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## **TITLE 327 WATER POLLUTION CONTROL BOARD**

### **FIRST NOTICE OF COMMENT PERIOD #01-51(WPCB)**

#### **DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING CONCENTRATED ANIMAL FEEDING OPERATIONS**

##### **PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules concerning concentrated animal feeding operations. The purpose of this rulemaking is to make any further needed changes to Indiana's confined feeding operation approval program rules to satisfy federal requirements for federal Confined Feeding Animal Operations (CAFO). 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 5-4; 327 IAC 15; 327 IAC 16.

**AUTHORITY:** IC 13-14-8-7; IC 13-15-2; IC 13-18-3-1; IC 13-18-10; 40 CFR 122; 40 CFR 123; 40 CFR 124; 40 CFR 412.

##### **SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING**

The Water Pollution Control Board is currently considering for final adoption the establishment of rules to govern the department's confined feeding operation approval program. The approval program rules, in IDEM's view, establish environmental requirements consistent with recent guidance established by the U.S. EPA for federal Concentrated Animal Feeding Operations (CAFO).

However, U.S. EPA believes that federal CAFOs must be included in the Clean Water Act's National Pollutant Discharge Elimination System permit program. Accordingly, IDEM is initiating this rulemaking in an effort to obtain input and guidance on any needed changes to the confined feeding operation approval program rules to satisfy federal requirements for concentrated animal feeding operations (CAFOs) (40 CFR 122, 40 CFR 123, 40 CFR 124, and 40 CFR 412). Any changes to the confined feeding operation approval rules also must meet state requirements for confined feeding operations (CFOs) in IC 13-18-10. The requirement in 40 CFR 122.23(a) provides that concentrated animal feeding operations are point sources subject to the NPDES permit program. CAFO is defined in Appendix B to Part 122. This federal language is reflected in the Indiana Administrative Code at 327 IAC 5-4-3 concerning special NPDES programs. In addition, the Indiana requirements for storm water run-off associated with industrial activity apply to feedlots subject to 40 CFR 412 (see 327 IAC 15-6-2(3)(B)). Construction activities in which five (5) or more acres of land are disturbed are also subject to NPDES (327 IAC 15-5-2(3)).

Federal CAFO requirements generally apply to animal feeding operations with more than one thousand (1,000) animal units. Confined feeding operations in IC 13-18-10 and the proposed rule at 327 IAC 16 apply to animal feeding operations with at least three hundred (300) cattle, six hundred (600) swine or sheep, or thirty thousand (30,000) fowl. In either the federal or state rules, smaller operations may need to comply with the requirements under certain circumstances, such as when there have been water quality violations.

IDEM has been working for more than three (3) years to develop regulations for confined feeding operations. The proposed confined feeding operation rule at 327 IAC 16 was preliminarily adopted on September 13, 2000. During the rulemaking, IDEM worked extensively with a CFO workgroup consisting of representatives from livestock producer groups, academia, legislators, farm organizations, government agencies, environmental groups, and citizens. There have also been many discussions with U.S. EPA Region V to discuss the affect of federal requirements on the CFO rulemaking and Indiana's program for CFOs.

Due to the evolving nature of the available guidance from U.S. EPA on CAFOs, the pending federal revisions to the CAFO effluent guidelines and the extent of the comments made by U.S. EPA to date on the preliminarily adopted CFO rule, IDEM believes the most effective way to address the issue of federal NPDES requirements of the Clean Water Act is in a separate rulemaking that considers all the alternatives available for compliance with the federal requirements.

IDEM is seeking comments on alternatives to meeting the federal requirements for CAFOs under the Clean Water Act and related federal regulations. IDEM is considering amendments to language in 327 IAC 5-4, 327 IAC 15, and 327 IAC 16. IDEM seeks comment on the affected citations listed and any other provisions of Title 327 that may be affected by this rulemaking.

## **STATUTORY AND REGULATORY REQUIREMENTS**

IC 13-14-8-4 requires the board to consider the following factors in promulgating rules:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as the case may be.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

## **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, whether mailed, hand-delivered, or faxed, should be addressed as follows:

#01-51(WPCB) Concentrated Animal Feeding Operations

Marjorie Samuel

Rules, Planning and Outreach Section

Office of Land Quality

Indiana Department of Environmental Management

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Hand delivered comments will be accepted by the receptionist on duty at the eleventh floor reception desk, Office of Land Quality, 100 North Senate Avenue, Indianapolis, Indiana, Monday through Friday, between 8:15 a.m. and 4:45 p.m.

Comments may be submitted by facsimile at the IDEM fax number: (317) 232-3403, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Development Section at (317) 232-7995.

## **COMMENT PERIOD DEADLINE**

Comments must be postmarked, hand delivered, or faxed by April 1, 2001.

Additional information regarding this action may be obtained from Chris Pedersen, Rules Development Section, (317) 233-6868 or (800) 451-6027, press 0, and ask for 3-6868 (in Indiana).