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

LSA Document #21-539

AQUATIC LIFE CRITERIA METHODOLOGIES FOR WATERS OUTSIDE OF THE GREAT LAKES SYSTEM**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at [327 IAC 2-1](#) and [327 IAC 5-2](#) concerning methodologies for deriving aquatic life criteria in waters outside of the Great Lakes System. IDEM seeks comment on the affected citations listed and any other provisions of Title 327 that may be affected by this rulemaking.

CITATIONS AFFECTED: [327 IAC 2-1-6](#); [327 IAC 2-1-8.2](#); [327 IAC 2-1-8.3](#); [327 IAC 2-1-8.9](#); [327 IAC 2-1-9](#); [327 IAC 2-1-13](#); [327 IAC 5-2-11.1](#).

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

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

The Clean Water Act (CWA) requires the states to periodically review and update their water quality standards (WQS) as appropriate. WQS include numeric water quality criteria (WQC), which are allowable concentrations of specific pollutants in waters, which, if exceeded, could impact designated uses. This rulemaking proposes rule revisions for waters outside of the Great Lakes System (downstate waters) regarding the methods for calculating derived numeric WQC for substances that are not in rule but might be present in quantities that could adversely impact human health or aquatic life. The existing methods for deriving numeric WQC for aquatic life in the rules for downstate waters will be eliminated and replaced with the more scientifically sound, up-to-date methods that are currently in the rules for waters within the Great Lakes System. Derived numeric WQC are used to evaluate if limits are warranted in a regulated discharge to a water of the state under the CWA's National Pollutant Discharge Elimination System (NPDES) program. Specifically, these methodologies are used to develop derived numeric WQC referred to as acute aquatic criteria (AAC) and chronic aquatic criteria (CAC) for downstate waters.

Indiana's existing methodologies to calculate derived numeric WQC for downstate waters are not consistent with the United States Environmental Protection Agency's (U.S. EPA) current procedures. Indiana adopted its methodologies to calculate derived numeric acute and chronic Tier I Criteria and Tier II Values for waters within the Great Lakes System in 1997, and these methodologies are consistent with U.S. EPA's current procedures, which are used to develop National Recommended Water Quality Criteria (NRWQC) at Section 304(a) of the CWA. Replacing the existing out-of-date downstate methodologies with the up-to-date Great Lakes System methodologies, as appropriate, will reflect current U.S. EPA recommended procedures and will support sound water quality management policies to consistently improve and protect the surface water resources of the state. Adopting these methodologies for downstate waters will result in a consistent set of methodologies for calculating derived numeric WQC to protect aquatic life in all of Indiana's surface waters as the Ohio River Sanitary Commission (ORSANCO) also uses the Great Lakes methodologies in their Pollution Control Standards (PCS) for discharges to the Ohio River.

Indiana has delegation from the federal government to conduct the state's CWA programs, including the NPDES program, which establishes wastewater discharge permit limitations based, in part, on the established WQC for parameters in discharges. WQC and derived numeric WQC form the basis for the maximum allowable concentrations of chemical pollutants and are used as the regulatory targets for permitting, compliance, and enforcement. This rulemaking will update the methods for calculating derived numeric WQC, specifically, the AAC and CAC for downstate waters by replacing them with the up-to-date methodologies existing in rule for calculating derived numeric WQC for waters within the Great Lakes System.

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

Alternatives to Be Considered Within the Rulemaking

Alternative 1. Amend the methodology for deriving the AAC and CAC for downstate waters to reflect the more scientifically sound and up-to-date methods that are already in rules for waters within the Great Lakes System. This rulemaking will promote sound and consistent water quality management policies in downstate waters to improve and protect the water resources and make the methodologies used for deriving numeric WQC consistent throughout the state.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.

- Is this alternative imposed by federal law or is there a comparable federal law? No. Federal law does not impose specific methodologies for deriving WQC. However, federal law does require states to periodically review and update their WQS, and WQC must be based on sound science.
- If it is a federal requirement, is it different from federal law? Not applicable (NA).
- If it is different, describe the differences. Not applicable (NA).

Alternative 2. Do not amend the existing methods in rule for calculating derived numeric WQC in downstate waters. The option to do no rulemaking would not satisfy the federal requirement for states to periodically review and update their WQS as appropriate. It will not support sound and consistent water quality management policies to improve and protect the water resources throughout the state.

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

Applicable Federal Law

Indiana is delegated to conduct the water quality programs required under the CWA. CWA Section 303(c)(1) requires states and tribes to periodically review their WQS and U.S.EPA NRWQC and to revise WQC, as necessary, to protect designated uses. States must adopt WQC that are based on sound scientific rationale, and state WQC are subject to U.S. EPA review [40 CFR 131.11; 40 CFR 131.5(a)]. When a state has not established a water quality criterion for a specific chemical pollutant, the permitting authority must establish effluent limits in prescribed ways, including by using methodologies in rule to derive these criteria [40 CFR 122.44(d)(1)(vi)(A)].

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 1. The proposed revisions to the methods for determining the AAC and CAC for downstate waters will keep Indiana's rules updated to reflect the most current scientific methods accepted by U.S. EPA and satisfy the federal requirement for states to periodically review and update their WQS as appropriate. Without this rulemaking to accomplish the needed update to the methods for determining the AAC and CAC, Indiana's rules that prescribe methods for deriving aquatic life criteria in downstate waters will continue to be out-of-date and inconsistent with the rules for those methodologies for waters within the Great Lakes System and for Indiana NPDES dischargers to the Ohio River, where the ORSANCO PCS apply.

This rulemaking to update the downstate methodologies for determining the AAC and CAC does not create any potential fiscal impact. Under the CWA, states are responsible for reviewing and revising their WQS, which include the methodologies used to derive WQC. WQC apply to Indiana waters themselves, not to any specific regulated entity. Instead, the methodologies used to derive WQC are applied under the NPDES permits program ([327 IAC 5](#)) to evaluate whether permit limits are warranted. Every derivation does not result in a discharge limitation being placed in a permit. The need to use derived WQC is a permit-by-permit individual consideration. As part of the NPDES permitting process, the application of the downstate methodologies proposed to be updated in this rulemaking may result in more or less stringent derived criteria than the current methodologies. Even for derived criteria that become more stringent using the updated methodologies, there may not be a fiscal impact even if they result in a permit limitation because the discharger's treatment process may be effective for meeting the permit limit without any upgrades. Entities having discharges both outside and within the Great Lakes System could experience a reduction of regulatory burden when the methodologies are consistent throughout the state for deriving numeric WQC. IDEM's NPDES permit writing staff could experience a reduction of administrative burden when calculations for derived WQC are based on consistent methodologies throughout the state.

Potential Fiscal Impact of Alternative 2. Doing no rulemaking would cause no fiscal impact; however, not doing a rulemaking to update the methods for determining the AAC and CAC for downstate waters will keep in place out-of-date methodologies that are not based on the latest scientific knowledge and are inconsistent with the methodologies that apply within the Great Lakes System and to Indiana NPDES dischargers to the Ohio River.

Small Business Assistance Information

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

www.in.gov/idem/ctap

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

Angela Taylor
IDEM Small Business Regulatory Coordinator/CTAP Small Business Liaison
IGCN 1316
100 North Senate Avenue
Indianapolis, IN 46204-2251

(317) 233-0572 or (800) 988-7901
ctap@idem.in.gov

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

Greg Lannan
Small Business Ombudsman
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204
(317) 601-8892
glannan@iedc.in.gov

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

The Small Business Assistance Program Ombudsman is:

Erin Moorhous
IDEM Small Business Assistance Program Ombudsman/Business, Agricultural, and Legislative Liaison
IGCN 1301
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 232-8921 or (800) 451-6027
emoorhous@idem.in.gov

Public Participation and Work Group Information

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

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

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

Comments may be submitted in one of the following ways:

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

LSA Document # 21-539 AAC and CAC Methodology
MaryAnn Stevens
Rules Development Branch
Office of Legal Counsel
Indiana Department of Environmental Management
Indiana Government Center North
100 North Senate Avenue
Indianapolis, IN 46204-2251

- (2) By electronic mail to mstevens@idem.in.gov. To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.**

Contact Karla Kindrick at kkindric@idem.in.gov or (317) 232-8922 if another method of submitting comments within the comment period is desired. Regardless of the delivery method used, in order to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

COMMENT PERIOD DEADLINE

All comments must be postmarked or time stamped not later than February 12, 2022.

Additional information regarding this action may be obtained from MaryAnn Stevens, Rules Development Branch, Office of Legal Counsel, mstevens@idem.in.gov, (317) 232-8635 or (800) 451-6027 (in Indiana).

Chris Pedersen, Chief
Rules Development Branch
Office of Legal Counsel

Posted: 12/29/2021 by Legislative Services Agency

