

Final Rule

LSA Document #19-510(F)

DIGEST

Amends [327 IAC 2-1-3.1](#) concerning combined sewer overflow (CSO) wet weather limited use designation. Adds [327 IAC 2-1-11.5](#) concerning CSO wet weather limited use subcategory. Effective April 27, 2020. *NOTE: See Executive Order 20-15, signed March 31, 2020, posted at [20200422-IR-GOV200234EOA](#).*

HISTORY

Proposed Rule: October 16, 2019, Indiana Register (DIN: [20191016-IR-327190510PRA](#)).
Notice of Hearing: October 16, 2019, Indiana Register (DIN: [20191016-IR-327190510PHA](#)).
Date of Hearing: January 8, 2020.

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

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

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

Authority: [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-18-3-2.5](#)
Affected: [IC 13-14-2-6](#); [IC 13-14-9-14](#); [IC 13-18-4](#)

Sec. 3.1. (a) The **combined sewer overflow** (CSO) wet weather limited use subcategory established under section 3 of this rule ~~shall be applied only~~ **applies** to waters receiving wet weather discharges from combined sewer overflows **that are listed in section 11.5 of this rule.**

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

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

(c) The LTCP submitted to the department must:

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

(d) The department shall:

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

(e) Upon approval of a UAA, the department shall begin a rulemaking under [IC 13-14-9-14](#) to amend the designated use to a CSO wet weather limited use designation. The rulemaking may commence before full implementation of the approved LTCP.

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

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

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

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

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

SECTION 2. [327 IAC 2-1-11.5](#) IS ADDED TO READ AS FOLLOWS:

[327 IAC 2-1-11.5](#) CSO wet weather limited use; designated waters

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

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

Sec. 11.5. (a) The following waters of the state are designated for limited use in CWA Authority, Inc.'s approved long term control plan (LTCP) for the city of Indianapolis pursuant to the combined sewer overflow (CSO) wet weather limited use subcategory established under section 3(c) of this rule:

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

(b) The water quality-based requirements for the CSO wet weather limited use subcategory:

(1) are determined by the November 2017 approved LTCP for the combined sewer system and require that CSO discharges that occur be consistent with the performance criteria contained in the approved LTCP that include:

(A) ninety-seven percent (97%) capture of typical year CSO volume and an annual average of two (2) typical year CSOs within the Fall Creek watershed; and

(B) ninety-five percent (95%) capture of typical year CSO volume and an annual average of four (4) typical year CSOs in watersheds other than the Fall Creek watershed; and

(2) remain in effect:

(A) during the time and to the physical extent that the recreational use designation that applied to the waters immediately before the application of the subcategory is not attained; and

(B) for not more than four (4) days after the date the CSO discharge ends.

(Water Pollution Control Division; [327 IAC 2-1-11.5](#); filed Apr 27, 2020, 8:57 a.m.: [20200506-IR-327190510FRA](#), eff Apr 27, 2020, see Executive Order 20-15, posted at [20200422-IR-GOV200234EOA](#))

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