

Document: IC 13-14-9 Notice, **Register Page Number:** 25 IR 1736

Source: February 1, 2002, Indiana Register, Volume 25, Number 5

Disclaimer: This document was created from the files used to produce the official (printed) Indiana Register. However, this document is unofficial.

TITLE 327 WATER POLLUTION CONTROL BOARD

SECOND NOTICE OF COMMENT PERIOD #00-136(WPCB)

DEVELOPMENT OF A NEW RULE CONCERNING COMMUNITY NOTIFICATION OF POTENTIAL HEALTH IMPACTS OF COMBINED SEWER OVERFLOWS BY NPDES PERMIT HOLDERS

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language concerning community notification by National Pollutant Discharge Elimination System (NPDES) permit holders of the potential health impact of combined sewer overflows (CSOs). IDEM seeks comment on the draft rule language, the affected citations listed, and any other provisions of Title 327 that may be affected by this rulemaking.

HISTORY

First Notice of Comment Period: #00-136(WPCB) July 1, 2000, Indiana Register (23 IR 2613).

CITATIONS AFFECTED: 327 IAC 5-2.1.

AUTHORITY: IC 13-14-8; IC 13-14-9; P.L.140-2000, SECTION 23.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

This rulemaking is being initiated pursuant to P.L.140-2000, SECTION 23, which requires the Water Pollution Control Board to adopt a rule to establish requirements for community notification by NPDES permit holders of the potential health impacts of CSOs whenever information from a reliable source indicates that a discharge is occurring or there is a reasonable likelihood that a discharge will occur within the next twenty-four (24) hours.

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from July 1, 2000, through July 31, 2000, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received one (1) comment letter from the following party by the comment period deadline:

Improving Kids' Environment, represented by Tom Neltner (IKE)

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

Comment: It is recommended that the CSO Notification rule drafted by IDEM incorporate the following principles:

- (1) Ensure that an individual has the ability to take effective precautions against the threats posed by combined sewer overflows.
- (2) Everyone has the right to know about CSO and there are several situations typical of those that must be adequately addressed in the rule, such as neighborhood residents, especially parents, who must be notified so they can take extra efforts to keep children and pets away from a waterbody affected by a CSO, anglers and others using affected waterbodies at common access points, administrators of schools near CSO affected waterbodies who need to keep students away from the waterbodies when they pose a CSO hazard, and persons who withdraw water from a CSO affected waterbody.
- (3) The best mechanism of providing CSO notification is likely to differ among the various situations and according to community circumstances.
- (4) People need to be notified about the magnitude of the CSO problem because the higher the level of contamination the more severe is the hazard.
- (5) A default approach to community notification would lessen the implementation cost for small communities and an alternative to the default approach should be available if a community can demonstrate that the alternative is equally effective.
- (6) The rule needs to require communities to periodically, at least on a quarterly basis, report to IDEM to confirm that CSO notifications were made in a timely manner or to explain why they were not.

The draft rule language submitted with the IKE comment letter captures the principles that need to be included in the CSO notification rule. (IKE)

Response: IDEM appreciates the effort by IKE to produce the suggested draft rule that was submitted during the first notice of comment period. IKE was represented at every workgroup meeting held in the rulemaking process, and IDEM believes the draft rule that is subject of this second notice of comment period incorporates the principles noted and rule language suggested by IKE.

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:

#00-136(WPCB) [CSO Public Notification]
MaryAnn Stevens
Rules Section
Office of Water Quality
Indiana Department of Environmental Management
P.O. Box 6015
Indianapolis, Indiana 46206-6015.

Hand delivered comments will be accepted by the IDEM receptionist on duty at the twelfth floor reception desk, Office of Water Quality, Indiana Government Center-North, Room 1255, 100 North Senate Avenue, Indianapolis, Indiana. Comments may be delivered by facsimile to (317) 232-8406. Please confirm the timely receipt of faxed comments by calling the Office of Water Quality Rules Section at (317) 233-8903.

COMMENT PERIOD DEADLINE

Comments must be postmarked, hand delivered, or faxed by March 2, 2002.

Additional information regarding this action may be obtained from MaryAnn Stevens, Rules Section, Office of Water Quality, (317) 232-8635, Reggie Baker, Urban Wet Weather Section, Office of Water Quality, (317) 233-0473, or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 327 IAC 5-2.1 IS ADDED TO READ AS FOLLOWS:

Rule 2.1. Combined Sewer Overflow Public Notification

327 IAC 5-2.1-1 Purpose

Authority: IC 13-14-1-5; IC 13-14-8; IC 13-14-9; IC 13-18-4-1
Affected: IC 13-18-3

Sec. 1. The purpose of this rule concerning community notification of potential health impacts resulting from a combined sewer overflow discharge is to promote and accomplish the following:

- (1) Educate the public, in general, and those persons who, specifically, may come into contact with water that has been affected by a combined sewer overflow discharge as to the health implications possible from combined sewer overflow tainted water.**
- (2) Alert persons who most likely would be immediately affected by a combined sewer overflow discharge or the potential for a combined sewer overflow discharge to occur.**
- (3) Protect persons from possible exposure to waterborne pathogens resulting from contact with or ingestion of water from a waterway affected by a combined sewer overflow.**
- (4) Complement the combined sewer overflow requirements contained in a National Pollutant Discharge Elimination System (NPDES) permit but not obviate or lessen any requirement to eliminate the impacts of an occurrence of combined sewer overflow.**

(Water Pollution Control Board; 327 IAC 5-2.1-1)

327 IAC 5-2.1-2 Applicability

Authority: IC 13-14-1-5; IC 13-14-8; IC 13-14-9; IC 13-18-4-1
Affected: IC 13-18-3

Sec. 2. Any person required to possess a National Pollutant Discharge Elimination System (NPDES) permit and having one (1) or more combined sewer overflow points into waters of the state must comply with this rule. *(Water Pollution Control Board; 327 IAC 5-2.1-2)*

327 IAC 5-2.1-3 Definitions

Authority: IC 13-14-1-5; IC 13-14-8; IC 13-14-9; IC 13-18-4-1
Affected: IC 13-11-2-158; IC 13-11-2-265; IC 13-18-3

Sec. 3. The following definitions apply throughout this rule:

- (1) "Affected persons" means those persons who most likely would be exposed to waterborne pathogens through direct contact with or ingestion of water affected by a combined sewer overflow.**
- (2) "Combined sewage" means a combination of wastewater, including domestic, commercial, or industrial wastewater and storm water transported in a combined sewer.**
- (3) "Combined sewer overflow" or "CSO" means the discharge from an overflow point authorized in an NPDES permit.**

- (4) "Combined sewer overflow community" or "CSO community" means a recipient of a National Pollutant Discharge Elimination System (NPDES) discharge permit that includes one (1) or more combined sewer overflow points.
- (5) "Combined sewer overflow outfall" or "CSO outfall" means an overflow point authorized in an NPDES permit.
- (6) "Combined sewer system" means a system that:
 - (A) is designed, constructed, and used to receive and transport combined sewage to a publicly owned wastewater treatment plant; and
 - (B) may contain one (1) or more combined sewer overflow outfalls that discharge sewage when the hydraulic capacity of the wastewater treatment plant, combined sewer system, or part of the system is exceeded as a result of a wet weather event.
- (7) "Commissioner" means the commissioner of the department of environmental management.
- (8) "Person" has the meaning set forth at IC 13-11-2-158.
- (9) "Publicly owned treatment works" or "POTW" has the meaning set forth at 327 IAC 5-1.5-48.
- (10) "Waters of the state" has the meaning set forth for "waters" at IC 13-11-2-265.
- (11) "Wet weather event" means storm water run-off, snow melt run-off, or ice melt run-off entering a combined sewer system.

(Water Pollution Control Board; 327 IAC 5-2.1-3)

327 IAC 5-2.1-4 CSO notification procedure

Authority: IC 13-14-1-5; IC 13-14-8; IC 13-14-9; IC 13-18-4-1

Affected: IC 13-18-3

Sec. 4. (a) A CSO community shall develop a CSO notification procedure that meets the requirements of this rule.

(b) A CSO notification procedure must include the following information:

- (1) Locations of the CSO points.
- (2) Description of the selection process used to determine who shall receive notification as required by section 5(a) of this rule.
- (3) Description of the likelihood, according to section 6 of this rule, for human contact with a waterbody impacted by a CSO.
- (4) Method, according to section 6 of this rule, that shall be used to provide notification to affected persons within the area of each CSO impacted waterbody.
- (5) Assignment of responsibilities within a CSO community for implementing the CSO notification procedure.
- (6) Identification of the CSO community's record keeping location.

(c) A CSO notification procedure must meet the following:

- (1) Be recorded on a form that is:
 - (A) designed by the commissioner; and
 - (B) made available from the commissioner within one (1) month after the effective date of this rule.
- (2) Be submitted to the commissioner for approval before the latter of the following:
 - (A) Four (4) months after the effective date of this rule.
 - (B) Four (4) months after the form is available from the commissioner.
- (3) Immediately be implemented by the CSO community following submission according to subdivision (2)(A) or (2)(B).
- (4) Be modified as necessary in response to comments received from the commissioner.

(Water Pollution Control Board; 327 IAC 5-2.1-4)

327 IAC 5-2.1-5 Notification

Authority: IC 13-14-1-5; IC 13-14-8; IC 13-14-9; IC 13-18-4-1

Affected: IC 13-18-3

Sec. 5. (a) Where appropriate according to section 6 of this rule, a CSO community shall provide notification to:

- (1) affected persons;
- (2) persons who request to be notified; and
- (3) local health departments and drinking water supply companies located within ten (10) river miles downstream of each CSO outfall experiencing or about to experience a CSO.

(b) The notification must be appropriately worded to explain the nature of the potential health effects and steps that affected persons can take to avoid exposure.

(c) A CSO community is not responsible for confirming that the intended recipients of the notification required by subsection (a) received the notification.

(d) Notification must be provided whenever information from a reliable source indicates one (1) of the following:

- (1) A discharge or discharges from one (1) or more combined sewer overflow points is occurring.
- (2) A reasonable likelihood exists that a discharge or discharges from one (1) or more combined sewer overflow points will

occur within the next twenty-four (24) hours.

(e) If a combined sewer overflow discharge occurs within the general time period predicted by a notification, then no additional notification is required to state that the discharge is occurring or has occurred.

(f) If a CSO occurred and notification was not provided according to subsection (d), the CSO community shall report this fact on the monthly report required according to section 7(a) of this rule. (*Water Pollution Control Board; 327 IAC 5-2.1-5*)

327 IAC 5-2.1-6 Community notification methods

Authority: IC 13-14-1-5; IC 13-14-8; IC 13-14-9; IC 13-18-4-1

Affected: IC 13-18-3

Sec. 6. (a) The likelihood of human contact with waters impacted by a CSO will determine the appropriate methods for providing notification according to the following:

(1) In areas where recreation occurs downstream of a CSO, the CSO community shall do the following:

(A) A prominent sign shall be posted as follows:

(i) On public property:

(AA) at access points to the water, for example at boat ramps; and

(BB) with the wording printed in English, and in any other language predominant in the locale, including the language necessary to fill in the blanks, that states, "Caution-Sewage pollution. Sewage may be in this water during and after rainfall and snow melt. Do not swim, wade, or ingest this water. For more information, please call [insert local sewer authority, telephone number, and, if available, a Web site address].".

(ii) On private property:

(AA) in accordance with item (i)(AA) and (i)(BB); and

(BB) with documentation on a yearly basis by the CSO community recording the sign posting offer and subsequent refusal if an owner or operator of an area affected by this clause refuses to allow a sign to be posted.

(B) Provide notification to an owner or operator of an area affected by this subdivision:

(i) when a CSO is occurring or is reasonably likely to occur within twenty-four (24) hours; and

(ii) in a manner that is mutually agreeable to the recipient and the CSO community.

(2) In areas where there is no public access to waters impacted by a CSO without crossing private property, a CSO community shall do the following:

(A) Send an invitation in March of each year to allow the following persons located within one (1) mile of the CSO outfall to request receipt of CSO notification:

(i) Media sources, such as newspapers, television, or radio.

(ii) Property owners.

(B) Provide notification to persons who accept the notification invitation according to clause (A):

(i) when a CSO is occurring or is reasonably likely to occur within twenty-four (24) hours; and

(ii) in a manner that is mutually agreeable to the recipient and the CSO community.

(b) A CSO community may submit a request for the commissioner's approval to establish alternative notification methods specific to the CSO community's needs for providing notification to affected persons. (*Water Pollution Control Board; 327 IAC 5-2.1-6*)

327 IAC 5-2.1-7 Record keeping and reporting

Authority: IC 13-14-1-5; IC 13-14-8; IC 13-14-9; IC 13-18-4-1

Affected: IC 13-18-3

Sec. 7. (a) A CSO community shall document its public notification efforts on its monthly CSO discharge monitoring report (DMR).

(b) A CSO community shall maintain a record of reports submitted according to subsection (a) that is:

(1) kept at a location specified in the CSO community's CSO notification procedure according to section 4(b)(6) of this rule; and

(2) available to the commissioner's representatives during normal working hours.

(*Water Pollution Control Board; 327 IAC 5-2.1-7*)

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on April 10, 2002 at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana the Water Pollution Control Board will hold a public hearing on a new rule concerning community notification of potential health impacts of combined sewer overflows by NPDES permit holders.

The purpose of this hearing is to receive comments from the public prior to preliminary adoption of this rule by the board. All

interested persons are invited and will be given reasonable opportunity to express their views concerning the drafted new rule. Oral statements will be heard, but for the accuracy of the record, all comments should be submitted in writing. Procedures to be followed at this hearing may be found in the April 1, 1996, Indiana Register, page 1710 (19 IR 1710).

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

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator

Indiana Department of Environmental Management

100 North Senate Avenue

P.O. Box 6015

Indianapolis, Indiana 46206-6015

or call (317) 233-1785 (V) or (317) 232-7589 (TDD). Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Office of Water Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Tim Method

Deputy Commissioner

Office of Water Quality

Indiana Department of Environmental Management