

TITLE 327 WATER POLLUTION CONTROL DIVISION**Proposed Rule**
LSA Document #18-238

DIGEST

Amends [327 IAC 5-2-1.8](#), [327 IAC 5-2-2](#), [327 IAC 5-4-6](#), [327 IAC 15-1-1](#), [327 IAC 15-1-2](#), [327 IAC 15-1-3](#), [327 IAC 15-2-2](#), [327 IAC 15-2-3](#), [327 IAC 15-2-5](#), [327 IAC 15-2-6](#), [327 IAC 15-2-8](#), [327 IAC 15-2-9](#), [327 IAC 15-3-2](#), [327 IAC 15-3-3](#), [327 IAC 15-4-1](#), [327 IAC 15-4-2](#), and [327 IAC 15-4-3](#) and repeals [327 IAC 15-1-4](#), [327 IAC 15-2-1](#), [327 IAC 15-2-7](#), [327 IAC 15-3-1](#), [327 IAC 15-5-1](#), [327 IAC 15-5-2](#), [327 IAC 15-5-3](#), [327 IAC 15-5-4](#), [327 IAC 15-5-5](#), [327 IAC 15-5-6](#), [327 IAC 15-5-6.5](#), [327 IAC 15-5-7](#), [327 IAC 15-5-7.5](#), [327 IAC 15-5-8](#), [327 IAC 15-5-9](#), [327 IAC 15-5-10](#), [327 IAC 15-5-12](#), [327 IAC 15-13](#), and [327 IAC 15-14](#). Effective 30 days after filing with the Publisher.

HISTORY

First Notice of Comment Period: May 23, 2018, Indiana Register (DIN: [20180523-IR-327180238FNA](#)).
Second Notice of Comment Period: March 27, 2019, Indiana Register (DIN: [20190327-IR-327180238SNA](#)).
Notice of First Hearing: March 27, 2019, Indiana Register (DIN: [20190327-IR-327180238PHA](#)).
Change in Notice of Public Hearing: May 22, 2019, Indiana Register (DIN: [20190522-IR-327180238CHA](#)).
Date of First Hearing: August 14, 2019.

PUBLIC COMMENTS UNDER [IC 13-14-9-4.5](#)

[IC 13-14-9-4.5](#) states that a board may not adopt a rule under [IC 13-14-9](#) that is substantively different from the draft rule published under [IC 13-14-9-4](#), until the board has conducted a third comment period that is at least 21 days long. Because this proposed rule is not substantively different from the draft rule published on March 27, 2019, at DIN: [20190327-IR-327180238SNA](#), the Indiana Department of Environmental Management (IDEM) is not requesting additional comment on this proposed rule.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

IDEM requested public comment from March 27, 2019, through April 26, 2019, on IDEM's draft rule language. IDEM received comments from the following parties:

Indra Frank, MD, MPH, Hoosier Environmental Council (HEC)

Jarrold Hahn, CFM, Wells County Surveyor and President of the County Surveyors Association of Indiana (JH-CSAI)

Kevin M. Pierard, Chief, U.S. EPA, Region 5, NPDES Programs Branch (U.S. EPA)

Jay Poe, P.S., Huntington County Surveyor (JP)

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

Comment: The reporting requirement at [327 IAC 15-4-3\(f\)](#) for toxic pollutants in a discharge has been deleted in the draft rule. HEC does not believe there is any reason related to this rulemaking to eliminate permits by rule and replace them with administratively issued general permits that accounts for eliminating subsection (f). Regulated entities operating under administratively issued general permits should be responsible for reporting releases of materials identified as toxic under the Clean Water Act. (HEC)

Response: The reporting requirement for toxic pollutants in a discharge, formerly located at [327 IAC 15-4-3\(f\)](#), has not been deleted from the draft rule. It is included in the list of standard permit conditions at [327 IAC 15-4-1\(n\)\(15\)](#), which states that, "Additional reporting requirement for existing manufacturing, commercial, mining, and silvicultural dischargers according to 40 CFR 122.42(a)." is applicable to a general permit.

Comment: The criminal penalties at [327 IAC 15-4-3\(k\)](#) regarding knowingly making a false report have been deleted in the draft rule. It is not apparent why elimination of subsection (k) would be necessary as part of changing from permits by rule to administratively issued general permits. (HEC)

Response: As noted in the Basic Purpose and Background of the Second Notice of Comment Period (LSA Document #18-238), "In an effort to eliminate duplication, three sections have been repealed and their citations are shown in the repeal section at the end of this document. These include [327 IAC 15-1-4](#), Enforcement, which is covered under [IC 13-30](#), and [327 IAC 15-2-1](#) and [327 IAC 15-3-1](#), both of which are purpose sections and are covered under the purpose section at [327 IAC 15-1-1](#)."

Comment: The U.S. Environmental Protection Agency, Region 5 (U.S. EPA), conducted an initial review of the regulations in the rulemaking LSA Document #18-238 and would like to meet with IDEM staff to discuss the results of this review. After the rulemaking is final adopted, U.S. EPA will review the regulations again for approval consistent with the state program revision procedures found at 40 CFR 123.62. (U.S. EPA)

Response: IDEM agrees to meet with U.S. EPA to discuss the results of U.S. EPA's initial review of the regulations in the rulemaking LSA Document #18-238.

Comment: The public notice for LSA Document #18-238 says that "No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law." Section 404 of the Clean Water Act allows exemptions for construction and maintenance of farm ponds, stock ponds, and the like. However, IDEM requires a permit for the construction of ponds for land disturbances over one acre. This seems to be more restrictions imposed by IDEM than by the federal rules. (JP)

Response: The purpose and subject matter of this rulemaking are to change the method of issuance of general permits from the current permit by rule process to administratively issued permits. The commenter's letter has been shared with IDEM's Office of Water Quality because the specific comments speak more to the requirements of the draft general permit for stormwater run-off from construction activity than to this rulemaking. IDEM has worked with U.S. EPA and an advisory group of a cross section of interested parties representing key stakeholders, including surveyors, in the development of the draft general permit for stormwater run-off from construction activity. Once this rulemaking is completed, the draft general permit will be public noticed for comment on the general permit's content. IDEM encourages the commenter to submit a comment in response to that notice with specific comments related to the requirements of the draft general permit for stormwater run-off from construction activity.

Comment: The County Surveyors Association of Indiana does not object to the change from the permit by rule process to an administratively issued process for issuance of general permits for stormwater run-off associated with construction activity so long as the change does not expand the projects that are covered beyond what is required presently under the Clean Water Act. (JH-CSAI)

Response: This rulemaking is concerned only with the process by which a general permit is issued. The type and scope of projects covered under the general permit for stormwater run-off from construction activity is set forth in the general permit itself, not in the rule language under consideration in this rulemaking. Once this rulemaking is completed, the draft general permit will be public noticed for comment on the general permit's content. IDEM encourages the commenter to submit a comment in response to that notice with specific comments related to the regulatory requirements of the draft general permit for stormwater run-off from construction activity.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On August 14, 2019, the Environmental Rules Board (board) conducted the first public hearing/board meeting concerning the development of amendments to rules in [327 IAC 5](#) and [327 IAC 15](#) concerning National Pollutant Discharge Elimination System (NPDES) general permits. No comments were made at the first hearing.

[327 IAC 5-2-1.8](#); [327 IAC 5-2-2](#); [327 IAC 5-4-6](#); [327 IAC 15-1-1](#); [327 IAC 15-1-2](#); [327 IAC 15-1-3](#); [327 IAC 15-1-4](#); [327 IAC 15-2-1](#); [327 IAC 15-2-2](#); [327 IAC 15-2-3](#); [327 IAC 15-2-5](#); [327 IAC 15-2-6](#); [327 IAC 15-2-7](#); [327 IAC 15-2-8](#); [327 IAC 15-2-9](#); [327 IAC 15-3-1](#); [327 IAC 15-3-2](#); [327 IAC 15-3-3](#); [327 IAC 15-4-1](#); [327 IAC 15-4-2](#); [327 IAC 15-4-3](#); [327 IAC 15-5-1](#); [327 IAC 15-5-2](#); [327 IAC 15-5-3](#); [327 IAC 15-5-4](#); [327 IAC 15-5-5](#); [327 IAC 15-5-6](#); [327 IAC 15-5-6.5](#); [327 IAC 15-5-7](#); [327 IAC 15-5-7.5](#); [327 IAC 15-5-8](#); [327 IAC 15-5-9](#); [327 IAC 15-5-10](#); [327 IAC 15-5-12](#); [327 IAC 15-13](#); [327 IAC 15-14](#)

SECTION 1. [327 IAC 5-2-1.8](#) IS AMENDED TO READ AS FOLLOWS:

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

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

Affected: [IC 13-11-2-38.3](#); [IC 13-14-12](#); [IC 13-18](#); [IC 13-30](#); [IC 14-37](#)

Sec. 1.8. ~~The following are exceptions and additions to materials~~ **(a) When used in a document** incorporated by reference in section 1.5 of this rule:

- (1) delete 40 CFR 122.3; and insert
- (2) substitute the following: **language in subsection (b).**

(b) The following discharges do not require an NPDES permit:

- (1) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when a vessel is being used as an energy or mining facility, a storage facility, or a seafood processing facility, or is secured to the bed of the waters of the state for the purpose of mineral or oil exploration or development.
- (2) Discharges of dredged or fill material into waters of the state and regulated under Section 404 of the Clean Water Act (33 U.S.C. 1344), except where the commissioner determines, on a case-by-case basis, that ~~such a~~ **the** discharge threatens to violate state water quality standards concerning toxic pollutants.
- (3) The introduction of sewage, industrial wastes, or other pollutants into publicly owned treatment works by

indirect dischargers. However, all applicable pretreatment standards promulgated under Section 307(b) and 307(c) of the Clean Water Act (33 U.S.C. 1317(b) and 33 U.S.C. 1317(c)) must also be complied with, and may be included in the permit to the publicly owned treatment works. This exclusion does not apply to discharges through pipes, sewers, or other conveyances owned by a public entity not leading to treatment works.

(4) Any introduction of pollutants from nonpoint source agricultural and silvicultural activities, including runoff from orchards, cultivated crops, pastures, range lands, and forest lands, except that this exclusion shall not apply to discharges from:

- (A) concentrated animal feeding operations as defined in [IC 13-11-2-38.3](#) and 40 CFR 122.23; or
- (B) silvicultural point sources, as defined in 40 CFR 122.27, that are point sources subject to the NPDES permit program.

(5) Any discharge in compliance with the instructions of an on-scene coordinator pursuant to 40 CFR 300 or 33 CFR 153.10(e) or of a state employee acting in a similar capacity.

(6) Discharges into a privately owned treatment works, except as the commissioner may otherwise require under section 10(a)(4) of this rule.

(7) Any discharge by underground injection of salt or sulfur-bearing water or waste liquids associated with the recovery of oil and natural gas, if the discharge is pursuant to a valid permit issued by the natural resources commission under ~~IC 13-8~~ [IC 14-37](#).

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

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

(Water Pollution Control Division; [327 IAC 5-2-1.8](#); filed Oct 9, 2015, 4:07 p.m.: [20151104-IR-327100659FRA](#); errata filed Sep 22, 2017, 11:46 a.m.: [20171004-IR-327170437ACA](#))

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

[327 IAC 5-2-2](#) Requirement to have a permit

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

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

Sec. 2. Any discharge of pollutants into waters of the state as a point source discharge, except for exclusions made in ~~[327 IAC 5-2-1.8](#)~~ **section 1.8 of this rule**, is prohibited unless in conformity with a valid NPDES permit obtained prior to the discharge.

(Water Pollution Control Division; [327 IAC 5-2-2](#); filed Sep 24, 1987, 3:00 p.m.: 11 IR 618; errata filed Sep 22, 2017, 11:46 a.m.: [20171004-IR-327170437ACA](#))

SECTION 3. [327 IAC 5-4-6](#) IS AMENDED TO READ AS FOLLOWS:

[327 IAC 5-4-6](#) Stormwater discharges

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

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

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

(1) A discharge that the commissioner determines:

- (A) contributes to a violation of a water quality standard;
- (B) is a significant contributor of pollutants to waters or to a regulated municipal separate storm sewer system (MS4) conveyance; or
- (C) meets any of the conditions listed in [327 IAC 15-2-9\(a\)](#).

~~(2) A discharge with respect to which a permit has been issued prior to February 4, 1987.~~

~~(3) (2)~~ (2) A discharge that is subject to federal stormwater effluent limitation guidelines unless the effluent limitations are placed in a general permit under [327 IAC 15](#).

~~(4) (3)~~ (3) A discharge associated with the state **Indiana** department of transportation.

~~(5) (4)~~ (4) A discharge from an MS4 conveyance subject to regulation under 40 CFR 122.26(a)(iii)* or 40 CFR 122.26(a)(iv)*.

(b) Discharges described in [327 IAC 15-2-2](#) that consist entirely of stormwater require an NPDES permit and are eligible for coverage under a general permit unless any of the conditions in subsection (a) for issuance of an

individual permit is met.

(c) The commissioner shall not, under this section, require a permit for discharges of stormwater runoff from any of the following:

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

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

(1) The provisions in the following:

- (A) [327 IAC 15-5](#), [327 IAC 15-6](#), and [327 IAC 15-13](#), as appropriate to the type of stormwater discharge.
- (B) NPDES Pesticide General Permit for Point Source Discharges to Waters of the State from the Application of Pesticides, Permit Number ING870000, effective October 31, 2011, available at: http://www.in.gov/idem/files/npdes_permit_pesticide_final_permit.pdf or from the IDEM Office of Water Quality, Permits Branch, 100 North Senate Avenue, Indianapolis, IN 46204-2251.

(1) **The nature of the discharges and activities occurring at the site or facility.**

(2) **Information relevant to the potential impact on water quality.**

(3) **The requirements found in the following:**

- ~~(A) [327 IAC 5-2](#).~~
- ~~(B) [327 IAC 5-5](#) and~~
- ~~(C) [327 IAC 5-9](#) for establishing NPDES permit effluent limitations and conditions.~~
- ~~(D) [327 IAC 15-6](#).~~

~~(2) (4) "Interim Permitting Approach for Water Quality-Based Effluent Limitations in Stormwater Permits", EPA 833-D-96-001, September 1, 1996**.~~ available from U.S. EPA/NSCEP, P.O. Box 42419, Cincinnati, Ohio 45242-0419 or from the department.

~~(3) The nature of the discharges and activities occurring at the site or facility.~~

~~(4) Other information relevant to the potential impact on water quality.~~

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

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

***These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana 46204.**

****This document is available from U.S. EPA/NSCEP, P.O. Box 42419, Cincinnati, OH 45242-0419 or from the Indiana Department of Environmental Management, Office of Water Quality, Permits Branch, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.**

(Water Pollution Control Division; [327 IAC 5-4-6](#); filed Sep 24, 1987, 3:00 p.m.: 11 IR 644; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1764; filed Jul 7, 2003, 2:15 p.m.: 26 IR 3575; errata filed Sep 8, 2003, 3:15 p.m.: 27 IR 191; errata filed Feb 6, 2006, 11:15 a.m.: 29 IR 1936; filed Oct 9, 2015, 4:07 p.m.: [20151104-IR-327100659FRA](#); errata filed Dec 30, 2015, 12:37 p.m.: [20160113-IR-327150453ACA](#))

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

ARTICLE 15. NPDES GENERAL PERMITS AND SPECIFIC CATEGORY INDIVIDUAL PERMIT REQUIREMENTS

327 IAC 15-1-1 Applicability

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

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

Sec. 1. The purpose of **(a) Except as provided in subsection (b)**, this article is to establish NPDES administrative **applies to a** general permit authority for certain classes or categories of discharges, except those covered by individual permits, within a geographical area within the state. **that is either:**

- (1) allowed through compliance with the applicable requirements in this article; or**
- (2) issued administratively by the department.**

(b) The provisions of this article do not apply to [327 IAC 15-16](#) unless expressly stated within that rule.

(Water Pollution Control Division; [327 IAC 15-1-1](#); filed Aug 31, 1992, 5:00 p.m.: 16 IR 15; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; readopted filed Nov 21, 2007, 1:16 p.m.: [20071219-IR-327070553BFA](#); readopted filed Jul 29, 2013, 9:21 a.m.: [20130828-IR-327130176BFA](#); filed Oct 9, 2015, 4:07 p.m.: [20151104-IR-327100659FRA](#))

SECTION 5. [327 IAC 15-1-2](#) IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-1-2 Definitions

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

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

Sec. 2. In addition to the definitions contained in [IC 13-11-2](#) and [327 IAC 5-1.5](#), the following definitions apply throughout this article:

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

(Water Pollution Control Division; [327 IAC 15-1-2](#); filed Aug 31, 1992, 5:00 p.m.: 16 IR 15; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; readopted filed Nov 21, 2007, 1:16 p.m.: [20071219-IR-327070553BFA](#); readopted filed Jul 29, 2013, 9:21 a.m.: [20130828-IR-327130176BFA](#); filed Oct 9, 2015, 4:07 p.m.: [20151104-IR-327100659FRA](#))

SECTION 6. [327 IAC 15-1-3](#) IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-1-3 Request for data

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

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

Sec. 3. (a) **In a general permit issued under this article**, the commissioner may ~~in a general permit issued under this article~~, require any a person who is subject to this article to:

- (1) establish and maintain such records;

- (2) make ~~such~~ reports;
- (3) install, use, and maintain ~~such~~ monitoring equipment or methods (including, where appropriate, biomonitoring methods);
- (4) sample: ~~such~~
 - (A) effluents;
 - (B) internal wastestreams, where appropriate; or
 - (C) other material; and
- (5) provide ~~such~~ other data, including, ~~but not limited to~~, **at a minimum:**
 - (A) raw materials;
 - (B) catalysts;
 - (C) intermediate products;
 - (D) byproducts;
 - (E) production rates; and
 - (F) related process information;

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

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

- (1) ~~such data are~~ reasonably expected to facilitate:
 - (A) the identification or quantification of pollutants ~~which that~~ may be released to the environment from facilities operated by the person to whom the request is made; and
 - (B) the **commissioner's** identification or quantification of ~~such the~~ pollutants **that** could not reasonably be made by the commissioner in the absence of the requested information; or
- (2) ~~such data are~~ necessary to properly control wastewater treatment processes.

(Water Pollution Control Division; [327 IAC 15-1-3](#); filed Aug 31, 1992, 5:00 p.m.: 16 IR 16; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; readopted filed Nov 21, 2007, 1:16 p.m.: [20071219-IR-327070553BFA](#); readopted filed Jul 29, 2013, 9:21 a.m.: [20130828-IR-327130176BFA](#); filed Oct 9, 2015, 4:07 p.m.: [20151104-IR-327100659FRA](#))

SECTION 7. [327 IAC 15-2-2](#) IS AMENDED TO READ AS FOLLOWS:

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

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

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

Sec. 2. (a) The commissioner may regulate the following discharges under an NPDES general permit, **consistent with the federal NPDES permit program administered by the U.S. EPA:**

- (1) Stormwater discharges associated with industrial activity, as defined in 40 CFR 122.26(b)(14) consistent with the EPA ~~2008~~ **2015** NPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity. ~~as modified, effective May 27, 2009.~~
- (2) Stormwater discharges associated with construction activity consistent with the EPA ~~2012~~ **2017** NPDES General Permit for Discharges from Construction Activities. ~~effective February 16, 2012.~~
- (3) Small municipal separate storm sewer system discharges consistent with EPA's general permit requirements for small municipal separate storm sewer systems (MS4s) in 40 CFR 122, Subpart B.
- (4) Discharges of pesticides to waters of the state consistent with EPA's NPDES Pesticide General Permit (PGP) for Point Source Discharges to Waters of the United States from the Application of Pesticides. ~~effective October 31, 2011.~~
- (5) Discharges of treated sewage from on-site residential sewage discharging disposal systems within the Allen County on-site waste management district for which an operating permit has been issued pursuant to [IC 13-18-12-9](#).
- (6) Discharges of wastewater from ground water petroleum remediation systems into surface waters of the state.**
- (7) Discharges of wastewater from hydrostatic testing of commercial pipelines into surface waters of the state.**
- (8) Once through noncontact cooling water into surface waters of the state.**
- (9) Discharges of wastewater from petroleum products terminals into surface waters of the state.**
- (10) Discharges of process wastewater and pit dewatering water from facilities involved in sand,**

gravel, dimension stone, or crushed stone operations into surface waters of the state.

(11) Discharges from facilities engaged in the mining of coal, coal processing, and reclamation activities.

~~(6) Such other (12) Categories or subcategories of discharges or sludge use or disposal practices or facilities, sites, and entities operating within the state that:~~

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

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

(b) The commissioner may determine that an individual permit must be obtained under section 9 of this rule.

(c) Each general permit issued by the commissioner must meet the criteria for general permits in 40 CFR 122.28*.

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

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

***These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana 46204.**

(Water Pollution Control Division; [327 IAC 15-2-2](#); filed Aug 31, 1992, 5:00 p.m.: 16 IR 16; errata filed Sep 10, 1992, 12:00 p.m.: 16 IR 65; filed Oct 9, 2015, 4:07 p.m.: [20151104-IR-327100659FRA](#))

SECTION 8. [327 IAC 15-2-3](#) IS AMENDED TO READ AS FOLLOWS:

[327 IAC 15-2-3](#) Applicability requirements

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

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

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

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

(b) **Persons Except under subsection (d), a person** excluded from general permit regulation solely because ~~they have the person has~~ an existing individual NPDES permit may request:

- (1)** to be regulated under a general permit; and ~~may request~~
- (2)** that the individual NPDES permit be revoked or modified to remove the discharge from the existing permit.

(c) Upon revocation or expiration of ~~the an~~ individual NPDES permit **described in subsection (b)(2)**, the general permit ~~shall apply~~ **applies** to ~~such the~~ discharges regulated under this article. ~~This~~

(d) **The** allowance to change from an individual NPDES permit to a general NPDES permit does not apply to municipal separate storm sewer system permittees who were issued an individual NPDES permit before January 1, 2000.

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

(Water Pollution Control Division; [327 IAC 15-2-3](#); filed Aug 31, 1992, 5:00 p.m.: 16 IR 17; filed Oct 27, 2003, 10:15 a.m.: 27 IR 830; filed Oct 9, 2015, 4:07 p.m.: [20151104-IR-327100659FRA](#); errata filed Dec 30, 2015, 12:37 p.m.: [20160113-IR-327150453ACA](#))

SECTION 9. [327 IAC 15-2-5](#) IS AMENDED TO READ AS FOLLOWS:

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

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

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

Sec. 5. (a) Except as provided in 40 CFR 122.28(b)(2)(v)*, ~~any~~ a person seeking to obtain an NPDES **coverage under a** general permit shall submit an NOI letter in accordance with the requirements of the applicable general permit.

(b) An NOI letter shall be submitted to the commissioner by the time specified in the applicable general permit.

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

(Water Pollution Control Division; [327 IAC 15-2-5](#); filed Aug 31, 1992, 5:00 p.m.: 16 IR 17; filed Oct 9, 2015, 4:07 p.m.: [20151104-IR-327100659FRA](#))

SECTION 10. [327 IAC 15-2-6](#) IS AMENDED TO READ AS FOLLOWS:

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

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

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

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

(1) to a receiving stream identified as an:

(A) outstanding state resource water, **as defined in [IC 13-11-2-149.6](#)**; or

(B) outstanding national resource water, ~~as defined under [IC 13-11-2-149.6](#) or in [IC 13-11-2-149.5](#)~~; respectively; or

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

(b) A discharge to an:

(1) outstanding national resource water, as defined in [IC 13-11-2-149.5](#); or

(2) outstanding state resource water, as defined in [IC 13-11-2-149.6](#);

that consists only of stormwater may be permitted under ~~this article~~ **a general permit** if the commissioner determines the discharge will not significantly lower the water quality as defined ~~under~~ **in [327 IAC 2-1.3-2](#)(50)** of ~~such~~ a water downstream of that discharge.

(Water Pollution Control Division; [327 IAC 15-2-6](#); filed Aug 31, 1992, 5:00 p.m.: 16 IR 17; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1476; filed Oct 27, 2003, 10:15 a.m.: 27 IR 830; filed May 29, 2012, 3:19 p.m.: [20120627-IR-327080764FRA](#); filed Nov 10, 2014, 1:51 p.m.: [20141210-IR-327130290FRA](#); filed Oct 9, 2015, 4:07 p.m.: [20151104-IR-327100659FRA](#))

SECTION 11. [327 IAC 15-2-8](#) IS AMENDED TO READ AS FOLLOWS:

[327 IAC 15-2-8](#) Transferability of permit responsibility and coverage

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

Affected: [IC 4-22-2](#); [IC 13-11-2](#); [IC 13-18-4](#)

Sec. 8. (a) Unless other requirements are found within specific rules under **otherwise stated in an applicable general permit or this article**, compliance with **responsibility for** the NOI letter submission requirements under **this article and the applicable general permit** may be transferred if the following ~~occurs~~ **occur**:

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

(2) A written agreement containing a specific date for transfer of permit responsibility and coverage between the current permittee and the transferee **is submitted to the commissioner**, including acknowledgment that the:

(A) existing permittee is liable for violations up to ~~that the~~ **date of transfer**; and ~~that the~~

(B) transferee is liable for violations from ~~that the date of~~ **transfer and afterward**.

~~is submitted to the commissioner.~~

(3) The transferee certifies in writing to the commissioner **the** intent to operate the facility without making such material and substantial:

(A) alterations; or

(B) additions;

to the facility **as that** would significantly change the nature or quantities of pollutants discharged.

(b) The commissioner may require that a new NOI letter be submitted rather than agreeing to **accepting** the transfer of the NOI letter requirements.

(Water Pollution Control Division; [327 IAC 15-2-8](#); filed Aug 31, 1992, 5:00 p.m.: 16 IR 18; filed Oct 27, 2003, 10:15 a.m.: 27 IR 831)

SECTION 12. [327 IAC 15-2-9](#) IS AMENDED TO READ AS FOLLOWS:

[327 IAC 15-2-9](#) Requirements for an individual permit

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

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

Sec. 9. (a) The commissioner may require ~~any~~ **a** person either with an existing discharge subject to the requirements of **an applicable general permit or this article** or who is proposing a discharge that would otherwise be subject to the requirements of **an applicable general permit or this article** to apply for and obtain an individual NPDES permit if ~~any~~ **one (1) or more** of the following occurs:

(1) The applicable requirements contained in **the applicable general permit or this article** are not adequate to ensure compliance with:

(A) water quality standards under [327 IAC 2-1](#) or [327 IAC 2-1.5](#); or

(B) the provisions that implement water quality standards contained in [327 IAC 5](#).

(2) The person is not in compliance with:

(A) the terms and conditions of ~~an NPDES~~ **the applicable general permit; or**

(B) **this article**.

(3) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants from the discharge.

(4) Effluent ~~limitations~~ **limitation** guidelines that are more stringent than the requirements in the general permit are subsequently promulgated for discharges regulated by the general permit.

(5) A water quality management plan containing more stringent requirements applicable to ~~such the~~ **the discharge or discharges regulated by the general permit** is approved.

(6) Circumstances have changed since the activity regulated under **the applicable general permit or this article** began so that:

(A) ~~the discharge~~ **discharge** is no longer appropriately controlled under the general permit; or

(B) either a temporary or permanent:

(i) reduction; or

(ii) elimination;

of the authorized discharge is necessary.

(7) The **receiving water of the discharge** is identified as impaired for a pollutant proposed to be discharged and listed pursuant to Section 303(d) of the Clean Water Act (33 U.S.C. 1313(d))* ~~and listed at~~ <http://www.in.gov/idem/nps/2647.htm>.

(8) The commissioner has revoked the person's coverage under the general permit.

An interested persons **person** may petition the commissioner to take action under this subsection.

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

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

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

(c) A person having financial responsibility or operational control for a:

- (1) facility;
- (2) project site; or
- (3) municipal separate storm sewer system area and the associated stormwater discharges;

that meets the applicability requirements of the general permit and is not covered by an existing individual NPDES permit, must submit an application under 40 CFR 122.26 and [327 IAC 5-3](#) if the operator seeks to cover the discharge under an individual permit.

***Information about impaired waters under Section 303(d) of the Clean Water Act is available from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204 and at <https://www.in.gov/idem/nps/2647.htm>.**

(Water Pollution Control Division; [327 IAC 15-2-9](#); filed Aug 31, 1992, 5:00 p.m.: 16 IR 18; errata filed Sep 10, 1992, 12:00 p.m.: 16 IR 65; errata, 16 IR 751; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1476; filed Oct 27, 2003, 10:15 a.m.: 27 IR 831; filed Oct 9, 2015, 4:07 p.m.: [20151104-IR-327100659FRA](#))

SECTION 13. [327 IAC 15-3-2](#) IS AMENDED TO READ AS FOLLOWS:

[327 IAC 15-3-2](#) Content requirements of an NOI

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

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

Sec. 2. ~~Except as provided in [327 IAC 15-5](#) and [327 IAC 15-13](#),~~ The NOI letter shall include the following:

- (1) Name, mailing address, and location of the facility for which the notification is submitted.
- (2) Standard Industrial Classification (SIC) codes, as defined in [327 IAC 5](#), up to four (4) digits, that best represent the principal products or activities provided by the facility.
- (3) The person's name, address, telephone number, e-mail address (if available), ownership status, and status as federal, state, private, public, or other entity.
- (4) The latitude and longitude of the approximate center of the facility to the nearest fifteen (15) seconds, and, if the section, township, and range are provided, the nearest quarter section in which the facility is located.
- (5) The name of receiving water, or, if the discharge is to a municipal separate storm sewer, the name of the municipal operator of the storm sewer and the ultimate receiving water.
- (6) A description of how the facility complies with the applicability requirements of the **applicable** general permit. ~~rule.~~
- (7) Any additional NOI ~~letter~~ information required by the applicable general permit. ~~rule.~~
- (8) The NOI ~~letter~~ must be signed by a person meeting the signatory requirements in [327 IAC 15-4-3\(g\)](#) and [327 IAC 15-4-3\(h\)](#).

(Water Pollution Control Division; [327 IAC 15-3-2](#); filed Aug 31, 1992, 5:00 p.m.: 16 IR 19; errata filed Sep 10, 1992, 12:00 p.m.: 16 IR 65; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Oct 27, 2003, 10:15 a.m.: 27 IR 832; filed Dec 18, 2003, 10:39 a.m.: 27 IR 1563; readopted filed Nov 21, 2007, 1:16 p.m.: [20071219-IR-327070553BFA](#); readopted filed Jul 29, 2013, 9:21 a.m.: [20130828-IR-327130176BFA](#); filed Oct 9, 2015, 4:07 p.m.: [20151104-IR-327100659FRA](#); errata filed Dec 30, 2015, 12:37 p.m.: [20160113-IR-327150453ACA](#))

SECTION 14. [327 IAC 15-3-3](#) IS AMENDED TO READ AS FOLLOWS:

[327 IAC 15-3-3](#) Deadline for submittal of an NOI; additional requirements

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

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

Sec. 3. ~~(a) Any~~ **A** person proposing a new discharge that will be subject to a general permit under ~~[327 IAC 15-6](#), [327 IAC 15-7](#), or [327 IAC 15-14](#)~~ shall submit an NOI letter ~~and to the department along with~~ additional information as required by the applicable general permit rule **according to one (1) of the following:**

(1) On or before the submission deadline prescribed by the applicable general permit.

(2) If no deadline is prescribed by the applicable general permit, submission must be at least one hundred eighty (180) days before the date ~~on which~~ **when** the discharge is to commence. ~~unless permission for~~

(3) At a later date if it has been granted by the commissioner or is established in the applicable general permit. rule.

~~(b) For construction activity under [327 IAC 15-5-5](#), a construction activity NOI letter shall be submitted in accordance with [327 IAC 15-5-6](#).~~

~~(c) For municipal separate storm sewer system discharges under [327 IAC 15-13](#), a municipal separate storm sewer system NOI letter shall be submitted in accordance with [327 IAC 15-13-6](#) and [327 IAC 15-13-9](#).~~

(Water Pollution Control Division; [327 IAC 15-3-3](#); filed Aug 31, 1992, 5:00 p.m.: 16 IR 19; errata filed Sep 10, 1992, 12:00 p.m.: 16 IR 65; errata, 16 IR 898; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Oct 27, 2003, 10:15 a.m.: 27 IR 832; readopted filed Nov 21, 2007, 1:16 p.m.: [20071219-IR-327070553BFA](#); readopted filed Jul 29, 2013, 9:21 a.m.: [20130828-IR-327130176BFA](#); filed Oct 9, 2015, 4:07 p.m.: [20151104-IR-327100659FRA](#); errata filed Dec 30, 2015, 12:37 p.m.: [20160113-IR-327150453ACA](#))

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

[327 IAC 15-4-1](#) General conditions

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

Affected: [IC 13-11-2](#); [IC 13-18-4](#); [IC 13-18-11](#); [IC 13-30-4-1](#); [IC 13-30-10](#)

Sec. 1. ~~(a) The conditions in this section apply to all NPDES general permits issued under [327 IAC 15-5](#), [327 IAC 15-6](#), [327 IAC 15-7](#), [327 IAC 15-13](#), and [327 IAC 15-14](#).~~

~~(b) Any~~ **(a) A** violation of this article constitutes a violation of the CWA and environmental management laws and is subject to enforcement under [IC 13-30](#). A person who violates this article may be required to obtain an individual NPDES permit.

~~(c) (b)~~ **(b)** In accordance with [IC 13-30-4-1](#), ~~any~~ **a** person who:

(1) violates a rule or standard adopted by the board is subject to a civil penalty not to exceed twenty-five thousand dollars (\$25,000) per day of ~~such~~ **each** violation; ~~Knowing, willful, or reckless violations of;~~

(2) willfully or negligently violates:

(A) an applicable standard or limitation;

(B) an NPDES permit ~~conditions are~~ condition; or

(C) an NPDES filing requirement;

is subject to criminal penalties under [IC 13-30-10](#).

If the conviction is for a violation committed after a first conviction of ~~such~~ **a** person under this subsection, punishment ~~shall~~ **must** be a fine of not more than fifty thousand dollars (\$50,000) per day of violation, or by imprisonment for not more than two (2) years, or both. Except as provided in applicable general permit rule conditions on bypassing under section 2(c) of this rule, and upsets under section ~~2(d)~~ **2(b)(3)** of this rule, nothing in this article shall be construed to relieve ~~persons~~ **a person** in violation of it from civil or criminal penalties for noncompliance.

~~(d)~~ **(c) A person** in violation of this article shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from ~~their~~ **the person's** noncompliance.

(d) Compliance with an applicable general permit does not:

(1) authorize:

- (A) injury to a person or private property;**
- (B) invasion of other private rights; or**
- (C) infringement of federal, state, or local:**
 - (i) laws; or**
 - (ii) regulations; or**

(2) preempt a duty to obtain state or local consent required by law for:

- (A) the discharge; or**
- (B) construction or operation of the facility from which the discharge is made.**

~~(e)~~ **(e) A person** regulated by this article shall furnish to the commissioner, within a reasonable time, ~~any~~ **the** information ~~which that~~ the commissioner may request to determine whether cause exists for **modifying**, revoking and reapproving, or terminating the approval to discharge under this article or to determine compliance with this article. ~~These persons~~ **A person** shall also furnish to the commissioner, upon request, copies of records required to be kept by this article.

~~(f)~~ Notwithstanding the provisions of [327 IAC 15-2-9](#), if a toxic effluent standard, prohibition, or sediment, wet weather, or biological criteria (including any schedule of compliance specified in such effluent standard or prohibition) is established under the CWA for a toxic pollutant which is present in the discharge and such standard or prohibition is more stringent than any limitation for such pollutant in an applicable general permit rule, the rule shall be modified to conform to the toxic effluent standard or prohibition. ~~The~~ **A person** shall comply with effluent standards or prohibitions established under the CWA for toxic pollutants injurious to human health within the time provided in the regulations that establish those standards or prohibitions, even if the rule **general permit** has not yet been modified to incorporate the requirement. **The commissioner shall modify the general permit to include the requirement.**

~~(g)~~ When cyanide or cyanogen compounds are used in any of the processes at a facility regulated under this article, the person responsible for that facility shall provide approved facilities for the containment of any losses of these compounds in accordance with the requirements under [327 IAC 2-2-1](#).

~~(h)~~ **(g) A person** regulated by this article shall have all wastewater treatment facilities, if any, under the direct supervision of an operator certified by the commissioner as required under [IC 13-18-11](#) and [327 IAC 8-12](#).

~~(i)~~ **(h)** Nothing in this article shall be construed to relieve ~~anyone~~ **a person** from ~~any~~ responsibility, liability, or penalty ~~to which they are~~ **that the person is** or may be subject to under the CWA.

~~(j)~~ **(i)** The applicability of this article does not convey ~~any~~ property rights ~~of any sort~~ or ~~any~~ exclusive privileges.

~~(k)~~ **(j)** The provisions of this article are severable and, if ~~any~~ **a** provision of this article or the application of ~~any~~ **a** provision of this article to ~~any~~ **a** circumstance is held invalid, the application of ~~such~~ **the** provision to other circumstances and the remainder of this article shall not be affected. ~~thereby~~.

~~(l)~~ **(k) A person** regulated by this article shall allow the commissioner, or an authorized representative (including an authorized contractor or representative of another governmental agency acting as a representative on behalf of the commissioner), at reasonable times, and in a manner to minimize disruption of the business, upon the presentation of credentials and ~~such~~ other documents as may be required by law, to:

- (1) enter upon the premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of **the applicable general permit or** this article;
- (2) have access to and copy, at reasonable times, ~~any~~ records that must be kept under the conditions of **the applicable general permit or** this article;
- (3) inspect, at reasonable times, ~~any~~ facilities, equipment (including monitoring and control equipment),

practices, or operations regulated or required under **the applicable general permit** or this article; and
(4) sample or monitor **substances or parameters** at **locations and at** reasonable times, for the purposes of **assuring ensuring** compliance with the applicable general permit ~~rule~~ conditions or as otherwise authorized by the CWA. ~~any substances or parameters at any location.~~

~~(m) Persons~~ **(l) A person** regulated by this article shall not:

- (1) construct;
- (2) install; or
- (3) modify; ~~any~~

a water pollution control facility without a valid construction permit issued by the department under [327 IAC 3-2](#).

~~(n) (m)~~ **(m)** A person with a new **discharge** or facility to which [327 IAC 15-5](#), [327 IAC 15-6](#), [327 IAC 15-7](#), [327 IAC 15-13](#), or [327 IAC 15-14](#) a **general permit** applies must comply with ~~all~~ **the applicable requirements of the applicable general permit and** this article including the submittal of the appropriate NOI.

(n) The following standard permit conditions are applicable to a general permit:

- (1) **Duty to comply according to 40 CFR 122.41(a)*.**
- (2) **Duty to reapply according to 40 CFR 122.41(b)*.**
- (3) **Need to halt or reduce activity not a defense according to 40 CFR 122.41(c)*.**
- (4) **Duty to mitigate according to 40 CFR 122.41(d)*.**
- (5) **Proper operation and maintenance according to 40 CFR 122.41(e)*.**
- (6) **Permit actions according to 40 CFR 122.41(f)*.**
- (7) **Property rights according to 40 CFR 122.41(g)*.**
- (8) **Duty to provide information according to 40 CFR 122.41(h)*.**
- (9) **Inspection and entry according to 40 CFR 122.41(i)*.**
- (10) **Monitoring and records according to 40 CFR 122.41(j)*.**
- (11) **Signatory requirements according to 40 CFR 122.41(k)*.**
- (12) **Reporting requirements according to 40 CFR 122.41(l)*.**
- (13) **Bypass reporting according to 40 CFR 122.41(m)*.**
- (14) **Upset reporting according to 40 CFR 122.41(n)*.**
- (15) **Additional reporting requirement for existing manufacturing, commercial, mining, and silvicultural dischargers according to 40 CFR 122.42(a)*.**

*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, Indiana 46204.

(Water Pollution Control Division; [327 IAC 15-4-1](#); filed Aug 31, 1992, 5:00 p.m.: 16 IR 19; errata filed Sep 10, 1992, 12:00 p.m.: 16 IR 65; errata, 16 IR 751; errata, 16 IR 898; filed Oct 9, 2015, 4:07 p.m.: [20151104-IR-327100659FRA](#); errata filed Dec 30, 2015, 12:37 p.m.: [20160113-IR-327150453ACA](#))

SECTION 16. [327 IAC 15-4-2](#) IS AMENDED TO READ AS FOLLOWS:

[327 IAC 15-4-2](#) Management requirements

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

Affected: [IC 13-18](#)

Sec. 2. (a) ~~Persons~~ **A person** regulated by **an applicable general permit and** this article shall, at all times:

- (1) maintain in good working order; and
- (2) efficiently operate; ~~all~~

facilities and systems (and related appurtenances) for collection and treatment ~~which~~ **that** are installed or used by the person and ~~which~~ **that** are necessary for achieving compliance with the terms and conditions of **the applicable general permit and** this article.

(b) The following definitions, with regard to bypass of treatment facilities **and upsets**, apply throughout ~~this rule:~~ **the applicable general permit and this article:**

- (1) "Bypass" means the intentional diversion of a wastestream from ~~any~~ a portion of a treatment facility

normally utilized for treatment of the wastestream.

(2) "Severe property damage":

(A) means:

(i) substantial physical damage to property;

(ii) damage to the treatment facilities ~~which~~ **that** would cause them to become inoperable; or

(iii) substantial and permanent loss of natural resources; ~~which~~

that can reasonably be expected to occur in the absence of a bypass; ~~Severe property damage and~~

(B) does not mean economic loss caused by delays in production. ~~at the facility.~~

(3) "Upset", as used in this rule:

(A) means an exceptional incident in which there is unintentional and temporary noncompliance

with an effluent limitation in the applicable general permit because of factors beyond the reasonable control of the responsible person; and

(B) does not include noncompliance to the extent caused by one (1) or more of the following:

(i) Operational error.

(ii) Improperly designed treatment facilities.

(iii) Inadequate treatment facilities.

(iv) Lack of preventive maintenance.

(v) Careless or improper operation.

(c) ~~A bypass which causes, or is likely to cause, applicable effluent limitations to be exceeded is prohibited except as allowed under this subsection. The permittee may allow a bypass that does not exceed any effluent limitations contained in the general permit to occur but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the requirements of subsection (d)(1) through (d)(3).~~

(d) The commissioner may take enforcement action against a permittee for a prohibited bypass unless the following conditions are met:

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

(2) There are no feasible alternatives to bypass, such as:

(A) the use of auxiliary treatment facilities;

(B) retention of untreated wastes; or

(C) maintenance during a normal period of equipment downtime.

This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass from occurring during normal periods of equipment down time or preventive maintenance.

(3) The ~~person~~ **permittee** submits notice of a **bypass according to the following:**

(A) An unanticipated bypass **must be reported** to the commissioner within twenty-four (24) hours of becoming aware of the bypass. If this information is provided orally, a written submission **also** must be provided within five (5) days. ~~Where~~

(B) ~~If the person permittee knows or should have known,~~ in advance of the need for a **an anticipated** bypass, this prior notification ~~shall~~ **must** be submitted for approval to the commissioner if possible, at least ten (10) days before the date of the bypass.

An anticipated bypass ~~which that~~ meets the criteria under this subsection may be allowed under conditions determined to be necessary by the commissioner to minimize any adverse effects.

~~(d) With regard to upset conditions, as used in this rule, "upset" means an exceptional incident in which there is unintentional and temporary noncompliance with the requirements of the applicable general permit rule because of factors beyond the reasonable control of the responsible person. An upset does not include Noncompliance to the extent caused by any of the following:~~

~~(1) Operational error.~~

~~(2) Improperly designed treatment facilities.~~

~~(3) Inadequate treatment facilities.~~

~~(4) Lack of preventive maintenance.~~

~~(5) Careless or improper operation.~~

(e) An upset ~~shall constitute~~ **constitutes** an affirmative defense to an action brought for noncompliance with ~~such~~ effluent limitations if the requirements under subsection ~~(d)~~ **(b)** are met.

(f) A ~~person~~ **permittee** regulated under **an applicable general permit or** this article who wishes to establish

the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence, the following:

- (1) An upset occurred and the regulated person has identified **permittee can identify** the specific cause or causes of the upset. ~~if possible.~~
- (2) The **permitted** facility was, at the time, being **properly** operated. ~~in compliance with proper operation and maintenance procedures.~~
- (3) The regulated person **permittee** complied with any remedial measures required under section 4(d) **1(c)** of this rule.
- (4) **The permittee gave the commissioner the notice required under section 3(c)(1)(D) of this rule.**

In an enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

(g) Solids, sludges, filter backwash, or other pollutants removed from or resulting from treatment or control of waters ~~shall~~ **must** be disposed of in a manner ~~such as to prevent any~~ **that prevents a** pollutant from ~~such materials~~ **the material** from entering navigable waters and to be in compliance with all Indiana statutes and rules relative to liquid ~~and/or~~ **or** solid waste, **or both**, disposal.

(Water Pollution Control Division; [327 IAC 15-4-2](#); filed Aug 31, 1992, 5:00 p.m.: 16 IR 21)

SECTION 17. [327 IAC 15-4-3](#) IS AMENDED TO READ AS FOLLOWS:

[327 IAC 15-4-3](#) Reporting requirements

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

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

Sec. 3. (a) ~~Any~~ **A** change in the information submitted in the NOI letter ~~shall~~ **must** be reported as soon as practicable to the commissioner. ~~Changes which are~~ **A change that is** reasonably expected to alter the characteristics of the discharge regulated under a general permit ~~rule~~ must be reported prior to the change. Following ~~such~~ **the change** notice, the commissioner may request the person to submit an application for an individual NPDES permit.

(b) Monitoring results ~~shall~~ **must** be reported at the intervals and in the form specified in the applicable general permit ~~rule~~. **and this section.**

(c) The following are requirements for twenty-four (24) hour reporting:

(1) ~~Persons~~ **A person** regulated by ~~[327 IAC 15-5](#), [327 IAC 15-6](#), [327 IAC 15-7](#), [327 IAC 15-13](#), or [327 IAC 15-14](#)~~ **a general permit** shall orally report information to the office of water quality at (317) 232-8670 on the following types of noncompliance within ~~one (1) business day~~ **twenty-four (24) hours** from the time the person becomes aware of ~~such~~ **the** noncompliance:

(A) ~~Any~~ **An** unanticipated bypass ~~which that~~ exceeds ~~any an~~ effluent limitation in the applicable general permit. ~~rule.~~

(B) Violation of a maximum daily discharge limitation for ~~any of~~ the pollutants listed by the commissioner in the ~~rule~~ **applicable general permit** to be reported within ~~one (1) business day~~. **twenty-four (24) hours.**

(C) ~~Any~~ **A** noncompliance ~~which that~~ may pose a significant danger to human health or the environment.

(D) An upset that exceeds an effluent limitation in the applicable general permit.

(2) A written submission ~~shall~~ **must** also be provided to the office of water quality within five (5) business days of the time the person becomes aware of the circumstances. The written submission ~~shall~~ **must** contain the following:

(A) A description of the noncompliance and its cause.

(B) The period of noncompliance, including exact dates and times, and, if the noncompliance has not been corrected, the anticipated duration.

(C) Steps taken or planned to reduce and eliminate the noncompliance and prevent its recurrence.

The commissioner may waive the written report on a case-by-case basis if the oral report has been received within ~~one (1) business day~~. **twenty-four (24) hours.**

(d) ~~Persons~~ **A person** regulated under ~~[327 IAC 15-5](#), [327 IAC 15-6](#), [327 IAC 15-7](#), [327 IAC 15-13](#), or [327 IAC 15-14](#)~~ **a general permit** shall report ~~any an~~ instance of noncompliance not reported under subsection (c) at the time the pertinent discharge monitoring report is submitted. The report ~~shall~~ **must** contain the information

specified under subsection (c)(2).

(e) When a person becomes aware that ~~any a~~ relevant ~~facts were~~ **fact was** omitted, or incorrect information was submitted in an NOI, ~~letter~~, or in ~~any a~~ report required to be submitted under **an applicable general permit** or this article, the person shall promptly submit ~~such facts~~ **the omitted fact** or corrected information.

~~(f) Persons regulated under [327 IAC 15-5](#), [327 IAC 15-6](#), [327 IAC 15-7](#), [327 IAC 15-13](#), or [327 IAC 15-14](#) shall notify the commissioner as soon as they know, or have reason to believe, the following:~~

~~(1) That any activity has occurred, or will occur, that would result in the discharge of any pollutant identified as toxic, under the CWA, which is not limited in the applicable general permit rule, if that discharge will exceed the highest of the following notification levels:~~

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

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

~~(C) A level established elsewhere in an applicable rule by the commissioner.~~

~~(2) That any toxic pollutant not reported in the NOI letter is or will be used or manufactured as an intermediate or final product or byproduct.~~

~~(g) Signatory requirements for (f) Reports required by an applicable general permit or this article and other information requested by the commissioner shall~~ **must** be signed by a person or by a duly authorized representative of that person according to the following:

(1) For a corporation, by a responsible corporate officer. As used in this section, "responsible corporate officer" means:

(A) a president, secretary, treasurer, ~~any a~~ vice president of the corporation in charge of a principal business function, or ~~any other a~~ person who performs similar policy making or decision making functions for the corporation; or

(B) the manager of one (1) or more manufacturing, production, or operating facilities provided the manager: (i) is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty to:

(AA) make major capital investment recommendations; and

(BB) initiate and direct other comprehensive measures to ~~assure~~ **ensure** long-term environmental compliance with environmental laws and regulations; and

(ii) can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements;

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

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

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

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

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

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

~~(h)~~ **(g)** A person is a duly authorized representative only if:

(1) the authorization is made in writing by a person described under subsection ~~(g)~~; **(f)**;

(2) the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the:

(A) position of plant manager;

(B) operator of a well or a well field; or

(C) superintendent or position of equivalent responsibility;

so that a duly authorized representative may ~~thus~~ be either a named individual or any individual occupying a named position; and

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

If an authorization under this subsection is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of this subsection must be submitted to the commissioner prior to or together with ~~any~~ **the** reports, information, or

applications to be signed by an authorized representative.

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

~~(j) (i)~~ **(i)** Except for data determined to be confidential under confidentiality rules at [327 IAC 12.1](#), all reports prepared in accordance with the terms of the applicable general permit rule shall **must** be available for public inspection at the offices of the Indiana department of environmental management and the U.S. Environmental Protection Agency Regional Administrator. As required by the CWA, information contained in the NOI letter and effluent data shall **is** not be considered confidential.

~~(k) The following are subject to the criminal penalties and provisions of [IC 13-30](#), including criminal fines and imprisonment under [IC 13-30-10](#):~~

~~(1) Any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under the applicable general permit rule, including monitoring reports or reports of compliance or noncompliance.~~

~~(2) Any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this article.~~

(Water Pollution Control Division; [327 IAC 15-4-3](#); filed Aug 31, 1992, 5:00 p.m.: 16 IR 21; errata filed Apr 10, 2006, 2:46 p.m.: 29 IR 2547; filed Oct 9, 2015, 4:07 p.m.: [20151104-IR-327100659FRA](#); errata filed Dec 30, 2015, 12:37 p.m.: [20160113-IR-327150453ACA](#))

SECTION 18.THE FOLLOWING ARE REPEALED: [327 IAC 15-1-4](#); [327 IAC 15-2-1](#); [327 IAC 15-2-7](#); [327 IAC 15-3-1](#); [327 IAC 15-5-1](#); [327 IAC 15-5-2](#); [327 IAC 15-5-3](#); [327 IAC 15-5-4](#); [327 IAC 15-5-5](#); [327 IAC 15-5-6](#); [327 IAC 15-5-6.5](#); [327 IAC 15-5-7](#); [327 IAC 15-5-7.5](#); [327 IAC 15-5-8](#); [327 IAC 15-5-9](#); [327 IAC 15-5-10](#); [327 IAC 15-5-12](#); [327 IAC 15-13](#); [327 IAC 15-14](#).

[Notice of Public Hearing](#)

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