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**TITLE 327 WATER POLLUTION CONTROL
BOARD**

LSA Document #99-111(F)

DIGEST

Amends 327 IAC 5-2-11.7 concerning Great Lakes system dischargers interim antidegradation implementation procedures for outstanding state resource waters. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: July 1, 1999, Indiana Register (22 IR 3238).

Second Notice of Comment Period: October 1, 1999, Indiana Register (23 IR 159).

Notice of First Hearing: December 1, 1999, Indiana Register (23 IR 597).

Date of First Hearing: January 12, 2000.

Proposed Rule, Notice of Second Hearing and Third Notice of Comment Period: March 1, 2000, Indiana Register (23 IR 1449).

Date of Second Hearing: April 12, 2000, continued to May 10, 2000.

Additional Notice of Second Hearing: June 1, 2000 (23 IR 2262).

Date of Final Hearing: June 14, 2000.

Final Adoption: June 14, 2000.

327 IAC 5-2-11.7

SECTION 1. 327 IAC 5-2-11.7 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-2-11.7 Great Lakes system dischargers interim antidegradation implementation procedures for outstanding state resource waters

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 4-21.5-3; IC 13-11-2-24; IC 13-14-8-4; IC 13-15-5-1; IC 13-18-4; IC 13-18-7; IC 13-23-13; IC 13-24-1; IC 13-25-5

Sec. 11.7. (a) ~~For waters~~ **In order to implement the antidegradation standard in 327 IAC 2-1.5-4(c), the commissioner shall ensure that the water quality of a waterbody** designated as an outstanding state resource water (OSRW) under 327 IAC 2-1.5-19(b) ~~except as provided in subsection (b) or (c); the commissioner shall ensure that the water quality of the waters is maintained and protected in their its~~ present high quality without degradation by requiring the following:

(1) For a new or increased discharge of a pollutant or pollutant parameter into an outstanding state resource water the wasteload allocation (WLA) for the pollutant or pollutant parameter for the new or increased discharge shall be set equal to the representative background level of the pollutant as determined under section 11.4(a)(8) of this rule. The WLA for the existing discharge and the WLA for the new or increased discharge shall be added together to obtain the WLA that shall be used to establish WQBELs in accordance with section 11.6 of this rule. **This subdivision applies to an existing Great Lakes discharger discharging under a valid NPDES permit directly into a waterbody designated as an OSRW.**

(A) This clause applies to a proposed discharge of a new pollutant or pollutant parameter for which the monthly average mass discharged would be greater than ten percent (10%) of the unused loading capacity, as defined in subsection (c)(5), for the pollutant or pollutant parameter.

(i) As used in this clause, “new” means a new pollutant or pollutant parameter that is proposed to be discharged and was not being discharged by an existing NPDES permittee as of the effective date of this section.

(ii) Except as provided in subsection (b), (c), (d), or (f), NPDES permit limits for the proposed new discharge of a pollutant or pollutant parameter shall be established as follows:

(AA) Determine the representative background concentration of the pollutant or pollutant parameter in the receiving waterbody using section 11.4(a)(8) of this rule. This concentration value shall be converted to a mass value using the discharge flow determined using section 11.4(a)(9) of this rule.

(BB) The mass value determined in subitem (AA) shall become the monthly average mass effluent limitation.

(B) This clause applies to a proposed increase in the discharge of any pollutant or pollutant parameter that is limited in an existing NPDES permit, which would cause an increase in the monthly average mass effluent limitation in the permit or the monthly average mass effluent limitation calculated under item (ii) when the permit contains an effluent limitation other than a monthly average mass effluent limitation for that pollutant or pollutant parameter. Except as provided in subsection (b), (c), (d), or (f), NPDES permit limits for the proposed increase in the discharge of a pollutant or pollutant parameter shall be established as follows:

(i) Determine the representative background concentration of the pollutant or pollutant parameter in the receiving waterbody using section 11.4(a)(8) of this rule. This concentration value shall be converted to a mass value using the proposed increase in the discharge flow.

(ii) Determine the monthly average mass limitation for the pollutant or pollutant parameter in the existing NPDES permit. If the existing permit does not contain a monthly average mass effluent limitation for the pollutant or pollutant parameter, the existing weekly average or daily maximum permit limit shall be converted into a monthly average value. If the existing permit does not contain a mass limit for the pollutant or pollutant parameter but does contain a concentration limitation, the concentration limitation shall be converted to a mass value using the discharge flow determined under section 11.4(a)(9) of this rule.

(iii) Add the monthly average mass values determined in items (i) and (ii) together. This sum then becomes the new monthly average mass effluent limitation.

(iv) Notwithstanding items (i) through (iii), if the proposed increase in mass is not a result of an increase in discharge flow, the commissioner shall calculate the monthly average mass effluent limitation on a case-by-case basis.

(C) This clause applies to a proposed increase in the discharge of any pollutant or pollutant parameter that was being discharged as of the effective date of this section but is not limited in an existing NPDES permit, which would trigger the need for a monthly average mass effluent limitation for the existing discharge. Except as provided in subsection (b), (c), (d), or (f), NPDES permit limits for the proposed increase in the discharge of a pollutant or pollutant parameter shall be established as follows:

(i) Determine the representative background concentration of the pollutant or pollutant parameter in the receiving waterbody using section 11.4(a)(8) of this rule. This concentration value shall be converted to a mass value using the proposed increase in the discharge flow.

(ii) Determine the monthly average mass effluent limitation for the pollutant or pollutant parameter for the existing discharge.

(iii) Add the mass values determined in items (i) and (ii) together. This sum becomes the new monthly average mass effluent limitation for the pollutant or pollutant parameter.

(iv) Notwithstanding items (i) through (iii), if the proposed increase in mass is not a result of an increase in discharge flow, the commissioner shall calculate the monthly average mass effluent limitation on a case-by-case basis.

(D) Clauses (A), (B), and (C) [Clauses (A) through (C)] do not apply to new or increased discharges of BCCs. If there is a proposed increase in the discharge of a BCC and the proposed increase is attributable to a deliberate action by the permittee and the proposed increase does not qualify under subsection (b) or (c), the commissioner shall deny the request.

(E) The following provisions apply to existing Great Lakes dischargers proposing a new or increased discharge of a pollutant or pollutant parameter.

(i) An existing Great Lakes discharger proposing to:

(AA) discharge a new pollutant or pollutant parameter; or

(BB) increase the discharge of any pollutant or pollutant parameter unless the increase is due to one (1) or more of the reasons provided in subsection (b);

shall first provide written notice to the commissioner. The notice shall specify the new or increased pollutant or pollutant parameter proposed to be discharged and the amount.

(ii) Upon receipt of the notice, the commissioner shall provide public notice and opportunity for comment. The notice shall contain the information required in 327 IAC 5-2-11.2(b)(2)(A)-(G) [section 11.2(b)(2)(A) through 11.2(b)(2)(G) of this rule] and shall be provided in accordance with the provisions of 327 IAC 5-2-11.2(b)(1) [section 11.2(b)(1) of this rule].

(iii) The commissioner shall determine whether new or different permit limitations are required pursuant to the provisions of clause (A), (B), or (C) for the pollutant or pollutant parameter. The commissioner shall provide notice of the determination in accordance with the provisions under 327 IAC 5-2-11.2(b)(1) [section 11.2(b)(1) of this rule] and the applicable provisions of IC 4-21.5-3.

(2) For a new or increased discharge of a pollutant or pollutant parameter from a new or existing Great Lakes discharger into

- a tributary of an **outstanding state resource water OSRW for which a new or increased permit limit would be required:**
- (A) section 11.3(a) and 11.3(b) of this rule apply to the new or increased discharge of a pollutant or pollutant parameter into the tributary; and
- (B) the **new or increased discharge of a pollutant or pollutant parameter into the tributary** shall not cause a significant lowering of water quality in the **outstanding state resource water: OSRW.**
- (C) **The requirements of this subdivision will be considered to have been met when:**
- (i) **one (1) or more of the items listed in section 11.3(b)(1)(C)(i), 11.3(b)(1)(C)(ii), 11.3(b)(1)(C)(iii)(BB), 11.3(b)(1)(C)(iii)(FF), or 11.3(b)(1)(C)(iii)(II) of this rule apply; or**
- (ii) **all three (3) of the following are met:**
- (AA) **one (1) or more of the subitems in section 11.3(b)(1)(C)(iii)(AA), 11.3(b)(1)(C)(iii)(CC), 11.3(b)(1)(C)(iii)(EE), 11.3(b)(1)(C)(iii)(GG), 11.3(b)(1)(C)(iii)(HH), or 11.3(b)(1)(C)(iii)(LL) of this rule apply;**
- (BB) **the applicant demonstrates that the increase is necessary; and**
- (CC) **the public notice requirements in subsection (c)(6) are met; or**
- (iii) **all four (4) of the following are met:**
- (AA) **one (1) or more of the subitems in section 11.3(b)(1)(C)(iii)(DD), 11.3(b)(1)(C)(iii)(JJ), or 11.3(b)(1)(C)(iii)(KK) of this rule apply;**
- (BB) **the applicant demonstrates that the increase is necessary;**
- (CC) **the applicant demonstrates that it will result in a net environmental improvement; and**
- (DD) **the public notice requirements in subsection (c)(6) are met.**
- (D) As used in this subdivision, “tributary of an **outstanding state resource water²² OSRW**” includes the upstream segments of a receiving **stream waterbody** when some or all of the downstream segments of the receiving **stream waterbody** are designated as an **outstanding state resource water: OSRW.**
- (3) For all discharges **directly** into an **outstanding state resource water: OSRW**, the commissioner shall establish the following conditions in the permit applicable to the regulated facility:
- (A) The permit shall prohibit the regulated facility from undertaking any deliberate action that would result in a degradation of water quality of the **outstanding state resource water: OSRW, unless the action complies with applicable provisions of this section.**
- (B) Whether or not the permit contains a limitation for a BCC, the permit shall require monitoring for any BCC known or believed to be present in the permitted discharge, from any point or nonpoint source over which the permittee has control. If there is an increase in loading of a BCC, above normal variability, attributable to a deliberate action, the permit shall require the discharger to notify the commissioner of the increase. **Unless If the increased discharge of the BCC qualifies does not qualify** under at least one (1) of the exceptions under subsection (b) or (c) **and is attributable to a deliberate action by the permittee**, the commissioner shall require **reduction or** elimination of the increase.
- (C) Fact sheets prepared pursuant to 40 CFR 124.8 and 40 CFR 124.56 or 327 IAC 5-3-8 shall reflect any conditions developed under clause (A) or (B) and included in a permit.

(b) Subsection (a)(1) ~~and (a)(2) do~~ **does** not apply to the following actions:

- (1) ~~Changes~~ **Increases** in loadings of any **substance pollutant or pollutant parameter, including heat, from an existing permitted discharger, that are** within the existing capacity and processes and that are covered by the existing applicable permit. These ~~changes~~ **increases** include, but are not limited to, the following:
- (A) Normal operational variability, including, but not limited to, intermittent increased discharges due to wet-weather conditions.
- (B) Changes in intake water pollutants not caused by the discharger.
- (C) Increasing the production hours of the facility, for example, adding a second shift.
- (D) Increasing the rate of production.
- (2) New limits for an existing permitted discharger that are not a result of ~~changes~~ **increases** in pollutant loading and will not allow an increase in pollutant loading including new limits that are a result of the following:
- (A) New or improved monitoring data.
- (B) New or improved analytical methods.
- (C) New or modified water quality criteria or values.
- (D) New or modified effluent limitations guidelines, pretreatment standards, or control requirements for POTWs.
- (3) Bypasses that are not prohibited at 40 CFR 122.41(m) or section 8(11) of this rule.
- (4) ~~New or increased discharges of a pollutant, when the facility withdraws intake water containing the pollutant from the same body of water, and the new or increased discharge of the pollutant is due solely to the presence of the pollutant in the intake.~~
- (5) ~~New or increased discharges of noncontact cooling water that will not increase the temperature of the receiving water body outside of the designated mixing zone, where applicable, and will not result in degradation of the water quality of the water body.~~

~~(6)~~ **(4)** Increasing the sewer area, connection of new sewers and customers, or acceptance of trucked-in wastes (such as septage and holding tank wastes) by a POTW, provided that the increase is within the ~~design flow~~ **existing NPDES permit limits** of the facility, there is no increased loading of BCCs from nondomestic wastes, and no significant change is expected in the characteristics of the wastewater discharged.

~~(7)~~ Discharges of storm water subject to a general permit under 327 IAC 15-5 (storm water run-off associated with construction activity) and 327 IAC 15-6 (storm water run-off associated with industrial activity):

(c) Notwithstanding subsection (a)(1), ~~and (a)(2)~~, the commissioner may permit the actions in subdivision (1), ~~or (2)~~, **or (3)** after providing public notice and opportunity for comment in accordance with subdivision ~~(5)~~: **(6)**. In all cases, the actions shall assure water quality adequate to protect **designated and** existing uses fully and shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control. In addition, the new or increased discharge shall be limited to the minimum necessary to allow the action to occur. The commissioner must approve of the following actions before the **proposed** new or increased discharge can occur:

(1) The commissioner may allow the following ~~proposed new or increased discharges~~ to occur if the applicant demonstrates that the increases are necessary:

(A) Short term, temporary (weeks or months) lowering of water quality.

(B) New or increased discharges of a pollutant or pollutant parameter due to response actions pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (as defined in IC 13-11-2-24), as amended, corrective actions pursuant to the Resource Conservation and Recovery Act (RCRA), as amended, or similar federal or state authorities undertaken to alleviate a release into the environment of hazardous substances, pollutants, or contaminants that may pose an imminent and substantial danger to public health or welfare.

(C) New or increased discharges of a pollutant due to implementation of department-approved industrial or municipal controls on wet-weather flows, including combined sewer overflows and industrial storm water, when there is no net increase in the loading of the pollutant to the ~~same body of water~~: **OSRW**.

(D) New or increased discharges of a ~~substance used to treat zebra mussels in an intake water pipe or structure if the new or increased discharge will not cause adverse effects to human health~~: **wastewater or water treatment additive, as defined in subsection (f)**.

(E) **New or increased discharges of a pollutant or pollutant parameter, when the facility withdraws intake water containing the pollutant or pollutant parameter from the same body of water, and the new or increased discharge of the pollutant or pollutant parameter is due solely to the presence of the pollutant or pollutant parameter in the intake. For the purpose of this clause, "same body of water" has the meaning set forth in section 11.5(b)(4)(B) of this rule.**

(F) **New or increased discharges of heat that will not result in an increase in temperature:**

(i) in a stream, outside of the designated mixing zone, where applicable; or

(ii) in Lake Michigan, as allowed in 327 IAC 2-1.5-8(c)(4)(D)(iv), at the edge of a one thousand (1,000) foot arc inscribed from a fixed point adjacent to the discharge.

(2) **The commissioner may allow the following proposed new or increased discharges to occur if the applicant demonstrates that the increases are necessary and that they will result in a net environmental improvement:**

~~(A)~~ **(A)** New or increased discharges of a pollutant **or pollutant parameter** that is not a BCC where there is a contemporaneous enforceable decrease in the actual loading of the pollutant **or pollutant parameter** from sources contributing to the ~~same body of water~~ **OSRW or to the tributaries to the OSRW** such that there is no net increase in the loading of the pollutant **or pollutant parameter** to the ~~same body of water~~: **OSRW**. The commissioner may approve such an action only if:

(i) the reduction in the discharge of the pollutant **or pollutant parameter** exceeds the new or increased discharge of the pollutant **or pollutant parameter**;

(ii) the applicant demonstrates that all reasonable and cost-effective methods for avoiding the new or increased discharge have been taken; **and**

(iii) ~~the new or increased discharge uses no more than ten percent (10%) of the unused loading capacity for the substance; and~~

~~(iv)~~ **(iii)** the new or increased discharge complies with subdivision ~~(3)~~: **(4)**.

~~(B)~~ **(B)** An action that will result in a new or increased discharge of a pollutant or pollutant parameter that is not a BCC if the new or increased discharge is necessary to accomplish a reduction in the discharge of another pollutant or pollutant parameter. ~~and the commissioner determines the action will result in a net improvement in water quality in the outstanding state resource water~~. The commissioner may approve such an action only if:

(i) the new or increased discharge **of the pollutant or pollutant parameter** is determined to be significantly **either:**

(AA) less toxic and no more bioaccumulative; ~~and~~ **or**

(BB) less bioaccumulative and no more toxic;

(ii) the applicant demonstrates that all reasonable and cost-effective methods for avoiding the new or increased discharge have

been taken; **and**

~~(iii) the new or increased discharge uses no more than ten percent (10%) of the unused loading capacity for the substance; and~~

~~(iv) (iii) the new or increased discharge complies with subdivision (3): (4).~~

~~(G) (C) An action that will result in a new or increased discharge of a pollutant or pollutant parameter that is not a BCC if the new or increased discharge is necessary to accomplish a reduction in the release of an air pollutant, and the commissioner determines the action will result in a net environmental improvement. The commissioner may approve such an action only if:~~

~~(i) the reduction in the discharge of the air pollutant is necessary to meet a state or federal air quality standard or will substantially reduce human exposure to hazardous air pollutants;~~

~~(ii) the applicant demonstrates that all reasonable and cost-effective methods for avoiding the new or increased discharge have been taken; **and**~~

~~(iii) the new or increased discharge uses no more than ten percent (10%) of the unused loading capacity for the substance; and~~

~~(iv) (iii) the new or increased discharge complies with subdivision (3): (4).~~

~~(2) (3) Notwithstanding subdivisions (1) and (2), an action that will result in the new or increased discharge of a substance pollutant or pollutant parameter that is not a BCC into a water body an OSRW for a facility with an existing NPDES permit for a discharge into that water body OSRW may be permitted in accordance with the following:~~

~~(A) The commissioner shall review and make a tentative decision on the application using the following criteria:~~

~~(i) The factors contained in IC 13-14-8-4.~~

~~(ii) The applicant has demonstrated that all economically and technically feasible measures have been undertaken to avoid the action that will result in the new or increased discharge of the substance, pollutant or pollutant parameter including a demonstration that it is not feasible to limit the new or increased discharge to a temporary or short term period.~~

~~(iii) The new or increased discharge uses no more than ten percent (10%) of the unused loading capacity for the substance.~~

~~(iv) (iii) The new or increased discharge complies with subdivision (3): (4).~~

~~(B) The commissioner shall incorporate the tentative decision on the application into the draft new, renewal, or modified NPDES permit, and the draft permit shall be made available for comment under 327 IAC 5-3-9.~~

~~(C) After the close of the public comment period (including any public hearing), the commissioner shall present the tentative decision on the application **and the** comments received during the public comment period (and public hearing) **and the commissioner's recommendation** to the board.~~

~~(D) The board shall take into account the criteria in clause (A) **and the factors contained in IC 13-14-8-4** in making their a recommendation to adopt, deny, or revise the commissioner's recommendation: tentative decision.~~

~~(E) The commissioner shall, after fully considering the board's recommendation, incorporate the commissioner's final decision on the new or increased discharge into the final new, renewal, or modified NPDES permit issued in accordance with 327 IAC 5-3-14.~~

~~(3) (4) A new or increased discharge under subdivision (1)(E); (1)(F); (1)(G); or (2) or (3) may be approved **only if under the following conditions, as applicable:**~~

~~(A) **Except for heat**, the sum of all **previously approved** new or increased discharges for the **substance pollutant or pollutant parameter** allowed under these subdivisions plus the **new** requested increase does not exceed ten percent (10%) of the unused loading capacity for the **substance pollutant or pollutant parameter** as determined as of the date of the first approved increase.~~

~~(B) **For heat, one (1) of the following conditions is satisfied:**~~

~~(i) **The new or increased discharge will not result in an increase in temperature:**~~

~~(AA) **in a stream, outside of the designated mixing zone, where applicable; or**~~

~~(BB) **in Lake Michigan, as allowed in 327 IAC 2-1.5-8(c)(4)(D)(iv), at the edge of a one thousand (1,000) foot arc inscribed from a fixed point adjacent to the discharge.**~~

~~(ii) **The new or increased discharge will not result in an increase in waste heat:**~~

~~(AA) **for a stream, that is greater than the amount determined by calculating the number of British thermal units (BTUs) required to raise the temperature of the stream design flow of the receiving stream by one (1) degree Fahrenheit; or**~~

~~(BB) **for Lake Michigan, greater than five-tenths (0.5) billion BTUs per hour.**~~

~~(4) (5) The following definitions apply throughout this subsection:~~

~~(A) "Total loading capacity" means the product of the applicable water quality criterion times the sum of the existing effluent flow and the approved mixing volume for Lake Michigan, or the stream design flow, for the **water body OSRW** in the area where the water quality is proposed to be lowered, expressed as a mass loading rate.~~

~~(B) "Unused loading capacity" means that amount of the total loading capacity not utilized by point source and nonpoint source discharges. The unused loading capacity is established at the time the request to lower water quality is considered.~~

~~**The definitions in this subdivision cannot be used to calculate the total loading capacity and unused loading capacity for total suspended solids, dissolved oxygen, heat, radioactive substances, bacteria, and pH.**~~

~~(5)~~ **(6)** Upon receipt of a request for application of an antidegradation exception under this subsection, the commissioner shall provide notice, request comment, and ~~if requested,~~ schedule and hold a public meeting on the application. **The notice, request for comments, and public meeting shall be conducted** in accordance with section 11.2 of this rule.

(d) As used in this section, “same body of water” has the meaning set forth in section 11.5(b)(4)(B)(i) of this rule. **Notwithstanding this section, and in accordance with the antidegradation standard in 327 IAC 2-1.5-4(e), in those cases where the potential lowering of water quality is associated with a thermal discharge granted pursuant to Section 316 of the Clean Water Act and 327 IAC 5-7, the decision to allow such degradation shall be consistent with Section 316 of the Clean Water Act and 327 IAC 5-7.**

(e) The department shall report to the board annually as to whether the increases allowed by this section have been determined to have a measurable effect on human health, aquatic life, or wildlife. The department shall use all available information to conduct the evaluation and prepare the report for the board.

~~(f) This section shall expire on July 1, 2000.~~ **Notwithstanding the other provisions of this section, the permittee may use wastewater and water treatment additives, other than BCCs, that have not been approved for use by the commissioner, on an immediate basis under the following conditions:**

(1) If the wastewater or water treatment additive is not a biocide, the use of the wastewater or water treatment additive is necessary to comply with permit conditions.

(2) If the wastewater or water treatment additive is a biocide, the use of the wastewater or water treatment additive is necessary to prevent the loss of human life, personal injury, or severe property damage.

(3) The permittee shall orally report information on the use of the treatment additive to IDEM within twenty-four (24) hours of the time the permittee uses or begins using the treatment additive.

(4) The permittee shall provide written notice, which contains the information required by subsection (c)(1), to IDEM within five (5) days of the time the permittee uses or begins using the treatment additive.

(5) As used in this subsection, “wastewater treatment additive” means a chemical or mixture of chemicals added to wastewater to aid in the treatment of that wastewater.

(6) As used in this subsection, “water treatment additive” means a chemical or mixtures of chemicals added to intake water or nonprocess water, such as water used in a boiler or noncontact cooling water, for the purpose of treating the intake or nonprocess water for use in the facility. Examples of uses for water treatment additives include slimicides, biocides, molluscides, and corrosion inhibitors.

(7) The permittee may use the authorization under this section for the period of time necessary to meet the conditions in subdivisions (1) or (2) of this subsection [subdivision (1) or (2)].

(Water Pollution Control Board; 327 IAC 5-2-11.7; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1461; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3380; filed Jul 30, 1998, 4:55 p.m.: 21 IR 4522; filed Jun 30, 1999, 2:34 p.m.: 22 IR 3380; filed Sep 26, 2000, 1:36 p.m.: 24 IR 284)

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