sec. 6. (a) The following numeric criteria are health protective goals for untreated ground water used as drinking water and are the maximum permissible level of a contaminant in drinking water class ground water:

(1) Numeric criteria for select inorganic contaminants:

Contaminant	Criterion (mg/l unless noted) ¹
Antimony	0.006
Arsenic	0.05
Asbestos	7 MFL ²
Barium	2
Beryllium	0.004
Cadmium	0.005
Chromium (total)	0.1
Combined beta/photon emitters	4 mrem/yr ³
Cyanide (free)	0.2
Fluoride	4
Gross alpha particle activity (including radium 226 but excluding radon and uranium)	15 pCi/L ⁴
Lead	0.015
Mercury (inorganic)	0.002
Nitrate (as N)	10
Nitrite (as N)	1
Radium 226 and 228 (combined)	5 pCi/L
Selenium	0.05
Thallium	0.002

Notes:

¹mg/l is milligrams per liter.

²MFL is million fibers per liter greater than 10 micrometers in length.

³mrem/yr is millirems per year.

⁴pCi/L is picocuries per liter.

(2) Numeric criteria for select organic contaminants:

Table 6(a)(2)

Numeric Criteria for Organic Contaminants in Drinking Water Class Ground Water

Chemical Abstract Registry Numbers	Contaminant	Criterion (mg/l unless noted)
15972-60-8	Alachlor	0.002
1912-24-9	Atrazine	0.003
71-43-2	Benzene	0.005
50-32-8	Benzo(a)pyrene	0.0002
1563-66-2	Carbofuran	0.04
56-23-5	Carbon tetrachloride	0.005
57-74-9	Chlordane	0.002

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94-75-7	2,4-D	0.07
75-99-0	Dalapon	0.2
103-23-1	Di(2-ethylhexyl)adipate	0.4
96-12-8	Dibromochloropropane (DBCP)	0.0002
95-50-1	Dichlorobenzene, 1,2-	0.6
106-46-7	Dichlorobenzene, 1,4-	0.075
107-06-2	Dichloroethane, 1,2-	0.005
75-35-4	Dichloroethylene, 1,1-	0.007
156-59-2	Dichloroethylene, cis-1,2-	0.07
156-60-5	Dichloroethylene, trans-1,2-	0.1
75-09-2	Dichloromethane or methylene chloride	0.005
78-87-5	Dichloropropane, 1,2-	0.005
117-81-7	Di(2-ethylhexyl)phthalate	0.006
88-85-7	Dinoseb	0.007
85-00-7	Diquat	0.02
145-73-3	Endothall	0.1
72-20-8	Endrin	0.002
100-41-4	Ethylbenzene	0.7
106-93-4	Ethylene dibromide (EDB)	0.00005
1071-83-6	Glyphosate	0.7
76-44-8	Heptachlor	0.0004
1024-57-3	Heptachlor epoxide	0.0002
118-74-1	Hexachlorobenzene	0.001
77-47-4	Hexachlorocyclopentadiene	0.05
58-89-9	Lindane (gamma-BHC)	0.0002
72-43-5	Methoxychlor	0.04
108-90-7	Monochlorobenzene	0.1
23135-22-0	Oxamyl (vydate)	0.2
87-89-5	Pentachlorophenol	0.001
1918-02-1	Picloram	0.5
1336-36-3	Polychlorinated biphenyls (PCBs)	0.0005
122-34-9	Simazine	0.004
100-42-5	Styrene	0.1
1746-01-6	2,3,7,8-TCDD (Dioxin)	0.00000003
127-18-4	Tetrachloroethylene	0.005
108-88-3	Toluene	1
8001-35-2	Toxaphene	0.003
93-72-1	2,4,5-TP (Silvex)	0.05
120-82-1	Trichlorobenzene, 1,2,4-	0.07
71-55-6	Trichloroethane, 1,1,1-	0.2
79-00-5	Trichloroethane, 1,1,2-	0.005
79-01-6	Trichloroethylene	0.005
75-01-4	Vinyl chloride	0.002
1330-20-7	Xylenes (total)	10

(3) A drinking water class numeric criterion may be added to the criteria established in this subsection if adopted according to IC 4-22-2 and IC 13-14-9.

(b) An agency shall determine if further action is necessary to comply with the narrative criteria established in section 5 of this rule if the following indicator levels are exceeded in drinking water class ground water:

- (1) Chloride at two hundred fifty (250) milligrams per liter.
- (2) Sulfate at two hundred fifty (250) milligrams per liter.
- (3) Total dissolved solids at five hundred (500) milligrams per liter.
- (4) Total coliform bacteria at nondetect.

(c) If the commissioner determines that a site-specific numeric criterion for a contaminant without a drinking water class numeric criterion established in subsection (a) is necessary to protect human health, any natural resource, or the environment, a risk analysis shall be used to establish a numeric criterion for that contaminant and must:

- (1) receive approval from the commissioner; and
- (2) be based upon appropriate toxicological data.

(d) The naturally occurring concentration of a contaminant in drinking water class ground water shall be the numeric criterion if that contaminant occurs at a concentration greater than the drinking water numeric criterion established in subsection (a) or (c) or an indicator level established in subsection (b).

(e) If drinking water class ground water at a facility, practice, or activity is determined to have one (1) or more contaminant concentrations above the numeric criteria established in this section that are not attributable to the facility, practice, or activity under consideration, an agency shall manage the facility, practice, or activity or implement programs such that:

- (1) the facility, practice, or activity causes no further increase in the concentration of the contaminant determined to be above the numeric criterion established in this section; and
- (2) any design standard or management requirements that apply to the facility, practice, or activity are at least as stringent as the design standard and management requirements that would be applied to a facility, practice, or activity where ground water does not have one (1) or more contaminant concentrations above the numeric criteria established in this section.

(f) The commissioner may, for a ground water contamination assessment or remediation at a facility, practice, or activity under the jurisdiction of the department of environmental management, allow an appropriate site specific, risk based numeric criterion different from the numeric criterion established in subsection (a) or (d) to be applied to drinking water class ground water within the boundary of the ground water management zone established according to section 9 of this rule. (*Water Pollution Control Board; 327 IAC 2-11-6; filed Feb 4, 2002, 11:00 a.m.: 25 IR 1879*)

327 IAC 2-11-7 Criteria for limited class ground water

Authority: IC 13-18-3-1; IC 13-18-4-1; IC 13-18-4-3; IC 13-18-4-4; IC 13-18-4-5; IC 13-18-17-5
Affected: IC 13-18-4; IC 13-18-17

Sec. 7. (a) Limited class ground water, classified according to section 4(c) of this rule, must meet the narrative criteria established in section 5 of this rule.

(b) Limited class ground water, classified according to

section 4(d) of this rule, must meet the following requirements:

(1) A contaminant attributable to activities associated with coal mining, not including the disposal of coal combustion waste at a surface coal mine under IC 14-34, must meet the greater of the following:

- (A) The existing contaminant concentration.
- (B) The numeric criterion established in section 6(a) of this rule.

(2) A contaminant not attributable to activities associated with coal mining, including the disposal of coal combustion waste at a surface coal mine under IC 14-34, if the contaminant concentration exceeds the concentration attributable to a coal mining activity, must meet the numeric criterion established in section 6(a) or 6(d) of this rule.

(c) Limited class ground water, classified according to section 4(e) of this rule, must meet the following requirements:

(1) A contaminant attributable to pesticides, crop nutrients, or soil amendments that have been applied for agricultural purposes and used in a manner consistent with all applicable regulatory requirements shall meet the greater of the following:

- (A) The existing contaminant concentration.
- (B) The numeric criterion established in section 6(a) of this rule.

(2) A contaminant not attributable to pesticides, crop nutrients, or soil amendments that have been applied for agricultural purposes and used in a manner consistent with all applicable regulatory requirements must meet the numeric criterion established in section 6(a) or 6(d) of this rule.

(d) Limited class ground water, classified according to section 4(f) of this rule, must meet the following requirements:

(1) A contaminant with a drinking water class numeric criterion established in section 6(a) of this rule must have a numeric criterion of ten (10) times the drinking water class numeric criterion established in section 6(a) of this rule.

(2) If the commissioner determines that a numeric criterion for a contaminant without a drinking water class numeric criterion established in subsection 6(a) of this rule is necessary to protect human health, any natural resource, or the environment, a risk analysis shall be used to establish a numeric criterion for that contaminant and must:

- (A) receive approval from the commissioner; and
- (B) be based on appropriate toxicological data.

(e) The naturally occurring concentration of a contaminant in limited class ground water shall be the numeric

criterion if that contaminant occurs at a concentration greater than the limited numeric criterion established in subsection (b), (c), or (d).

(f) If limited class ground water at a facility, practice, or activity is determined to have one (1) or more contaminant concentrations above the numeric criteria established in this section that are not attributable to the facility, practice, or activity under consideration, an agency shall manage the facility, practice, or activity or implement programs such that:

- (1) the facility, practice, or activity causes no further increase in the concentration of the contaminant determined to be above the numeric criterion established in this section; and
- (2) any design standard or management requirements that apply to the facility, practice, or activity are at least as stringent as the design standard and management requirements that would be applied to a facility, practice, or activity where ground water does not have one (1) or more contaminant concentrations above the numeric criteria established in this section.

(g) The commissioner may allow an appropriate site specific, risk based numeric criterion different from the numeric criterion established in this section to be applied to limited class ground water at and beyond the boundary of the ground water management zone established according to section 9 of this rule. (*Water Pollution Control Board; 327 IAC 2-11-7; filed Feb 4, 2002, 11:00 a.m.: 25 IR 1880*)

327 IAC 2-11-8 Criteria for impaired drinking water class ground water

Authority: IC 13-18-3-1; IC 13-18-4-1; IC 13-18-4-3; IC 13-18-4-4; IC 13-18-4-5; IC 13-18-17-5
 Affected: IC 13-18-4; IC 13-18-17

Sec. 8. Impaired drinking water class ground water, classified according to section 4(g) or 4(h) of this rule, shall meet the following requirements:

(1) A contaminant not identified in the classification as being in excess of the numeric criterion of section 6(a) or 6(d) of this rule shall meet the numeric criterion established in section 6(a) or 6(d) of this rule.

(2) A contaminant identified in the classification as being in excess of the numeric criterion established in section 6(a) or 6(d) of this rule shall meet the existing contaminant concentration if it is greater than the numeric criterion established in section 6(a) or 6(d) of this rule and results from a source of contamination that:

- (A) was from a previously unregulated facility, practice, or activity;
- (B) was discovered after those who caused the contamination abandoned the site and those who caused the contamination cannot be found; or
- (C) cannot be identified due to the nature of the specific constituent.

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(3) Any design standard or management requirements that apply to a facility, practice, or activity with impaired drinking water class ground water must be at least as stringent as the design standard and management requirements that would be applied to a facility, practice, or activity with drinking water class ground water.

(4) The commissioner may allow an appropriate site specific, risk based numeric criterion different from the numeric criterion established in this section to be applied to impaired drinking water class ground water at and beyond the boundary of the ground water management zone established according to section 9 of this rule.

(Water Pollution Control Board; 327 IAC 2-11-8; filed Feb 4, 2002, 11:00 a.m.: 25 IR 1881)

327 IAC 2-11-9 Ground water management zones

Authority: IC 13-18-3-1; IC 13-18-4-1; IC 13-18-4-3; IC 13-18-4-4; IC 13-18-4-5; IC 13-18-17-5

Affected: IC 4-22-2; IC 13-18-4; IC 13-18-17

Sec. 9. (a) The criteria established in sections 5, 6, 7, and 8 of this rule must be met at and beyond the boundary of the ground water management zone.

(b) An agency, having jurisdiction over a facility, practice, or activity that is subject to the criteria of this rule, may establish an appropriate program specific or site specific three (3) dimensional ground water management zone and shall determine its boundary location and duration considering the following factors:

- (1) Regulatory program requirements.
- (2) Design standards.
- (3) Monitoring frameworks.
- (4) Hydrogeologic conditions.
- (5) Risks of human exposure.
- (6) Impacts to any natural resource and the environment.
- (7) Property controls.
- (8) Physical and chemical properties of potential contaminants.

(c) An agency, having jurisdiction over a ground water contamination assessment or remediation that is subject to the criteria of this rule, may establish an appropriate program specific or site specific three (3) dimensional ground water management zone considering the following factors:

- (1) Regulatory program requirements.
- (2) Type and amount of a contaminant present.
- (3) Monitoring frameworks.
- (4) Hydrogeologic conditions.
- (5) Risks of human exposure.
- (6) Impacts to any natural resource and the environment.
- (7) Property controls.
- (8) Expected future use of the site.
- (9) Physical and chemical properties of existing contaminants.

(d) Rules adopted by an agency under IC 4-22-2 to apply the standards in this rule must include a default three (3) dimensional ground water management zone that shall apply if an agency having jurisdiction over a facility, practice, activity, or a ground water contamination assessment or remediation does not establish a program specific or site specific ground water management zone under subsection (b) or (c). The boundary of the default ground water management zone shall be located in accordance with one (1) of the following:

(1) At each drinking water well that is:

(A) within three hundred (300) feet from the edge of a potential or existing contaminant source when the property boundary is greater than three hundred (300) feet from the edge of a potential or existing contaminant source; or

(B) within the property boundary when the property boundary is less than three hundred (300) feet from the edge of a potential or existing contaminant source.

(2) The property boundary, when the property boundary is less than three hundred (300) feet from the edge of a potential or existing contaminant source, and there is no drinking water well within the property boundary.

(3) Three hundred (300) feet from the edge of a potential or existing contaminant source when the property boundary is greater than three hundred (300) feet from the edge of a potential or existing contaminant source and there is no drinking water well within three hundred (300) feet from the edge of a potential or existing contaminant source.

(e) If overlapping ground water management zone boundaries are present at a facility, practice, activity, or ground water contamination assessment or remediation, then the agency or agencies with jurisdiction may combine them. *(Water Pollution Control Board; 327 IAC 2-11-9; filed Feb 4, 2002, 11:00 a.m.: 25 IR 1882)*

SECTION 2. THE FOLLOWING ARE REPEALED: 327 IAC 2-1-7; 327 IAC 2-1.5-9.

LSA Document #99-263(F)

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Hearing Held:

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Approved by Governor: January 28, 2002

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Incorporated Documents Filed with Secretary of State: 33 U.S.C. 1362(6); 42 U.S.C. 6903(5).

TITLE 327 WATER POLLUTION CONTROL BOARD

LSA Document #00-235(F)

DIGEST

Adds 327 IAC 16 concerning confined feeding operations. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: November 1, 1997, Indiana Register (21 IR 848).

Second Notice of Comment Period: November 1, 1998, Indiana Register (22 IR 559).

Continuation of Second Notice of Comment Period: December 1, 1998, Indiana Register (22 IR 830).

Notice of First Hearing: September 1, 2000, Indiana Register (23 IR 3097).

Date of First Hearing: September 13, 2000.

Proposed Rule: November 1, 2000, Indiana Register (24 IR 450).

Notice of Second Hearing: March 1, 2001, Indiana Register (24 IR 1686).

Date of Second Hearing: March 14, 2001.

Notice of Recall: July 1, 2001, Indiana Register (24 IR 3071).

Date of Third Hearing: July 11, 2001.

Notice of Recall: November 1, 2001, Indiana Register (25 IR 385).

Date of Readoption: November 14, 2001.

327 IAC 16

SECTION 1. 327 IAC 16 IS ADDED TO READ AS FOLLOWS:

ARTICLE 16. CONFINED FEEDING OPERATIONS

Rule 1. General Provisions

327 IAC 16-1-1 Applicability

Authority: IC 13-14-8-1; IC 13-18-10-4

Affected: IC 13-11-2; IC 13-18; IC 13-22

Sec. 1. (a) This article applies to the following:

(1) Any person who owns, designs, constructs, operates, or closes a confined feeding operation.

(2) Any person responsible for application of manure onto the land in Indiana that is generated by a confined feeding operation.

(b) This article does not apply to a person who applies manure from a confined feeding operation in amounts of less than ten (10) cubic yards or two thousand (2,000) gallons in a calendar year. (Water Pollution Control Board; 327 IAC 16-1-1; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1883)

327 IAC 16-1-2 Compliance schedule

Authority: IC 13-14-8-1; IC 13-18-10-4

Affected: IC 13-11-2; IC 13-18; IC 13-22

Sec. 2. (a) Compliance with all sections of this article shall be on the effective date of this rule, except that the

owner/operator of a confined feeding operation shall develop an emergency spill response plan in accordance with 327 IAC 16-9-4(a) prior to the collection and storage of any manure.

(b) All confined feeding operation approvals issued prior to the effective date of this rule shall expire five (5) years from the date of the submission of the most recently submitted manure management plan unless an application for renewal has been submitted in accordance with 327 IAC 16-7-4. Approval renewals shall be issued for a fixed term not to exceed five (5) years. (Water Pollution Control Board; 327 IAC 16-1-2; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1883)

327 IAC 16-1-3 Appeal of decisions

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4

Affected: IC 4-21.5; IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 3. A decision by the commissioner to approve, deny, revoke, amend, require an approval, or impose additional requirements under this article is appealable under IC 4-21.5. Information on appeal rights shall be provided with the documentation of the commissioner's decision. (Water Pollution Control Board; 327 IAC 16-1-3; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1883)

327 IAC 16-1-4 Federal and state requirements

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4

Affected: IC 4-21.5; IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 4. An approval under this article is intended to satisfy the environmental requirements under the Clean Water Act. The commissioner is not limited from requiring a NPDES permit under 327 IAC [sic., this title]. (Water Pollution Control Board; 327 IAC 16-1-4; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1883)

Rule 2. Definitions

327 IAC 16-2-1 "Agronomic rate" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4

Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 1. "Agronomic rate" means a rate of application of manure to the land based on:

- (1) the nutrient content of the manure to be applied;**
- (2) the fertility level of the soil;**
- (3) the nutrient needs of the current or planned crops;**
- (4) the nutrient holding capacity of the soil; and**
- (5) additional sources of nutrients, including legume credits, process wastewater, biosolids, or commercial fertilizer.**

(Water Pollution Control Board; 327 IAC 16-2-1; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1883)

327 IAC 16-2-2 "Bedrock" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4

Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

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Sec. 2. “Bedrock” means cemented or consolidated earth materials exposed on the earth’s surface or underlying unconsolidated earth materials. (*Water Pollution Control Board; 327 IAC 16-2-2; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1883*)

327 IAC 16-2-3 “Commissioner” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 13-11-2-35; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 3. “Commissioner”, as defined in IC 13-11-2-35, refers to the commissioner of the department of environmental management. (*Water Pollution Control Board; 327 IAC 16-2-3; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1884*)

327 IAC 16-2-4 “Confined feeding” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 13-11-2-29; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 4. (a) “Confined feeding”, as defined in IC 13-11-2-39, means the confined feeding of animals for food, fur, or pleasure purposes in lots, pens, ponds, sheds, or buildings where:

- (1) animals are confined, fed, and maintained for at least forty-five (45) days during any twelve (12) month period; and
- (2) ground cover or vegetation is not sustained over at least fifty percent (50%) of the animal confinement area.

(b) The term does not include the following:

- (1) A livestock market:
 - (A) where animals are assembled from at least two (2) sources to be publicly auctioned or privately sold on a commission basis; and
 - (B) that is under state or federal supervision.
- (2) A livestock sale barn or auction market where animals are kept for not more than ten (10) days.

(*Water Pollution Control Board; 327 IAC 16-2-4; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1884*)

327 IAC 16-2-5 “Confined feeding operation” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 4-21.5; IC 13-11-2-40; IC 13-14; IC 13-15; IC 13-18-10; IC 13-30

Sec. 5. “Confined feeding operation”, as defined in IC 13-11-2-40, means any:

- (1) confined feeding of at least:
 - (A) three hundred (300) cattle;
 - (B) six hundred (600) swine or sheep; or
 - (C) thirty thousand (30,000) fowl;
- (2) animal feeding operation electing to be subject to IC 13-18-10; or
- (3) animal feeding operation that causes a violation of:
 - (A) water pollution control laws;
 - (B) any rules of the water pollution control board; or
 - (C) IC 13-18-10.

A determination by the department under this subdivision is appealable under IC 4-21.5. (*Water Pollution Control Board; 327 IAC 16-2-5; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1884*)

327 IAC 16-2-6 “Construction” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 13-11-2-40.8; IC 13-14; IC 13-15; IC 13-18-10; IC 13-30

Sec. 6. “Construction”, as defined in IC 13-11-2-40.8, for purposes of IC 13-18-10, means the fabrication, erection, or installation of a facility or manure control equipment at the location where the facility or manure control equipment is intended to be used. The term does not include the following:

- (1) The dismantling of existing equipment and control devices.
- (2) The ordering of equipment and control devices.
- (3) Off-site fabrication.
- (4) Site preparation.

(*Water Pollution Control Board; 327 IAC 16-2-6; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1884*)

327 IAC 16-2-7 “Contaminated run-off” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 7. “Contaminated run-off” means any precipitation or surface water that has come into contact with any liquid or solid animal excreta or any used bedding, litter, or waste liquid at the confined feeding operation. (*Water Pollution Control Board; 327 IAC 16-2-7; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1884*)

327 IAC 16-2-8 “Department” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 13-11-2-51; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 8. “Department”, as defined in IC 13-11-2-51, refers to the department of environmental management. (*Water Pollution Control Board; 327 IAC 16-2-8; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1884*)

327 IAC 16-2-9 “Discharge” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 9. “Discharge”, for purposes of this article, means any addition of any pollutant, or combination of pollutants, into any waters of the state from a point source. The term includes, without limitation, an addition of a pollutant into any waters of the state from the following:

- (1) Surface run-off that is collected or channeled by human activity.
- (2) Discharges through pipes, sewers, or other conveyances, including natural channels that do not lead to treatment works.

(*Water Pollution Control Board; 327 IAC 16-2-9; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1884*)

327 IAC 16-2-10 “Drainage inlet” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 10. “Drainage inlet” means any surficial opening to an underground tile drainage system that drains to waters of the state. For purposes of this article, “drainage inlet” includes water and sediment control basins. (*Water Pollution Control Board; 327 IAC 16-2-10; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1885*)

327 IAC 16-2-11 “Feedlot” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 11. “Feedlot” means an outside lot or pen used for confined feeding, including areas that may be covered, partially covered, or uncovered. (*Water Pollution Control Board; 327 IAC 16-2-11; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1885*)

327 IAC 16-2-12 “Filter strip” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 12. “Filter strip” means a relatively uniform and maintained vegetated area used for collecting sediment and cleansing run-off. (*Water Pollution Control Board; 327 IAC 16-2-12; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1885*)

327 IAC 16-2-13 “Flood plain” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 13. “Flood plain” means any area adjoining a river, stream, or lake that has been or may be covered by a one hundred (100) year flood. (*Water Pollution Control Board; 327 IAC 16-2-13; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1885*)

327 IAC 16-2-14 “Floodway” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 14. “Floodway” means the channel of a river or stream and those portions of the flood plain adjoining the channel that are reasonably required to efficiently carry and discharge the peak flood flow of a one hundred (100) year flood as determined by 310 IAC 6. (*Water Pollution Control Board; 327 IAC 16-2-14; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1885*)

327 IAC 16-2-15 “Gradient barrier” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 15. “Gradient barrier” means a structure or feature that prevents run-off from entering waters of the state. (*Water Pollution Control Board; 327 IAC 16-2-15; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1885*)

327 IAC 16-2-16 “Ground water” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 16. “Ground water” means such accumulations of underground water, natural or artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this state, but excluding manmade underground storage or conveyance structures. (*Water Pollution Control Board; 327 IAC 16-2-16; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1885*)

327 IAC 16-2-17 “Highly erodible land” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 17. “Highly erodible land” means land that has a high potential to erode based on site-specific characteristics, such as slope length and steepness, rainfall, run-off, wind, soil type, and soil conditions. (*Water Pollution Control Board; 327 IAC 16-2-17; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1885*)

327 IAC 16-2-18 “Historic site” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30; IC 14-8-2-125

Sec. 18. “Historic site”, as defined in IC 14-8-2-125, means a site that is important to the general, archaeological, agricultural, economic, social, political, architectural, industrial, or cultural history of Indiana. The term includes adjacent property that is necessary for the preservation or restoration of the site. (*Water Pollution Control Board; 327 IAC 16-2-18; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1885*)

327 IAC 16-2-19 “Incorporation” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 19. “Incorporation” means the mixing of liquid or solid manure, with the surface soil using standard agricultural practices, such as tillage. (*Water Pollution Control Board; 327 IAC 16-2-19; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1885*)

327 IAC 16-2-20 “Injection” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 20. “Injection” means the placement of liquid manure beneath the surface of the soil in the crop root zone using equipment specifically designed for this purpose. (*Water Pollution Control Board; 327 IAC 16-2-20; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1885*)

327 IAC 16-2-21 “Karst terrain” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 21. “Karst terrain” means an area where karst

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topography, including the characteristic surface and subterranean features, has developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terrains include the following:

- (1) Sinkholes.
- (2) Sinking streams.
- (3) Caves.
- (4) Large springs.
- (5) Blind valleys.

(Water Pollution Control Board; 327 IAC 16-2-21; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1885)

327 IAC 16-2-22 “Manure” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 22. “Manure” means any liquid or solid animal excreta or any used bedding, litter, waste liquid, or contaminated run-off. *(Water Pollution Control Board; 327 IAC 16-2-22; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1886)*

327 IAC 16-2-23 “Manure application” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 23. “Manure application” means the placement of liquid or solid manure by:

- (1) spraying or spreading onto the land surface;
- (2) injection below the land surface; or
- (3) incorporation into the soil.

(Water Pollution Control Board; 327 IAC 16-2-23; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1886)

327 IAC 16-2-24 “Manure storage structure” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 24. “Manure storage structure” means any pad, pit, pond, lagoon, tank, building, or manure containment area used to store or treat manure, including any portions of buildings used specifically for manure storage or treatment. *(Water Pollution Control Board; 327 IAC 16-2-24; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1886)*

327 IAC 16-2-25 “Manure transfer system” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 25. “Manure transfer system” means any pipes, lift stations, pumps, or other stationary devices used for the transfer of manure. *(Water Pollution Control Board; 327 IAC 16-2-25; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1886)*

327 IAC 16-2-26 “Manure transfer vehicle” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 26. “Manure transfer vehicle” means a vehicle, tank, or

wagon used to move manure. *(Water Pollution Control Board; 327 IAC 16-2-26; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1886)*

327 IAC 16-2-27 “New manure storage structure” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 27. “New manure storage structure” means any manure storage structure:

(1) for which an application for approval was received by the commissioner on or after the effective date of this rule; and

(2) that is approved after the effective date of this rule.

(Water Pollution Control Board; 327 IAC 16-2-27; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1886)

327 IAC 16-2-28 “Operating record” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 28. “Operating record” means the written record of the confined feeding operation activities required by this article and kept by the owner/operator. *(Water Pollution Control Board; 327 IAC 16-2-28; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1886)*

327 IAC 16-2-29 “Owner/operator” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 29. (a) “Owner/operator”, for purposes of this rule, means the person:

- (1) that owns the waste management systems at the confined feeding operation;
- (2) that owns the livestock at the confined feeding operation and that applies for or has received an approval pursuant to this article; or
- (3) in direct or responsible charge or control of one (1) or more confined feeding operations or land application activity.

(b) The term includes contractors responsible for activities described in 327 IAC 16-1-1(a) at the confined feeding operation. *(Water Pollution Control Board; 327 IAC 16-2-29; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1886)*

327 IAC 16-2-30 “Potentially available nitrogen” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 30. “Potentially available nitrogen” means the nitrogen that could be realistically taken up by a crop during one (1) growing season. Potentially available nitrogen is usually calculated as the sum total of:

- (1) ammonium nitrogen;
- (2) nitrate nitrogen; and
- (3) the percent organic nitrogen that will mineralize in one (1) growing season.

(Water Pollution Control Board; 327 IAC 16-2-30; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1886)

327 IAC 16-2-31 “Public water supply surface intake structure” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 31. “Public water supply surface intake structure” means any structure used for the purpose of providing water through a public water supply system. *(Water Pollution Control Board; 327 IAC 16-2-31; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1887)*

327 IAC 16-2-32 “Public water supply well” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 32. “Public water supply well” means any well that provides water to the public through a water distribution system that:

- (1) serves at least twenty-five (25) persons per day for:
 - (A) drinking;
 - (B) domestic use; or
 - (C) other purposes; or
- (2) has at least fifteen (15) service connections.

(Water Pollution Control Board; 327 IAC 16-2-32; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1887)

327 IAC 16-2-33 “Registered professional engineer” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30; IC 25-31

Sec. 33. “Registered professional engineer” means a professional engineer registered by the state under IC 25-31. *(Water Pollution Control Board; 327 IAC 16-2-33; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1887)*

327 IAC 16-2-34 “Sensitive area” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30; IC 14-31; IC 14-38-1-5

Sec. 34. “Sensitive area” means a site where conditions exist that pose a specific water quality threat to one (1) or more of the following:

- (1) Aquifers used as a source of drinking water.
- (2) Public water supply wells.
- (3) Wellhead protection areas.
- (4) Drinking water supply reservoirs.
- (5) Areas requiring special protection, such as:
 - (A) wetlands, except for wetlands constructed for manure management;
 - (B) karst terrains;
 - (C) the critical habitat of an endangered species; or
 - (D) natural areas, including:

- (i) parks;
- (ii) nature preserves, as regulated under IC 14-31;
- (iii) historic sites, as defined in section 18 of this rule; and
- (iv) public lands, as defined in IC 14-38-1-5.

(Water Pollution Control Board; 327 IAC 16-2-34; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1887)

327 IAC 16-2-35 “Spill” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 35. “Spill” means any unexpected, unintended, abnormal, or unapproved dumping, leakage, drainage, seepage, discharge or other loss of petroleum, hazardous substances, extremely hazardous substances, or objectionable substances. The term does not include releases to impermeable surfaces when the substance does not migrate off the surface or penetrate the surface and enter the soil. *(Water Pollution Control Board; 327 IAC 16-2-35; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1887)*

327 IAC 16-2-36 “Spray irrigation” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 36. “Spray irrigation” means the application of manure on the land through a stationary or mobile sprinkler type system. *(Water Pollution Control Board; 327 IAC 16-2-36; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1887)*

327 IAC 16-2-37 “Staging” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 37. “Staging” means the temporary placement of manure in a pile at the site where the manure will be land applied. *(Water Pollution Control Board; 327 IAC 16-2-37; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1887)*

327 IAC 16-2-38 “Surface application” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 38. “Surface application” means the placement of manure by spraying or spreading onto the land surface. *(Water Pollution Control Board; 327 IAC 16-2-38; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1887)*

327 IAC 16-2-39 “Surface water” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 39. “Surface water” means water present on the surface of the earth, including:

- (1) streams;
- (2) lakes;
- (3) ponds;
- (4) rivers;
- (5) swamps;

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- (6) marshes; or
- (7) wetlands.

(Water Pollution Control Board; 327 IAC 16-2-39; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1887)

327 IAC 16-2-40 "Uncovered" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 40. "Uncovered" means any structure that allows exposure of manure to precipitation events or to the run-on or run-off from precipitation events. (Water Pollution Control Board; 327 IAC 16-2-40; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1888)

327 IAC 16-2-41 "Vegetative management system" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 41. "Vegetative management system" means a vegetated area designed to accept contaminated run-off or waste liquid after settling for the purpose of treatment or infiltration into the soil. (Water Pollution Control Board; 327 IAC 16-2-41; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1888)

327 IAC 16-2-42 "Waste liquid" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 42. "Waste liquid" means liquid to be handled as manure that is generated at the confined feeding operation, including:

- (1) excess drinking water;
- (2) clean-up water;
- (3) contaminated livestock truck or trailer washwater;
- (4) milking parlor wastewater;
- (5) milk house washwater;
- (6) egg washwater; or
- (7) silage leachate.

(Water Pollution Control Board; 327 IAC 16-2-42; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1888)

327 IAC 16-2-43 "Waste liquid storage system" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 43. "Waste liquid storage system" means any storage structures, conveyances, or other devices to manage waste liquids. (Water Pollution Control Board; 327 IAC 16-2-43; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1888)

327 IAC 16-2-44 "Waste management system" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 44. "Waste management system" means any method of managing manure at the confined feeding operation, including:

- (1) manure storage structures;
- (2) manure transfer systems;
- (3) manure treatment systems, such as:
 - (A) a constructed wetland;
 - (B) a vegetative management system;
 - (C) a wastewater treatment system under a valid national pollutant discharge elimination system (NPDES) permit; or
 - (D) another system approved by the commissioner;
- (4) feedlots;
- (5) confinement buildings; or
- (6) waste liquid handling, storage, and treatment systems.

(Water Pollution Control Board; 327 IAC 16-2-44; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1888)

327 IAC 16-2-45 "Waters" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 13-11-2-265; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 45. (a) "Waters", as defined in IC 13-11-2-265, means:

- (1) the accumulations of water, surface and underground, natural and artificial, public and private; or
- (2) a part of the accumulations of water; that are wholly or partially within, flow through, or border upon Indiana.

(b) The term does not include:

- (1) a private pond; or
- (2) an off-stream pond, reservoir, or facility built for reduction or control of pollution or cooling of water prior to discharge; unless the discharge from the pond, reservoir, or facility causes or threatens to cause water pollution. (Water Pollution Control Board; 327 IAC 16-2-45; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1888)

Rule 3. Performance Standards for All Confined Feeding Operations

327 IAC 16-3-1 Performance standards

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 1. (a) A confined feeding operation shall be managed to avoid an unpermitted discharge into waters of the state.

(b) A confined feeding operation must be conducted in a manner that minimizes nonpoint source pollution entering waters of the state.

(c) A confined feeding operation shall immediately take all reasonable steps to prevent spills or the discharge of manure in violation of the approval or this article, including seepage and leakage.

(d) All waste management systems must be designed,

constructed, and maintained to minimize leaks and seepage and prevent spills.

(e) Manure to be staged or applied to land in Indiana must be staged or applied in such a manner as:

- (1) not to enter or threaten to enter waters of the state;
- (2) to prevent:
 - (A) run-off;
 - (B) ponding for more than twenty-four (24) hours; and
 - (C) spills; and
- (3) to minimize nutrient leaching beyond the root zone.

(Water Pollution Control Board; 327 IAC 16-3-1; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1888)

Rule 4. General Approval Conditions

327 IAC 16-4-1 Requirement to obtain an approval

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 1. Confined feeding operations must:

- (1) have a valid approval to operate; or
- (2) close in accordance with 327 IAC 16-11.

(Water Pollution Control Board; 327 IAC 16-4-1; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1889)

327 IAC 16-4-2 Conditions applicable to all approvals

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18-10; IC 13-30

Sec. 2. The following conditions apply to all confined feeding approvals:

- (1) The owner/operator must comply with all terms and conditions of the approval and this article.
- (2) The owner/operator shall take all reasonable steps to prevent, minimize, or correct any adverse impact on the environment resulting from noncompliance with the approval or this article.
- (3) The filing by the owner/operator of a request for an approval amendment, revocation and reissuance, or revocation does not stay or suspend any approval term or condition. The approval may be amended, revoked and reissued, or revoked for causing or threatening to cause harm to the environment.
- (4) The approval does not convey any property rights of any sort or any exclusive privilege.
- (5) The owner/operator 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 in compliance with biosecurity procedures developed by the department in consultation with the Indiana state board of animal health or individual owner/operators as defined in 327 IAC 16-2-29:

- (A) to enter upon the confined feeding operation premises or where any records must be kept under the

terms and conditions of the approval or this article;
 (B) to have access for review to any records that must be kept under the terms and conditions of the approval;
 (C) to inspect, at reasonable times:

- (i) any monitoring equipment or method;
- (ii) any waste management systems; or
- (iii) practices required or otherwise regulated under the approval; and

(D) to sample or monitor, at reasonable times, for the purpose of evaluating compliance with the approval or state and federal laws and regulations.

(6) The provisions of this approval are severable and, if any provision of the approval or the application of any provision of the approval to any circumstances is held invalid, the application of such provision to other circumstances and the remainder of this approval shall not be affected thereby.

(Water Pollution Control Board; 327 IAC 16-4-2; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1889)

327 IAC 16-4-3 Additional conditions for large confined feeding operations

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 3. (a) In addition to the other requirements of this article, the owner/operator of confined feeding operations with more than twenty (20) times the animal numbers listed in 327 IAC 16-2-5 must comply with the provisions in this section.

(b) The owner/operator shall comply with the public notice requirements under 327 IAC 16-7-12 and the public comment period and hearing requirements under 327 IAC 16-7-13.

(c) If determined to be necessary to protect human health or the environment, the commissioner may require additional design standards, operational requirements, or other best management practices, such as:

- (1) monitoring systems;
- (2) liners;
- (3) higher compaction;
- (4) reporting;
- (5) innovative technology; or
- (6) other protective measures.

(d) The commissioner shall provide written documentation describing the basis for requiring additional design or operational requirements. *(Water Pollution Control Board; 327 IAC 16-4-3; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1889)*

327 IAC 16-4-4 Enforcement

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14-2-6; IC 13-15; IC 13-18; IC 13-30-3

Sec. 4. For a confined feeding operation that has a valid

approval, a violation of the operational requirements in 327 IAC 16-9, or land application of manure requirements in 327 IAC 16-10, may not be subject to an enforcement action pursuant to IC 13-30-3 or IC 13-14-2-6 if the violation:

- (1) has not caused a:
 - (A) discharge to waters of the state; or
 - (B) release of manure that has crossed a property boundary;
- (2) is corrected:
 - (A) immediately; or
 - (B) within a reasonable time frame as specified in a written notification of the violation by a department representative;
- (3) is not the same type of violation as a violation that occurred within the previous five (5) years; and
- (4) is not one of multiple concurrent violations that represent a threat to the environment.

(Water Pollution Control Board; 327 IAC 16-4-4; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1889)

Rule 5. Alternate Design or Compliance Approach; Innovative Technology

327 IAC 16-5-1 Alternate design or compliance approach; innovative technology

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 1. (a) The use of a design or compliance approach other than the requirement specified in this article, or an innovative technology may be proposed by the owner/operator in accordance with the following:

- (1) The proposal for the alternative design or compliance approach, or innovative technology must be accompanied by documentation that indicates that the performance standards in 327 IAC 16-3-1 will be met. The alternative design or compliance approach, or innovative technology must comply with all existing environmental regulations and laws.
- (2) The proposed design or compliance approach, or innovative technology must be incorporated into the approval.

(b) In making a determination on an alternate design or compliance approach, or innovative technology, the commissioner shall consider applicable criteria that may include:

- (1) design specifications that indicate adequate structural integrity;
- (2) protective measures that reduce the potential for spills;
- (3) existence of barriers or surface gradient that directs liquid flow away from features specified for protection;
- (4) operational practices that provide additional protection;
- (5) threats of adverse impacts to water quality or other specified sensitive areas; and

(6) other criteria related to protection of the environment or human health.

(c) The commissioner shall provide written documentation describing the basis for the approval or denial of the proposed alternate design, compliance approach, or innovative technology. *(Water Pollution Control Board; 327 IAC 16-5-1; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1890)*

Rule 6. Existing Confined Feeding Operations

327 IAC 16-6-1 Existing confined feeding operations

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18-10-2.3; IC 13-30

Sec. 1. (a) Existing confined feeding operations are not subject to 327 IAC 16-8, but must be maintained and operated in compliance with all:

- (1) federal laws;
- (2) state laws; and
- (3) approval conditions.

(b) The owner/operator of existing confined feeding operations shall comply with the following requirements by the effective date of this rule:

- (1) Operational requirements in 327 IAC 16-9, except the owner/operator shall comply with 327 IAC 16-9-4 within ninety (90) days of the effective date of this rule.
- (2) Manure application requirements in 327 IAC 16-10.
- (3) Manure management plan requirements in IC 13-18-10-2.3, and as described in 327 IAC 16-7-11.
- (4) Closure requirements in 327 IAC 16-11.

(c) An approval amendment is required for an increase in the amount of manure generated that:

- (1) reduces the storage capacity to less than the required storage capacity at the time of the most recent approval; or
- (2) results from an increase in the number of animals, excluding swine that weigh twenty-five (25) kilograms or less, by:
 - (i) more than the numbers in 327 IAC 16-2-5; or
 - (ii) greater than ten percent (10%) of the approved animal capacity at the time of the most recent approval.

(d) The owner/operator of an existing confined feeding operation shall have a soil test and a manure test conducted in accordance with a manure management plan prior to April 1, 2002.

(e) For existing confined feeding operations, application of manure to the land must be conducted in accordance with the following:

- (1) Prior to April 1, 2002, manure application must:
 - (A) be at a rate not to exceed one hundred fifty (150) pounds of potentially available nitrogen per acre per year for confined feeding operations that have not received soil and manure test results; or

(B) in accordance with agronomic rates for potentially available nitrogen as documented in the operating record for confined feeding operations that have received soil and manure test results.

(2) After April 1, 2002, all manure application must be in accordance with agronomic rates for potentially available nitrogen as documented in records at the confined feeding operation.

(f) All confined feeding operation approvals issued prior to the effective date of this rule shall expire no later than five (5) years from the effective date of this rule unless a renewal application is submitted in accordance with 327 IAC 16-7-4. (*Water Pollution Control Board; 327 IAC 16-6-1; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1890*)

Rule 7. Application and Approval Process for Confined Feeding Operations

327 IAC 16-7-1 Applicability

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 4-21.5; IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 1. (a) This rule applies to any person seeking approval for a confined feeding operation.

(b) A person shall not begin construction of a confinement building or waste management system at a new or an existing confined feeding operation without obtaining the prior written approval of the commissioner.

(c) All manure management structures approved prior to July 1, 1997, that have not been constructed, but that are intended to be constructed, must meet one (1) of the following:

- (1) Construction must be:
 - (A) initiated by the effective date of this rule; and
 - (B) completed within two (2) years of the effective date of this rule or the date all appeals brought under IC 4-21.5 concerning the construction of the confined feeding operation have been completed, whichever is later.
- (2) A new application for the manure management structure must be submitted to the department under this article.

(*Water Pollution Control Board; 327 IAC 16-7-1; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1891*)

327 IAC 16-7-2 Application requirements

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18-10-2; IC 13-30; IC 25-17.6

Sec. 2. (a) Two (2) copies of the application package for an approval of a confined feeding operation must be submitted to the commissioner in a format specified by the department.

(b) A complete application package must include all of the following information:

- (1) A completed application form on forms provided by the department.
- (2) A plot map as described in section 8 of this rule.
- (3) A farmstead plan as described in section 9 of this rule.
- (4) A waste management system drawing as described in section 10 of this rule.
- (5) Soil and water table information from test holes for proposed liquid manure storage structures that are conducted by a soil scientist certified under the Federation of Certified Boards of Agriculture, Biology, Earth and Environmental Sciences, a professional geologist certified in Indiana under IC 25-17.6, or a professional engineer registered in Indiana. The number of test holes must be sufficient to adequately characterize the seasonal water table and soil. Test holes for concrete liquid manure storage structures must be at least two (2) feet below the base of the structure. Test holes for earthen liquid manure storage structures must be:
 - (A) at least five (5) feet below the base of the structure for non-karst areas; or
 - (B) in accordance with 327 IAC 16-8-1(b)(1) in areas of karst terrain or over mines.
- (6) A manure management plan as described in section 11 of this rule.
- (7) A description of any proposed alternative to a specific requirement in this article to indicate equivalent environmental and human health protection in accordance with 327 IAC 16-5.
- (8) For new earthen liquid manure storage structures, certification of the structure design by a professional engineer registered in Indiana.
- (9) A list of potentially affected parties.
- (10) A fee of one hundred dollars (\$100), in accordance with IC 13-18-10-2(a)(5).
- (11) Other plans or supplemental information that may be required by the commissioner to ensure compliance with this article. The commissioner shall provide written documentation of the basis for requiring any other plans or supplemental information.

(c) The commissioner may deny an approval application, or place conditions on an approval:

- (1) if the confined feeding operation is, at the time of the approval application or approval decision, not in compliance with water pollution control laws, IC 13-18, or rules promulgated thereunder;
- (2) consistent with IC 13-18-10-2.1; or
- (3) if the application does not meet the requirements of this article.

(d) The commissioner shall provide written documentation of the basis for denial of the application or placement of additional conditions on the approval. (*Water Pollution Control Board; 327 IAC 16-7-2; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1891*)

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327 IAC 16-7-3 Duration of approvals

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 3. (a) An approval and approval renewal shall be effective for a fixed term not to exceed five (5) years. An approval may be amended, revoked, and reissued, or revoked prior to the expiration of the term for cause, as specified in sections 5 and 6 of this rule, or in accordance with conditions set forth in the approval. In no event may the term of an approval be extended beyond five (5) years from its original effective date by amendment, extension, or other means, except as provided in subsection (b).

(b) If the owner/operator wishes to continue the activity regulated by the approval after the expiration date of the approval, the owner/operator shall apply for and obtain an approval renewal. The terms and conditions of an expired approval are automatically extended in full force and effect until the effective date of a renewal, if:

- (1) the owner/operator has submitted a timely and sufficient application for an approval renewal under this article; and
- (2) the commissioner, through no fault of the owner/operator, does not issue an approval renewal prior to the expiration date of the previous approval.

(Water Pollution Control Board; 327 IAC 16-7-3; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1892)

327 IAC 16-7-4 Approval renewals

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 4-21.5; IC 13-11-2; IC 13-14; IC 13-15; IC 13-18-10-2.3; IC 13-30-3

Sec. 4. (a) In accordance with IC 13-18-10-2.3, an updated manure management plan must be submitted once every five (5) years, along with the additional information required in subsection (b), prior to the expiration of the approval. Approval renewals shall be issued for a fixed term not to exceed five (5) years. A confined feeding operation that has had a discharge within the previous five (5) years that was, or is subject to an enforcement action by the department pursuant to IC 13-30-3 shall be subject to public notice requirements in section 13 of this rule upon receipt of a complete renewal application by the department. A confined feeding operation that has not had a discharge within the previous five (5) years that was, or is subject to an enforcement action by the department pursuant to IC 13-30-3 shall be considered to have a new approval renewal upon receipt of a complete approval renewal application by the department.

(b) The application for approval renewal must contain the following:

- (1) The name, full address, phone number, and contact person for the confined feeding operation.

(2) An updated manure management plan in accordance with section 11 of this rule.

(3) If any information from the original application has changed, or is proposed to be changed, then updates of any applicable items in section 2(b) of this rule.

(Water Pollution Control Board; 327 IAC 16-7-4; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1892)

327 IAC 16-7-5 Amendments and notifications

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 13-11-2; IC 13-14; IC 13-15-7-1; IC 13-18-10-2.1; IC 13-30

Sec. 5. (a) The commissioner may issue amendments to approvals of a confined feeding operation at any time:

- (1) pursuant to IC 13-18-10-2.1(e);
- (2) to address phosphorous limits if adequate information indicates that the application of manure to land represents a water quality threat;
- (3) at the request of the applicant to address changes at the confined feeding operation that do not require a new approval;
- (4) as a result of an agreement between the department and the owner/operator; or
- (5) due to a reduction in storage capacity that results in less than one hundred eighty (180) days storage capacity.

(b) Changes that require only written notification to the department, include the following:

- (1) Changes to the positioning of a structure that remains in compliance with the setback distances and within the boundaries identified in the farmstead plan in section 9 of this rule and delineated by representative site borings.
- (2) Changes to the design or construction of a structure as shown in as-built plans.
- (3) Reduction in storage capacity that results in at least one hundred eighty (180) days combined storage at the confined feeding operation after the manure storage structure closure.
- (4) Transfers of ownership as described in section 7 of this rule.
- (5) Corrections of typographical or other minor errors within the approval or other minor changes as determined by the commissioner.

(c) The commissioner shall provide written documentation of the basis for issuing or denying an amendment.

(Water Pollution Control Board; 327 IAC 16-7-5; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1892)

327 IAC 16-7-6 Revocation

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18-10; IC 13-30

Sec. 6. (a) The commissioner may revoke an approval or a condition of an approval as a result of a violation of:

- (1) water pollution control laws;

- (2) rules adopted under the water pollution control laws;
- (3) IC 13-18-10;
- (4) this article; or
- (5) approval conditions.

(b) The commissioner shall provide written documentation of the basis for revoking an approval or a condition of an approval. (*Water Pollution Control Board; 327 IAC 16-7-6; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1892*)

327 IAC 16-7-7 Transferability

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 7. An approval issued by the department shall be transferred to another person by the current approval recipient if, at least forty-five (45) days prior to the date of the proposed transfer of the approval:

- (1) the current approval recipient notifies the commissioner of the proposed transfer; and
- (2) a written agreement is submitted to the commissioner containing:
 - (A) a specific date for transfer of approval responsibilities; and
 - (B) identification of responsibility for any violations existing at the time of the transfer.

(*Water Pollution Control Board; 327 IAC 16-7-7; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1893*)

327 IAC 16-7-8 Plot maps

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 8. (a) The applicant shall submit plot maps of the location proposed for approval consisting of the following:

- (1) A United States Department of Agriculture Natural Resources Conservation Service soil survey map.
- (2) A United States Geological Survey topographical map that includes identification of any public water supply wells and public water supply surface intake structures within one thousand (1,000) feet of the manure storage structures.

(b) The maps in subsection (a) must be legible and clearly show the following:

- (1) The location of the waste management systems.
- (2) The boundaries of the property of the confined feeding operation.
- (3) The boundaries of all manure application areas.

These maps will satisfy the requirement for maps under section 11(a)(3) of this rule. (*Water Pollution Control Board; 327 IAC 16-7-8; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1893*)

327 IAC 16-7-9 Farmstead plan

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 9. (a) A farmstead plan must show all existing and

proposed waste management systems, and, within five hundred (500) feet of the waste management systems, the following known features:

- (1) Residences.
- (2) Surface waters of the state.
- (3) Public and private roads.
- (4) Water well locations.
- (5) Characteristics of karst terrain as identified in 327 IAC 16-2-21.
- (6) Drainage patterns.
- (7) Property boundary line.
- (8) All outfalls of known subsurface drainage structures.
- (9) Drainage inlets, including water and sediment control basins.

(b) In addition to subsection (a), the farmstead plan must show the diversion of uncontaminated surface water.

- (c) The farmstead plan must be legible and either:
 - (1) drawn to approximate scale; or
 - (2) show specific distances between:
 - (A) the waste management systems; and
 - (B) the features in subsection (a) that are within five hundred (500) feet of the existing or proposed waste management system.

(d) The plan must be submitted on paper no less than eight and one-half (8½) inches by eleven (11) inches in size. (*Water Pollution Control Board; 327 IAC 16-7-9; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1893*)

327 IAC 16-7-10 Waste management system drawing

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 10. The waste management system drawing must show detailed views and necessary cross sections to define all dimensions and construction materials. Systems relying on gravity flow must provide elevations of the entire waste management system. (*Water Pollution Control Board; 327 IAC 16-7-10; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1893*)

327 IAC 16-7-11 Manure management plan

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 11. (a) A manure management plan must be developed and submitted to the commissioner that, at a minimum, contains the following:

- (1) Procedures for soil testing as described in subsections (c) and (e).
- (2) Procedures for manure testing as described in subsections (d) and (e).
- (3) Legible maps of manure application areas.

(b) If applicable, the manure management plan must also contain a description of any:

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- (1) alternate methods proposed by the applicant for managing of the manure; and
- (2) other practices to be used that assure the confined feeding operation meets the performance standards in this article.

(c) A soil test must be obtained that provides sufficient information about soil fertility to allow for nutrient recommendations for existing or planned crops and to minimize nutrient leaching.

(d) A manure test must be obtained that provides sufficient information about the manure content to allow for nutrient recommendations for existing or planned crops and to minimize nutrient leaching.

- (e) The frequency of soil and manure testing must:
- (1) be specified in the manure management plan; and
 - (2) be conducted a minimum of once every three (3) years unless a different frequency is justified in the manure management plan.

(f) One (1) manure test must be conducted for each type of manure generated.

(g) A manure management plan must be submitted to the department at least one (1) time every five (5) years and with any approval application and renewal application to maintain a valid approval for the confined feeding operation. A copy of the current manure management plan must be reasonably accessible to a representative of the department during an inspection. (*Water Pollution Control Board; 327 IAC 16-7-11; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1893*)

327 IAC 16-7-12 Notice to adjacent landowners

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 12. An applicant who applies for approval to construct a confined feeding operation on land that is undeveloped or for which a valid existing approval has not been issued shall make a reasonable effort to provide notice:

- (1) to:
- (A) each person who owns land that adjoins the land on which the confined feeding operation is to be located; or
 - (B) if a person who owns land that adjoins the land on which the confined feeding operation is to be located does not occupy the land, all occupants of the land; and
- (2) to the county commissioners of the county in which the confined feeding operation is to be located;

not more than ten (10) working days after submitting an application. The notice must be sent by mail, be in writing, include the date on which the application was submitted to the department, and include a brief description of the subject of the application. The applicant shall pay the cost of complying with this section. The applicant shall submit

an affidavit to the department that certifies that the applicant has complied with this section. (*Water Pollution Control Board; 327 IAC 16-7-12; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1894*)

327 IAC 16-7-13 Public comment periods and hearings

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 13-11-2; IC 13-14; IC 13-15-3-1; IC 13-18; IC 13-30

Sec. 13. (a) This section applies to:

(1) an application for an approval for a confined feeding operation that has:

- (A) conducted confined feeding activities as defined in 327 IAC 16-2-4 prior to application for an approval; and
 - (B) had a discharge prior to application for an approval;
- (2) an application for an approval for a confined feeding operation that will have twenty (20) times the animal numbers listed in 327 IAC 16-2-5; or
- (3) an application for an approval renewal for a confined feeding operation that has had a discharge subject to an enforcement action by the agency within the previous five (5) years.

(b) Upon receipt of an application package, the department shall provide notice of receipt of the application to:

- (1) the owner/operator;
- (2) the public through notice in a newspaper; and
- (3) local officials in accordance with IC 13-15-3-1.

(c) A comment period of at least thirty (30) days following the date of public notice of the receipt by the department of an approval application shall be provided. During this period, any interested persons may submit written comments on the approval application and may request a public hearing. 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. The commissioner, after reviewing all comments, shall make a decision consistent with this article and applicable federal and state laws.

(d) A public hearing on an approval application may be held by the commissioner in appropriate cases where environmental concerns relevant to applicable rules or laws are raised, 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 approval application. (*Water Pollution Control Board; 327 IAC 16-7-13; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1894*)

Rule 8. Manure Handling and Storage; Site, Design, and Construction Requirements

327 IAC 16-8-1 Site restrictions for new waste management systems for liquid or solid manure

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 1. (a) New waste management systems for liquid or solid manure must not be constructed:

- (1) except for subsection (b), in karst terrain based on information compiled by the department, and from karst and bedrock maps from the Indiana Geological Survey dated 1997;
- (2) in a floodway;
- (3) in a one hundred (100) year flood plain, unless all waste management system access is at least two (2) feet above the one hundred (100) year flood plain;
- (4) except for subsection (b), over mines; or
- (5) in soil that is expected to be in the seasonal high water table, unless the water table is lowered to keep the water table below the bottom of the waste management system.

(b) The commissioner may approve a new waste management system to be constructed in karst terrain or over mines based upon the following site-specific information submitted to the commissioner:

- (1) For earthen manure storage structures for liquid manure, in addition to 327 IAC 16-7-2(b)(5), information from at least one (1) of the soil borings or test holes to the shallower of either:
 - (A) bedrock; or
 - (B) ten (10) feet below the lowest point of the proposed waste management system.
- (2) Characterization of the seasonal water table and soil.
- (3) Design specifications that indicate adequate structural integrity and environmental protection.
- (4) Other information that the commissioner deems necessary to ensure protection of human health and the environment.

(Water Pollution Control Board; 327 IAC 16-8-1; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1895)

327 IAC 16-8-2 Waste management system setbacks

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 2. (a) Waste management systems must be located to maintain the minimum setback distances from the following features that are known and identifiable at the time of application:

- (1) One thousand (1,000) feet from a public water supply well or public water supply surface intake structure.
- (2) Except for subsection (b), three hundred (300) feet from:
 - (A) surface waters of the state;
 - (B) drainage inlets, including water and sediment control basins;
 - (C) sinkholes, as measured from the surficial opening or the lowest point of the feature; and

- (D) off-site water wells.
- (3) One hundred (100) feet from:
 - (A) on-site water wells;
 - (B) property lines; and
 - (C) public roads.

(b) A solid manure storage structure that contains the manure and prevents storm water from entering the structure must be maintained to have a minimum setback of one hundred (100) feet from the features in [subsection] (a)(2) of this section.

(c) If one (1) of the features in subsection (a) is constructed within the specified setback distance in subsection (a), then a new waste management system may be constructed no closer to the new feature than the distance between the original waste management system and the new feature, providing that:

- (1) the new feature was not under the control of the owner/operator of the confined feeding operation; and
- (2) the new feature was constructed after the application for original new waste management system was submitted to the department.

(d) The owner/operator may obtain a reduced setback under 327 IAC 16-5, by demonstrating to the commissioner that a different compliance approach meets the performance standards in 327 IAC 16-3-1.

(e) If deemed necessary to protect human health or the environment, the commissioner shall require a greater setback distance or require setback distances to residences and public buildings based on:

- (1) surface gradient; or
- (2) other criteria related to protection of human health or the environment.

(f) The commissioner shall provide written documentation of the basis for requiring additional setback distances under subsection (e). *(Water Pollution Control Board; 327 IAC 16-8-2; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1895)*

327 IAC 16-8-3 Design requirements applicable to all new waste management systems

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 3. (a) The base of a new manure storage structure must be above bedrock as follows:

- (1) If not in karst terrain, the base must be at least two (2) feet above bedrock.
- (2) If in karst terrain, the base must be at a distance above bedrock that is determined by the commissioner based on information provided under section 1(b) of this rule.

(b) Any drainage system to lower a seasonal water table

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around the base of a waste management system must be equipped with an access point for sampling.

(c) If determined to be necessary to protect human health or the environment in highly permeable soils, in areas with a high water table, on steep slopes, in proximity to bedrock, or in sensitive areas, the commissioner may require additional design standards, such as:

- (1) monitoring systems;
- (2) liners;
- (3) higher compaction;
- (4) innovative technology; or
- (5) other protective measures.

(d) The commissioner shall provide written documentation of the basis for requiring additional design standards under subsection (c). (*Water Pollution Control Board; 327 IAC 16-8-3; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1895*)

327 IAC 16-8-4 Storage capacity for manure storage structures

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 4. All new manure storage structures for the confined feeding operation must be designed, constructed, and maintained with a combined storage capacity of at least one hundred eighty (180) days storage for:

- (1) manure;
- (2) if applicable, bedding;
- (3) net average rainfall; and
- (4) if applicable, the expected rainfall and run-off from a twenty-five (25) year, twenty-four (24) hour precipitation event that falls on the drainage area around the liquid manure storage structure, but not to include the expected rainfall and run-off from a twenty-five (25) year, twenty-four (24) hour precipitation event that falls directly on the liquid manure storage structure.

(*Water Pollution Control Board; 327 IAC 16-8-4; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1896*)

327 IAC 16-8-5 Design requirements applicable to all new liquid manure storage structures

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 5. (a) For any uncovered new liquid manure storage structures, the design must include a minimum of two (2) feet of freeboard to include the expected rainfall from a twenty-five (25) year, twenty-four (24) hour precipitation event that falls directly on the liquid manure storage structure.

(b) An emergency spillway must exist to handle overflow for an uncovered new liquid manure storage structure that receives precipitation run-off from a drainage area, not including the manure storage structure surface area, that

exceeds fifty percent (50%) of the surface area of the manure storage structure.

(c) An emergency spillway required under subsection (b) must:

- (1) direct manure to:
 - (A) secondary containment;
 - (B) an appropriate manure storage structure; or
 - (C) an approved vegetative management system; and
- (2) be designed to handle the run-off from a fifty (50) year, twenty-four (24) hour precipitation event.

(d) Manure transfer systems must be designed and constructed to minimize leaks and seepage and prevent spills. (*Water Pollution Control Board; 327 IAC 16-8-5; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1896*)

327 IAC 16-8-6 Design requirements applicable to all new concrete storage structures for liquid manure

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 6. In addition to sections 1 through 5 of this rule, new concrete storage structures for liquid manure must be designed to be structurally sound through:

- (1) a concrete mixture that is well-proportioned and consolidated;
- (2) minimized cracking;
- (3) joints that are properly spaced, sized, designed, and constructed;
- (4) adequate reinforcement steel;
- (5) a foundation that provides necessary support; and
- (6) use of water stops.

(*Water Pollution Control Board; 327 IAC 16-8-6; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1896*)

327 IAC 16-8-7 Design requirements applicable to all new earthen manure storage structures for liquid manure

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 7. (a) In addition to sections 1 through 5 of this rule, and the performance standards of 327 IAC 16-3-1, new earthen manure storage structures must meet the requirements of this section.

(b) New earthen manure storage structures for liquid manure must not have a seepage rate that exceeds one-sixteenth ($1/16$) inch per day.

(c) Designs for new earthen storage structures for liquid manure must be certified by a professional engineer registered in Indiana.

(d) If determined to be necessary to protect the environ-

ment, the commissioner may require additional design standards, such as:

- (1) monitoring systems;
- (2) liners;
- (3) higher compaction;
- (4) innovative technology; or
- (5) other protective measures.

(e) The commissioner shall provide written documentation describing the basis for requiring additional design standards. (*Water Pollution Control Board; 327 IAC 16-8-7; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1896*)

327 IAC 16-8-8 Design requirements applicable to solid manure storage structures

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 8. (a) Solid manure storage structures must not be constructed in sand or gravel soils, Unified Soil Classification of Pt, GW, GP, GM, GC, SW, SP, SM, SC, unless specially designed with an approved liner.

(b) Run-on and precipitation must be diverted away from the solid manure storage structures, unless the design includes a method to collect and manage the contaminated run-off.

(c) For purposes of this article, stockpiling of solid manure at the confined feeding operation is subject to the design standards of this section. (*Water Pollution Control Board; 327 IAC 16-8-8; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1897*)

327 IAC 16-8-9 Design requirements applicable to other manure storage structures

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 9. (a) Installation of underground steel storage tanks for manure is prohibited.

(b) Plastic and fiberglass tanks and aboveground steel tanks must comply with the following:

- (1) Tanks must have sufficient strength to withstand design loads.
- (2) All tanks must be watertight.
- (3) Tanks used to store other substances must be cleaned to remove any traces of other chemicals prior to addition of manure to the tank.
- (4) Tanks must be designed and installed to ensure the seasonal high water table is maintained below the tank or the tank must be anchored to prevent flotation.
- (5) Aboveground tanks must have protected shut-off valves for all inlet and outlet pipes.

(*Water Pollution Control Board; 327 IAC 16-8-9; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1897*)

327 IAC 16-8-10 Vegetative management systems

Authority: IC 13-14-8-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14-12; IC 13-18; IC 13-30

Sec. 10. (a) A settling basin, low velocity channel, or equivalent structure must be provided between the vegetative management system and the source of contaminated run-off or waste liquid. A constructed settling basin or low velocity channel designed for the one (1) year, one (1) hour precipitation event must have sufficient capacity to store the contaminated run-off or waste liquid and the expected sediment.

(b) Vegetative management systems must have minimum dimensions based on the peak outflow from the confined feeding area or settling basin based on a twenty-five (25) year, twenty-four (24) hour precipitation event. (*Water Pollution Control Board; 327 IAC 16-8-10; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1897*)

327 IAC 16-8-11 Constructed wetlands

Authority: IC 13-14-8-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14-12; IC 13-18; IC 13-30

Sec. 11. (a) This section applies to the use of a constructed wetland as a waste management system for contaminated run-off or waste liquid.

(b) The owner/operator of a confined feeding operation that plans to use a constructed wetland and discharge the treated effluent must comply with applicable state and federal requirements.

(c) The owner/operator of a confined feeding operation that plans to use a constructed wetland and does not plan to discharge the treated effluent must:

- (1) obtain approval of the design plan from the commissioner; and
- (2) apply the treated effluent to the land in accordance with 327 IAC 16-10 or in accordance with an alternate method described in the manure management plan under 327 IAC 16-7-11(b)(1).

(*Water Pollution Control Board; 327 IAC 16-8-11; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1897*)

327 IAC 16-8-12 Construction requirements for waste management systems

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 12. (a) All waste management systems must be constructed to minimize leaks and seepage and prevent spills that could contaminate ground water or surface water.

(b) The owner/operator shall notify the commissioner when construction on a new waste management system begins.

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(c) The commissioner may incorporate conditions into the approval that require testing to verify that the earthen liquid waste management system is consistent with the design and meets the performance standards established in this article.

(d) Within thirty (30) days after the date construction of an approved waste management system is completed, and prior to the introduction of any animals, the applicant shall execute and send to the commissioner an affidavit, under penalty of perjury, that a waste management system was constructed, and will be operated, in accordance with the requirements of the approval and this article. (*Water Pollution Control Board; 327 IAC 16-8-12; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1897*)

Rule 9. Manure Handling and Storage; Operational Requirements

327 IAC 16-9-1 Maintenance requirements

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 1. (a) All waste management systems and application equipment must be maintained and operated to meet the approval conditions.

(b) Management of liquid and solid manure must be in compliance with the following:

- (1) This article.
- (2) The confined feeding operation approval.
- (3) All applicable state and federal laws.

(c) Manure must be in an approved manure storage structure until removed for land application in accordance with 327 IAC 16-10.

(d) If uncovered, liquid manure storage structures must be maintained with a minimum freeboard of two (2) feet or as specified in the approval conditions.

(e) The owner/operator shall inspect all waste management systems for compliance with this article and the approval conditions and, if applicable, freeboard as specified in subsection (d) or the approval, at least one (1) time each month. Completed self-monitoring records must be kept in the operating record described in section 5 of this rule.

(f) Uncovered liquid manure storage structures must have clearly identified markers to indicate manure levels relative to the approved freeboard elevation.

(g) All earthen berms for manure storage structures must:

- (1) be stabilized with vegetation or alternative erosion control measures; and
- (2) be maintained to allow for visual inspection.

(h) An owner/operator that plans to use a vegetative management system must operate and maintain the vegetative management system to provide effective treatment.

(i) Migration of solids from contaminated run-off from any feedlot must be minimized. (*Water Pollution Control Board; 327 IAC 16-9-1; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1898*)

327 IAC 16-9-2 Transport and handling

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 2. Pumping, dumping, or allowing the leakage or drainage of manure from a manure transfer vehicle onto unauthorized premises, public thoroughfares, or into waters of the state is prohibited. (*Water Pollution Control Board; 327 IAC 16-9-2; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1898*)

327 IAC 16-9-3 Dead animal compost operations

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 3. (a) Dead animal compost operations must have run-on and run-off control.

(b) Dead animal compost may be applied to the land if in accordance with the manure application requirements in this article. (*Water Pollution Control Board; 327 IAC 16-9-3; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1898*)

327 IAC 16-9-4 Emergency spill response plan

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 4. (a) The owner/operator of a confined feeding operation shall:

- (1) develop an emergency spill response plan as described in subsection (c);
- (2) keep it in the operating record;
- (3) implement the emergency spill response plan at any time a spill occurs; and
- (4) familiarize all employees involved with manure handling with the emergency spill response plan.

(b) The emergency spill response plan must be located at the confined feeding operation in a place accessible to all employees.

(c) The emergency spill response plan must include the following:

- (1) The names and telephone numbers of persons who are identified by the owner/operator as responsible for implementing the emergency spill response plan.
- (2) Areas where potential spills can occur and their accompanying drainage points.

(3) Procedures to be followed in the event of a spill, including the following:

- (A) Actions to contain or manage any spill of manure.
- (B) Identification of the proper authorities to be contacted.
- (C) Mitigation of any adverse effects of the spill.

(4) Identification of equipment and clean-up materials to be used in the event of a spill.

(5) Procedures for reporting the spill to:

- (A) the confined feeding operation owner/operator;
- (B) any applicable local emergency or health authorities; and
- (C) the department in accordance with 327 IAC 2-6.1.

(Water Pollution Control Board; 327 IAC 16-9-4; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1898)

327 IAC 16-9-5 Operating record

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18-10; IC 13-30

Sec. 5. (a) The following information must be added to the operating record in accordance with required time frames established in this article and IC 13-18-10, and must be maintained and updated in the operating record:

- (1) All valid approvals, amendments, and notifications relevant to the approvals.
- (2) The current manure management plan.
- (3) The current emergency spill response plan.

(b) The operating record must also contain all applicable records from the following:

- (1) Section 1(e) of this rule, regarding completed self-monitoring records for three (3) years.
- (2) 327 IAC 16-10-1, regarding minimum acreage records.
- (3) 327 IAC 16-10-2(c), regarding land application records for five (5) years.
- (4) 327 IAC 16-10-5(c), regarding marketing and distribution records for three (3) years.
- (5) Documentation of any spill response implemented in accordance with section 4(a)(3) of this rule by confined feeding operation personnel within the past five (5) years.

(Water Pollution Control Board; 327 IAC 16-9-5; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1899)

Rule 10. Land Application of Manure

327 IAC 16-10-1 Required acreage for manure application

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 1. (a) A minimum number of acres for manure application must be maintained and documented in the operating record at all times based on:

- (1) agronomic rates for potentially available nitrogen

provided by a laboratory soil test, and a manure test; or
 (2) application rates not to exceed one hundred fifty (150) pounds of potentially available nitrogen per acre per year, for confined feeding operations that have not received the test results on the soil and manure.

(b) Any acreage identified as part of the minimum required acreage for the application of manure that is not owned by the owner of the confined feeding operation must be documented in the operating record via land use agreements signed by the property owners on whose property the manure will be applied.

(c) The calculation of acreage identified as part of the minimum required acreage for manure application must only include acreage that meets the site restrictions in section 3 of this rule and the setbacks in section 4 of this rule.

(d) If the applicant can demonstrate to the satisfaction of the commissioner that a smaller amount of acreage can be used and is equally protective of human health and the environment, the commissioner may approve the different amount of acreage based on site-specific criteria submitted with the application package, including:

- (1) type of manure generated;
- (2) alternate methods of managing manure;
- (3) innovative technology; or
- (4) other criteria related to protection of human health or the environment.

(e) Copies of any written waivers related to reduction of the property line setback distances must be kept in the operating record. *(Water Pollution Control Board; 327 IAC 16-10-1; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1899)*

327 IAC 16-10-2 Manure application rates

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18-10; IC 13-30

Sec. 2. (a) The owner/operator of a new confined feeding operation shall have a soil test and a manure test conducted in accordance with the manure management plan that is submitted to the commissioner to meet the requirement in 327 IAC 16-7-2(b)(6).

(b) The agronomic rate for potentially available nitrogen must not exceed the nitrogen requirements of current or planned crops of the upcoming growing season as documented in the operating record.

(c) The following information must be added to the operating record as needed in accordance with required time frames established in this article and IC 13-18-10, and must be maintained and updated in the operating record:

- (1) The type of manure applied.

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- (2) Results of manure tests.
- (3) Soil tests for all manure application sites.
- (4) The amount of manure applied.
- (5) The type of application method used.
- (6) Identification of locations and number of acres on which manure is applied.
- (7) The dates on which the manure is applied.
- (8) Determination of the agronomic rates for potentially available nitrogen used to apply manure to each field.

(Water Pollution Control Board; 327 IAC 16-10-2; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1899)

327 IAC 16-10-3 Manure application activities

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 3. (a) Manure that is staged at the manure application site for more than seventy-two (72) hours must be:

- (1) covered or otherwise protected; and
- (2) applied to the site within ninety (90) days.

(b) Staging of solid manure at the manure application site is prohibited:

- (1) within three hundred (300) feet of surface waters of the state, drainage inlets, including water and sediment control basins, or water wells unless there is:
 - (A) a barrier; or
 - (B) a surface gradient that contains or directs any contaminated run-off away from the waters of the state, drainage inlets, including water and sediment control basins, or water wells;
- (2) on any area with a slope greater than six percent (6%), unless run-on and run-off is controlled; or
- (3) on any standing water or waterway.

(c) To prevent leaks or excessive application of liquid manure spray irrigation must be conducted:

- (1) under the constant supervision of a person designated by the owner/operator or as specified in the approval;
- (2) with devices to detect pressure loss due to leaks and devices to shut down the system if leaks are detected; or
- (3) in accordance with a spray irrigation plan approved by the department.

(d) Spray irrigation of manure must not be applied to any land that has less than twenty (20) inches of soil above the bedrock unless in accordance with an approved spray irrigation plan.

(e) Spray irrigation in a flood plain must be conducted in accordance with a spray irrigation plan that:

- (1) addresses spray irrigation in a flood plain; and
- (2) has been approved by the commissioner.

(f) Application of manure to frozen ground must be handled in accordance with the following:

- (1) Surface application of manure to slopes in excess of two percent (2%) without adequate residue protection or crop cover is prohibited on snow covered or frozen ground.
- (2) Surface application to snow covered or frozen ground of manure from a new or amended operation approved after the effective date of this rule is prohibited, except as allowed in conditions established in a valid approval obtained under 327 IAC 16-7.
- (3) Spray irrigation of liquid manure to snow covered or frozen ground is prohibited.
- (4) Any manure application that causes a water quality violation is a violation of this article and will result in enforcement action.

(g) Manure must not be applied to the land from manure application equipment operating on a public road.

(h) Liquid or solid manure must not be applied to highly erodible land unless:

- (1) the land has residue protection or crop cover; or
- (2) in accordance with a conservation plan.

(i) Manure shall not be applied on saturated ground.
(Water Pollution Control Board; 327 IAC 16-10-3; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1900)

327 IAC 16-10-4 Manure application setbacks

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 4. (a) Except under subsections (e) and (f), application of manure must be in accordance with the setbacks in Table 1:

Table 1.
 SETBACK DISTANCES (in feet)

Known Feature	Liquid Injection or Single Pass Incorporation	Liquid Incorporation; Application to Pasture; or Solid or Composted Manure Application	Liquid Surface Application	
			Less than or Equal to 6% Slope; or Residue Cover	Greater than 6% Slope
Public water supply wells and public water supply surface intake structures	500	500	500	500
Surface waters of the state	25	50	100	200
Sinkholes (measured from the surficial opening or the lowest point)	25	50	100	200
Wells	50	50	100	200
Drainage inlets	5	50	100	200
Property lines and public roads	0	10	50	50

(b) Liquid incorporation of manure in Table 1 means only manure that has been incorporated into the soil within twenty-four (24) hours of placement on the land.

(c) All setback distances must be measured from the edge of the area of actual placement of manure on the land.

(d) The property line setback distances specified in subsection (a), Table 1, may be waived in writing by the owner of the adjoining property.

(e) If a properly designed and maintained filter strip is located between the application site and:

- (1) waters of the state;
- (2) any known well;
- (3) the surficial opening or lowest point of any sinkhole; or
- (4) any drainage inlet, including water and sediment control basins;

then the setback is the width of the filter strip.

(f) The setback is ten (10) feet if a gradient barrier is located between the application site and:

- (1) surface waters of the state;
- (2) any known well;
- (3) the surficial opening or lowest point of any sinkhole; or
- (4) any drainage inlet, including water and sediment control basins.

(g) The owner/operator may obtain a reduced setback under 327 IAC 16-5, by demonstrating to the commissioner that a different compliance approach meets the performance standards in 327 IAC 16-3-1. (*Water Pollution Control Board; 327 IAC 16-10-4; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1900*)

327 IAC 16-10-5 Marketing and distribution of manure

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 5. (a) The owner/operator of the confined feeding operation shall provide an information sheet to any person that receives or purchases more than ten (10) cubic yards or two thousand (2,000) gallons of manure in a year from the confined feeding operation unless the owner/operator takes responsibility for applying the manure.

(b) The information sheet must contain, at a minimum, the following information:

- (1) The name and address of the confined feeding operation providing the manure.
- (2) A statement indicating that it is unlawful to allow the manure to enter any waters of the state.
- (3) Information on the nutrient content of the manure.
- (4) The manure application requirements of this rule.

(c) The operating record must contain and be maintained

and updated with records of any person who receives or purchases more than ten (10) cubic yards or two thousand (2,000) gallons of manure in a year to include:

- (1) the name and address of the person receiving or purchasing the manure;
- (2) the amount of manure received or purchased by the person; and
- (3) a copy of the information sheet.

(d) All records in this section must be made available to a representative of the department during an inspection. (*Water Pollution Control Board; 327 IAC 16-10-5; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1901*)

Rule 11. Closure of Manure Storage Structures

327 IAC 16-11-1 Applicability

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 1. (a) The owner/operator of confined feeding operations that plan to close or discontinue use of a manure storage structure must comply with the requirements in section 3 of this rule, as applicable. A manure storage structure is deemed closed when the environmental threat has been removed.

(b) The owner/operator of a confined feeding operation that plans to temporarily discontinue use of a manure storage structure must comply with section 2 of this rule. (*Water Pollution Control Board; 327 IAC 16-11-1; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1901*)

327 IAC 16-11-2 Temporary shut-down of manure storage structures

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 2. (a) Manure storage structures that are temporarily shut down must be maintained in accordance with this article and a valid approval.

(b) A manure storage structure that has been temporarily shut down for three (3) years must be cleaned out in accordance with section 3(c)(1) and 3(c)(2) of this rule. (*Water Pollution Control Board; 327 IAC 16-11-2; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1901*)

327 IAC 16-11-3 General closure requirements

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
 Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 3. (a) The owner/operator of a confined feeding operation that plans to close or discontinue use of a manure storage structure shall:

- (1) close the manure storage structure in accordance with the closure requirements in this section prior to expiration of the approval; or

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(2) until the manure is removed, continue to maintain the manure storage structure in accordance with the requirements of the approval and this article.

(b) If the confined feeding operation will not be completely closed, the owner/operator shall apply for an amendment to the approval for any manure storage structure that is to be closed, and:

- (1) recalculate the storage capacity for the confined feeding operation; and
- (2) notify the department:
 - (A) before demolishing or converting the use of any manure storage structure; and
 - (B) of the intended future use of the manure storage structure if the manure storage structure is to be converted to another use.

(c) The owner/operator of manure storage structures that are to be closed shall:

- (1) have all the manure removed from the manure storage structure;
- (2) have the manure:
 - (A) applied to the land in accordance with 327 IAC 16-10; or
 - (B) managed in accordance with this article and applicable state and federal laws; and
- (3) have all associated appurtenances, and conveyance structures removed from uncovered liquid manure storage structures.

(d) The owner/operator shall submit a certification to the commissioner within thirty (30) days of completing the requirements in this section that states compliance with the requirements in this section.

(e) If deemed necessary to protect human health or the environment, the commissioner may require additional closure activities based on:

- (1) surface or ground water contamination;
- (2) evidence of leakage, seepage, or spills; or
- (3) other criteria related to protection of human health or the environment.

(Water Pollution Control Board; 327 IAC 16-11-3; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1901)

Rule 12. Exiting the Confined Feeding Approval Program

327 IAC 16-12-1 Applicability

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 1. This rule applies to any confined feeding operation with a valid approval that wants to be removed from the program due to:

- (1) a reduction in the size of the confined feeding operation to a number of animals that is less than the definition

- of confined feeding operation in 327 IAC 16-2-5; or
- (2) a decision to cease operation and completely close the entire confined feeding operation.

(Water Pollution Control Board; 327 IAC 16-12-1; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1902)

327 IAC 16-12-2 Exiting the confined feeding approval program due to a reduction in size of operation

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 2. (a) A confined feeding operation may be removed from the regulated confined feeding approval program, but continue to operate as a smaller operation, if:

- (1) the department has received a request from the owner/operator to be removed from the program and confirming that the confined feeding operation has and maintains fewer animals than the definition of confined feeding operations in 327 IAC 16-2-5; and
- (2) approved by the commissioner based on a review of the criteria in subsection (b).

(b) The commissioner shall review the following criteria in determining if a request to exit the confined feeding approval should be approved:

- (1) The number of animals at the confined feeding operation.
- (2) Past enforcement actions relative to any discharges and current compliance with any outstanding violations.
- (3) Existence of any conditions which pose a threat to human health or the environment.

(c) The commissioner shall send the owner/operator a letter of confirmation when the department has verified that the requirements of subsection (a) have been met.

(d) For a confined feeding operation that has been removed from the confined feeding operation approval program under (a), the owner/operator must submit a new application under this article to again operate a confined feeding operation as defined in 327 IAC 16-2-5. *(Water Pollution Control Board; 327 IAC 16-12-2; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1902)*

327 IAC 16-12-3 Exiting the confined feeding approval program due to a complete closure of the operation

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-18-10-4
Affected: IC 13-11-2; IC 13-14; IC 13-15; IC 13-18; IC 13-30

Sec. 3. (a) A confined feeding operation may be removed from the regulated confined feeding approval program and completely closed if the department has been notified that:

- (1) all livestock animals are removed from the site; and
- (2) the confined feeding operation closes all manure storage structures in accordance with 327 IAC 16-11.

(b) The commissioner shall send the owner/operator a letter of confirmation when the department has verified that the requirements of subsection (a) have been met. (*Water Pollution Control Board; 327 IAC 16-12-3; filed Feb 8, 2002, 1:30 p.m.: 25 IR 1902*)

LSA Document #00-235(F)

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Approved by Governor: February 6, 2002

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TITLE 804 BOARD OF REGISTRATION FOR ARCHITECTS AND LANDSCAPE ARCHITECTS

LSA Document #01-57(F)

DIGEST

Amends 804 IAC 1.1-1-1 to revise the definitions of board and landscape architect and to establish the definition of "LARE". Amends 804 IAC 1.1-2-2 to revise and establish the actual practical experience requirements for applicants for registration as a landscape architect. Effective 30 days after filing with the secretary of state.

804 IAC 1.1-1-1

804 IAC 1.1-2-2

SECTION 1. 804 IAC 1.1-1-1 IS AMENDED TO READ AS FOLLOWS:

804 IAC 1.1-1-1 Definitions and abbreviations

Authority: IC 25-4-1-3

Affected: IC 25-4-1-8; IC 25-4-2

Sec. 1. (a) NCARB Appendix A, Circular of Information #1, Table of Equivalents for Education, Training, and Experience will be used by the board as a guide. The following definitions apply throughout this rule:

- (1) "Accredited degree program" means a program leading to a professional degree which is accredited by the NAAB or the LAAB or certified equivalent by NCARB or CLARB guidelines.
- (2) "Act" means ~~Article 4 of Title 25 IC 25-4~~ creating a board to regulate the practice of architecture and the practice of landscape architecture in Indiana.
- (3) "Applicant" means an individual whose application has been received by the board for registration as an architect or a landscape architect.
- (4) "Approved department, school, or college of architecture or landscape architecture" means a department, school, or college with an architecture or landscape architecture profes-

sional degree program recognized by the board at the time of an applicant's graduation.

(5) "Architect" means a person registered under IC 25-4-1 and this article and thereby entitled to **use the title architect and engage in the practice of architecture in Indiana.**

(6) "A.R.E." means the architect registration examination prepared by NCARB.

(7) "Board" means the board of registration for architects **and landscape architects.**

(8) "CLARB" means the Council of Landscape Architectural Registration Boards.

(9) "Council record-CLARB" means a detailed, authenticated record of an applicant's activities and accomplishments, factual data of education, training, practice, character, examination, and registration.

(10) "Council record-NCARB" means a detailed, authenticated record of an applicant's education, training, experience, examination, registration, and character. Council record prepared by NCARB.

(11) "Degree in a design discipline", as used in IC 25-4-1-8, means the study of the design of buildings and structures for human occupancy. The courses required to obtain the degree must include the application of recognized standards to promote the health and safety of the users or occupants of the buildings or structures. An example of such degree in a design discipline includes pre-professional bachelor degree in architecture.

(12) "EESA" means a program approved by NCARB known as Education Evaluation Services for Architects.

(13) "IDP" means Intern Development Program.

(14) "LAAB" means the Landscape Architectural Accreditation Board.

(15) "LARE" means the landscape architect registration examination prepared by CLARB.

~~(15)~~ **(16)** "Landscape architect" means a person registered under ~~IC 25-4-1~~ **IC 25-4-2** and this article and thereby entitled to use the title landscape architect **and engage in the practice of landscape architecture** in Indiana.

~~(16)~~ **(17)** "NAAB" means the National Architectural Accrediting Board.

~~(17)~~ **(18)** "NCARB" means the National Council of Architectural Registration Boards.

~~(18)~~ **(19)** "Professional examination" means the former architects registration examination prepared by NCARB.

~~(19)~~ **(20)** "Qualifying test" means the examination formerly prepared by NCARB to qualify applicants without an accredited architectural degree for admission to the professional examination.

~~(20)~~ **(21)** "Registrant" means a registered architect or landscape architect, unless the context clearly indicates otherwise, whose qualifications have been examined by the board and a certificate of registration granted.

~~(21)~~ **(22)** "Week" means a thirty-five (35) hour work week. (No more than thirty-five (35) hours shall be counted toward requirements in any given calendar week.)

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(22) (23) “Year” means fifty (50) calendar weeks not including vacation.

(23) (24) “Valid certificate” means a certificate of registration held by an individual that is current and in good standing. A certificate shall have the effect of a license to practice architecture in Indiana, subject to IC 25-4-1. A certificate shall have the effect of a license to use the title landscape architect in Indiana subject to IC 25-4-1.

(b) When the masculine pronoun is used, it shall include the feminine. (*Board of Registration for Architects and Landscape Architects; 804 IAC 1.1-1-1; filed Mar 25, 1980, 9:15 a.m.: 3 IR 949; filed Jan 8, 1982, 10:10 a.m.: 5 IR 387; filed Apr 26, 1983, 9:31 a.m.: 6 IR 1075; filed Nov 14, 1985, 8:39 a.m.: 9 IR 752; filed Oct 28, 1998, 3:35 p.m.: 22 IR 756; readopted filed May 10, 2001, 2:40 p.m.: 24 IR 3235; filed Jan 24, 2002, 12:05 p.m.: 25 IR 1903*)

SECTION 2. 804 IAC 1.1-2-2 IS AMENDED TO READ AS FOLLOWS:

804 IAC 1.1-2-2 Landscape architects; experience requirements

Authority: IC 25-4-1-3

Affected: IC 25-4-2-1; IC 25-4-2-3

Sec. 2. (a) This section establishes the actual practical experience requirements under ~~IC 25-4-2-3(a)(2)(B)~~ **IC 25-4-2-3(a)(2)(B) and IC 25-4-2-3(a)(6)** for applicants for registration as a landscape architect. ~~Such experience is Subsection (b) establishes the requirements for IC 25-4-2-3(a)(2)(B) as an alternative to graduation from an approved accredited curriculum of landscape architecture presented by a college or school approved by the board. Subsections (c) through (i) establishes [sic., establish] the requirements for IC 25-4-2-3(a)(6).~~

(b) Experience of a grade and character satisfactory to the board, which would be used in lieu of an accredited degree in landscape architecture as follows:

- (1) work under the direct supervision of a registered landscape architect which falls within the scope of the services described in the definition of landscape architecture found in IC 25-4-2-1(b); and**
- (2) has attained before January 1, 2003, at least eight (8) years of satisfactory experience as described in subdivision (1).**

(b) An applicant must provide satisfactory evidence consisting of eight (8) years of actual practical experience in landscape architectural work meeting the requirements of this section:

(c) Experience accumulated after January 1, 1982, must be under the supervision of a registered landscape architect.

(d) Experience for a landscape architect applicant must be verified by letters from registered practicing landscape archi-

itects for experience obtained after January 1, 1982, and from the applicant's employer for experience obtained before January 1, 1982.

(e) Satisfactory experience before January 1, 1982, consists of work which falls within the scope of the services described in the definition of landscape architecture found in IC 25-4-2-1.

(c) Before January 1, 2003, experience of a grade and character satisfactory to the board to be used in combination with an accredited degree in landscape architecture, and satisfactorily passing the LARE in order to establish licensure as a registered landscape architect, consists of all work which falls within the scope of the services described in the definition of landscape architecture found in IC 25-4-2-1. Applicants who accrue experience allowed under this subsection will not lose credit for that experience even if their applications are filed after December 31, 2002.

(f) Satisfactory experience in the practice of landscape architecture after January 1, 1982; (d) After December 31, 2002, experience of a grade and character satisfactory to the board to be used in combination with an accredited degree in landscape architecture, and satisfactorily passing the LARE in order to establish licensure as a registered landscape architect, includes the following:

- (1) Work in a landscape architect's office, ~~architecture firm or other locations under the direct supervision of a registered landscape architect.~~
- (2) Teaching landscape architecture in an approved accredited program.
- (3) Conducting or participating in research in landscape architecture problems.
- (4) (3) Work in an architect's office, under a registered landscape architect ~~or architect.~~
- (5) (4) Work in an engineer's office, under a registered landscape architect ~~or professional engineer.~~
- (6) (5) Work in a land surveyor's office, under a registered landscape architect ~~or land surveyor.~~
- (7) ~~Work in a contractor's office, under a registered landscape architect, including field-work.~~
- (8) (6) Work in a government agency's office, under a registered landscape architect, ~~registered professional engineer, registered architect, registered land surveyor, or planner certified by the American Institute of City Planners.~~

(g) (e) The work performed under subsection (f)(1) and (f)(4) ~~through (f)(8)~~ **(d)(1) through (d)(6)** must:

- (1) be within the scope of the services described in the definition of landscape architecture found in IC 25-4-2-1; and**
- (2) cover work as addressed in the definition of landscape architecture in IC 25-4-2-1(b).**

(f) Applicants who were admitted to the landscape

architect examination on an application filed before July 1, 2000, shall not be required to obtain the three (3) year experience required by IC 25-4-2-3(a)(6) and by subsections [sic., subsection] (c) or (d).

(g) Applicants who were admitted to the landscape architect examination on an application filed after June 30, 2000, shall be required to obtain the three (3) year experience required by IC 25-4-2-3(a)(6) and by subsection (c) or (d).

(h) A maximum of twelve (12) months of actual practical experience as listed in subsection (d) may be acquired prior to receiving an accredited degree in landscape architecture. An applicant for registration as a landscape architect must acquire a minimum of two (2) years of actual practical experience after having graduated with an accredited degree from a school or college of landscape architecture in a setting described in subsection (d). This subsection does not apply to individuals who take the examination without a degree as allowed by subsection (b) and IC 25-4-2-3(a)(2)(B).

(i) One (1) year of the minimum three (3) years of practical experience must be obtained in settings described in subsections [sic., subsection] (d)(1) or (d)(3) through (d)(6). (Board of Registration for Architects and Landscape Architects; 804 IAC 1.1-2-2; filed Mar 25, 1980, 9:15 a.m.: 3 IR 950; filed Jan 8, 1982, 10:10 a.m.: 5 IR 389; filed May 24, 1982, 8:45 a.m.: 5 IR 1404; filed Sep 22, 1983, 3:30 p.m.: 6 IR 2411; filed Nov 14, 1985, 8:39 a.m.: 9 IR 755; filed Sep 16, 1987, 9:15 a.m.: 11 IR 789; filed Jan 22, 1990, 5:00 p.m.: 13 IR 1051; readopted filed May 10, 2001, 2:40 p.m.: 24 IR 3235; filed Jan 24, 2002, 12:05 p.m.: 25 IR 1904)

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TITLE 804 BOARD OF REGISTRATION FOR ARCHITECTS AND LANDSCAPE ARCHITECTS

LSA Document #01-103(F)
DIGEST

Repeals 804 IAC 1.1-2-4.1. Effective 30 days after filing with the secretary of state.

804 IAC 1.1-2-4.1

SECTION 1. 804 IAC 1.1-2-4.1 IS REPEALED.

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