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TITLE 327 WATER POLLUTION CONTROL BOARD

FINDINGS AND DETERMINATION OF THE COMMISSIONER PURSUANT TO IC 13-14-9-7 AND SECOND NOTICE OF COMMENT PERIOD #02-327(WPCB)

DEVELOPMENT OF NEW RULES AND AMENDMENTS TO RULES CONCERNING ON-SITE RESIDENTIAL SEWAGE DISCHARGING DISPOSAL SYSTEMS IN ALLEN COUNTY

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for a new rule and amendments to rules concerning a National Pollutant Discharge Elimination System (NPDES) general permit for on-site residential sewage discharging disposal systems in Allen County, Indiana. The purpose of this notice is to seek public comment on the draft rule, including suggestions for specific language to be included in the rule. 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 5-1-1.5; 327 IAC 15-3-2; 327 IAC 15-14.

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

STATUTORY REQUIREMENTS

IC 13-14-9-7 recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that the rulemaking policy alternatives available to IDEM are so limited that the notice of first public comment period would provide no substantial benefit, IDEM may forego this comment period and proceed directly to the notice of second comment period.

If the commissioner makes the determination of limited rulemaking policy alternatives required by IC 13-14-9-7, the commissioner shall prepare written findings and include them in the second notice of public comment period published in the Indiana Register. This document constitutes the commissioner's written findings pursuant to IC 13-14-9-7.

The statute provides for this shortened rulemaking process if the commissioner determines that "the rulemaking policy alternatives available to the department are so limited that the public notice and comment period under [IC 13-14-9-3]... would provide no substantial benefit to:

- (1) the environment; or
- (2) persons to be regulated or otherwise affected by the proposed rule."

BACKGROUND

This rulemaking is being initiated pursuant to SECTION 8 of Public Law 172-2002 (SEA 461 (2002)), which requires IDEM to obtain from the U.S. Environmental Protection Agency a general permit for a county having a population of more than three hundred thousand (300,000) but less than four hundred thousand (400,000) (a/k/a Allen County), to regulate point source discharges of treated sewage from on-site residential sewage disposal systems installed to repair or replace sewage disposal systems that fail to meet public health and environmental standards.

SECTION 8(b) of P.L. 172-2002 requires IDEM to obtain the general NPDES permit described in the Public Law "in an expeditious manner calculated to obtain the general permit as soon as possible." The Indiana General Assembly clearly intended that this rulemaking proceed quickly. IDEM believes that the regulatory framework for a general NPDES permit has been set forth unambiguously in P.L. 172-2002, as well as in the existing general NPDES permits contained in 327 IAC 15. Therefore IDEM has decided to proceed with this rulemaking under the provisions of IC 13-14-9-7.

The draft rule sets forth requirements for the permitting of on-site residential sewage discharging disposal systems in Allen County that discharge one thousand (1,000) gallons or less per day of treated sanitary wastewater. To be permitted, such systems must be located within an on-site waste management district and must have received an operating permit from the local health department. The rule sets forth other duties and requirements of the permitted systems and their owners, including duties to comply and mitigate, and provisions addressing other issues, including property rights, transfers, bypasses, maintenance and quality control, and penalties. The rule also sets forth inspection and enforcement requirements applicable to the permitted systems.

FINDINGS

The commissioner of IDEM has prepared written findings regarding rulemaking concerning a National Pollutant Discharge

Elimination System (NPDES) general permit for on-site residential sewage discharging disposal systems in Allen County, Indiana. These findings are prepared under IC 13-14-9-7 and are as follows:

- (1) SECTION 8 of Public Law 172-2002 (SEA 461 (2002)) requires IDEM to obtain from the U.S. Environmental Protection Agency a general permit for a county having a population of more than three hundred thousand (300,000) but less than four hundred thousand (400,000) (a/k/a Allen County) to regulate point source discharges of treated sewage from on-site residential sewage disposal systems installed to repair or replace sewage disposal systems that fail to meet public health and environmental standards.
- (2) SECTION 8(b) of P.L.172-2002 requires IDEM to obtain the general NPDES permit described in the Public Law "in an expeditious manner calculated to obtain the general permit as soon as possible."
- (3) The Indiana General Assembly clearly intended that this rulemaking proceed quickly.
- (4) IDEM believes that the regulatory framework for a general NPDES permit has been set forth unambiguously in P.L.172-2002, as well as in the existing general NPDES permits contained in 327 IAC 15.
- (5) I have determined that under the specific circumstances pertaining to this rule the rulemaking policy alternatives are so limited that the public notice and comment period provided in the notice of first public comment period would provide no substantial benefit to the environment or to persons to be regulated or otherwise affected by the rule.
- (6) The draft rule is hereby incorporated into these findings.

Lori F. Kaplan
Commissioner
Indiana Department of Environmental Management

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 rule. Mailed comments should be addressed to:

#02-327(WPCB) [*Allen County NPDES general permit*]
Lawrence Wu
Rules Section, Chief
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, 100 North Senate Avenue, Room 1255, 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 December 31, 2002.

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).

DRAFT RULE

SECTION 1. 327 IAC 5-1-1.5 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-1-1.5 Prohibitions

Authority: IC 13-11-2-99; IC 13-13-5-1; IC 13-22-2-3
Affected: IC 13-18-3

Sec. 1.5. **Except as provided in 327 IAC 15-14**, the point source discharge of sewage treated or untreated, from a dwelling or its associated residential sewage disposal system, to the waters of the state is prohibited. (*Water Pollution Control Board; 327 IAC 5-1-1.5; filed Nov 13, 1995, 5:00 p.m.: 19 IR 660; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 2. 327 IAC 15-3-2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-3-2 Content requirements of a NOI letter

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 13-11-2; IC 13-18-4

Sec. 2. **Except as provided in 327 IAC 15-14-4**, the NOI letter shall include the following:

- (1) Name, mailing address, and location of the facility for which the notification is submitted.
- (2) Standard Industrial Classification (SIC) codes, as defined in 327 IAC 5, up to four (4) digits, that best represent the principal products or activities provided by the facility.

- (3) The person's name, address, telephone number, ownership status, and status as federal, state, private, public, or other entity.
 - (4) The latitude and longitude of the approximate center of the facility to the nearest fifteen (15) seconds, or the nearest quarter section (if the section, township, and range are provided) in which the facility is located.
 - (5) The name of receiving water, or, if the discharge is to a municipal separate storm sewer, the name of the municipal operator of the storm sewer and the ultimate receiving water.
 - (6) A description of how the facility complies with the applicability requirements of the general permit rule.
 - (7) Any additional NOI letter information required by the applicable general permit rule.
 - (8) The NOI letter must be signed by a person meeting the signatory requirements in 327 IAC 15-4-3(g).
- (Water Pollution Control Board; 327 IAC 15-3-2; filed Aug 31, 1992, 5:00 p.m.: 16 IR 19; errata filed Sep 10, 1992, 12:00 p.m.: 16 IR 65; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 3. 327 IAC 15-14 IS ADDED TO READ AS FOLLOWS:

Rule 14. On-Site Residential Sewage Discharging Disposal Systems within the Allen County On-Site Waste Management District

327 IAC 15-14-1 Purpose

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2
Affected: IC 13-18-4

Sec. 1. The purpose of this rule is to establish requirements for point source discharges of treated sewage from on-site residential sewage discharging disposal systems within the Allen County on-site waste management district so that the public health, existing water uses, and aquatic biota are protected. *(Water Pollution Control Board; 327 IAC 15-14-1)*

327 IAC 15-14-2 Applicability

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2
Affected: IC 13-18-4; IC 13-18-12-9

Sec. 2. This rule applies to on-site residential sewage discharging disposal systems located within the Allen County on-site waste management district that have been installed to repair or replace a sewage disposal system that fails to meet public health and environmental standards and for which an operating permit has been issued pursuant to IC 13-18-12-9. This rule is only applicable to existing on-site systems or the replacement of such systems that were installed on or before July 1, 2002. Such systems shall discharge one thousand (1,000) gallons or less per day of treated sanitary wastewater. *(Water Pollution Control Board; 327 IAC 15-14-2)*

327 IAC 15-14-3 Definitions

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2
Affected: IC 13-11-2; IC 13-18-4; IC 36-11

Sec. 3. In addition to the definitions contained in IC 13-11-2, 327 IAC 5, and 327 IAC 15-1-2, the following definitions apply throughout this rule:

- (1) "CBOD₅" means Five (5)-day Carbonaceous Biochemical Oxygen Demand.
- (2) "Commissioner" means the commissioner of the department of environmental management.
- (3) "District" means the Allen County on-site waste management district established under IC 36-11.
- (4) "E. coli" means Escherichia coli bacteria.
- (5) "Notice of intent letter" or "NOI" means a written notification indicating a person's intention to comply with the terms of a specified general permit rule in lieu of applying for an individual National Pollutant Discharge Elimination System (NPDES) permit and includes information as required by 327 IAC 15-3 and the general permit rules.
- (6) "On-site residential sewage discharging disposal system" means a sewage disposal system that:
 - (A) is located on a site with and serves a one (1) or two (2) family residence; and
 - (B) discharges effluent offsite.
- (7) "Sewage disposal system" means septic tanks, wastewater holding tanks, seepage pits, cesspools, privies, composting toilets, interceptors or grease traps, portable sanitary units, and other equipment, facilities, or devices used to:
 - (A) store;
 - (B) treat;
 - (C) make inoffensive; or
 - (D) dispose of;human excrement or liquid carrying wastes of a domestic nature.
- (8) "TSS" means total suspended solids.

(Water Pollution Control Board; 327 IAC 15-14-3)

327 IAC 15-14-4 NOI letter requirements

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

Affected: IC 13-18-4; IC 13-18-12-9

Sec. 4. (a) The owner of property upon which an on-site residential sewage discharging disposal system subject to this rule is located shall submit an NOI letter to the following address:

Indiana Department of Environmental Management
Office of Water Quality
100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015
Attention: Permits Section

(b) The NOI letter shall include the following:

- (1) Name and mailing address of the owner and location of the property for which the NOI is submitted, if different than the mailing address.
- (2) A copy of the operating permit issued by the local health department with jurisdiction over the system as provided in section 7 of this rule, pursuant to IC 13-18-12-9(d).
- (3) The name of the receiving stream into which the system will discharge.

(c) The NOI letter must be signed by:

- (1) the owner of the property for which the NOI is submitted if the owner is not described under 327 IAC 15-4-3(g); or
- (2) a person described under 327 IAC 15-4-3(g).

(Water Pollution Control Board; 327 IAC 15-14-4)

327 IAC 15-14-5 Deadline for submission of a NOI letter

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

Affected: IC 13-18-4

Sec. 5. Any person requesting coverage under this rule shall submit an NOI letter within ninety (90) days of receipt of the operating permit issued by the local health department with jurisdiction over the on-site residential sewage discharging disposal system as provided in section 7(a)(1) of this rule unless permission for a later date has been granted by the commissioner. (Water Pollution Control Board; 327 IAC 15-14-5)

327 IAC 15-14-6 General permit rule boundary

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

Affected: IC 13-18-4

Sec. 6. On-site residential sewage discharging disposal systems located within the boundaries of the Allen County on-site waste management district are regulated under this rule. (Water Pollution Control Board; 327 IAC 15-14-6)

327 IAC 15-14-7 General requirements

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

Affected: IC 13-18-4; IC 13-18-12-9

Sec. 7. (a) The point source discharge of treated sewage from an on-site residential sewage discharging disposal system is prohibited unless:

- (1) the local health department with jurisdiction over the system has issued an operating permit for the system as provided under IC 13-18-12-9(d); and
- (2) all applicable requirements of this article and 327 IAC 5 have been met.

(b) Coverage commences under this rule for discharges from an on-site residential sewage discharging disposal system upon receipt of a NOI letter by the department of environmental management.

(c) Under this rule, the permittee must meet the discharge and monitoring requirements listed in Table 1 as follows:

Table 1

The discharge shall be limited and monitored by the permittee as specified as follows:

<u>Parameter</u>	Daily	Daily	<u>Units</u>	<u>Monitoring Frequency</u>
	<u>Maximum</u>	<u>Minimum</u>		
Temperature	Report	Report	°C	2 X Annually
CBOD ₅	15	—	mg/l	2 X Annually
TSS	18	—	mg/l	2 X Annually
Ammonia-nitrogen	2	—	mg/l	2 X Annually
pH	9.0	6.0	s.u.	2 X Annually

E. coli	235	—	colonies/100ml	2 X Annually
Dissolved Oxygen				2 X Annually
Winter [1]	—	6.0	mg/l	
Summer [2]	—	[3]	mg/l	

[1] Winter limitations apply from December 1 through April 30 of each year.

[2] Summer limitations apply from May 1 through November 30 of each year.

[3] During the summer monitoring period, the dissolved oxygen concentration shall not be less than fifty percent (50%) of saturation as determined by Table 2 as follows:

Table 2

No one (1) sample shall be less than 4.0 mg/l.

Temp. °C	<u>18.0</u>	<u>18.5</u>	<u>19.0</u>	<u>19.5</u>	<u>20.0</u>	<u>20.5</u>	<u>21.0</u>	<u>21.5</u>	<u>22.0</u>	<u>22.5</u>	<u>23.0</u>	<u>23.5</u>	<u>24.0</u>	<u>24.5</u>	<u>25.0</u>	<u>25.5</u>	<u>26.0</u>
D.O. mg/l	4.703	4.654	4.606	4.559	4.513	4.467	4.422	4.378	4.335	4.293	4.251	4.210	4.169	4.129	4.090	4.051	4.012

(d) The discharge from the on-site residential sewage discharging disposal system shall not cause receiving waters, including the mixing zone, to contain substances (e.g. foam), materials, floating debris, oil, scum, or other pollutants that:

- (1) will settle to form putrescent or otherwise objectionable deposits;
- (2) are in amounts sufficient to be unsightly or deleterious;
- (3) produce color, visible oil sheen, odor, or other conditions in such degree as to create a nuisance;
- (4) are in amounts sufficient to be acutely toxic to or otherwise severely injure or kill aquatic life, other animals, plants, or humans; or
- (5) are in concentrations or combinations that will cause or contribute to the growth of aquatic plants or algae to such a degree as to create a nuisance, be unsightly, or otherwise impair the designated uses.

(e) Samples and measurements required by this rule shall:

- (1) be representative of the volume and nature of the monitored discharge flow;
- (2) be taken at times that reflect the full range of effluent parameters normally expected to be present;
- (3) be taken more than four (4) months apart unless approved by the commissioner; and
- (4) not be taken at times or in a manner to avoid showing elevated levels of any parameter.

(Water Pollution Control Board; 327 IAC 15-14-7)

327 IAC 15-14-8 Standard conditions

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

Affected: IC 13-18-4

Sec. 8. In addition to the conditions set forth in this rule, the standard conditions for a NPDES general permit under 327 IAC 15-4-2 and 327 IAC 15-4-3 apply to this rule. (Water Pollution Control Board; 327 IAC 15-14-8)

327 IAC 15-14-9 Inspection and enforcement

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

Affected: IC 13-14-10; IC 13-15-7; IC 13-18-3; IC 13-18-4; IC 13-30; IC 36-11-2-1; IC 36-11-5

Sec. 9. (a) The permittee shall allow the commissioner or an authorized representative, upon presentation of credentials, to enter upon the premises where a regulated facility or activity is located and have access to and copy any records that must be kept under the conditions of this rule, in accordance with 327 IAC 15-4-1(l).

(b) The conditions of this rule are subject to enforcement pursuant to 327 IAC 15-4-1 and IC 13-30. (Water Pollution Control Board; 327 IAC 15-14-9)

327 IAC 15-14-10 Duration and renewal of coverage

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

Affected: IC 13-18-4

Sec. 10. (a) Coverage under this rule is granted by the commissioner for a period of five (5) years from the date coverage commences according to section 7(b) of this rule.

(b) To obtain renewal of coverage under this general permit rule, the information required under section 4 of this rule shall be submitted to the commissioner no later than ninety (90) days prior to the expiration of coverage under this rule unless the commissioner determines that a later date is acceptable. (Water Pollution Control Board; 327 IAC 15-14-10)

Notice of First 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, Office of Water Quality, (317) 232-8635 or (800)451-6027 (in Indiana).

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, Twelfth Floor, Indianapolis, Indiana and are open for public inspection.

Lori F. Kaplan
Commissioner
Department of Environmental Management