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TITLE 327 WATER POLLUTION CONTROL BOARD

SECOND NOTICE OF COMMENT PERIOD #00-46(WPCB)

READOPTION OF RULES IN TITLE 327 UNDER IC 13-14-9.5

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on the readoption of the following rules in Title 327 of the Indiana Administrative Code pursuant to IC 13-14-9.5: 327 IAC 5-4 and 327 IAC 15-4. The rules are being published as they were most recently adopted by the board. IDEM seeks comment on the rule language, including any specific revisions to the rule language.

HISTORY

First Notice of Comment Period: March 1, 2000, Indiana Register (23 IR 1489).

Continuation of First Notice Period: May 1, 2000, Indiana Register (23 IR 2110).

CITATIONS AFFECTED: 327 IAC 5-4; 327 IAC 15-4.

AUTHORITY: IC 13-14-9.5.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

This rulemaking is required pursuant to IC 13-14-9.5, which provides for the expiration and readoption of administrative rules. A rule that was adopted under a provision of IC 13 and was in force on December 31, 1995, expires not later than January 1, 2002. All rules adopted after that date under IC 13-14-9, with some exceptions listed in IC 13-14-9.5-1, expire on January 1 of the seventh year after the year in which each rule takes effect. The First Notice of Comment Period and Continuation of First Notice of Comment Period opened all rules required to be opened in Title 327 for readoption. All comments received and responses thereto are summarized below.

Because the rules commented on have differing actual expiration dates, not all rules commented on will be readopted within this rulemaking. Depending on the expiration date of each rule, it may be readopted in a subsequent rulemaking or, if possible, included within a currently existing rulemaking. Responses to comments below identify the expiration date of each rule and whether the rule will be readopted in a future rulemaking or included in a currently existing rulemaking.

Rules being readopted in this rulemaking are set out below, in their entirety, as draft rules. IDEM seeks comment on specific revisions to the draft rule language. Rules not commented on during the First Notice of Comment Period or the Continuation of First Notice shall be readopted by publication of a Notice of Readoption in the Indiana Register pursuant to IC 13-14-9.5-4(c).

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from March 1, 2000, through March 31, 2000, and from May 1, 2000, through May 30, 2000, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received comments from the following parties by the comment period deadline:

Eli Lilly (ELC)

Indiana Manufacturers Association (IMA)

Marcia Oddi (MJO)

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

Comment: What is the legal effect of the readoption of the rules under IC 13-14-9.5? Is a readopted rule a "new" rule with a new effective date? (MJO)

Response: IDEM believes the effective date of the rule is the date the rule was originally effective. The law, however, is unsettled on that point. Therefore, appropriate language will have to be added to rules that are being readopted to assure that there is no gap in effectiveness of a rule on regulated entities.

Comment: All rules containing language dealing with incorporation by reference of federal regulations should be considered in

separate rulemakings with language precisely describing the versions of the documents incorporated. (MJO)

Response: Although the commentor does not specifically list the rules that this comment would affect, if those rules are not exempt from expiration under IC 13-14-9.5-1, they will eventually be readopted as their expiration dates approach. At that time, the specific date of incorporated materials must be included within the rulemaking under IC 4-22-2-21.

Comment: It is inappropriate and outside the scope of IDEM's statutory authority for IDEM to readopt these rules without the involvement of the respective board. (ELC)

Response: IC 13-14-9.5-4(c) allows the department to publish a notice stating that the agency has readopted any rule not commented on within the first notice. IDEM is following the letter of the statute and is, therefore, within its statutory authority to readopt rules not commented on through this process.

Comment: Any environmental rule impacted by an enrolled act from the 2000 session should be adopted in a separate rulemaking and not as part of the readoption process. (ELC)

Response: Substantive rulemakings required by statute are not affected by the readoption process except to the extent that rules must be readopted prior to their expiration seven (7) years after the year in which they become effective.

Comment: IDEM must make a distinction between the rules that are subject to readoption and those that are not (e.g., federal rules adopted by reference). (ELC)

Response: Rules that incorporate a federal regulation by reference are not subject to the readoption process. IDEM is making this distinction.

Comment: IDEM should withdraw the notices of readoption published in the March 1, 2000, Indiana Register. (ELC)

Response: IDEM did not withdraw the notices because they were published in accordance with the procedures established in IC 13-14-9.5-4(a).

Comment: The first notice comment period needs to be extended from March 31 to April 28, 2000, so that readoption of a rule is not based on anxiety that could cause excessive work for IDEM if a large number of rules are required to go through the standard process of rulemaking. (IMA)

Response: The first notice comment period was extended through May 30, 2000.

Comment: The Water Pollution Control Board should determine the water regulations that should be summarily readopted and those that should be reopened to rulemaking. (IMA)

Response: IC 13-14-9.5-4(b) provides that a person may submit to the department or the WPCB a request to readopt a rule separately from the summary readoption. The statute does not direct the WPCB to make that determination on its own initiative. Subsection (c) of the statute also provides that rules not commented on during the first notice of comment period may be summarily readopted upon filing with the secretary of state and publication of notice in the Indiana Register. The determination to proceed with summary readoption is, by statute, to be made by IDEM, not the WPCB.

Comment: The statute concerning rule readoption under the sunset legislation states that the readoption process does not apply to any rule incorporating a federal regulation by reference or adopting a federal mandate in its entirety without substantive additions. The first notice for readoption of water rules on page 1490 of the Indiana Register states that no rules are exempt from readoption. The state's attorney general previously has rejected some IDEM rules that adopt federal rules by reference. The failure of the sunset readoption first notice to distinguish the water rules that are not eligible for readoption could subject Indiana's federally delegated programs to be called into question if the readoption rulemaking is delayed for some reason or if an individual challenges readoption on one (1) of these federally mandated rules. (IMA)

Response: The first notice did provide for rules exempt from the expiration statutes under IC 13-14.5-9. The Indiana Register, at the top of page 1490, lists 327 IAC 8-2 under "Rules Exempt From Readoption".

Comment: Wholesale rule readoption as indicated by the first notice may conflict with legislation being enacted by the 2000 legislative session. (IMA)

Response: Substantive rulemakings required by statute are not affected by the readoption process except to the extent that rules must be readopted prior to their expiration seven years after the year in which they became effective.

Comment: The water rules considered for readoption according to the first notice published on March 1, 2000, include rules that result in stringent permit limits and restrictions or even prohibitions on new and increased discharges. These rules cause enormous compliance costs, potential increases in taxes for Indiana residents and businesses, and adverse impacts on economic growth and employment in Indiana. The readoption of these rules will provide little environmental benefit; therefore, the Water Pollution Control Board and IDEM should consider whether the existing rules are truly necessary and whether the benefits justify the resulting social and economic impacts. (IMA)

Response: Unless there is a request that a particular rule be readopted separately, accompanied by a basis for the request, as provided by IC 13-14-9.5-4, there is no provision for conducting the wholesale consideration requested by the commentor. Substantive rulemakings dealing with water quality standards and permit limits will continue apart from the readoption process. To the extent that some of the rules commented on in the sunset comments touch on those issues, they will be included within the substantive rulemakings.

Comment: 327 IAC 2-1-3(a)(6), 327 IAC 2-1-6(i), 327 IAC 2-1-10, and 327 IAC 2-1-11 should be amended or repealed, as appropriate, to eliminate the exceptional use designation in keeping with Senate Enrolled Act (SEA) 431. Waters listed as exceptional use waters should be reevaluated to determine whether they merit outstanding state resource water status. (IMA)

Response: 327 IAC 2-1 expires on January 1, 2005. Therefore, these rules will not be readopted within this rulemaking but will be readopted in a subsequent rulemaking to address the specific requirements and deadlines imposed by SEA 431. Notice of those rulemakings will be published in a subsequent Indiana Register.

Comment: 327 IAC 2-1.5-9 should be repealed since the ground water quality standards have been preliminarily adopted by the Water Pollution Control Board.

Response: Mere preliminary adoption of a proposed rule is not a sufficient basis for repealing the existing rule the proposed rule is intended to replace. The preliminarily adopted ground water quality standards rule already provides for the repeal of 327 IAC 2-1.5-9 once it becomes effective following final adoption.

Comment: Some bioaccumulative chemicals of concern (BCC) restricted by 327 IAC 2-1-6 have been considered to be of concern based on now outdated data and technical assumptions. These substances should not be regulated as BCC unless and until field data is generated that shows a bioaccumulation factor greater than one thousand (1,000). (IMA)

Response: This rule expires on January 1, 2005. Therefore, this rule will not be readopted within this rulemaking but will be readopted in a subsequent rulemaking. Notice of that rulemaking will be published in a subsequent Indiana Register.

Comment: Tier II aquatic life values methodology of 327 IAC 2-1.5-12 needs to be revised so that: (1) no values are developed unless there is at least data from a daphnid test and a test of either fathead minnow, bluegill, or rainbow trout species; (2) Tier II values are only developed for substances that are covered by the original study used to develop the Tier II methodology; and (3) Tier II methodology is modified to allow flexibility if strict application of its requirements does not yield scientifically sound values. (IMA)

Response: This rule expires on January 1, 2005. Therefore, this rule will not be readopted within this rulemaking but will be readopted in a subsequent rulemaking. Notice of that rulemaking will be published in a subsequent Indiana Register.

Comment: 327 IAC 2-1.5-9(b)(3) should not be readopted without specifying that the boundaries of the Indiana Dunes National Lakeshore are the boundaries as specified in the water quality standards adopted in 1990 and not the Lakeshore boundaries that have significantly expanded since that time. (IMA)

Response: This rule expires on January 1, 2005. Therefore, this rule will not be readopted within this rulemaking but will be readopted in a subsequent rulemaking. Notice of that rulemaking will be published in a subsequent Indiana Register.

Comment: Senate Bill 63 passed in the 1999 legislative session changed the activities that require construction permits and established a general permit rule for approval of sanitary collection systems; therefore, 327 IAC 3-2-4 and 327 IAC 3-6-7 should be reopened to rulemaking to reflect the legislative directives. (IMA)

Response: The requirements of SEA 63 were met by the amendments to 327 IAC 3 that were adopted by the WPCB and filed with the Secretary of State on May 17, 1999. These rules were effective on June 16, 1999. See 22 IR 3080. Consequently, these rules expire on January 1, 2007. Absent additional substantive rulemakings related to these rules, they will be considered for reoption at a date closer to their expiration date.

Comment: The ban on mixing zones for BCC that is contained in 327 IAC 5-2-11.1(b)(6) and 327 IAC 5-2-11.4(b)(1) should be deleted as it is unnecessary, will impose substantial compliance costs for very little environmental benefit, and is contrary to the D.C. Circuit Court of Appeals ruling that invalidated the Great Lakes Initiative ban on BCC mixing zones. In the very least, IDEM should remove the BCC mixing zone ban until a cost analysis has been conducted on the economic impact and benefits of the ban. (IMA)

Response: This rule expires on January 1, 2005. Therefore, this rule will not be readopted within this rulemaking but will be readopted in a subsequent rulemaking. Notice of that rulemaking will be published in a subsequent Indiana Register.

Comment: 327 IAC 5-2-11.1(g)(2) needs to be modified to include an exemption from water quality based effluent limits for water discharges that do not add to the pollutant level of the receiving water and to provide an exemption for non-contact cooling waters from water quality based limits and net limitations for any pollutant not contained in the discharged cooling water. (IMA)

Response: This rule expires on January 1, 2005. Therefore, this rule will not be readopted within this rulemaking but will be readopted in a subsequent rulemaking. Notice of that rulemaking will be published in a subsequent Indiana Register.

Comment: According to 327 IAC 5-2-11.5(b)(1)(B)(i) and 327 IAC 5-2-11.5(b)(1)(B)(iv), an excessive amount of data is required to satisfy the demonstration of the reasonable potential to exceed water quality standards, but there is no scientific justification to support the minimum data requirements. This requirement has forced dischargers to do a significant amount of monitoring prior to the issuance of a permit or to accept unnecessary limits and monitoring requirements. These minimum data requirements should not be readopted. (IMA)

Response: This rule expires on January 1, 2005. Therefore, this rule will not be readopted within this rulemaking but will be readopted in a subsequent rulemaking. Notice of that rulemaking will be published in a subsequent Indiana Register.

Comment: 327 IAC 5-2-15 should be revised to require that only one (1) monthly report concerning wastewater discharge be required to be submitted by a discharger rather than the current practice of requiring both a federal and a state form of the discharge

information. The duplicative reporting requirement is overly burdensome with no related benefit. (IMA)

Response: This rule expires on January 1, 2005. Therefore, this rule will not be readopted within this rulemaking but will be readopted in a subsequent rulemaking. Notice of that rulemaking will be published in a subsequent Indiana Register.

Comment: 327 IAC 5-4-2 should be repealed as it concerns the regulation of underground injection of pollutants which is an activity currently administered by the Environmental Protection Agency under the Safe Drinking Water Act and not a state program under IDEM's authority. (IMA)

Response: Pursuant to IC 13-14-9.5-4(b), you have requested that 327 IAC 5-4-2 be subject to rulemaking separately from the general readoption rule authorized by IC 13-14-9.5-4(a). 327 IAC 5-4-2 is included within this second notice. The rule is being published as it was most recently adopted by the board. IDEM requests comment on the draft rule language, including suggestions for specific revisions to the draft rule.

Comment: 327 IAC 15-2-6 should be modified to remove the restriction on obtaining a general NPDES permit for a discharge to an Outstanding State Resource Water (OSRW). SEA 431 has directed IDEM to make changes to rules regarding OSRWs. Among the changes should be the elimination of this overly burdensome prohibition against general NPDES permits that constitutes a poor use of IDEM and regulatory community resources through the process of requiring individual permits for activities that really have no significant impact on water quality. (IMA)

Response: This rule expires on January 1, 2005. Therefore, this rule will not be readopted within this rulemaking but will be readopted in a subsequent rulemaking. Notice of that rulemaking will be published in a subsequent Indiana Register.

Comment: 327 IAC 15-4-1 needs to be modified to reflect the criminal fines for environmental offenses specified by House Enrolled Act 1343 and concerning required permits according to Senate Bill 63. (IMA)

Response: Pursuant to IC 13-14-9.5-4(b), you have requested that 327 IAC 15-4-1 be subject to rulemaking separately from the general readoption rule authorized by IC 13-14-9.5-4(a). 327 IAC 15-4-1 is included within this second notice. The rule is being published as it was most recently adopted by the board. IDEM requests comment on the draft rule language, including suggestions for specific revisions to the draft rule.

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Mailed comments should be addressed to:

#00-46(WPCB) Readoption Rule

Barbara Scott, Chief

Rules Section

Office of Water Management

Indiana Department of Environmental Management

P.O. Box 6015

Indianapolis, Indiana 46206-6015.

Hand delivered comments will be accepted by the receptionist on duty at the twelfth floor reception desk, Office of Water Management, 100 North Senate Avenue, Indianapolis, Indiana. Comments may be submitted by facsimile to (317) 232-8406. To ensure timely receipt of the document, it is recommended that the sender contact the Office of Water Management Rules Section at (317) 233-8544 when faxing a document. Please be advised that electronic transmission of comments is unacceptable.

COMMENT PERIOD DEADLINE

Comments must be postmarked, hand delivered, or faxed by October 30, 2000.

Additional information regarding this action may be obtained from Mary Ann Stevens, Rules Section, Office of Water Management, (317) 232-8635 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 327 IAC 5-4-1 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

327 IAC 5-4-1 Purpose

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

Affected: IC 13-18-1; IC 13-12

Sec. 1. This rule (327 IAC 5-4) describes NPDES program requirements for certain categories of point source dischargers. (*Water Pollution Control Board; 327 IAC 5-4-1; filed Sep 24, 1987, 3:00 p.m.: 11 IR 642*)

SECTION 2. 327 IAC 5-4-2 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

327 IAC 5-4-2 Underground injection of pollutants

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

Affected: IC 13-18-1; IC 13-12

Sec. 2. (a) If an applicant for an NPDES permit proposes to dispose of pollutants by underground injection as part of the overall effort to meet the requirements of the NPDES program, the commissioner shall deny the request, as this function now lies with EPA as part of the requirements of the SWDA, unless it is determined by the commissioner to be necessary to specify additional terms and conditions in the final NPDES permit which shall:

- (1) prohibit the proposed disposal; or
- (2) control the proposed disposal in order to prevent pollution of ground and surface water resources of such character and degree as would endanger or threaten to endanger the public health and welfare.

(b) A person proposing a discharge of pollutants by underground injection from a facility with no other point source discharge of pollutants subject to NPDES requirements shall not be required to obtain an NPDES permit. However, the commissioner may prohibit or control such a proposed discharge through the issuance of construction and operation permits under 327 IAC 3 so as to prevent pollution of ground waters of the state of such character and degree as would endanger or threaten to endanger the public health and welfare. (*Water Pollution Control Board; 327 IAC 5-4-2; filed Sep 24, 1987, 3:00 p.m.: 11 IR 642; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1763*)

SECTION 3. 327 IAC 5-4-3 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

327 IAC 5-4-3 Concentrated animal feeding operations

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

Affected: IC 13-18-1; IC 13-12

Sec. 3. (a) Concentrated animal feeding operations are point sources subject to the NPDES permit program.

(b) Definitions.

(1) "Animal feeding operation" means a lot or facility where the following conditions are met:

- (A) animals (other than aquatic animals) have been, are, or will be, stabled or confined and fed or maintained for a total of forty-five (45) days or more in any 12-month period; and
- (B) crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

Two (2) or more animal feeding operations under common ownership are considered, for the purposes of this article (327 IAC 5), to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

(2) "Concentrated animal feeding operation" means an animal feeding operation which meets the criteria set forth in clause (A) or (B) or which is designated by the commissioner under subsection (c):

(A) More than the numbers of animals specified in any of the following categories are confined:

- (i) one thousand (1,000) slaughter and feeder cattle;
- (ii) seven hundred (700) mature dairy cattle (whether milked or dry cows);
- (iii) two thousand five hundred (2,500) swine each weighing over 25 kilograms (approximately 55 pounds);
- (iv) five hundred (500) horses;
- (v) ten thousand (10,000) sheep or lambs;
- (vi) fifty-five thousand (55,000) turkeys;
- (vii) one hundred thousand (100,000) laying hens or broilers (if the facility has continuous overflow watering);
- (viii) thirty thousand (30,000) laying hens or broilers (if the facility has a liquid manure system);
- (ix) five thousand (5,000) ducks; or
- (x) one thousand (1,000) animal units; or

(B)(i) Either pollutants are discharged from the facility into waters of the state through a man-made ditch, flushing system, or other similar man-made device; or pollutants are discharged directly from the facility into waters of the state which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation; provided, however, that no animal feeding operation is a concentrated animal feeding operation as defined above if such animal feeding operation discharges only in the event of a twenty-five (25) year, twenty-four (24) hour storm event; and

(ii) More than the following numbers of animals are confined in any of the following categories:

- (AA) three hundred (300) slaughter or feeder cattle;
- (BB) two hundred (200) mature dairy cattle (whether milked or dry cows);
- (CC) seven hundred fifty (750) swine, each weighing over 25 kilograms;
- (DD) one hundred fifty (150) horses;
- (EE) three thousand (3,000) sheep or lamb;
- (FF) sixteen thousand five hundred (16,500) turkeys;
- (GG) thirty thousand (30,000) laying hens or broilers (if the facility has continuous overflow watering);
- (HH) nine thousand (9,000) laying hens or broilers (if the facility has a liquid manure handling system);
- (II) one thousand five hundred (1,500) ducks; or
- (JJ) three hundred (300) animal units.

(3) "Animal unit" means a unit of measurement for any animal feeding operation such that the total animal units is calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

(4) "Man-made" means constructed by man and used for the purpose of transporting wastes.

(c) Case-by-case designation of concentrated animal feeding operations.

(1) Notwithstanding any other provision of this section, any animal feeding operation may be designated as a concentrated animal feeding operation where it is determined to be a significant contributor of pollution to the waters of the state. In making this designation the commissioner shall consider the following factors:

- (A) the size of the animal feeding operation and the amount of wastes reaching waters of the state;
- (B) the location of the animal feeding operation relative to waters of the state;
- (C) the means of conveyance of animal wastes and process wastewaters into waters of the state;
- (D) the slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process wastewaters into waters of the state; and
- (E) other factors relevant to the significance of the pollution problem under consideration.

(2) In no case shall a permit application be required from a concentrated animal feeding operation designated under this subsection until there has been an on-site inspection of the operation and a determination that the operation should be regulated under the permit program.

(3) No animal feeding operation with less than the numbers of animals set forth in subsection (b) shall be designated as a concentrated animal feeding operation unless:

- (A) pollutants are discharged into waters of the State through a man-made ditch, flushing system, or other similar man-made device; or
- (B) pollutants are discharged directly into waters of the state which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(Water Pollution Control Board; 327 IAC 5-4-3; filed Sep 24, 1987, 3:00 p.m.: 11 IR 642)

SECTION 4. 327 IAC 5-4-4 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

327 IAC 5-4-4 Concentrated aquatic animal production facilities

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

Affected: IC 13-18-1; IC 13-12

Sec. 4. Concentrated aquatic animal production facilities, as defined at 40 CFR 122.24, are point sources subject to NPDES permit requirements. *(Water Pollution Control Board; 327 IAC 5-4-4; filed Sep 24, 1987, 3:00 p.m.: 11 IR 643)*

SECTION 5. 327 IAC 5-4-5 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

327 IAC 5-4-5 Aquaculture projects

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

Affected: IC 13-18-1; IC 13-12

Sec. 5. Discharges into aquaculture [*sic.*] projects, as defined in 40 CFR 122.25, are subject to the NPDES permit program in accordance with the criteria specified in 40 CFR Part 125, Subpart B. *(Water Pollution Control Board; 327 IAC 5-4-5; filed Sep 24,*

1987, 3:00 p.m.: 11 IR 643)

SECTION 6. 327 IAC 5-4-6 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

327 IAC 5-4-6 Storm water discharges

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

Affected: IC 13-18-1; IC 13-12

Sec. 6. (a) The following discharges consisting entirely of storm water are subject to the NPDES program:

- (1) A discharge with respect to which a permit has been issued prior to February 4, 1987.
- (2) A discharge which the commissioner determines contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the state.

(b) Prior to October 1, 1992, a permit shall not be required for a discharge composed entirely of storm water, except the following:

- (1) A discharge with respect to which a permit has been issued prior to February 4, 1987.
- (2) A discharge associated with industrial activity.
- (3) A discharge from a large municipal separate storm sewer system serving a population of two hundred fifty thousand (250,000) or more.
- (4) A discharge from a medium municipal separate storm sewer system serving a population of one hundred thousand (100,000) or more but less than two hundred fifty thousand (250,000).
- (5) A discharge which the commissioner determines contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the state.

(c) The commissioner shall not, under this section, require a permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including, but not limited to, pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with or do not come into contact with any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations.

(d) The following are requirements for large and medium municipal separate storm sewer systems:

- (1) Permits must be obtained for all discharges from large and medium municipal separate storm sewer systems.
- (2) The commissioner may either issue one (1) system wide permit covering all discharges from municipal separate storm sewers within a large or medium municipal storm sewer system or issue distinct permits for appropriate categories of discharges within a large or medium municipal separate storm sewer system including, but not limited to:
 - (A) all discharges owned or operated by the same municipality;
 - (B) located within the same jurisdiction;
 - (C) all discharges within a system that discharges to the same watershed;
 - (D) discharges within a system that are similar in nature; or
 - (E) individual discharges from municipal separate storm sewers within the system.
- (3) The operator of a discharge from a municipal separate storm sewer which is part of a large or medium municipal separate storm sewer system must do any of the following:
 - (A) Participate in a permit application (to be a permittee or a copermittee) with one (1) or more other operators of discharges from the large or medium municipal storm sewer system which covers all, or a portion of all, discharges from the municipal separate storm sewer system.
 - (B) Submit a distinct permit application which only covers discharges from the municipal separate storm sewers for which the operator is responsible.
 - (C) A regional authority may be responsible for submitting a permit application under the following guidelines:
 - (i) The regional authority together with coapplicants shall have authority over a storm water management program that is in existence, or shall be in existence at the time Part 1 of the application is due.
 - (ii) The permit applicant or coapplicants shall establish their ability to make a timely submission of Part 1 and Part 2 of the municipal application.
 - (iii) Each of the operators of large or medium municipal separate storm sewers shall comply with the application requirements of 40 CFR 122.26(d).
- (4) One (1) permit application may be submitted for all or a portion of all municipal separate storm sewers within adjacent or

interconnected large or medium municipal separate storm sewer systems. The commissioner may issue one (1) system wide permit covering all or a portion of all municipal separate storm sewers in adjacent or interconnected large or medium municipal separate storm sewer systems.

(5) Permits for all or a portion of all discharges from large or medium municipal separate storm sewer systems that are issued on a system wide, jurisdiction wide, watershed, or other basis may specify different conditions relating to different discharges covered by the permit, including different management programs for different drainage areas which contribute storm water to the system.

(6) Copermitees need only comply with permit conditions relating to discharges from the municipal separate storm sewers for which they are operators.

(e)(1) In addition to meeting the requirements of 40 CFR 122.26(c), an operator of a storm water discharge associated with industrial activity which discharges through a large or medium municipal separate storm sewer system shall submit, to the operator of the municipal separate storm sewer system receiving the discharge no later than May 15, 1991, or one hundred eighty (180) days prior to commencing such discharge, the following:

(A) The name of the facility.

(B) A contact person and phone number.

(C) The location of the discharge.

(D) A description, including Standard Industrial Classification, which best reflects the principal products or services provided by each facility.

(E) Any existing NPDES permit number.

(2) In cases where the industrial activity consists of construction activity which disturbs five (5) acres or more of ground, information equivalent to that required by subdivision (1) and 327 IAC 15-5-5 shall be submitted to the operator of the municipal separate storm sewer system receiving the discharge prior to the initiation of the land disturbing activities.

(f) The commissioner may issue permits for municipal separate storm sewers that are designated under subsection (b)(5) on a system wide basis, jurisdiction wide basis, watershed basis, or other appropriate basis, or may issue permits for individual discharges.

(g) For storm water discharges associated with industrial activity from point sources which discharge through a nonmunicipal or nonpublicly owned separate storm sewer system, the commissioner may issue a single NPDES permit, with each discharger a copermitee to a permit issued to the operator of the portion of the system that discharges into waters of the state, or individual permits to each discharger of storm water associated with industrial activity through the nonmunicipal conveyance system.

(1) All storm water discharges associated with industrial activity that discharge through a storm water discharge system that is not a municipal separate storm sewer must be covered by an individual permit, or a permit issued to the operator of the portion of the system that discharges to waters of the state, with each discharger to the nonmunicipal conveyance a copermitee to that permit.

(2) Where there is more than one (1) operator of a single system of such conveyances, all operators of storm water discharges associated with industrial activity must submit applications.

(3) Any permit covering more than one (1) operator shall identify the effluent limitations, or other permit conditions, if any, that apply to each operator.

(h) Conveyances that discharge storm water runoff combined with municipal sewage are point sources that must obtain NPDES permits in accordance with the procedures of 40 CFR 122.21 and are not subject to the provisions of this section.

(i) Whether a discharge from a municipal separate storm sewer is or is not subject to regulation under this section shall have no bearing on whether the owner or operator of the discharge is eligible for funding under Title II, Title III, or Title VI of the CWA.

(j) Terms as used in this section have the same meaning as defined under 40 CFR 122.26(b). (*Water Pollution Control Board; 327 IAC 5-4-6; filed Sep 24, 1987, 3:00 p.m.: 11 IR 644; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1764*)

SECTION 7. 327 IAC 5-4-7 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

327 IAC 5-4-7 Silvicultural activities

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

Affected: IC 13-18-1; IC 13-12

Sec. 7. Silvicultural point sources, as defined in 40 CFR 122.27, are point sources subject to the NPDES permit program. (*Water*

SECTION 8. 327 IAC 15-4-1 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

327 IAC 15-4-1 General conditions

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

Affected: IC 13-18-1; IC 13-12; IC 13-18-11; IC 13-30

Sec. 1. (a) The conditions in this section apply to all NPDES general permit rules.

(b) Any violation of this article constitutes a violation of the Federal Act and the Indiana Environmental Management Act and is grounds for enforcement action and/or requirement to obtain an individual NPDES permit.

(c) Under the Indiana Environmental Management Act at IC 13-7-13-3, any person who violates "any rule or standard adopted by one (1) of the boards" is subject to a civil penalty not to exceed twenty-five thousand dollars (\$25,000) per day of such violation. Any person who willfully or negligently violates "any rule or standard adopted by one (1) of the boards" is subject to a fine of not less than two thousand five hundred dollars (\$2,500) nor more than twenty-five thousand dollars (\$25,000) per day of violation, or by imprisonment for not more than one (1) year, or both. If the conviction is for a violation committed after a first conviction of such person under this subsection, punishment shall 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) of this rule, nothing in this article shall be construed to relieve persons in violation of it from civil or criminal penalties for noncompliance.

(d) Persons in violation of this article shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from their noncompliance.

(e) Persons regulated by this article shall furnish to the commissioner, within a reasonable time, any information which the commissioner may request to determine whether cause exists for revoking and reapproving or terminating the approval to discharge under this article or to determine compliance with this article. Those persons 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 Federal Act 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 person shall comply with effluent standards or prohibitions established under the Federal Act for toxic pollutants injurious to human health within the time provided in the regulations that establish those standards or prohibitions, even if the rule has not yet been modified to incorporate 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) Persons 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 13-1-6 and 327 IAC 8-12.

(i) Nothing in this article shall be construed to relieve anyone from any responsibility, liability, or penalty to which they are or may be subject to under the Federal Act.

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

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

(l) Persons 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 this article;
- (2) have access to and copy, at reasonable times, any records that must be kept under the conditions of this article;
- (3) inspect, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this article; and
- (4) sample or monitor, at reasonable times, for the purposes of assuring compliance with the applicable general permit rule conditions or as otherwise authorized by the Federal Act, any substances or parameters at any location.

(m) Persons regulated by this article shall not construct, install, or modify any water pollution control facility without a valid construction permit issued by the Indiana department of environmental management under 327 IAC 3-2. (*Water Pollution Control Board; 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*)

SECTION 9. 327 IAC 15-4-2 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

327 IAC 15-4-2 Management requirements

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

Affected: IC 13-18-1; IC 13-12

Sec. 2. (a) Persons regulated by this article shall, at all times, maintain in good working order and efficiently operate all facilities and systems (and related appurtenances) for collection and treatment which are installed or used by the person and which are necessary for achieving compliance with the terms and conditions of this article.

(b) The following definitions, with regard to bypass of treatment facilities, apply throughout this rule:

- (1) "Bypass" means the intentional diversion of a wastestream from any portion of a treatment facility normally utilized for treatment of the wastestream.
- (2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which would cause them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production at the facility.

(c) Bypass which causes, or is likely to cause, applicable effluent limitations to be exceeded is prohibited 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 the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal period of equipment downtime.
- (3) The person submits notice of an unanticipated bypass to the commissioner within twenty-four (24) hours of becoming aware of the bypass. (If this information is provided orally, a written submission must be provided within five (5) days.) Where the person knows, or should have known, in advance of the need for a bypass, this prior notification shall be submitted for approval to the commissioner, if possible, at least ten (10) days before the date of the bypass.

An anticipated bypass which 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 an affirmative defense to an action brought for noncompliance with such effluent limitations if the requirements under subsection (d) are met.

(f) A person regulated under 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 the specific cause of the upset, if possible.
- (2) The facility was, at the time being operated, in compliance with proper operation and maintenance procedures.
- (3) The regulated person complied with any remedial measures required under section 1(d) of this rule.

(g) Solids, sludges, filter backwash, or other pollutants removed from or resulting from treatment or control of waters shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters and to be in compliance with all Indiana statutes and rules relative to liquid and/or solid waste disposal. (*Water Pollution Control Board; 327 IAC 15-4-2; filed Aug 31, 1992, 5:00 p.m.: 16 IR 21*)

SECTION 10. 327 IAC 15-4-3 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

327 IAC 15-4-3 Reporting requirements

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

Affected: IC 13-18-1; IC 13-12; IC 35-50-3-3

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

(b) Monitoring results shall be reported at the intervals and in the form specified in the appropriate general permit rule.

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

(1) Persons regulated by this article shall orally report information to the office of enforcement at (317) 232-8603 on the following types of noncompliance within one (1) business day from the time the person becomes aware of such noncompliance:

- (A) Any unanticipated bypass which exceeds any 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 to be reported within one (1) business day.
- (C) Any noncompliance which may pose a significant danger to human health or the environment.

(2) A written submission shall also be provided to the office of enforcement within five (5) business days of the time the person becomes aware of the circumstances. The written submission shall 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 time it is expected to continue.
- (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.

(d) Persons regulated under this article shall report any instance of noncompliance not reported under subsection (c) at the time the pertinent discharge monitoring report is submitted. The report shall contain the information specified under subsection (c)(2).

(e) Where the person becomes aware that he failed to submit any relevant facts, or submitted incorrect information in a NOI letter, or in any report to the commissioner, the person shall promptly submit such facts or corrected information.

(f) Persons regulated under this article 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, which would result in the discharge of any pollutant identified as toxic, under the Federal Act 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 the rule by the commissioner.

(2) That it has begun, or expects to begin, to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the NOI letter.

(g) Signatory requirements shall be as follows:

(1) All reports required by this article and other information requested by the commissioner shall be signed by a person described as follows, or by a duly authorized representative of that person:

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

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

(ii) the manager of one (1) or more manufacturing, production, or operating facilities employing more than two hundred fifty (250) persons or having gross annual sales or expenditures exceeding twenty-five million dollars (\$25,000,000) (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

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

(C) For a municipality, state, federal, or other public agency or political subdivision thereof, by either a principal executive officer or ranking elected official.

(2) A person is a duly authorized representative only if:

(A) the authorization is made in writing by a person described under subdivision (1);

(B) the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and

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

(3) Any 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."

(h) Except for data determined to be confidential under 327 IAC 12, all reports prepared in accordance with the terms of the applicable general permit rule shall 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 Federal Act, information contained in the NOI letter and effluent data shall not be considered confidential.

(i) The Indiana Environmental Management Act at IC 13-7-13-3(b) provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under the applicable general permit rule, including monitoring reports or reports of compliance or noncompliance, shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000) per violation, or by imprisonment for not more than six (6) months per violation, or by both. The Federal Act, as well as IC 13-7-13-3 and IC 35-50-3-3, provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this article shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000) per violation, or by imprisonment for not more than one hundred eighty (180) days per violation, or by both. (*Water Pollution Control Board; 327 IAC 15-4-3; filed Aug 31, 1992, 5:00 p.m.: 16 IR 21*)

Notice of Public Hearing

These rules are not scheduled for hearing at this time. When the public hearing is scheduled, it will be noticed in the Change in Notice section of the Indiana Register.

Additional information regarding this action may be obtained from MaryAnn Stevens, Rules Section of the Office of Water Management, (317) 232-8635, or (800) 451-6027 (in Indiana).

Copies of these rules are now on file at the Office of Water Management, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana and Legislative Services Agency,

Indiana Government Center-South, 302 West Washington Street, Room E011, Indianapolis, Indiana and are open for public inspection.

Matthew C. Rueff
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Office of Water Management
Indiana Department of Environmental Management