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TITLE 327 WATER POLLUTION CONTROL BOARD

Proposed Rule LSA Document #01-95

DIGEST

Amends 327 IAC 15 concerning storm water run-off associated with construction activity and storm water discharges associated with industrial activity. Repeals 327 IAC 15-5-11. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: April 1, 2001, Indiana Register (24 IR 2243).

Second Notice of Comment Period and Notice of First Hearing: September 1, 2001, Indiana Register (24 IR 4242).

Change in Notice of Public Hearing: November 1, 2001, Indiana Register (25 IR 404).

Change in Notice of Public Hearing: November 1, 2002, Indiana Register (26 IR 416).

Change in Notice of Public Hearing: December 1, 2002, Indiana Register (26 IR 812).

Date of First Hearing: December 11, 2002.

PUBLIC COMMENTS UNDER IC 13-14-9-4.5

IC 13-14-9-4.5 states that a board may not adopt a rule under IC 13-14-9 that is substantively different from the draft rule published under IC 13-14-9-4, until the board has conducted a third comment period that is at least twenty-one (21) days long.

REQUEST FOR PUBLIC COMMENTS

This proposed (preliminarily adopted) rule is substantively different from the draft rule published on September 1, 2001, at 24 IR 4242. The Indiana Department of Environmental Management (IDEM) is requesting comment on the entire proposed (preliminarily adopted) rule.

The proposed rule contains numerous changes from the draft rule that make the proposed rule so substantively different from the draft rule that public comment on the entire proposed rule is advisable. This notice requests the submission of comments on the entire proposed rule, including suggestions for specific amendments. These comments and the department's responses thereto will be presented to the board for its consideration at final adoption under IC 13-14-9-6. Mailed comments should be addressed to:

#01-95 (Storm water Rules 2, 3, 5, and 6)

Larry Wu, Chief

Rules Section

Office of Quality

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 Quality, 100 North Senate Avenue, Indianapolis, Indiana. Comments may also be submitted by facsimile to (317) 232-8406, 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 Section at (317) 233-8903.

COMMENT PERIOD DEADLINE

Comments must be postmarked, hand delivered, or faxed by February 21, 2003.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from September 1, 2001, through October 3, 2001, on IDEM's draft rule language. IDEM received comments from the following parties:

American Electric Power (AEP)

Andrews Environmental Engineering Inc. (AEE)

Bethlehem Steel Corporation (BSC)

Indiana Builders Association (IBA)

Indiana Chapter of the National Solid Waste Management Association (NSWMA)

Indiana Constructors, Inc. (ICI)

Indiana Manufacturers Association (IMA)
Kimball International (KI)
Monroe County Soil and Water Conservation District (MCSW)
Republic Services, Inc. (RSI)
Utilimaster (UTI)
Waste Management of Indiana (WM)

Following is a summary of the comments received and IDEM's responses thereto. The summarized comments are being divided into categories so as to focus on issues.

Rules 1 through 4 Comments

General Comments:

Comment: They agree with the proposed changes to 327 IAC 15-2-6 which would eliminate the necessity of getting individual permits for discharges to outstanding state resource waters or exceptional use state waters. They suggest making general permits applicable for discharges to outstanding national resource waters as well. (ICI)

Response: There are no outstanding national resource waters currently in Indiana. However, this rule language was added for the future in case outstanding national resource waters are designated in Indiana.

Comment: The new language in 327 IAC 15-3-2 "except for permittees covered under 327 IAC 15-5 and 327 IAC 15-13" seems to be confusing and duplicative, therefore, should be deleted. (ICI)

Response: 327 IAC 15-3-2 contains NOI letter requirements for all Article 15 general permit rules. Because Rules 5 and 13 have all of the information required for their NOI letter submittals within those respective rules, 327 IAC 15-3-2 does not apply to 327 IAC 15-5 and 327 IAC 15-13. The following language in 327 IAC 15-5-5(a) was deleted "In addition to the Notice of Intent (NOI) letter requirements under 327 IAC 15-3...."

Rule 5 Comments

Definitions:

Comment: Though "natural and cultural resources" is defined in the rule, the concern is that an operator or a permittee would not know beforehand what these resources were. They wonder if a listing or map of these resources is available, since that would be very beneficial to an investor. (IBA)

Response: The intent was for the commissioner or the commissioner's designated representative to compare the location of the proposed construction site to various resource maps (i.e. Endangered and Threatened Species maps). However, the rule requirement to evaluate natural and cultural resources was deleted.

Comment: They question the need to evaluate natural and cultural resources for a storm water permit, and whether these issues are addressed under other statutes and rules. (RSI, NSWMA)

Response: According to EPA Region 5, this is not a specific storm water issue but any time EPA issues a permit (a federal action), they are obligated through the National Environmental Policy Act to coordinate with other affected program areas. When EPA delegated the storm water program to the State of Indiana, EPA did not require this review from delegated states at that time. Therefore, the natural and cultural resources review requirement was deleted from rule language.

Comment: The definition of "agricultural land disturbing activity" should also include the construction of facilities, such as residences, barns, buildings that house livestock, roads, forest land management activities, agricultural waste lagoons and facilities, lakes and ponds, and other infrastructure. These agricultural activities should be exempt until they reach five acres, and once over five acres, they should be treated as other "land disturbing activities". (MCSW)

Response: Construction activities, regardless of the setting, pose a threat to water quality through the potential pollutants generated during construction operations. Singling out a particular land use for exemption would not be appropriate. Also, the definition change is simply a clarification, and not a change in the coverage of the rule. Construction activities in agricultural areas have been subject to coverage under 327 IAC 15-5 since 1992.

Comment: The rule is written to address commercial or residential construction activity, therefore, determining applicability for contract work can be difficult. For example in 327 IAC 15-5-2, it states, "when the activity is under control of the operator". Again, is a contractor under a public works contract a developer under this definition? The definition of developer should be revised to exclude contractors. (ICI)

Response: The words "contractor, developer, and operator" have been defined to clarify their roles as they pertain to their responsibility for maintaining storm water pollution prevention measures at a site.

Rule 5 and Rule 13 interaction:

Comment: MS4 areas in 327 IAC 15-5-4 is not well defined. Questions that need to be answered are whether a highway project would fall under this; where does a listing of MS4 areas exist to meet the requirements of 327 IAC 15-5-5. (ICI)

Response: The listing of entities could include any municipality regulated under 327 IAC 15-13, the Phase II Municipal Separate Storm Sewer System (MS4) program, or any entity that the MS4 operator chooses to implement the municipality's construction storm water permit program. IDEM currently has a list of regulated MS4 entities on their web site.

Comment: In 327 IAC 15-5-5(C), it is not clear to a permittee as to whom the construction plans need to be submitted, other than the SWCD. Clarification is also needed as to other entities designated by the department who could potentially need a copy of the construction plan? (IBA)

Response: IDEM will provide a revised list of regulated MS4 entities and their agents to whom Rule 5 information needs to be submitted when that information becomes available.

Comment: The entity responsible for approving submitted storm water pollution prevention plans is not clearly indicated. According to 327 IAC 15-5-6(b), plan review will be conducted by a minimum of four entities. AEP feels this may not result in a consistent review and conceivably a plan approval being denied. They would like to see the rationale behind having multiple approval entities, as well as, the review guidelines IDEM

will be instituting. (AEP)

Response: If a project is located within a regulated MS4 area, then the MS4 operator will be responsible for implementing the Rule 5 program. IDEM and IDNR will retain primacy for the responsibility of the Rule 5 program and will provide oversight for the MS4 programs. For projects located outside of a regulated MS4 area, the State will maintain the existing Rule 5 program structure. The intent is not to have all entities issue permits and review permit compliance information. The State does not want to duplicate Rule 5 program efforts and agrees that Rule 5 program implementation should be consistent through out the State of Indiana.

Qualified Professional:

Comment: The recommendation is being made to correct the discrepancy which exists between the title of the certifying person in Rule 5 as “qualified professional”, versus “qualified environmental professional” in Rule 6. (KI)

Response: The term “qualified environmental professional” in Rule 6 has been changed to “qualified professional.” The term “qualified professional” in Rule 5 has been changed to “trained individual.” The two definitions in these respective rules have been modified to reflect these differences in terms and the differing roles of each of these persons.

Comment: The suggestion is being made to eliminate the requirements for a qualified professional as a state certification program is not in place. Another option is to delay the implementation of the requirements until 18 months after the state makes a certification program available. If such a program already exists, companies that did not need certified personnel earlier would need at least a year to get their personnel certified. This also raises the question whether a company can certify their own personnel. (IBA, ICI)

Response: The definition of Qualified Professional in Rule 5 has been modified to “Trained Individual” to address concerns voiced in the public comments. This should reduce the perceived burden of needing to hire third parties to conduct quality assurance procedures. IDEM never intended to mandate the hiring of third parties; the intent was to have trained persons conducting the monitoring procedures.

Comment: In 327 IAC 15-5-4(24) and 327 IAC 15-5-7(b)(19), the qualifications of the “qualified professional” appear to exceed the requirements of the qualified professionals responsibilities. (RSI, NSWMA)

Response: IDEM has reworded this language as to not limit the scope of a “trained individual’s” credentials. IDNR in cooperation with Soil and Water Conservation Districts will provide training courses and materials to assist operators and their representatives in performing these duties for Rule 5.

Notice of Intent (NOI):

Comment: One of the requirements for the NOI letter in 327 IAC 15-5-5 is a certification that the storm water quality measures comply with sections 7, 8, 9, and 11. Only sections 7 and 9 pertain to measures that must be used. The reference to section 8 is also inappropriate. (ICI)

Response: IDEM has corrected this language.

Comment: In 327 IAC 15-5-6, references to “SWD, DNR, DSC” implies there are three (3) agencies, this needs to be clarified. (RSI, NSWMA)

Response: IDEM has corrected this language.

Land Disturbance Calculation

Comment: If the land disturbance calculation is based on lots, the question is how would the calculation be done for a linear project, such as a sewer line. Per 327 IAC 15-5-7, a stable construction entrance is required at all points of ingress and egress. Such a requirement is not feasible for a linear project. (ICI)

Response: The land disturbance calculation for a linear project, such as a sewer line, would be done by taking the total length of the project times the total width of the project. The requirement to provide a stable construction entrance at all points of ingress and egress would have to be assessed on a case by case basis for linear projects via the construction plan review process.

Submittal of Construction Plans for Agency Approval:

Comment: In 15-5-6(b)(2), a construction plan is to be submitted sixty (60) days before any land disturbing activities. There is no timeline for the approval process. IBA suggests that if the department has not acted on the construction plan, then after 60 days of submission, land disturbing activities could begin. The issue of an action of recourse for the permittee should be addressed. IBA and NSWMA feel the lack of a deadline appear to violate federal requirements under 40 CFR 122.28(b)(2) (iii). There is a concern that requiring the construction plan to be submitted sixty (60) days prior to land disturbing activities is excessive and would cause unnecessary delays that could contribute to sediment runoff and the company may not be able to take advantage of the construction season. If the same requirement pertains to a public works construction where the contractor is not determined until after a required public bidding process, it must be noted that some elements of the construction plan are determined by the contractor rather than the operator. Holding up plan review would again cause undue delays and be a burden to taxpayers and users of the public facility. (IBA, WM, RSI, NSWMA, ICI, AEP)

Response: IDEM has revised 15-5-6(a) language to read, “After the project site owner has received notification from the reviewing agency that the construction plans meet the requirements of the rule or the review period outlined in section 6(b)(3) has expired, all NOI letter information required under section 5 of this rule shall be submitted to the commissioner at least forty-eight(48) hours prior to the initiation of land disturbing activities at the site.”

15-5-6(b)(3) has been revised to, “If the project site owner does not receive notification from the reviewing agency that the plan meets the requirements of the rule within thirty (30) days after the plan is received by the reviewing agency, the project site owner may submit the NOI letter information.

Comment: At 327 IAC 15-5-6, ICI is concerned with requiring approval of the construction plan by the SWCD. The SWCD or any other entity should not have authority to force changes to a plan that effectively controls runoff. This provision is highly subjective. (ICI)

Response: While the Storm Water Pollution Prevention Plan is an important document and critical to successful stormwater pollution prevention during the construction process, other issues may arise during construction that would reduce or negate the effectiveness of stormwater pollution prevention measures proposed in the plan. These could include decisions by the operator and/or contractor, which could not have been known by the planner at the time of plan submittal. Weather conditions, likewise, are impossible to predict far in advance, therefore field changes to the plan may often become necessary.

Field changes and additions would be recommended by the reviewing and inspecting agency to address deficiencies and prevent stormwater pollution. These recommended changes would only be made to bring the project in compliance with the standards set forth in this rule and the Indiana Storm Water Quality Manual.

Comment: Clarification is needed on 327 IAC 15-5-6 which states that the plan will be approved if the contents meet minimum standards. If the minimum standards are the same as the rule, it needs to be spelled out. If the minimum standards are other than the entire rule, then they need to be referenced. (ICI)

Response: IDEM has revised this language to clarify that the plan will be reviewed and verified to see if the contents comply with the rule requirements.

Requirements for Construction Plans:

Comment: In 327 IAC 15-5-6.5, the cost for complying with the requirements for construction plans will be less for the an operator of a large subdivision rather than the smaller builder building in rural areas on one (1) to five (5) acre tracts, crippling housing affordability in rural areas. Therefore, IBA suggests a modified construction plan for permits files in the one (1) to five (5) acre range. (IBA, ICI)

Response: The purpose of the requirements for construction plans is to ensure that all aspects of a project are evaluated and taken into consideration in the development of the project. The plan is a blueprint for the project and serves to provide critical information to all parties involved in the development and construction of the project. A well developed plan that is drafted utilizing specific site information and that addresses construction activities is the first defense in addressing pollutants associated with the site. The intent of the rule is to reduce the impact of sedimentation and other pollutants associated with construction activity. Taking into consideration the intent of the rule, the potential for harm is not specific to the size of the development but is related to site specific information such as, but not limited to, topography, soils, proximity to water bodies, and the extent of grading that is planned for the site. A small site of 4 acres may have the potential for more harm if the site is rolling and the developer plans to conduct massive earthmoving compared to a 15 acre site on relatively flat land where the developer has chosen to minimize disturbance of the site.

Comment: 327 IAC 15-5-6.5(b)(7) requires that the plan be designed to meet or exceed the requirements of sections 8 or 9 of this rule. Sections 8 and 9 do not seem to have any relevance to the items that are listed. (ICI)

Response: IDEM has corrected this language to reference to "...meet or exceed the requirements of sections 7 and 7.5 or this rule..."

Comment: In 327 15-5-6.5, requiring the method of seeding to be included in the construction plan seems meaningless. Public works contracts may not specify the method for the contractor to use. (ICI)

Response: IDEM has removed the requirement to include the method of seeding.

Comment: 327 IAC 15-5-6 requires that the construction plan meet the requirements of section 7. They wonder whether it should be 6.5 instead. (ICI)

Response: IDEM has corrected this language.

Post-construction Plan Requirement:

Comment: 327 IAC 15-5-6.5(6) mentions providing information for post construction. The intent of the rule has been to regulate storm water run-off associated with construction activity, not to regulate drainage plans after construction. IBA questions the use of the phrase "10-year storm event", and well as wonders who would make the judgement of the conditions. (IBA)

Response: The post construction requirement requires up front planning for a construction project. The intent is not to regulate the project after it is completed. IDEM intends to duplicate the post construction requirement in 327 IAC 15-13 for Phase II MS4 entities. Examples of these post construction measures will be included in IDEM's MS4 Guidance Document and in IDNR's Indiana Stormwater Quality Manual. It is prudent to require consistency across the state to have similar design criteria. The ten (10)-year storm design criteria is most commonly used as a sufficient design criteria for post construction. The agency felt the ten (10)-year criteria would satisfy the intent and not overly burden the operator.

Comment: IBA feels that the requirement of a post construction prevention plan is beyond the federal requirements. Also, clarification is needed on the term first flush and the expectations of the department regarding this. (IBA)

Response: Each type of land usage has inherent pollutants associated with that type of usage. It is important for the operator to realize that the proposed land use will potentially discharge specific storm water pollutants. Project design can have a significant impact to the amount of these pollutants that enters the run-off stream. This requirement in the rule heightens the awareness of this fact, and requires each project to have designed measures to minimize the impacts of these inherent pollutants.

The term first flush has been removed from the draft rule.

General Requirements:

Comment: In 327 IAC 15-5-7.5(b)(5), daily cleanup of the site is a practice that most builders and developers try to achieve, but with the constant flow of contractors at the site, these requirements could lead to enforcement problems. IBA suggests a "weekly cleanup of sediment" be inserted instead. (IBA)

Response: Cleanup of the site is crucial since the nature of wet weather events is so unpredictable. The time element of "daily" has been removed to reflect the unpredictability of when and how often an operator must perform this essential type of maintenance at the project site.

Comment: 327 IAC 15-5-7(b)(17) is a duplication of air rules at 326 IAC 6. Fugitive dust rules which are enforceable by Office of Air Management should be referenced, otherwise the proposed language should be deleted. (RSI, NSWMM, ICI)

Response: Fugitive dust may be mobilized via storm water discharges and all potential sources of storm water pollution are regulated by the storm water regulations. IDEM has referenced the fugitive dust rule and has added clarification to the Rule 5 language.

Comment: The posting of the required notice per 327 IAC 15-5-7 would be near the field office established for the project. The question is if the field office is a few miles from the project site, whether it is considered "near" the currently active construction site. (ICI)

Response: The intent of posting a notice is to provide information concerning the construction activity, including the location of the construction plans and project contacts. Therefore, the posting for the project should be close to the actual land-disturbing activity, so the notice can be referenced to the permitted site. Typically, this would be at the entrance to the project site. For linear projects (highway, utility), the notice should

be posted within the confines of the project area.

Comment: They question the language in 327 IAC 15-5-7(b)(8) and seek clarification on the purpose of submitting an SWP3 plan for review and approval if it is not deemed the basis for implementation of a storm water quality measure. (WM, RSI, NSWMA)

Response: Field changes and additions would be mandated by the inspecting agency to address deficiencies and prevent storm water pollution. These mandated changes would only be made to bring the project in compliance with the standards set forth in this rule and the Indiana Storm Water Quality Manual.

Pre-construction Meetings Requirement:

Comment: In 327 IAC 15-5-7(b)(9) the rule is requiring a pre-construction meeting with the operator and all contractors visiting the site. IBA strongly disagrees with this government intrusion into the business practices of the on-site operator, as this would be time consuming and cause costly delays. They are opposed to the two-week delay, and the requirement for a written certification of the meeting in this subsection. They feel that there is already a sufficient form being used to notify contractors of their Rule 5 responsibilities, and the language with the additional requirements should be deleted from this subsection. (IBA, RSI, NSWMA, AEP, WM)

Response: Pre-construction meetings play an important role in the success of a construction project. It's purpose is to make sure everyone involved with the project understands what regulations are governing the project as well as what is expected by each contractor.

The language has been revised to require the project site owner to inform all primary individuals involved in construction activities at the site of the terms and conditions of Rule 5. The intent is to give each operator flexibility in how they decide to implement this requirement whether it be a pre-construction meeting with everyone that will be involved or via individual meetings with affected parties.

Quality assurance Plan Procedures and Program:

Comment: 327 IAC 15-5-6.5(b)(7)(G) requires quality assurance plan procedures. This raises questions on how the procedures will be enforced and whether quality assurance inspections would be required. (IBA)

Response: Compliance inspections and enforcement of Rule 5 will continue to be the responsibility of IDEM and IDNR in non-regulated MS4 areas. In regulated MS4 areas, the MS4 operator will perform compliance inspections and enforcement. The provision in 327 IAC 15-5-7(b)(18) has been revised to a "self monitoring program" and would be performed by a "trained individual" on behalf of the operator.

Comment: IBA has serious concerns with the quality assurance program in 327 IAC 15-5-7(19). A definition is needed for measurable rainfall. There are expense and other problems associated with weekend and weekly reporting of site conditions after a rain event. They feel that the requirements of this section are unnecessary, difficult to achieve, and difficult for IDEM to monitor. (IBA, ICI, WM, RSI, NSWMA)

Response: Effectiveness of storm water pollution prevention measures is heavily dependent on the frequent monitoring and maintenance of those measures. The weekly monitoring requirement is intended to ensure that appropriate pollution prevention measures have not been damaged and are in place for future rain events. The monitoring operation required after each rain event is necessary to identify cleanout and repair needs resulting from each storm. The required written reports do not have to be automatically submitted to IDEM. The requirement is to have the reports available within 48 hours, upon the request of the agency or their designated representative.

Surface Stabilization:

Comment: IBA suggests a forty-five (45) day period before surface stabilization since surface stabilization after fifteen (15) days is too short for many construction projects. Weather and other uncontrollable delays affect surface stabilization, therefore a longer time-frame is needed. (IBA, ICI)

Response: The intent of the rule is to minimize adverse impacts to surface waters of the state during construction activities. With respect to soil erosion and sedimentation, this can best be accomplished by minimizing the exposure of bare soil to the erosive effects of precipitation and run-off. Temporary surface stabilization is considered most often as the least expensive and most efficient means to minimize this exposure. Temporary surface stabilization may take many forms, including anchored mulching, seeding and anchored mulching, covering, and the application of spray-on materials. The intent is to stabilize unvegetated and thinly vegetated areas that are expected to be left idle for a period of fifteen (15) or more days in the construction process. In these areas, it is expected that the appropriate stabilization method be applied upon completion of the most recent land disturbing activity in the unvegetated and thinly vegetated areas that are expected to be left idle, and not at the end of the fifteen (15) day requirement. Forty-five (45) days of inactivity with no stabilization would significantly increase the potential for erosion and the resulting sedimentation.

Comment: The provision in 327 IAC 15-5-7(b)(16) is impossible to meet as a blanket requirement in the continuous construction and operation of a solid waste land disposal facility. With 329 IAC 10-20-14(h) already in place, the fifteen (15) day seeding provision in the proposed rules is not appropriate. (RSI, NSWMA)

Response: 329 IAC 10 is currently being revised to address this concern.

Project Termination:

Comment: In the event that the inspection of the site per 327 IAC 15-5-8-(d) is not done, the question is how the entity would know if their NOT letter was properly filed. They would also question how the NOT letter filing would be verified. (IBA)

Response: The intent of this requirement is to stress the importance of the Rule 5 permittee's obligation to submit an NOT letter once they have met the requirements in Section 8. It is important for the permittee to coordinate with the entity who has jurisdiction over their project to verify that the project is complete.

Inspection and Enforcement:

Comment: In 327 IAC 15-5-10, WM seeks justification for additional measures beyond those already identified in the SWP3. The language is vague and allows the representative to be subjective. (WM, RSI, NSWMA)

Response: Field changes and additions would be recommended by the inspecting agency to address deficiencies and prevent storm water pollution. These recommended changes would only be made to bring the project in compliance with the standards set forth in this rule and the Indiana Storm Water Quality Manual.

Revisions that are required, and revisions that go beyond federal requirements:

Comment: IBA is concerned about the rule going beyond the federal requirements. In 15-5-1, there is concern about the language referring to “completed project”. They feel that once erosion control measures are in place, the owner/developer of the project should be relieved of their Rule 5 responsibilities. (IBA)

Response: The intent is to include within Rule 5 a method to address storm water pollutants that may be reduced via “post construction” best management practices. These practices must be planned for prior to initiation of land disturbing activities to ensure that they can be installed at a site. The intent is not to regulate the project after it is completed.

Comment: IBA requests IDEM to highlight the federal requirements in the draft rule as well as the changes IDEM feels are necessary for this rule. They would like to see the science or reasoning behind each of IDEM’s decisions. IBA believes that if the current rule moves forward it will completely drain the agency of its resources of proper enforcement and severely cripple housing affordability in Indiana. (IBA)

Response: These rule changes are generally required to implement the federal Phase II program. The draft rules contain a few provisions that further clarify or elaborate on Indiana’s Phase I storm water program language to address state concerns. Examples of these provisions include additions to the definitions section, the addition of the land disturbance calculation section, expansion of the construction plan section, and the requirement to inform all contractors of the permit compliance terms and conditions. IDEM does not believe provisions in the rule, whether specifically in the federal requirements or not, will cripple housing affordability in Indiana.

Comment: WM fails to find how the proposed language “adds clarity and effectiveness” to the existing program. They would like to know the reasons IDEM seeks to exceed federal requirements. (WM)

Response: The proposed rule revisions and additions will improve clarity, remedy old Phase I omissions, utilize past program experiences, and incorporate new Phase II requirements.

Landfills:

Comment: WM strongly believes that the proposed rule is a duplication of permit requirements for landfills regulated under 329 IAC 10. The proposed rule suggests that landfills do not have storm water pollution prevention plans and soil erosion measures, when in fact landfills are already required to have storm water pollution prevention plans and controls for soil erosion. They feel landfill operators may be placed in the middle of two branches of the same agency and receive conflicting directives. For example, 327 IAC 15-5-7(b)(16) regarding soil stabilization conflicts with 329 IAC 10 which addresses the same. In 327 IAC 15-5-4(14), they recommend excluding landfills from 327 IAC 15, and amending 327 IAC 10, if required, to add specificity regarding storm water management, rather than adopting a conflicting rule. (WM, RSI, NSWMA)

Response: 329 IAC 10 is currently being revised to address this concern.

General Comments:

Comment: Regarding their comments from the first comment period, IBA was pleased that IDEM intends to continue the general permitting process. (IBA, IMA)

Response: The Phase II NPDES language contained in the federal register also strongly encourages the use of general permits for the storm water program. IDEM feels this is the best utilization of its resources.

Comment: The added language at 327 IAC 15-3-2, conflicts with the opening sentence of 327 IAC 15-5-6.

Response: IDEM has corrected this language in 327 IAC 15-5-6 to remove “327 IAC 15-3 and...”

Comment: The proposed rule is very specific, and requires timely review and oversight by various agencies. WM questions whether IDEM and other relevant agencies, with their current staffing levels, will be able to implement and oversee this new rule. (WM)

Response: All implementing agencies will do their best to effectively implement the revised federal program. IDEM is seeking statutory authorization for the Water Pollution Control Board to establish fees for the new MS4 and Phase II storm water programs.

Comment: The Indiana Storm Water Quality Manual should be placed on the DNR website and the web address should be shown in the rule. (ICI)

Response: The DNR, Division of Soil Conservation, is currently revising the Indiana Handbook for Erosion Control in Developing Areas. The revised version of this handbook will become the Indiana Stormwater Quality Manual. The revised version will include planning principles and practices that address post construction run-off associated with various land uses. This explanation is currently on the DNR, Division of Soil Conservation, website. The Division of Soil Conservation, at a minimum, plans to have an abbreviated version of the handbook and how to purchase the entire handbook on their website. Because they frequently change, IDEM feels that placing web addresses in the rule is not useful. The logistics of having the entire manual accessible via the web is being considered.

Comment: There is confusion over the substance of IDEM’s presentation to the Water Pollution Control Board versus the published draft rule. The understanding from the board meeting presentation was that the rule would primarily impact municipal activities and minimally impact other activities. However, the proposed rule goes well beyond municipal activities. (RSI, NSWMA)

Response: As was explained in the presentation, the federally mandated Phase II NPDES storm water rule regulates storm water discharges associated with construction, industrial, and municipal activities.

Cost benefit review:

Comment: AEE questions whether the proposed rules have been subject to a cost benefit review. They feel that costs of regulation for small construction activity may outweigh the benefits, and that the costs would exceed estimates provided by U.S. EPA. (AEE)

Response: USEPA provided a cost-benefit analysis as part of the final Phase II storm water regulations. Provisions in draft Rule 5 that are Phase I omissions or were previously included in the federal language have already been accounted for at the federal level.

Rule 6 Comments

Rule Applicability:

Comment: In 327 IAC 15-6-5(7), justify the inclusion of “transfer stations” under this definition. Why was the potential designation of transfer stations moved from 327 IAC 15-6-2 (5)(H) to (5)(D)? The term “industrial waste” in this provision is contrary to Indiana Statute. (WM, RSI, NSWMA)

Response: In 327 IAC 15-6-2 (5)(D), IDEM has revised the designation category to include transfer stations. Transfer stations were added to

provide more complete coverage of various solid waste handling and recycling facilities under Rule 6. Many of the same materials handled by facilities already subject to this rule are processed at transfer stations. Because they are solid waste processing facilities, IDEM staff felt that transfer stations would be more appropriately covered under subsection (5)(D), instead of placing them under transportation facilities in subsection (5)(H). IDEM's Office of Land Quality staff provided input into this rule revision, and felt that Rule 6 coverage was needed at transfer stations. The potential for pollutants to impact water quality from transfer stations was deemed significant enough to require Rule 6 permit coverage and to initiate requirements for storm water pollution prevention measures. To clarify a difference, the term "process" was added to "industrial waste" in subsection (5)(D). "Industrial process waste" is meant to encompass wastes from all types of facilities subject to Rule 6.

Definitions:

Comment: Amendments to 327 IAC 15-6-1 add a new definition of storm water discharge at 327 IAC 15-6-4(31) that appear to potentially make nonpoint sources subject to a NPDES General Permit. The NPDES permit process as codified in 33 U.S.C., makes no reference to nonpoint source management programs. In the preamble to the initial federal NPDES rules at 55 FR 47995, U.S. EPA noted that the rulemaking covered only storm water discharges from point sources. AEE requests clarification on the state's authority to include nonpoint sources, such as sheetflow run-off, in the NPDES general rule. (AEE)

Response: Rule 6, like the other storm water programs, regulates storm water discharges. Given the unpredictable nature of precipitation events, it is likely that there will be some form of point source discharge at a facility. Reference to sheetflow run-off has been removed from the definition, and the term "point source" has been reestablished in appropriate sections of the rule.

Qualified Professional:

Comment: KI would like the criteria for a qualified environmental professional to include experience or training but not require both, stating that many personnel in the environmental field acquire sufficient knowledge through experience equal to that of a new graduate. (KI)

Response: IDEM agrees and has revised this definition to remove the educational degree requirement.

NOI Requirements:

Comment: In former 327 IAC 15-6-5(7), writers request justification for exceeding federal requirements and requiring a map with a one (1)-mile radius. Federal regulations only require mapping of the site and drainage basins of site outfalls, and listing of only those wells and streams that are affected by storm water discharges. The proposed rules have additional requirements which will prove costly and time-consuming. (WM, RSI, NSWMA)

Response: In former 327 IAC 15-6-5(7), IDEM has revised the NOI letter requirements to remove an area map with a one-mile radius beyond the property boundaries of the facility. The area mapping requirements have been moved into 327 IAC 15-6-7(b). Under 327 IAC 15-6-7(b)(1)(B)(iii) of the current rule, IDEM requires regulated facilities to currently provide a map, extending one-fourth of a mile beyond their property boundaries, that indicates springs, other surface water bodies, and drinking water wells. This information is useful to identify area storm water drainage patterns and potential impact areas for polluted storm water run-off from the facility. The one-mile radius extension has been removed, and the one-fourth of a mile radius is the revised rule requirement. Well location and area drainage system information is readily available from local municipal, county, or state offices. If this type of information is required under other regulations, the information simply needs to be duplicated for the Rule 6 NOI letter submittal. IDEM feels the use of existing data to meet multiple regulations is not overly burdensome to the permittee.

Proof of publication

Comment: There is concern over the provision which adds a proof of publication submittal and public appeal process to Rule 6. (RSI)

Response: In 327 IAC 15-6-5(8), IDEM has required the submittal of a proof of publication to be consistent with other storm water general permit rules, and because this was a Phase I omission. The proof of publication requirement is intended to provide the general public with an opportunity to comment on the allowance of an industrial NPDES general storm water permit.

Storm Water Pollution Prevention Plan requirements:

Comment: IMA is concerned that requiring risk assessment analysis seems to be going beyond the federal requirements and questions the need for it. (IMA, BSC, UTIL, AEP, RSI, NSWMA)

Response: Under 327 IAC 15-6-7(b)(2)(A) and (D) of the current rule, IDEM requires regulated facilities to currently conduct a risk assessment. The revised rule language does not add a new requirement, but clarifies it. Risk assessment is necessary to identify industrial practices and areas that have the potential for exposure to storm water run-off, and, as a result of this assessment, to determine measures that can be implemented to reduce this potential exposure. The term "risk assessment" was changed to "risk identification", to avoid confusion with recent other risk-based IDEM programs.

Comment: The required reporting of historical spill information beyond the most recent three (3)-year period exceeds the federal requirements, and it is not clear as to the value of such requirements. (WM, RSI, NSWMA)

Response: IDEM feels that the three (3)-year requirement is not adequate to address potential pollutant source locations from spills. Spills that are greater than three years old may still contribute pollutants to storm water run-off. The historical requirement was changed to spills occurring three (3) years prior to the NOI letter submittal date, and five (5) years from the NOI letter date in subsequent permit terms.

Comment: There is concern within the new general requirements of a storm water pollution prevention plan at former 327 IAC 15-6-7(b)(2) and 327 IAC 15-6-7(b)(3). The required soils map and aerial photograph exceed the federal requirements and it is not clear as to the value of such requirements. (AEP, WM, RSI, NSWMA)

Response: Under 327 IAC 15-6-7(b)(1)(i)(JJ) of the current rule, IDEM requires regulated facilities to currently provide a site map indicating soil types in the storm water pollution prevention plan. The revised rule language does not add a soils map requirement, but clarifies it. The revised rule language no longer adds a requirement for aerial photography. Aerial photography could provide a graphic overview of the facility, so that industrial activity areas can easily be identified and assessed for pollutant potential through visual means. Although not required, the photograph is a useful tool for implementation of a storm water pollution prevention plan, and is widely available through local sources such as the US Geological Survey, regional planning commissions, and county Soil and Water Conservation Districts.

Comment: The requirement in 327 IAC 15-6-7(a)(4) to specifically identify individual members of the storm water pollution prevention team

is unnecessary and burdensome to update and keep current with personnel changes. They suggest using position titles instead of names. (WM, RSI, NSWMA)

Response: IDEM agrees and has revised this language to reference position titles for member or members of the storm water pollution prevention team.

Comment: The provision in 327 IAC 15-6-7(d)(1) seems to duplicate the Storm Water Pollution Prevention Plan. In addition, a SPCC plan is required which is duplicative and should be deleted. (RSI, NSWMA)

Response: In 327 IAC 15-6-7(c)(1), the requirements are part of the overall facility storm water pollution prevention plan. As a result of a submitted comment, the content of subsections (c) and (d) were switched for clarity. As it pertains to 327 IAC 15-6-7(c)(2) and is written in 327 IAC 15-6-7(d)(6), any information that has been developed to comply with another regulation, such as Spill Prevention Control and Countermeasures (SPCC) requirements, can be referenced, and not duplicated, in the storm water pollution prevention plan. However, if the exact information required by this subsection is not addressed in another required document, it must be presented in the storm water pollution prevention plan. Because the potential exists for the items listed in subsection (c)(2) to not be addressed elsewhere by a facility, the language will remain in the rule.

Monitoring requirements:

Comment: The test requirements for E.coli bacteria should be *in lieu* of a written non-storm water assessment program. Many plants are located in rural areas where there is run-off from adjacent properties that have animal wastes containing E.coli bacteria. The question raised is whether the entities would have to test upstream waters each sampling event to prove that E.coli bacteria is from other sources. The concern is the increased expense that would result. (KI)

Response: The interpretation of sampling data is done on a case by case basis for each facility. All sources of potential pollution should be documented in the Storm Water Pollution Prevention Plan, including those potentially contributed from external sources. The written non-storm water assessment must include a certification letter stating that storm water discharges from the facility property have been evaluated for the presence of illicit discharges and non-storm water contributions. This certification would be performed once during each five (5) year permit cycle and, if suitable to a facility, an E.coli bacteria sample could be collected and analyzed to analytically verify that no sewage is present. The rule language was changed to remove the requirement for E.coli bacteria sampling. To verify that a bacteria source is upstream of a facility, the collection of an upstream sample would be recommended during the sample collection of the facility's discharge(s).

Comment: At 327 IAC 15-6-7.3, it is unclear whether the new monitoring parameter of E.coli applies to industrial facilities. AEP would like to see an explanation of the need, as well as supporting justification, for this parameter. (AEP)

Response: The testing for E.coli bacteria is no longer required for Rule 6 permittees. This requirement was originally added due to the significant potential for illicit discharges to contaminate storm water run-off, and to numerically determine if sewage is present. If a facility determines its suitability, E.coli bacteria can still be tested as a means of verification of no illicit sanitary connections, but bacteria testing is not required.

Comment: Under 327 IAC 15-6-7.3(a)(12) monitoring requirements, it is stated that run-off events resulting from snow and ice melt should not be sampled and may not be used to meet the minimum annual monitoring requirements. U.S. EPA has allowed the sampling of snow and ice melt in the storm water program. Therefore, facilities should have the option to obtain samples from snow and ice melt. Moreover, large corporations with multiple regulated facilities may not have sufficient time, staff, and equipment to collect samples at all their facility locations without sampling during winter months. The expense related to renting equipment is not feasible due to the current economic conditions. (KI)

Response: The intent of this requirement is to develop standards for uniformity with regard to data collection procedures. USEPA's NPDES Storm Water Sampling Guidance Document, EPA # 833-B-92-001, July 1992, states that "snow melt may be sampled as long as the applicant works closely with the permitting authority to determine the proper sampling strategy". IDEM, as the permitting authority, feels that sampling snow and ice melt discharges does not meet the required qualified storm event sampling conditions, and tend to provide inconsistent data.

Comment: In 327 IAC 6-7.3(a)(1) they question IDEM's rationale for exceeding federal requirements, and adding E.coli, total copper, total zinc, and total lead to the listing of required sampling parameters. (RSI, NSWMA)

Response: In 327 IAC 15-6-7.3, IDEM initially added E.coli bacteria, total copper, total zinc, total lead, and any other pollutant, which is reasonably expected to be present in the discharge. The additional parameters were added to gather concentration data on pollutants that have not been previously addressed and have been historically identified as present in storm water run-off from industrial facilities. However, because the parameters are not present at all categories of regulated facilities, IDEM concurs that language requiring the sampling and analysis for E.coli bacteria, total copper, total zinc, and total lead should be removed from the rule.

Comment: In 327 IAC 15-6-7.3(b)(4) the phrase "as soon as they are completed" is vague and needs to be defined. They suggest several time frames for data submittal, including annual or "within thirty (30) days after lab analysis has been completed." (KI, RSI, NSWMA)

Response: IDEM concurs with the suggestion to change the "as soon as they are completed" reference in 327 IAC 15-6-7.3 (b)(4) to "within thirty (30) days after laboratory analyses have been completed."

Comment: The rule calls for analysis of carbonaceous biochemical oxygen demand (CBOD) as well as chemical oxygen demand (COD). The current rule had reportedly been amended to replace BOD with CBOD, and to eliminate COD. COD needs to be removed from the list of required sampling. (KI)

Response: Currently both 327 IAC 15-6-7(d)(1) and 40 CFR 122.26(c)(E)(3) list COD as a required storm water monitoring parameter. The listing of COD as a parameter has not changed since the rule (327 IAC 15-6) was first published in 1992. COD is a measure of oxygen depletion caused by chemicals, and is different from CBOD₅ or BOD₅, which are measures for depletion by biological sources. Therefore, COD is a better indicator of industrial source discharges, which typically contain chemical components. For the CBOD₅ parameter, CBOD₅ is preferred instead of BOD₅ because the nitrogenous component of BOD₅ is already being addressed by the required ammonia-nitrogen and nitrate-nitrite parameters.

Comment: It needs to be clarified whether the oil and grease test required under the monitoring requirement section is to be performed by the Freon extraction method or by the EPA-mandated Hexane extraction method. (KI)

Response: Per 327 IAC 15-6-7.3(a)(11) sampling methods used must meet the requirements of 327 IAC 5-2-13(d)(1), which references approved

methods in 40 CFR 136. Currently both the Freon and Hexane extraction methods are listed as approved methods for oil and grease testing and therefore either may be used. However, it should be noted that during calendar year 2002 USEPA is scheduled to revise part 136 to remove the testing procedures that utilize Freon. Therefore, IDEM recommends the use of USEPA Hexane extraction method 1664.

Comment: Under current Rule 6 language, certain outfalls have been permitted in individual NPDES permits by reference to the general NPDES permit program and its sampling requirements. The question is how will the changes to Rule 6 affect the facilities who have a set of sampling requirements in their existing permits. The language in 327 IAC 15-6-1 "composed entirely" of storm water will impact previously issued individual permits, and this needs to be addressed. (KI)

Response: The "composed entirely" of storm water language and the clarification found in 327 IAC 15-6-2(a)(4) that includes allowable non-storm water discharges were Phase I omissions, and were added to the rule language to be consistent with federal requirements. Permittees with individual NPDES permits are governed by the permit conditions, and there is the allowance under those permits to have commingled wastewater and storm water discharges. Permittees with existing individual NPDES permits that reference Rule 6 requirements will either have to comply with existing or revised Rule 6 requirements, depending on the reference language in the individual permit and the permit's effective date.

Duration of Coverage and Renewal:

Comment: Upon permit renewal in 2006, will IDEM issue a generator certification document to certify the original NOI letter is still valid and information is current? The rule states that the NOI information package would have to be resubmitted even if there are no changes. This would not be cost-effective. The recommendation is to have a short-form for the purposes of renewal when no changes have occurred. (KI)

Response: IDEM is currently developing state forms to use for all required compliance submittals. The new NOI letter forms will be simpler to use. It is standard practice in the NPDES permit program to require resubmittal of such an application for permit renewals. The resubmittal is particularly needed for Rule 6 NOI letter forms, due to changes in NOI package submittal requirements.

Required revisions and revisions that go beyond federal requirements:

Comment: They request that a full accounting of the provisions in the proposed rule which are beyond the federal requirement along with the justification for each of them be presented to the Water Pollution Control Board. (IMA, UTIL)

Response: This comparison and justification will be provided to the Board.

Comment: IDEM needs to re-issue the second notice identifying the revisions being made that are required to implement the Phase II rule, and the revisions IDEM is proposing which go beyond the federal requirements. (BSC)

Response: Due to lengthy state rulemaking procedures and the limiting federal time frame for required state rule adoption, IDEM will not be re-opening the Second Public Comment Period. IDEM is making every effort to be responsive to comments concerning the rules, and has invited all commenters and known relevant associations to participate in question and answer public meeting sessions concerning the two rules. Public comments will be allowed during preliminary adoption, third comment period, if applicable, and final adoption public hearings before the Water Pollution Control Board.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On December 11, 2002, the Water Pollution Control Board (board) conducted the first public hearing/board meeting concerning the development of new rules 327 IAC 15-5-5.5, 327 IAC 15-5-6.5, 327 IAC 15-5-7.5, 327 IAC 15-6-7.3, 327 IAC 15-6-7.5, 327 IAC 15-6-8.5, 327 IAC 15-6-10, 327 IAC 15-6-11, and 327 IAC 15-6-12; and amendments to 327 IAC 15-2-3, 327 IAC 15-2-6, 327 IAC 15-2-8, 327 IAC 15-2-9, 327 IAC 15-3-1, 327 IAC 15-3-2, 327 IAC 15-3-3, 327 IAC 15-5-1, 327 IAC 15-5-2, 327 IAC 15-5-3, 327 IAC 15-5-4, 327 IAC 15-5-5, 327 IAC 15-5-6, 327 IAC 15-5-7, 327 IAC 15-5-8, 327 IAC 15-5-10, 327 IAC 15-5-12, 327 IAC 15-6-1, 327 IAC 15-6-2, 327 IAC 15-6-4, 327 IAC 15-6-5, 327 IAC 15-6-6, and 327 IAC 15-6-7. Comments were made by the following parties:

- Fort Wayne-Allen County Airport Authority (FWACAA)
- Aviation Association of Indiana (AAIA)
- Indiana Water Quality Coalition (IWQC)
- Indiana Home Builders Association (IHBA)
- Indiana Petroleum Council (IPC)
- Indiana Constructors, Incorporated (ICI)

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

Rule 5 Comments:

Comment: They have been tracking these rules since introduction and have raised their concerns at previous board meetings about their serious concern with the rules exceeding federal requirements for Phase II. He is pleased to report that the Coalition has been working very hard with IDNR and IDEM and most of the key concerns had been resolved, therefore, will not be opposing preliminary adoption of the rule. They indicated that there were still some minor issues dealing with stabilization that the Home Builders group had, and was hopeful that those could be worked out before final adoption. (IWQC) (IHBA) (IPC)

Response: This item has been addressed by the addition of language allowing the site owner to demonstrate that adequate erosion and sediment control measures are implemented around the inactive area.

Comment: One of the biggest changes in the rule is that erosion control plans will have to be approved in advance of construction. The current rule only requires that a copy of the plan be sent to the SWCD and local authority for review prior to the commencement to construction. The proposed version requires that the plan be provided to the reviewing agency at least thirty (30) days in advance of construction and that the protect site owner receive notification from the reviewing agency that the plan complies with all the requirements, plus this has to occur before the NOI letter can be filed with the department. Though IDEM did make some changes in response to these concerns, ICI requests the board to reduce the thirty (30) day review period to twenty (20) days in 327 IAC 15-5-6(b)(3). A reference to the section 6 provision that allows the NOI letter to be submitted if the reviewing agency does not respond in a timely fashion should be added to (a)(14) of section 5, otherwise there is a conflict in the rule. (ICI)

Response: Quality Storm Water Pollution Prevention Plans are the foundation of successful storm water pollution prevention during construction. Ten years of experience by the agencies has shown that quality plans are not as common as they should be. Plan review for adequacy is a critical component to the success of the program. The agency requires adequate time to complete a thorough review. The proposed rule allows the agency to have up to a twenty-eight (28) day period for plan review.

There is a conflict in language between 327 IAC 15-5-5(a)(14) and 327 IAC 15-5-6 (b)(3). To correct this conflict the agency will add the following language to 327 IAC 15-5-5(a)(14), "A notification from the SWCD, DNR-DSC or other entity designated by the department as the reviewing agency indicating that the construction plans are sufficient to comply with this rule. This requirement may be waived if the project site owner has not received notification from the reviewing agency within the time frame specified in 327 IAC 15-5-6(b)(3)."

Comment: In 327 IAC 15-2-9, it appears that the project site owners who obtained general permit coverage for construction projects under the current rules will have to refile a plan and submit a new NOI once the new rule becomes effective. This was discussed in earlier meetings and the department had indicated that this was not their intent but no change has been made in the rule. If this language is left in, they believe that it would be a lot of wasted effort on the part of the industry. (ICI)

Response: 327 IAC 15-2-9 states that once the general permit rule is amended all persons currently affected by that rule will be notified and that NOIs would be submitted ninety (90) days after receipt of a notice from the commissioner. Therefore, projects that are currently regulated under Rule 5 would only need to submit a new NOI if they receive a notice from the commissioner asking them to do so.

Comment: In 327 IAC 15-5-7(b)(18), the requirement to make and maintain evaluation reports following storm events shifts the focus of the rule from environmental protection to paperwork. They object to the additional documentation the possibility of getting penalized for poor paperwork. (ICI)

Response: The intent of a self monitoring program is to promote a regularly scheduled program in which erosion and sediment control practices are maintained and repaired. The purpose of an evaluation report is to document the routine self-inspections. The report serves as documentation of corrective actions that are required to keep the project in compliance. The report should be used by project site decision makers to assess deficiencies, determine corrective actions, and document that corrective actions are implemented. An effective self monitoring program will reduce overall project costs by reducing post construction costs associated with cleaning of storm water detention/retention basins, flushing of storm sewers and culverts, removal of sediment from drainage channels and adjoining properties, etcetera.

Comment: They do not agree with the "one-size fits all approach" taken in section 7(b)(16) in requiring unvegetated areas to be stabilized if they are left inactive for fifteen (15) days or more. They emphasize that every construction site is different, therefore, erosion and sediment control measures should address site-specific conditions. Though a sentence has been added since the last meeting the meaning is unclear. They recommend stating that alternative measures "are acceptable" rather than the current "may be acceptable". They suggest that the project site owner be required to state in the erosion control how he will address disturbed areas that will be inactive for fifteen (15) days or longer and be accountable for following the plan. (ICI)

Response: Stabilization of inactive areas is an important part of the system approach to erosion and sediment control. By reducing the erosion potential of inactive areas through stabilization, there will be less pressure on the other implemented erosion and sediment control measures. There may be situations in the field where sediment control used independently of stabilization is not adequate. The proposed rule gives the project site owner more flexibility in choosing alternative methods of surface stabilization and sediment control through out the life of the project, whereas the language proposed by ICI would appear to lock the developer into implementing only those practices designated in the plan.

Comment: Another issue that has been discussed, but not yet addressed, is an appeals process that a project site owner can utilize if it believes that the SWCD, MS4, or other review agency is being unreasonable in the control measures that the agency wants to implement on a site. There should be an impartial administrative review board that can consider such matters so that every dispute doesn't end up in a court of law. (ICI)

Response: The Office of Environmental Adjudication (OEA), created and operating under IC 4-21.5-7, reviews decisions of the commissioner of IDEM. The OEA is the impartial administrative review board the commentor has requested. If the commentor is referring to disagreements with the agency on specific items that have not yet reached the level of an agency action or decision that is reviewable by the OEA, IDEM believes that informal negotiations and discussions are preferable to adding another administrative review body to the permitting process.

Comment: There is a conflict in the rule, on one hand 327 IAC 15-5-6.5(b)(A)(ii) requires that a copy of the completed NOI letter be included in the construction plan. On the other hand, 327 IAC 15-5-5(a)(14) states that the NOI letter cannot be submitted until the construction plan has been approved by the reviewing agency. One of these requirements should be changes so that it is possible to comply with both revisions. (ICI)

Response: There does appear to be a conflict with submittal of the Notice of Intent at the time of plan submittal. The issue raised can be resolved by removing item (ii) from 327 IAC 15-5-6.5(a)(1)(A) and 327 IAC 15-5-6.5(b)(1)(A).

Comment: It needs to be clarified in the rule, most notably in section 6(b), that the "other entity designated by the department for review and verification" is in fact the MS4s with approved programs. (ICI)

Response: This may not always be an MS4. Other entity designated by the department may refer to a local city or county planning department or other local unit of government that is not designated an MS4. The agency plans to supply an updated list on their website providing the names of various designated entities for each county.

Comment: They want to bring their concern about the interaction of Rules 5 and 13 to the board's attention, particularly since they were unable to submit comments for the earlier Rule 13 hearing. The prospect of one-hundred seventy (170) or more different erosion control programs around the state could create great confusion for the construction industry. They urge IDEM to work with local government groups and representatives of other MS4s to develop model programs so there is consistency throughout Indiana. (ICI)

Response: IDEM and DNR-DSC in cooperation with local SWCDs have been actively working with MS4s and regional planning departments in the promotion of MS4 co-permitting. Some inconsistency is inevitable and not uncommon when a local entity develops their own ordinances.

Comment: The proposal greatly expands the regulatory burden on the industry and urges the board to examine whether each element is really needed. (ICI)

Response: The agency has worked very hard to develop an effective regulation, meeting the federal requirements while minimizing the burden

on the regulated community. Quite a number of meetings were held with industry groups and their concerns weighed heavily on decisions involving specific requirements.

Comment: They have some minor concerns as well. 327 IAC 15-2-8 allows IDEM to negate transferability. If the conditions are valid and are met, then IDEM should not be authorized to prohibit transferability. (ICI)

Response: The only aspect of non-transferability that exists is the requirement to submit a new NOI for the new owner. This is the only means for the agency to have a record of the change in ownership and responsibility.

Comment: It appears that the grading of county gravel roads would require a construction plan and this could be clarified in the definition of construction activity. (ICI)

Response: Language was clarified so as not to regulate maintenance of existing gravel roads.

Comment: Notifying the plan review agency and IDEM within forty-eight (48) hours of the actual start of construction activity seems needless. Some clarification is needed on this issue. (ICI)

Response: The expected start date for a project is delayed for various reasons. Notification to the plan review agency will prevent unnecessary travel by site inspectors to sites that have not started construction due to delays or other reasons.

Comment: The material handling provision in 327 IAC 15-5-6.5(b)(7)(H) should be applicable only to the handling and storage of hazardous substances that present a possible threat to the waters of the state. (ICI)

Response: The purpose of the rule is to implement appropriate practices for all possible pollutants that may leave the site and threaten waters of the state.

Comment: The contractor determines some of the information required in the submittal of the construction plan. Therefore, the project site owner does not know how these aspects will be handled when the plan is developed. The rule partly acknowledges this by stipulating that certain information had to be included in the plan only to the extent that it was “under control of the project site owner.” They suggest adding similar language to the provisions regarding off-site activities, soil stockpiles, borrow areas, construction sequence, and material handling/storage. (ICI)

Response: Stockpiles, etcetera, are included in the proposed rule under 327 IAC 15-5-6.5 (a)(5)(C) (see next comment as this citation requires change) and contains language that refers to control by the project site owner. Similar language will be added to 327 IAC 15-5-6.5 (a)(5)(A) and will read “Delineation of all proposed land disturbing activities, including off-site activities that will provide services to the project site and are under the control of the Project Site Owner”. With regard to material storage and handling, it is the intent to have procedures in place to address the containment and control of pollutants that impact water quality. While it is true that the Project Site Owner or their engineer may not be able to predetermine an exact construction sequence describing the relationship between implementation of storm water quality measures and stages of construction activity, they should have the capability of developing a basic level of a construction sequence which can be modified as individual contractors are selected.

Comment: There appears to be some confusion in the numbering of both sections 6 and 6.5 and an incorrect reference to section 12. (ICI)

Response: Section 6 appears to be correct. However, in Section 6.5(a) the numbering is incorrect. The numbering should be corrected beginning at 6.5 (a)(2) through 6.5(a)(8). 6.5(a)(2) through 6.5(a)(8) should be renumbered 6.5(a)(1)(B) through 6.5(a)(1)(H).

The reference to section 12 in 327 IAC 15-5-12 (b) should be changed to 12(c) or sections.

Comment: Section 10(e) mentions a quality assurance plan that is not defined anywhere in the proposed rule. Other sections which referred to a quality assurance plan in earlier versions were changed to a self-monitoring program, but the reference to quality assurance plan still remains in 10(e). If it needs to be left in then an explanation of what it constitutes, is needed. (ICI)

Response: The term should be changed to “self monitoring program” instead of “quality assurance” for consistency in the rule.

Rule 6 Comments

Comment: Concern was expressed with the requirement to obtain an individual NPDES storm water permit due to use of certain stated deicing compounds in amounts in excess of certain stated limits. The limits allegedly date back to ten (10) years ago. Currently, most airports in Indiana are reportedly covered under group storm water permits, which were allowed in the early 1990’s. Each facility has its own unique character, and one, across-the-board rulemaking does not serve the communities, airports, or the citizens. Concern was expressed with the stated limits for urea and glycol compounds, which trigger the requirements of an individual permit. (FWACAA, AAI)

Response: IDEM currently utilizes individual NPDES permits for most storm water discharges associated with airport deicing operations. Since the middle 1990’s, group storm water permits have not been accepted in Indiana, and the existing group permits were terminated in favor of specific facility permits. The purpose of a general permit rule, such as Rule 6, is to make it general enough to be applicable to a wide variety of similar discharge sources. If a discharge is unique, then it is more appropriately covered by a facility-specific individual NPDES permit. The “trigger” limitation language for urea and glycol compounds in the rule was deleted, and the rule language was changed to require individual storm water permits for airports that use any amount of aircraft deicing compounds that have the potential to impact a water of the state.

Comment: The amount of deicing chemical should not be used as a trigger mechanism due to variability of the land area size, chemical usage, and tenant base at airport facilities. Since the size of an airport facility may correlate to the amount of chemicals utilized, a more appropriate trigger for individual permit coverage should be to use a chemical amount per-acre of watershed. Larger facilities will generate more storm water run-off and will likely have larger receiving watersheds, and deicing chemicals should have more dilution. (FWACAA, AAI)

Response: Dilution does not always correspond to a minimal impact on the receiving water. IDEM typically bases pollutant limitations on the amount of pollutant, the average flow of the receiving water, and the ability of the receiving water to handle the pollutant amount. IDEM feels that chemical usage, in any amount, could impact a receiving water, and, as such, should be more appropriately covered under an individual NPDES storm water permit. General storm water permits issued under Rule 6 are not intended to take into account the impact variability of deicing chemicals. The “trigger” limitation language for urea and glycol compounds in the rule was deleted, and the rule language was changed to require individual storm water permits for airports that use any amount of aircraft deicing compounds that have the potential to impact a water of the state.

Comment: Many changes have occurred in the airport industry relative to deicing chemicals. The current rule language is too broad and open-

ended in terms of regulating other pollutants which could be discharged into the waters of the state. The suggestion was given to have individual permit exemptions granted for using environmentally friendly substitutes for ethylene glycol, such as potassium acetate and propylene glycol, which have been developed over the last ten (10) years. The other suggested exemption is regarding the use of urea, not for transportation-related purposes, but for farming operations that use thousands of acres of airport land for agricultural purposes. The industry wants to continue to work with both IDEM and the board to help make these regulations as meaningful as possible. (FWACAA, AAI)

Response: The use of more environmentally friendly substitutes is a desirable practice to IDEM. However, the intent of a general permit is to make it general enough to be applicable to a wide variety of similar discharge sources, and the use of different chemical compounds is more appropriately covered by site-specific individual NPDES storm water permits. As for the use of urea for farming operations on airport land, the farming activity is not regulated by Rule 6. IDEM encourages the use of best management practices related to farming application of fertilizers and pesticides, but farming activities are already exempt from the storm water regulations.

Comment: The definition of airport deicing operations should be revised to take into account the various forms and dilution concentrations of glycol compounds used at airports. The suggested recommendation is that the one hundred thousand gallons of glycol compounds be further specified as one hundred percent (100%) concentrate and it be focused on ethylene glycol. This focus is further justified by a belief that U.S. EPA's only deicing chemical reporting requirement is for the use of ethylene glycol. (FWACAA, AAI)

Response: The definition was revised to eliminate reference to specific types of deicing compounds. If any amount, type, or concentration of deicing compound is used, an individual NPDES storm water permit, because it can be written to take into account chemical type and concentration, would provide more appropriate coverage than a Rule 6 permit.

Comment: A suggestion was raised to allow a two-year implementation period for airports to come into compliance with the new Rule 6 requirements, commencing from the effective date of the new rule. (FWACAA, AAI)

Response: Airports will not be treated any differently than other types of industrial facilities subject to Rule 6. Furthermore, gradual implementation of best management practices and other means to reduce storm water pollution is already allowed in the rule. The rule allows for continual review of the facility's storm water program to ensure that storm water pollution is being minimized and receiving waters are not being significantly impacted. Pollution controls and practices may be added or changed at any time during the permit term.

Comment: Concerns were raised over the case-by-case basis for requiring an individual storm water permit for airports if the airport uses deicing chemicals in amounts less than the limits stated in the rule. The case-by-case determination is too vague. If the stated limits have scientific basis, then the commissioner should not need discretionary authority. A willingness was expressed to work with IDEM to find limits that are developed using scientific rationale. (AAI)

Response: The language referring to commissioner determination and threshold deicing chemical amounts was deleted. To improve clarity, the rule language was changed to require individual storm water permits for any airport that uses aircraft deicing chemicals, regardless of the amount.

Comment: The definition of airport deicing operation was not in the original version of this rule in the September 2001 Indiana Register. They are not aware that any of the airports was contacted regarding this definition. (AAI)

Response: The definition was originally added based on comments IDEM received from the regulated community concerning what criteria was used to require individual storm water permits for airports. The definition, which was based on federal language, was intended to help clarify that issue. However, after additional comments and discussions, the definition was revised to specify any deicing compounds.

Comment: There are no apparent environmental improvements to be gained with this rule. (AAI)

Response: Rule 6 is federally required, and addresses storm water pollution from industrial facilities. By permitting categories of industry with the greatest potential to cause pollutant impacts to waters of the state, IDEM is fulfilling the federal requirements and initiating a best management practice-driven solution to storm water pollution from industrial sources. Once storm water pollution from these industrial sources is minimized, the quality of receiving waters in the state will improve chemically and biologically, thus potentially enabling the waters to support beneficial uses. The rule forces industrial facilities to assess their facilities for appropriate controls and practices, so that storm water discharge quality is improved.

Comment: Concern was raised with the fiscal impact of the rule, specifically to the airport industry. The cost of the rule on airports was requested, both for airports already permitted under Rule 6 and those that will be subject to the rule based on rule revisions. Emphasis was placed on the financial problems of the aviation industry since the events of September 11th, which has already caused additional costs for airports. (AAI)

Response: Since storm water discharges for the airport industrial category are already regulated, the original fiscal analysis was not changed. The revised rule language pertaining to airports is an attempt to clarify existing state program operating procedures at IDEM. IDEM currently requires airport facilities with deicing chemicals to obtain individual storm water permits. The rule simply clarifies the situations when airports can remain under Rule 6 coverage (that is, when they have on-site maintenance, and do not use aircraft deicing chemicals).

327 IAC 15-2-3	327 IAC 15-5-8
327 IAC 15-2-6	327 IAC 15-5-10
327 IAC 15-2-8	327 IAC 15-5-11
327 IAC 15-2-9	327 IAC 15-5-12
327 IAC 15-3-1	327 IAC 15-6-1
327 IAC 15-3-2	327 IAC 15-6-2
327 IAC 15-3-3	327 IAC 15-6-4
327 IAC 15-5-1	327 IAC 15-6-5
327 IAC 15-5-2	327 IAC 15-6-6
327 IAC 15-5-3	327 IAC 15-6-7
327 IAC 15-5-4	327 IAC 15-6-7.3
327 IAC 15-5-5	327 IAC 15-6-7.5
327 IAC 15-5-6	327 IAC 15-6-8.5
327 IAC 15-5-6.5	327 IAC 15-6-10
327 IAC 15-5-7	327 IAC 15-6-11
327 IAC 15-5-7.5	327 IAC 15-6-12

SECTION 1. 327 IAC 15-2-3 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-2-3 NPDES general permit rule applicability requirements

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. 3. (a) A general permit rule may regulate all designated categories of point sources for which a general permit rule exists, except:

- (1) as provided under section 6 or 9 of this rule or the applicable general permit rule; and
- (2) point source discharges meeting the applicability requirements of a general permit rule, who are already subject to individual NPDES permits prior to the effective date of a general permit rule.

(b) Persons excluded from general permit rule regulation solely because they have an existing individual NPDES permit may request to be regulated under a general permit rule and may request that the individual NPDES permit be revoked or modified to remove the point source from the existing permit. Upon revocation or expiration of the individual NPDES permit, the general permit rule shall apply to such point source discharges regulated under this article. **This allowance to change from an individual NPDES permit to a general NPDES permit does not apply to municipal separate storm sewer system permittees who were issued an individual NPDES permit before January 1, 2000.**

(c) A person that holds an individual NPDES permit may have discharges regulated under an applicable general permit rule if such discharges are not addressed in the individual permit. (*Water Pollution Control Board; 327 IAC 15-2-3; filed Aug 31, 1992, 5:00 p.m.: 16 IR 17*)

SECTION 2. 327 IAC 15-2-6 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-2-6 Exclusions

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. 6. (a) **Except as provided in subsection (b),** an individual NPDES permit issued under 327 IAC 5 is required for a discharge to a receiving stream identified as an outstanding state resource water, an exceptional use water, or an outstanding national resource water as defined under 327 IAC 2-1-2(3), 327 IAC 2-1-11(b), or 327 IAC 2-1.5-4 or which would significantly lower the water quality, as defined under 327 IAC 5-2-11.3(b)(1) of such a water downstream of the point source discharge.

(b) **A discharge to an outstanding national resource water, outstanding state resource water or exceptional use water may be permitted under 327 IAC 15-5, 327 IAC 15-6, or 327 IAC 15-13 if the commissioner determines the discharge will not significantly lower the water quality, as defined under 327 IAC 5-2-11.3(b)(1) of such a water downstream of that point source discharge.** (*Water Pollution Control Board; 327 IAC 15-2-6; filed Aug 31, 1992, 5:00 p.m.: 16 IR 17; filed Jan 14, 1997,*

12:00 p.m.: 20 IR 1476)

SECTION 3. 327 IAC 15-2-8 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-2-8 Transferability of notification requirements

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 4-22-2; IC 13-11-2; IC 13-18-4

Sec. 8. (a) **Unless other requirements are found within specific rules under this article**, compliance with the NOI letter submission requirements under this article may not be transferred if ownership/operation of a facility is transferred to a new person; that person must submit a NOI letter pursuant to 327 IAC 15-3 or seek coverage under an individual NPDES permit pursuant to 327 IAC 5. **the following occurs:**

(1) **The current permittee notifies the commissioner at least thirty (30) days in advance of the proposed transfer date in subdivision (2).**

(2) **A written agreement containing a specific date for transfer of permit responsibility and coverage between the current permittee and the transferee (including acknowledgment that the existing permittee is liable for violations up to that date, and that the transferee is liable for violations from that date on) is submitted to the commissioner.**

(3) **The transferee certifies in writing to the commissioner intent to operate the facility without making such material and substantial alterations or additions to the facility as would significantly change the nature or quantities of pollutants discharged.**

(b) **A person who filed a NOI letter under this article and who subsequently was requested by the commissioner to file an application for an individual NPDES permit has one hundred twenty (120) days from the time of the request by the commissioner to file the application. The commissioner may require that a new NOI letter be submitted rather than agreeing to the transfer of the NOI letter requirements.** (*Water Pollution Control Board; 327 IAC 15-2-8; filed Aug 31, 1992, 5:00 p.m.: 16 IR 18*)

SECTION 4. 327 IAC 15-2-9 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-2-9 Special requirements for NPDES general permit rule

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

Sec. 9. (a) If a general permit rule is amended, all persons regulated by the affected general permit rule must be notified by first class mail of the amendment by the commissioner. ~~within sixty (60) days after the effective date of the amended rule.~~ Those persons notified by the commissioner under this subsection shall:

(1) apply for an individual NPDES permit under 327 IAC 5-3; ~~within one hundred twenty (120) days after the effective date of the amended rule;~~ or

(2) submit a **complete** NOI letter containing the information required in 327 IAC 15-3-2 and the amended rule; ~~within ninety (90) days after the effective date of the amended rule.~~ **receipt of the notice from the commissioner.**

(b) The commissioner may require any person either with an existing discharge subject to the requirements of this article or who is proposing a discharge that would otherwise be subject to the requirements of this article to apply for and obtain an individual NPDES permit if one (1) of the six (6) cases listed in this subsection occurs. Interested persons may petition the commissioner to take action under this subsection. Cases where individual NPDES permits may be required include the following:

(1) The applicable requirements contained in this article are not adequate to ensure compliance with:

(A) water quality standards under 327 IAC 2-1 or 327 IAC 2-1.5; or

(B) the provisions that implement water quality standards contained in 327 IAC 5.

(2) The person is not in compliance with the terms and conditions of the general permit rule.

(3) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants from the point source.

(4) Effluent limitations guidelines that are more stringent than the requirements in the general permit rule are subsequently promulgated for point sources regulated by the general permit rule.

(5) A water quality management plan containing more stringent requirements applicable to such point source is approved.

(6) Circumstances have changed since the activity regulated under this article began so that the discharger is no longer appropriately controlled under the general permit rule, or either a temporary or permanent reduction or elimination of the

authorized discharge is necessary.

(c) If, under subsection (b), the commissioner requires an individual NPDES permit, pursuant to 327 IAC 5-3, the commissioner shall notify the person in writing that an individual NPDES permit application is required. This notice shall be issued pursuant to IC 4-21.5 and shall also include the following:

- (1) A brief statement of the reasons for this decision.
- (2) An application form.
- (3) A statement setting a time for the person to file the application.
- (4) A statement that on the effective date of the individual NPDES permit, the general permit rule, as it applies to the individual person, shall no longer apply.

The commissioner may grant additional time upon request of the applicant for completion of the application.

(d) ~~An operator, as defined in 327 IAC 15-5-4(7), of a storm water discharge~~ **A person having financial responsibility or operational control for a facility, project site, or municipal separate storm sewer system area and the associated storm water discharges**, that meets the applicability requirements of the general permit rule and is not covered by an existing individual NPDES permit, must submit an application under 40 CFR 122.26 as published in the Federal Register on November 16, 1990, and 327 IAC 5-3 if the operator seeks to cover the discharge under an individual permit.

(e) On the effective date of an individual NPDES permit that is issued to a person regulated under this article, this article no longer applies to that person.

(f) Persons with a discharge meeting all the applicability criteria of more than one (1) general permit rule shall comply with all applicable general permit rules. (*Water Pollution Control Board; 327 IAC 15-2-9; filed Aug 31, 1992, 5:00 p.m.: 16 IR 18; errata filed Sep 10, 1992, 12:00 p.m.: 16 IR 65; errata, 16 IR 751; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1476*)

SECTION 5. 327 IAC 15-3-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-3-1 Purpose

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. 1. The purpose of this rule is to establish the requirements and procedures for submitting ~~a~~ **an** NOI letter under a general permit rule. **Unless otherwise specified under an applicable general permit rule**, the NOI letter shall be sent to the following address:

Indiana Department of Environmental Management
Office of Water ~~Management~~ **Quality**
~~105 South Meridian Street~~ **100 North Senate Avenue**
P.O. Box 6015
Indianapolis, Indiana 46206
Attention: Permits Section, General Permit Desk

(*Water Pollution Control Board; 327 IAC 15-3-1; filed Aug 31, 1992, 5:00 p.m.: 16 IR 19; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 6. 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 for permittees covered under 327 IAC 15-5 and 327 IAC 15-13**, 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, **e-mail address (if available)**, 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 and, if the section, township, and range are provided,~~ 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 7. 327 IAC 15-3-3 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-3-3 Deadline for submittal of a NOI letter; additional requirements

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. 3. (a) Any person proposing a new discharge that will be subject to a general permit rule, except for construction activity under 327 IAC 15-5 and **municipal separate storm sewer system discharges under 327 IAC 15-13**, shall submit ~~a an~~ NOI letter and additional information as required by the applicable general permit rule at least one hundred eighty (180) days before the date on which the discharge is to commence unless permission for a later date has been granted by the commissioner or is established in the applicable general permit rule. A construction activity NOI letter shall be submitted in accordance with 327 IAC 15-5-6. **A municipal separate storm sewer system NOI letter shall be submitted in accordance with 327 IAC 15-13-6 and 327 IAC 15-13-9.**

(b) Any person ~~operating~~ **requesting** coverage under a general permit rule with an existing discharge shall submit an NOI letter within ninety (90) days of the effective date of the applicable general permit rule, unless permission for a later date has been granted by the commissioner or is established in **327 IAC 15-2-9(a)(3)** or the applicable general permit rule. *(Water Pollution Control Board; 327 IAC 15-3-3; 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 898; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 8. 327 IAC 15-5-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-5-1 Purpose

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. 1. The purpose of this rule is to ~~reduce pollutants principally sediment as a result of soil erosion; in establish requirements for storm water discharges into surface waters of the state from sites where construction activity disturbs five (5) acres or more of the site. However, in contemplation of recent federal court decisions, persons with sites greater than one (1) acre but less than five (5) acres are invited to comply with this rule as well.~~ **from construction activities of one (1) acre or more so that the public health, existing water uses, and aquatic biota are protected.** *(Water Pollution Control Board; 327 IAC 15-5-1; filed Aug 31, 1992, 5:00 p.m.: 16 IR 23; errata, 16 IR 898; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 9. 327 IAC 15-5-2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-5-2 Applicability of general permit rules

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; IC 14-34

Sec. 2. (a) The requirements under this rule apply to all persons who:

(1) do not obtain an individual NPDES permit under 327 IAC 15-2-6;

(2) meet the general permit rule applicability requirements under 327 IAC 15-2-3; and

(3) are involved in construction activity, ~~which includes clearing, grading, excavation, and other land disturbing activities;~~ except operations that result in the **land** disturbance of less than ~~five (5) acres~~ **one (1) acre** of total land area **as determined under**

subsection (h) and which are not part of a larger common plan of development or sale.

(b) The requirements under this rule do not apply to persons who are involved in:

- (1) agricultural land disturbing activities; or
- (2) forest harvesting activities.

(c) The requirements under this rule do not apply to the following activities, provided other applicable permits contain provisions requiring immediate implementation of soil erosion control measures:

- (1) Landfills that have been issued a certification of closure under 329 IAC 10.
- (2) Coal mining activities permitted under IC 14-34.
- (3) Municipal solid waste landfills that are accepting waste pursuant to a permit issued by the department under 329 IAC 10 that contains equivalent storm water requirements, including the expansion of landfill boundaries and construction of new cells either within or outside the original solid waste permit boundary.

(d) It will be the responsibility of the project site owner to complete a sufficient notice of intent letter and ensure that a sufficient construction plan is completed and submitted in accordance with section 6 of this rule. It will be the responsibility of the project site owner to ensure compliance with this rule during the construction activity and implementation of the construction plan, and to notify the department with a sufficient notice of termination letter. However, all persons engaging in construction activities on a permitted project site must comply with the requirements of this rule.

(e) For off-site construction activities that provide services (for example, road extensions, sewer, water, and other utilities) to a permitted project site, these off-site activity areas must be considered a part of the permitted project site, when the activity is under the control of the project site owner.

(f) For an individual lot within a project site permitted under this rule and where land disturbance is expected to be one (1) acre or more, the individual lot owner must complete their own notice of intent letter, apply for a permit under this rule, and ensure that a sufficient construction plan is completed and submitted in accordance with section 6 of this rule.

(g) An individual lot within a permitted project site, where the land disturbance is less than one (1) acre, is considered part of the permitted project site, and the individual lot operator must comply with the provisions and requirements of the plan developed by the project site owner and section 7.5 of this rule. Submittal of a notice of intent and construction plans is not required for an individual lot within a permitted project site that has less than one (1) acre of land disturbance. Strip developments will be considered as one (1) project site and must comply with this rule unless the total combined disturbance on all individual lots is less than one (1) acre and is not part of a larger common plan of development or sale.

(h) To determine if multi-lot project sites are regulated by this rule, the area of land disturbance shall be calculated by adding the total area of land disturbance for improvements, such as, roads, utilities, or common areas, and the expected total disturbance on each individual lot, as determined by the following:

- (1) For a single-family residential project site where the lots are one-half (0.5) acre or more, one-half (0.5) acre of land disturbance must be used as the expected lot disturbance.
- (2) For a single-family residential project site where the lots are less than one-half (0.5) acre in size, the total lot must be calculated as being disturbed.
- (3) To calculate lot disturbance on all other types of projects sites, such as industrial and commercial project sites, a minimum of one (1) acre of land disturbance must be used as the expected lot disturbance, unless the lots are less than one (1) acre in size, in which case the total lot must be calculated as being disturbed.

(i) Submittal of a notice of intent and construction plans is not required for construction activities associated with a single family residential dwelling disturbing less than five (5) acres, when the dwelling is not part of a larger common plan of development or sale. Provisions in section 7(a)(1) through 7(a)(5) and 7(a)(10) through 7(a)(19) of this rule *[sic.]* shall be complied with throughout construction activities and until the areas are permanently stabilized.

(j) The department may waive the permit requirements under this rule for construction activities that disturb less than five (5) acres where the waiver applicant, determined by the commissioner, certifies that:

- (1) a total maximum daily load (TMDL) for the pollutants of concern from storm water discharges associated with

construction activity indicates that controls on construction site discharges are not needed to protect water quality; or
(2) a site discharging to nonimpaired waters that does not require TMDLs by an equivalent analysis that demonstrates water quality is not threatened by storm water discharges has determined allocations for small construction sites for the pollutants of concern or determined that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety.
(Water Pollution Control Board; 327 IAC 15-5-2; filed Aug 31, 1992, 5:00 p.m.: 16 IR 23; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 10. 327 IAC 15-5-3 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-5-3 General permit rule boundary

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. 3. Facilities existing ~~This general permit covers all lands~~ within the boundaries of the state of Indiana. affected by this rule are regulated under this rule. (Water Pollution Control Board; 327 IAC 15-5-3; filed Aug 31, 1992, 5:00 p.m.: 16 IR 23; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 11. 327 IAC 15-5-4 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-5-4 Definitions

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 14-32; IC 14-34

Sec. 4. In addition to the definitions contained in ~~IC 13-7-1, IC 13-1-3-1.5,~~ **IC 13-11-2**, 327 IAC 1, 327 IAC 5, and 327 IAC 15-1-2, the following definitions apply throughout this rule:

(1) ~~“Agricultural land use”~~ **conservation practices**” means use of land for the production of animal or plant life, including forestry, pasturing or yarding of livestock, and planting, growing, cultivating, and harvesting crops for human or livestock consumption. practices that are constructed on agricultural land for the purposes of controlling soil erosion and sedimentation. These practices include grass waterways, sediment basins, terraces, and grade stabilization structures.

(2) **“Agricultural land disturbing activity”** means tillage, planting, cultivation, or harvesting operations for the production of agricultural or nursery vegetative crops. The term also includes pasture renovation and establishment, the construction of agricultural conservation practices, and the installation and maintenance of agricultural drainage tile. For purposes of this rule, the term does not include land disturbing activities for the construction of agricultural related facilities, such as:

- (A) barns;
- (B) buildings to house livestock;
- (C) roads associated with infrastructure;
- (D) agricultural waste lagoons and facilities;
- (E) lakes and ponds;
- (F) wetlands; and
- (G) other infrastructure.

(3) **“Commissioner”** refers to the commissioner of the department of environmental management.

(4) **“Construction activity”** means land disturbing activities, and land disturbing activities associated with the construction of infrastructure and structures. This term does not include routine ditch maintenance or minor landscaping projects.

(5) **“Construction plan”** means a representation of a project site and all activities associated with the project. The plan includes the location of the project site, buildings and other infrastructure, grading activities, schedules for implementation and other pertinent information related to the project site. A storm water pollution prevention plan is a part of the construction plan.

(6) **“Construction site access”** means a stabilized stone surface at all points of ingress or egress to a project site, for the purpose of capturing and detaining sediment carried by tires of vehicles or other equipment entering or exiting the project site.

(7) **“Contractor”** or **“subcontractor”** means an individual or company hired by the project site or individual lot owner, their agent, or the individual lot operator to perform services on the project site.

(8) **“Department”** refers to the department of environmental management.

(9) “Developer” means:

(A) any person financially responsible for construction activity; or

(B) an owner of property who sells or leases, or offers for sale or lease, any lots in a subdivision.

(10) “DNR-DSC” means the division of soil conservation of the department of natural resources.

(11) “Erosion” means the detachment and movement of soil, sediment, or rock fragments by water, wind, ice, or gravity.

(12) “Erosion and sediment control measure” means a practice, or a combination of practices, to control erosion and resulting sedimentation, and/or off-site damages.

(13) “Erosion control plan” means a written description and site plan of pertinent information concerning erosion control measures.

(14) “Erosion and sediment control system” means the use of appropriate erosion and sediment control measures to minimize sedimentation by first reducing or eliminating erosion at the source and then as necessary, trapping sediment to prevent it from being discharged from or within a project site.

(15) “Final stabilization” means the establishment of permanent vegetative cover or the application of a permanent nonerosive material to areas where all land disturbing activities have been completed and no additional land disturbing activities are planned under the current permit.

(16) “Grading” means the cutting and filling of the land surface to a desired slope or elevation.

(17) “Impervious surface” means surfaces, such as pavement and rooftops, which prevent the infiltration of storm water into the soil.

(18) “Individual building lot” means a single parcel of land within a multi-parcel development.

(19) “Individual lot operator” means a contractor or subcontractor working on an individual lot.

(20) “Individual lot owner” means a person who has financial control of construction activities for an individual lot.

(21) “Land disturbing activity” means any manmade change of the land surface, including removing vegetative cover that exposes the underlying soil, excavating, filling, transporting, and grading. In the context of this rule, agricultural land disturbing activities, coal mining activities permitted by the DNR under IC 13-4.1, and active landfills permitted by the Indiana department of environmental management where the permit requires soil erosion control are excluded.

(22) “Nonagricultural land use” means commercial use of land for the manufacturing and wholesale or retail sale of goods or services; residential or institutional use of land intended primarily to shelter people; highway use of land including lanes, alleys, and streets; and other land uses not included in agricultural land use.

(23) “Larger common plan of development or sale” means a plan, undertaken by a single project site owner or a group of project site owners acting in concert, to offer lots for sale or lease; where such land is contiguous, or is known, designated, purchased or advertised as a common unit or by a common name, such land shall be presumed as being offered for sale or lease as part of a larger common plan. The term also includes phased or other construction activity by a single entity for its own use.

(24) “Measurable storm event” means a precipitation event that results in a total measured precipitation accumulation equal to, or greater than, one-half (0.5) inch of rainfall.

(25) “MS4 area” means a land area comprising one (1) or more places that receives coverage under one (1) NPDES storm water permit regulated by 327 IAC 15-13 or 327 IAC 5-4-6(a)(3) and 327 IAC 5-4-6(a)(4).

(26) “MS4 operator” means the person responsible for development, implementation, or enforcement of the minimum control measures for a designated MS4 area regulated under 327 IAC 15-13.

(27) “Municipal separate storm sewer system” or “MS4” has the same meaning set forth at 327 IAC 15-13-5(42).

(28) “Peak discharge” means the maximum rate of flow during a storm, usually in reference to a specific design storm event.

(29) “Permanent stabilization” means the establishment, at a uniform density of seventy percent (70%) across the disturbed area, of vegetative cover or permanent nonerosive material that will ensure the resistance of the soil to erosion, sliding, or other movement.

(30) “Phasing of construction” means sequential development of smaller portions of a large project site, stabilizing each portion before beginning land disturbance on subsequent portions, to minimize exposure of disturbed land to erosion.

(31) “Project site” means the entire area on which construction activity is to be performed.

(32) “Operator” (33) “Project site owner” means the person required to submit the NOI letter under this article, and required to comply with the terms of this rule, including either of the following:

(A) A developer.

(B) A person who has financial and operational control of construction activities, and project plans and specifications,

including the ability to make modifications to those plans and specifications.

- (8) "Site" means the entire area included in the legal description of the land on which land disturbing activity is to be performed.
- (31) "Sediment" means solid material (both mineral and organic) that is in suspension, is being transported, or has been moved from its site of origin by air, water, gravity, or ice and has come to rest on the earth's surface.
- (32) "Sedimentation" means the settling and accumulation of unconsolidated sediment carried by storm water run-off.
- (33) "Soil" means the unconsolidated mineral and organic material on the surface of the earth that serves as the natural medium for the growth of plants.
- (34) "Soil and Water Conservation District" or "SWCD" means a political subdivision established under IC 14-32.
- (35) "Storm water pollution prevention plan" means a plan developed to minimize the impact of storm water pollutants resulting from construction activities.
- (36) "Storm water quality measure" means a practice, or a combination of practices, to control or minimize pollutants associated with storm water run-off.
- (37) "Strip development" means a multi-lot project where building lots front on an existing road.
- (38) "Subdivision" means any land that is divided or proposed to be divided into lots, whether contiguous or subject to zoning requirements, for the purpose of sale or lease as part of a larger common plan of development or sale.
- (39) "Temporary stabilization" means the covering of soil to ensure its resistance to erosion, sliding, or other movement. The term includes vegetative cover, anchored mulch, or other nonerosive material applied at a uniform density of seventy percent (70%) across the disturbed area.
- (40) "Tracking" means the deposition of soil that is transported from one (1) location to another by tires, tracks of vehicles, or other equipment.
- (41) "Trained individual" means an individual who is trained and experienced in the principles of storm water quality, including erosion and sediment control as may be demonstrated by state registration, professional certification, experience, or completion of coursework that enable the individual to make judgments regarding storm water control or treatment and monitoring.

(Water Pollution Control Board; 327 IAC 15-5-4; filed Aug 31, 1992, 5:00 p.m.: 16 IR 23; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 12. 327 IAC 15-5-5 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-5-5 Notice of intent letter requirements

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

Sec. 5. In addition to the NOI letter requirements under 327 IAC 15-5-3, (a) The following information must be submitted by the operator project site owner with a complete NOI letter under this rule:

- (1) Name, mailing address, and location of the project site for which the notification is submitted.
- (2) The project site owner's name, address, telephone number, e-mail address (if available), ownership status as federal, state, public, private, or other entity.
- (3) Contact person (if different than project site owner), person's name, company name, address, e-mail address (if available), and telephone number.
- (4) A brief description of the construction project, including but not limited to, a statement of the total acreage of the project site. Total acreage claimed in the NOI letter shall be consistent with the acreage covered in the construction plan.
- (5) Estimated timetable dates for land disturbing initiation and completion of construction activities, and installation of erosion control measures. Within forty-eight (48) hours of the initiation of construction activity, the project site owner must notify the commissioner and the appropriate plan reviewing agency of the actual project start date.
- (6) The latitude and longitude of the approximate center of the project site to the nearest fifteen (15) seconds, and the nearest quarter section, township, range, and civil township in which the project site is located.
- (7) Total impervious surface area, in square feet, of the final project site including structures, roads, parking lots, and other similar improvements.
- (8) The number of acres to be involved in land disturbing the construction activities.
- (9) Proof of publication in a newspaper of general circulation in the affected area that notified the public that a construction activity is to commence, that states, "(Company name, address) is submitting an NOI letter to notify the Indiana Department of Environmental Management of our intent to comply with the requirements under 327 IAC 15-5 to discharge storm water from construction activities for the following project: (name of the construction project, address

of the location of the construction project). Run-off from the project site will discharge to (stream(s) receiving the discharge(s)).”.

(10) As applicable, a list of all MS4 areas designated under 327 IAC 15-13 within which the project site lies.

~~(4)~~ (11) A written certification by the operator that:

(A) the ~~erosion control~~ **storm water quality** measures included in the ~~erosion control~~ **construction** plan comply with the requirements under sections **6.5, 7, and 9 7.5** of this rule and that the **storm water pollution prevention** plan complies with **all applicable federal, state, county, or and** local ~~erosion control~~ **storm water** requirements;

(B) the ~~erosion control~~ measures **required by section 7 of this rule** will be implemented in accordance with the **storm water pollution prevention** plan;

(C) ~~verification that an appropriate state, county, or local erosion control authority and if the projected land disturbance is one (1) acre or more, the applicable soil and water conservation district office have or other entity designated by the department, has been sent a copy of the construction plan for review; and~~

(D) storm water quality measures beyond those specified in the storm water pollution prevention plan will be implemented during the life of the permit if necessary to comply with section 7 of this rule; and

~~(E) verification that (E) implementation of the erosion control plan storm water quality measures will be conducted inspected by personnel trained in erosion control practices. trained individuals.~~

~~(5) Proof of publication in a newspaper of general circulation in the affected area that notified the public that a construction under this rule is to commence.~~

(12) 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.

(13) The NOI letter must be signed by a person meeting the signatory requirements in 327 IAC 15-4-3(g).

(14) A notification from the SWCD, DNR-DSC, or other entity designated by the department as the reviewing agency indicating that the constructions plans are sufficient to comply with this rule.

(b) Send NOI letters to:

Attention: Rule 5 Storm Water Coordinator

Indiana Department of Environmental Management

Office of Water Quality, Urban Wet Weather Section

100 North Senate Avenue

P.O. Box 6015

Indianapolis, Indiana 46206-6015.

(Water Pollution Control Board; 327 IAC 15-5-5; filed Aug 31, 1992, 5:00 p.m.: 16 IR 24; 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 13. 327 IAC 15-5-6 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-5-6 Submittal of an NOI letter and construction plans

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

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

Sec. 6. (a) **After the project site owner has received notification from the reviewing agency that the construction plans meet the requirements of the rule or the review period outlined in subsection (b)(3) has expired, all NOI letter information required under ~~327 IAC 15-3~~ and section 5 of this rule shall be submitted to the commissioner at least forty-eight (48) hours prior to the initiation of land disturbing activities at the site. A copy of the completed NOI letter must also be submitted to all SWCDs, or other entity designated by the department, where the land disturbing activities are to occur. If the NOI letter is determined to be deficient, the project site owner must address the deficient items and submit an amended NOI letter to the commissioner at the address specified in section 5 of this rule.**

(b) **For a project site where the proposed land disturbance is one (1) acre or more as determined under section 2 of this rule, the following requirements must be met:**

(1) **The following information must be submitted:**

(A) **A construction plan, including the storm water pollution prevention plan, which meets the requirements of sections 6.5, 7, and 7.5 of this rule, must be submitted prior to the initiation of any land disturbing activities to the appropriate SWCD, or other entity designated by the department for review and verification that the plan meets the requirements**

of the rule. If the construction activity will occur in more than one (1) SWCD, the project site owner may request a single coordinated review in accordance with subsection (c)(3).

(2) If the construction plan is determined to be deficient, the SWCD, DNR-DSC, or other entity designated by the department as the reviewing agency may require modifications, terms, and conditions as necessary to meet the requirements of the rule. The initiation of construction activity following notification by the reviewing agency that the plan does not meet the requirements of the rule is a violation and subject to enforcement action. If notification of a deficient plan is received after the review period outlined in subdivision (3) and following commencement of construction activities, the plans must be modified to meet the requirements of the rule and resubmitted within fourteen (14) days of receipt of the notification of deficient plans.

(3) If the project site owner does not receive notification from the reviewing agency that the plan meets the requirements of the rule within twenty-eight (28) days after the plan is received by the reviewing agency, the project site owner may submit the NOI letter information.

(4) The following apply for a project where construction activity occurs inside an MS4 area regulated under 327 IAC 15-13:

(A) A copy of the completed NOI letter must be submitted to the appropriate MS4 operators.

(B) The project site owner must comply with all appropriate ordinances and regulations within the MS4 area related to storm water discharges. The MS4 operator ordinance will be considered to have the same authority as this rule within the regulated MS4 area.

(c) For a project that will occur in more than one (1) jurisdiction, such as an SWCD or regulated MS4 area, the following must be met:

(1) Project site owners of project sites occurring in multiple MS4 areas, but not in nondesignated areas, shall submit the information required in this subsection to each appropriate MS4 operator.

(2) Project site owners of project sites occurring in one (1) or more MS4 areas and nondesignated areas shall submit the information required in subsection (b) and this subsection to all appropriate MS4 operators, and the SWCD or other entity designated by the department.

(3) Project site owners of project sites occurring in multiple nondesignated areas, but not occurring within an MS4 area, may request a single coordinated review through the DNR-DSC office at the following address:

402 West Washington Street

Room W265

Indianapolis, Indiana 46204.

Upon acceptance of the request, the DNR-DSC will coordinate the plan review with appropriate SWCDs and other entities designated by the department.

(Water Pollution Control Board; 327 IAC 15-5-6; filed Aug 31, 1992, 5:00 p.m.: 16 IR 24; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 14. 327 IAC 15-5-6.5 IS ADDED TO READ AS FOLLOWS:

327 IAC 15-5-6.5 Requirements for construction plans

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

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

Sec. 6.5. (a) For project sites that do not meet the criteria in subsection (b), the project site owner shall develop a set of construction plans. Storm water quality measures included in the plan must achieve the minimum project site requirements specified in section 7 of this rule and meet the design criteria, standards, and specifications established in the Indiana Storm Water Quality Manual* or similar guidance documents approved for use by the department.

(1) The construction plans must include the following:

(A) Project narrative and supporting documents, including the following information:

(i) An index indicating the location, in the construction plans, of all required items in section 6.5(a)(1) through 6.5(a)(8) of this rule *[sic.]*.

(ii) Copy of the completed NOI letter for the project site.

(iii) Description of the nature and purpose of the project.

(iv) Legal description of the project site. The description should be to the nearest quarter section, township, and range, and include the civil township.

- (v) Soil properties, characteristics, limitations, and hazards associated with the project site and the measures that will be integrated into the project to overcome or minimize adverse soil conditions.
 - (vi) General construction sequence of how the project site will be built, including phases of construction.
 - (vii) Hydrologic Unit Code (14 Digit) available from the United States Geological Survey (USGS).
 - (viii) A reduced plat or project site map showing the lot numbers, lot boundaries, and road layout and names. The reduced map must be legible and submitted on a sheet or sheets no larger than eleven (11) inches by seventeen (17) inches for all phases or sections of the project site.
 - (ix) Identification of any other state or federal water quality permits that are required for construction activities associated with the owner's project site.
- (2) Vicinity map depicting the project site location in relationship to recognizable local landmarks, towns, and major roads, such as a USGS topographic quadrangle map, or county or municipal road map.
- (3) An existing project site layout that must include the following information:
- (A) Location and name of all wetlands, lakes, and water courses on, or adjacent to, the project site.
 - (B) Location of all existing structures on the project site.
 - (C) One hundred (100) year floodplains, floodway fringes, and floodways. Please note if none exist.
 - (D) Soil map of the predominant soil types, as determined by the United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS) Soil Survey, or an equivalent publication, or as determined by a soil scientist. A soil legend must be included with the soil map.
 - (E) Identification and delineation of vegetative cover such as grass, weeds, brush, and trees on the project site.
 - (F) Land use of all adjacent properties.
 - (G) Existing topography at a contour interval appropriate to indicate drainage patterns.
- (4) Final project site layout, including the following information:
- (A) Location of all proposed site improvements, including roads, utilities, lot delineation and identification, proposed structures, and common areas.
 - (B) One hundred (100) year floodplains, floodway fringes, and floodways. Please note if none exist.
 - (C) Proposed final topography, at a contour interval appropriate to indicate drainage patterns.
- (5) A grading plan, including the following information:
- (A) Delineation of all proposed land disturbing activities, including off-site activities that will provide services to the project site.
 - (B) Location of all soil stockpiles and borrow areas.
 - (C) Information regarding any off-site borrow or disposal areas that are associated with a project site, and under the control of the project site owner.
 - (D) Existing and proposed topographic information.
- (6) A drainage plan, including the following information:
- (A) An estimate of the peak discharge, based on the ten (10) year storm event, of the project site for both preconstruction and postconstruction conditions.
 - (B) Location, size, and dimensions of all storm water drainage systems, such as culverts, storm sewers, and conveyance channels.
 - (C) Locations where storm water may be directly discharged into ground water, such as abandoned wells or sinkholes. Please note if none exist.
 - (D) Locations of specific points where storm water discharge will leave the project site.
 - (E) Name of all receiving waters. If the discharge is to a separate municipal storm sewer, identify the name of the municipal operator and the ultimate receiving water.
 - (F) Location, size, and dimensions of features such as permanent retention or detention facilities, including existing or manmade wetlands, used for the purpose of storm water management.
- (7) A storm water pollution prevention plan associated with construction activities. The plan must be designed to, at least, meet the requirements of sections 7 and 7.5 of this rule and must include the following:
- (A) Location, dimensions, detailed specifications, and construction details of all temporary and permanent storm water quality measures.
 - (B) Temporary stabilization plans and sequence of implementation.
 - (C) Permanent stabilization plans and sequence of implementation.
 - (D) Temporary and permanent stabilization plans shall include the following:
 - (i) Specifications and application rates for soil amendments and seed mixtures.
 - (ii) The type and application rate for anchored mulch.

(E) Construction sequence describing the relationship between implementation of storm water quality measures and stages of construction activities.

(F) Self-monitoring program including plan and procedures.

(G) A description of potential pollutant sources associated with the construction activities, which may reasonably be expected to add a significant amount of pollutants to storm water discharges.

(H) Material handling and storage associated with construction activity, spill prevention, and spill response procedures. Spill response procedures must be in accordance with 327 IAC 2-6.1.

(8) The postconstruction storm water pollution prevention plan. The plan must include the following information:

(A) A description of potential pollutant sources from the proposed land use, which may reasonably be expected to add a significant amount of pollutants to storm water discharges.

(B) Location, dimensions, detailed specifications, and construction details of all postconstruction storm water quality measures.

(C) A description of measures that will be installed to control pollutants in storm water discharges that will occur after construction activities have been completed. Such practices include infiltration of run-off, flow reduction by use of open vegetated swales and natural depressions, buffer strip and riparian zone preservation, filter strip creation, minimization of land disturbance and surface imperviousness, maximization of open space, and storm water retention and detention ponds.

(D) A sequence describing when each postconstruction storm water quality measure will be installed.

(E) Storm water quality measures that will remove or minimize pollutants from storm water run-off.

(F) Storm water quality measures that will be implemented to prevent or minimize adverse impacts to stream and riparian habitat.

(G) A narrative description of the maintenance guidelines for all postconstruction storm water quality measures to facilitate their proper long term function. This narrative description shall be made available to future parties who will assume responsibility for the operation and maintenance of the postconstruction storm water quality measures.

(b) For a single-family residential development consisting of four (4) or less lots or a single-family residential strip development where the developer offers for sale or lease without land improvements, and the project is not part of a larger common plan of development or sale, the project site owner shall develop a set of construction plans containing storm water quality measures which achieve the minimum project site requirements specified in section 7 of this rule and meet the design criteria, standards, and specifications established in the Indiana Storm Water Quality Manual* or similar guidance documents approved for use by the department and Indiana department of natural resources.

(1) The construction plan must include the following:

(A) Project narrative and supporting documents, including the following information:

(i) An index indicating the location, in the construction plans, of all required items in section 6.5(b)(1) through 6.5(b)(8) of this rule.

(ii) Copy of the completed NOI letter for the project site.

(iii) Description of the nature and purpose of the project.

(iv) Legal description of the project site. The description should be to the nearest quarter section, township, and range, and include the civil township.

(v) Soil properties, characteristics, limitations, and hazards associated with the project site and the measures that will be integrated into the project to overcome or minimize adverse soil conditions.

(vi) Hydrologic Unit Code (14 Digit) available from the United States Geological Survey (USGS).

(vii) Identification of any other state or federal permits that are required for construction activities associated with the project site operator's project site.

(B) Vicinity map depicting the project site location in relationship to recognizable local landmarks, towns, and major roads, such as a USGS topographic quadrangle map, or county or municipal road map.

(C) A project site layout that must include the following information:

(i) Location and name of all wetlands, lakes, and water courses on, or adjacent to, the project site.

(ii) Location of all existing structures on the project site (if applicable).

(iii) One hundred (100) year floodplains, floodway fringes, and floodways. Please note if none exist.

(iv) Soil map of the predominant soil types, as determined by the United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS) Soil Survey, or an equivalent publication, or as determined by a soil scientist. A soil legend must be included with the soil map.

(v) Identification and delineation of vegetative cover, such as grass, weeds, brush, and trees on the project site.

- (vi) Land use of all adjacent properties.
- (vii) Existing and proposed topography at a contour interval appropriate to indicate drainage patterns.
- (viii) Location of all proposed site improvements, including roads, utilities, lot delineation and identification, and proposed structures.

(D) A storm water pollution prevention plan associated with construction activities. The plan must be designed to, at least, meet the requirements of sections 7 and 7.5 of this rule and must include the following:

- (i) Delineation of all proposed land disturbing activities, including off-site activities that will provide services to the project site.
- (ii) Location of all soil stockpiles and borrow areas.
- (iii) Location, size, and dimensions of all storm water drainage systems such as culverts, storm sewers, and conveyance channels.
- (iv) Locations where storm water may be directly discharged into ground water, such as abandoned wells or sinkholes. Please note if none exist.
- (v) Locations of specific points where storm water discharge will leave the project site.
- (vi) Name of all receiving waters. If the discharge is to a separate municipal storm sewer, identify the name of the municipal operator and the ultimate receiving water.
- (vii) Location, dimensions, detailed specifications, and construction details of all temporary and permanent storm water quality measures.
- (viii) Temporary stabilization plans and sequence of implementation of storm water quality measures.
- (ix) Temporary and permanent stabilization plans shall include the following:
 - (AA) Specifications and application rates for soil amendments and seed mixtures.
 - (BB) The type and application rate for anchored mulch.
- (x) Self-monitoring program plan and procedures.

(c) The SWCD or the DNR-DSC representative or other designated entity may upon finding reasonable cause require modification to the construction plan, if it is determined that changes are necessary due to site conditions or project design changes. Revised plans, if requested, must be submitted to the appropriate entity within twenty-one (21) calendar days of a request for a modification.

*Copies of the Indiana Storm Water Quality Manual referenced in this section may be obtained from the Division of Soil Conservation, Indiana Department of Natural Resources, 402 West Washington Street, Room W265, Indianapolis, Indiana 46204-2739. (*Water Pollution Control Board; 327 IAC 15-5-6.5*)

SECTION 15. 327 IAC 15-5-7 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-5-7 General requirements for storm water quality control

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

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

Sec. 7. (a) ~~The operator shall develop an erosion control construction storm water pollution prevention plan in accordance with the requirements under this section.~~ **All storm water quality measures and erosion and sediment controls necessary to comply with this rule must be implemented in accordance with the construction plan and meet the design criteria, standards, and specifications as established in the "Indiana Storm Water Quality Manual*" or similar guidance documents approved for use by the department and Indiana department of natural resources requirements under this section.**

(b) **A project site owner shall, at least, meet the following requirements: shall be met on all sites during the period when active land disturbing activities occur:**

- (1) ~~Sediment-laden water which otherwise would flow from the project site shall be detained~~ **treated** by erosion and sediment control practices ~~measures~~ appropriate to minimize sedimentation. ~~in the receiving stream. No storm water shall be discharged from the site in a manner causing erosion in the receiving channel at the point of discharge.~~
- (2) ~~Appropriate measures shall be taken by the operator~~ **implemented** to minimize or eliminate wastes or unused building materials, including ~~but not limited to;~~ garbage, debris, cleaning wastes, wastewater, **concrete truck washout**, and other substances from being carried from a project site by run-off or wind. ~~Proper disposal or management of all wastes and unused building materials; appropriate to the nature of the waste or material; is required.~~ **Identification of areas where concrete truck**

washout is permissible must be clearly posted at appropriate areas of the site. Wastes and unused building materials shall be managed and disposed of in accordance with all applicable statutes and regulations.

(3) Sediment being tracked from a site onto public or private roadways shall be minimized. This can be accomplished initially by a temporary gravel construction entrance in addition to a well-planned layout of roads, access drives, and parking areas of sufficient width and length, or other appropriate measures. **A stable construction site access shall be provided at all points of construction traffic ingress and egress to the project site.**

(4) Public or private roadways shall be kept cleared of accumulated sediment **that is a result of run-off or tracking.** Bulk clearing of accumulated sediment shall not include flushing the area with water. Cleared sediment shall be returned to the point of likely origin or other suitable location: **redistributed or disposed of in a manner that is in accordance with all applicable statutes and regulations.**

(5) All on-site storm drain inlets shall be protected against sedimentation with straw bales, filter fabric, or equivalent barriers meeting accepted design criteria, standards, and specification for that purpose.

(6) The following items apply during the time the construction activity is taking place:

(A) Storm water drainage from adjacent areas that naturally pass through the site shall be controlled by diverting it around disturbed areas. Alternatively, the existing channel must be protected and/or improved to prevent erosion or sedimentation from occurring.

(B) Run-off from a disturbed area shall be controlled by one (1) or more of the following measures:

(i) Except as prevented by inclement weather conditions or other circumstances beyond the control of the operator, appropriate vegetative practices will be initiated within seven (7) days of the last land disturbing activity at the site regulated by this rule. Appropriate vegetative practices include, but are not limited to, seeding, sodding, mulching, covering, or by other equivalent erosion control measures.

(ii) The erosion control plan shall be implemented on disturbed areas within the construction site. The plan shall include erosion control measures as appropriate, such as, but not limited to, the following:

(AA) Sediment detention basins.

(BB) Sediment control practices, such as filter strips, diversions, straw bales, filter fences, inlet protection measures, slope minimization, phased construction, maximizing tree coverage, temporary and permanent seeding of vegetation, mulching, and sodding.

All measures involving erosion control practices shall be designed and installed under the guidance of a qualified professional experienced in erosion control and following the specifications and criteria under this subsection. All other nonengineered erosion control measures involving vegetation should be installed according to accepted specifications and criteria under this subsection.

(5) Storm water run-off leaving a project site must be discharged in a manner that is consistent with applicable state or federal law.

(6) The project site owner shall post a notice near the main entrance of the project site. For linear project sites, such as a pipeline or highway, the notice must be placed in a publicly accessible location near the project field office. The notice must be maintained in a legible condition and contain the following information:

(A) Copy of the completed NOI letter and the NPDES permit number, where applicable.

(B) Name, company name, telephone number, e-mail address (if available), and address of the project site owner or a local contact person.

(C) Location of the construction plan if the project site does not have an on-site location to store the plan.

(7) This permit and posting of the notice under subdivision (6) does not provide the public with any right to trespass on a project site for any reason, nor does it require that the project site owner allow members of the public access to the project site.

(8) The storm water pollution prevention plan shall serve as a guideline for storm water quality, but should not be interpreted to be the only basis for implementation of storm water quality measures for a project site. The project site owner is responsible for implementing, in accordance with this rule, all measures necessary to adequately prevent polluted storm water run-off.

(9) The project site owner shall inform all general contractors, construction management firms, grading or excavating contractors, utility contractors, and the contractors that have primary oversight on individual building lots of the terms and conditions of this rule and the conditions and standards of the storm water pollution prevention plan and the schedule for proposed implementation.

(10) Phasing of construction activities shall be used, where possible, to minimize disturbance of large areas.

(11) Appropriate measures shall be planned and installed as part of an erosion and sediment control system.

(12) All storm water quality measures must be designed and installed under the guidance of a trained individual. (13)

Collected run-off leaving a project site must be either discharged directly into a well-defined, stable receiving channel, or diffused and released to adjacent property without causing an erosion or pollutant problem to the adjacent property owner.

(14) Drainage channels and swales must be designed and adequately protected so that their final gradients and resultant velocities will not cause erosion in the receiving channel or at the outlet.

(15) Natural features, including wetlands and sinkholes, shall be protected from pollutants associated with storm water run-off.

(16) Unvegetated areas that are scheduled or likely to be left inactive for fifteen (15) days or more must be temporarily or permanently stabilized with measures appropriate for the season to minimize erosion potential. Alternative measures to site stabilization may be acceptable if the project site owner or their representative can demonstrate they have implemented erosion and sediment control measures adequate to prevent sediment discharge. Vegetated areas with a density of less than seventy percent (70%) shall be restabilized using appropriate methods to minimize the erosion potential.

(17) During the period of construction activities, all storm water quality measures necessary to meet the requirements of this rule shall be maintained in working order.

(18) A self-monitoring program that includes the following must be implemented:

(A) A trained individual shall perform a written evaluation of the project site:

- (i) by the end of the next business day following each measurable storm event; and
- (ii) at a minimum of one (1) time per week.

(B) The evaluation must address:

- (i) the maintenance of existing storm water quality measures to ensure they are functioning properly; and
- (ii) identify additional measures necessary to remain in compliance with all applicable statutes and regulations.

(C) Written evaluation reports must include:

- (i) the name of the individual performing the evaluation;
- (ii) the date of the evaluation;
- (iii) problems identified at the project site; and
- (iv) details of corrective actions recommended and completed.

(D) All evaluation reports for the project site must be made available to the inspecting authority within forty-eight (48) hours of a request.

(19) Proper storage and handling of materials, such as fuels or hazardous wastes, and spill prevention and clean-up measures shall be implemented to minimize the potential for pollutants to contaminate surface or ground water or degrade soil quality.

(20) Final stabilization of a project site is achieved when:

- (A) all land disturbing activities have been completed and a uniform (for example, evenly distributed, without large bare areas) perennial vegetative cover with a density of seventy percent (70%) has been established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures have been employed; and
- (B) construction projects on land used for agricultural purposes are returned to its preconstruction agricultural use or disturbed areas, not previously used for agricultural production, such as filter strips and areas that are not being returned to their preconstruction agricultural use meet the final stabilization requirements in clause (A).

(c) During the period of construction activity at a site, all erosion control measures necessary to meet the requirements of this rule shall be maintained by the operator.

(d) All erosion control measures required to comply with this rule shall meet the design criteria, standards, and specifications for erosion control measures established by the department in guidance documents similar to, or as effective as, those outlined in the Indiana Handbook for Erosion Control in Developing Areas from the division of soil conservation, Indiana department of natural resources and the Field Office Technical Guide from the Soil Conservation Service. The erosion control plan shall include, but is not limited to, the following:

(1) A map of the site in adequate detail to show the site and adjacent areas, including the following:

(A) Site boundaries and adjacent lands which accurately portray the site location.

(B) Lakes, streams, channels, ditches, wetlands, and other water courses on and adjacent to the site.

(C) One hundred (100) year floodplains, floodway fringes, and floodways.

(D) Location of the predominant soil types which may be determined by the United States Department of Agriculture, SCS County Soil Survey, or an equivalent publication, or as determined by a certified professional soil scientist.

- (E) Location and delineation of vegetative cover such as grass, weeds, brush, and trees.
- (F) Location and approximate dimensions of storm water drainage systems and natural drainage patterns on, and immediately adjacent to, the site.
- (G) Locations and approximate dimensions of utilities, structures, roads, highways, and paving.
- (H) Site topography, both existing and planned, at a contour interval appropriate to indicate drainage patterns.
- (I) Potential areas where point source discharges of storm water may enter ground water, if any.
- (2) A plan of final site conditions on the same scale as the existing site map showing the site changes.
- (3) A site construction plan shall include, but is not limited to, the following:
 - (A) Locations and approximate dimensions of all proposed land disturbing activities.
 - (B) Potential locations of soil stockpiles.
 - (C) Locations and approximate dimensions of all erosion control measures necessary to meet the requirements of this rule.
 - (D) Schedule of the anticipated initiation and completion dates of each land disturbing activity, including the installation of erosion control measures needed to meet the requirements of this rule.
 - (E) Provisions, including a schedule, for maintenance of the erosion control measures during construction.
 - (F) Where feasible, preserve vegetation that exists on the site prior to the initiation of land disturbing activities.

***Copies of the Indiana Storm Water Quality Manual referenced in this section may be obtained from the Division of Soil Conservation, Indiana Department of Natural Resources, 402 West Washington Street, Room W265, Indianapolis, Indiana 46204-2739. (Water Pollution Control Board; 327 IAC 15-5-7; filed Aug 31, 1992, 5:00 p.m.:16 IR 24; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)**

SECTION 16. 327 IAC 15-5-7.5 IS ADDED TO READ AS FOLLOWS:

327 IAC 15-5-7.5 General requirements for individual building lots within a permitted project

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

Sec. 7.5. (a) All storm water quality measures, including erosion and sediment control, necessary to comply with this rule shall be implemented in accordance with the plan and meet the design criteria, standards, and specifications as established in the "Indiana Storm Water Quality Manual*" or similar guidance documents approved for use by the department.

(b) Provisions for erosion and sediment control on individual building lots regulated under the original permit of a project site owner must include the following requirements:

- (1) The individual lot operator, whether owning the property or acting as the agent of the property owner, shall be responsible for erosion and sediment control requirements associated with activities on individual lots.**
- (2) Installation and maintenance of a stable construction site access.**
- (3) Installation and maintenance of appropriate perimeter erosion and sediment control measures prior to land disturbance.**
- (4) Sediment discharge and tracking from each lot must be minimized throughout the land disturbing activities on the lot until permanent stabilization has been achieved.**
- (5) Cleanup of sediment that is either tracked or washed onto roads. Bulk clearing of sediment shall not include flushing the area with water. Cleared sediment must be redistributed or disposed of in a manner that is in compliance with all applicable statutes and regulations.**
- (6) Adjacent lots disturbed by an individual lot operator must be repaired and stabilized with temporary or permanent surface stabilization.**
- (7) For individual residential lots, final stabilization meeting the criteria in section 7(b)(20) of this rule will be achieved when the individual lot operator:**
 - (A) completes final stabilization; or**
 - (B) has installed appropriate erosion and sediment control measures for an individual lot prior to occupation of the home by the homeowner and has informed the homeowner of the requirement for, and benefits of, final stabilization.**

***Copies of the Indiana Storm Water Quality Manual referenced in this section may be obtained from the Division of Soil Conservation, Indiana Department of Natural Resources, 402 West Washington Street, Room W265, Indianapolis, Indiana 46204-2739. (Water Pollution Control Board; 327 IAC 15-5-7.5)**

SECTION 17. 327 IAC 15-5-8 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-5-8 Project termination

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

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

Sec. 8. (a) The ~~operator~~ **project site owner** shall plan an orderly and timely termination of the ~~land disturbing construction~~ activities, ~~which shall include the following:~~

- ~~(1) Allowing the installation of utility lines on the site, whenever practicable, prior to final land grading, seeding, and mulching of the site.~~
- ~~(2) Implementing erosion control measures which are to remain on the site.~~

(b) The commissioner may, subsequent to termination of a project, inspect the site to evaluate the adequacy of the remaining erosion control measures: **including the implementation of storm water quality measures that are to remain on the project site.**

(b) The project site owner shall submit a notice of termination (NOT) letter to the commissioner and a copy to the appropriate SWCD or other designated entity in accordance with the following:

(1) Except as provided in subdivision (2), the project site owner shall submit an NOT letter when the following conditions have been met:

(A) All land disturbing activities, including construction on all building lots, have been completed and the entire site has been stabilized.

(B) All temporary erosion and sediment control measures have been removed.

The NOT letter must contain a verified statement that each of the conditions in this subdivision has been met.

(2) The project site owner may submit an NOT letter to obtain early release from compliance with this rule if the following conditions are met:

(A) The remaining, undeveloped acreage does not exceed five (5) acres, with contiguous areas not to exceed one (1) acre.

(B) A map of the project site, clearly identifying all remaining undeveloped lots, is attached to the NOT letter. The map must be accompanied by a list of names and addresses of individual lot owners or individual lot operators of all undeveloped lots.

(C) All public and common improvements, including infrastructure, have been completed and permanently stabilized and have been transferred to the appropriate local entity.

(D) The remaining acreage does not pose a significant threat to the integrity of the infrastructure, adjacent properties, or water quality.

(E) All permanent storm water quality measures have been implemented and are operational.

(c) Maintenance of the remaining erosion control measures shall be the responsibility of the occupier of the property after the operator has terminated land disturbing activities. **Following acceptance of the NOT letter and written approval from the department for early release under subsection (b), the project site owner shall notify all current individual lot owners and all subsequent individual lot owners of the remaining undeveloped acreage and acreage with construction activity that they are responsible for complying with section 7.5 of this rule. The remaining individual lot owners do not need to submit an NOI letter or NOT letter. The notice must contain a verified statement that each of the conditions in subsection (b)(2) have been met. The notice must also inform the individual lot owners of the requirements to:**

(1) install and maintain appropriate measures to prevent sediment from leaving the individual building lot; and

(2) maintain all erosion and sediment control measures that are to remain on-site as part of the construction plan.

(d) The SWCD, DNR-DSC, other entity designated by the department or a regulated MS4, or the department may inspect the project site to evaluate the adequacy of the remaining storm water quality measures and compliance with the NOT letter requirements. If the inspecting entity finds that the project site owner has sufficiently filed an NOT letter, the entity shall forward notification to the department. Upon receipt of the verified NOT letter by the department, and receipt of written approval from the department, the project site owner shall no longer be responsible for compliance with this rule.

(e) After a verified NOT letter has been submitted for a project site, maintenance of the remaining storm water quality measures shall be the responsibility of the individual lot owner or occupier of the property. *(Water Pollution Control Board;*

327 IAC 15-5-8; filed Aug 31, 1992, 5:00 p.m.: 16 IR 25; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 18. 327 IAC 15-5-10 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-5-10 Inspection and enforcement

Authority: IC 13-13-5-2; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-3-13; IC 13-18-4-1; IC 13-18-4-3

Affected: IC 13-14-10; IC 13-15-7; IC 13-18-3; IC 13-18-4; IC 13-30

Sec. 10. (a) The department or its designated representative may inspect any **project** site involved in ~~land disturbing~~ **construction** activities regulated by this rule at reasonable times. ~~The erosion control plan must be readily accessible for review at the time of the inspection.~~ **The department or its designated representatives may make recommendations to the project site owner or their representative to install appropriate measures beyond those specified in the storm water pollution prevention plan to achieve compliance.**

(b) All persons engaging in ~~land disturbing activity~~ **construction activities** on a **project** site shall be responsible for complying with the ~~soil erosion control~~ **storm water pollution prevention** plan for that site and the provisions of this rule.

(c) The department shall investigate potential violations of this rule to determine which person may be responsible for the violation. The department shall, if appropriate, consider public records of ownership, building permits issued by local units of government, and other relevant information, which may include site inspections, ~~soil erosion control~~ **storm water pollution prevention** plans, notices of intent, and other information related to the specific facts and circumstances of the potential violation. Any person causing or contributing to a violation of any provisions of this rule shall be subject to enforcement and penalty under IC 13-14-10, IC 13-15-7, and IC 13-30.

(d) If remaining ~~erosion control~~ **storm water quality** measures are not properly maintained by the person occupying or owning the property, the department may pursue enforcement against that person for correction of deficiencies under 327 IAC 15-1-4.

(e) Construction plans and supporting documentation associated with the quality assurance plan must be made available to the department or its designated representatives within forty-eight (48) hours of such a request. (*Water Pollution Control Board; 327 IAC 15-5-10; filed Aug 31, 1992, 5:00 p.m.: 16 IR 26; filed Mar 23, 2000, 4:15 p.m.: 23 IR 1912; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 19. 327 IAC 15-5-12 IS ADDED TO READ AS FOLLOWS:

327 IAC 15-5-12 Duration of coverage

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

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

Sec. 12. (a) A permit issued under this rule is granted by the commissioner for a period of five (5) years from the date coverage commences.

(b) Once the five (5) year permit term duration is reached, a general permit issued under this rule will be considered expired, and, as necessary for construction activity continuation, a new NOI letter would need to be submitted in accordance with this section.

(c) To obtain renewal of coverage under this rule, the information required under sections 5 and 6 of this rule must be submitted to the commissioner ninety (90) days prior to the termination of coverage under this NPDES general permit rule, unless the commissioner determines that a later date is acceptable. Coverage under renewal NOI letters will begin on the date of expiration from the previous five (5) year permit term. (*Water Pollution Control Board; 327 IAC 15-5-12*)

SECTION 20. 327 IAC 15-6-1 IS AMENDED TO READ AS FOLLOWS:

Rule 6. Storm Water Discharges Exposed to Industrial Activity

327 IAC 15-6-1 Purpose

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

Sec. 1. The purpose of this rule is to establish requirements for ~~point source storm water discharges exposed to industrial activity that are composed entirely of storm water associated with industrial activity. Storm water discharges associated with construction activity are regulated under rule 5 of this article only. and allowable nonstorm water so that the public health, existing water uses, and aquatic biota are protected.~~ (Water Pollution Control Board; 327 IAC 15-6-1; filed Aug 31, 1992, 5:00 p.m.: 16 IR 26; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 21. 327 IAC 15-6-2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-6-2 Applicability of the general permit rule for storm water discharges exposed to industrial activity

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

Sec. 2. (a) ~~Except as provided in subsections (c) and (d), the requirements under this rule apply to all persons who:~~ **facilities that meet the following requirements:**

- (1) Are not prohibited from regulation under a NPDES general permit rule under 327 IAC 15-2-6.
- (2) Meet the NPDES general permit rule applicability requirements under 327 IAC 15-2-3. ~~and~~
- (3) Have not received a conditional no exposure exclusion from storm water permitting under section 12 of this rule.**
- ~~(4) Have a new or existing point source discharge composed entirely of storm water associated with and the following allowable nonstorm water discharges exposed to industrial activity: except for categories, in effect on February 12, 1992, of facilities that have storm water effluent guidelines for at least one (1) of their subcategories. These categories include:~~
 - (A) cement manufacturing (40 CFR 411);
 - (B) feedlots (40 CFR 412);
 - (C) fertilizer manufacturing (40 CFR 418);
 - (D) petroleum refining (40 CFR 419);
 - (E) phosphate manufacturing (40 CFR 422);
 - (F) steam electric power generation (40 CFR 423);
 - (G) coal mining (40 CFR 434);
 - (H) mineral mining and processing (40 CFR 436);
 - (I) ore mining and dressing (40 CFR 440); and
 - (J) asphalt (40 CFR 443).

If a facility is classified in one (1) of the subcategories that have storm water effluent guidelines, an individual NPDES storm water permit application must be submitted:

- (A) Discharges from firefighting activities.
- (B) Fire hydrant flushings.
- (C) Potable water sources, including waterline flushings.
- (D) Irrigation drainage.
- (E) Landscape watering provided all pesticides, herbicides, and fertilizer have been applied in accordance with manufacturer's instructions.
- (F) Routine external building washdown that does not use detergents.
- (G) Pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred, unless all spilled material has been removed, and where detergents are not used.
- (H) Uncontaminated ground water or spring water.
- (I) Foundation or footing drains where flows are not contaminated with process materials, such as solvents.
- (J) Uncontaminated air conditioning or compressor condensate.
- (K) Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of your facility, but not intentional discharges from the cooling tower (for example, piped cooling tower blowdown or drains).
- (L) Vehicle washwaters where uncontaminated water, without detergents or solvents, is utilized.
- (M) Run-off from the use of dust suppressants approved for use by other program areas within the department.

Allowable nonstorm water discharges described under this subdivision may be allowed under this rule provided they have not been identified by the permittee or commissioner as a significant contributor of pollutants to a water of the state. If an allowable nonstorm water discharge is determined to be a significant contributor of pollutants to a water of the state an individual wastewater permit may be required for the discharge.

(5) Have industrial activities classified by one (1) or more of the following categories:

(A) Facilities classified under the following SIC codes:

- (i) 20 (food and kindred products).**
- (ii) 21 (tobacco products).**
- (iii) 22 (textile mill products).**
- (iv) 23 (apparel and other textile products).**
- (v) 24 (lumber and wood products).**
- (vi) 25 (furniture and fixtures).**
- (vii) 26 (paper and allied products).**
- (viii) 27 (printing and publishing).**
- (ix) 28 (chemicals and allied products).**
- (x) 29 (petroleum and coal products).**
- (xi) 30 (rubber and miscellaneous plastic products).**
- (xii) 31 (leather and leather products).**
- (xiii) 32 (stone, clay, and glass products).**
- (xiv) 33 (primary metal industries).**
- (xv) 34 (fabricated metal products).**
- (xvi) 35 (industrial machinery and equipment).**
- (xvii) 36 (electronic and other electric equipment).**
- (xviii) 37 (transportation equipment).**
- (xix) 38 (instruments and related products).**
- (xx) 39 (miscellaneous manufacturing industries).**

(B) Mining operations classified under the following SIC codes:

- (i) 10 (metal mining).**
- (ii) 13 (oil and gas extraction).**
- (iii) 14 (nonmetallic minerals, except fuels).**

(C) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of the Resource Conservation and Recovery Act (RCRA), (42 U.S.C. 6921).

(D) Landfills, land application sites, open dumps, and transfer stations that receive, or have received, industrial process wastes, as defined in rules of the solid waste management board at 329 IAC 10-2-95, from any of the types of facilities described under this subdivision. This inclusion does not include those facilities that have undergone landfill closure approved by the department, or are regulated under an individual municipal solid waste landfill permit, that includes requirements for addressing the quality of storm water run-off, issued under 329 IAC 10.

(E) Facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, including those classified under the following SIC codes:

- (i) 5015 (motor vehicles parts, used).**
- (ii) 5093 (scrap and waste materials).**

(F) Steam electric power generating facilities. Those facilities identified in this clause that are involved in the processing, handling, or storage of coal and associated byproducts are not subject to this rule and must apply for an individual NPDES storm water permit.

(G) Transportation facilities classified under the following SIC codes that have vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication) or industrial equipment cleaning areas:

- (i) 40 (railroad transportation).**
- (ii) 41 (local and interurban passenger transit).**
- (iii) 42 (trucking and warehousing).**
- (iv) 43 (United States Postal Service).**
- (v) 44 (water transportation).**
- (vi) 45 (transportation by air).**

Facilities involved in airport deicing operations and having storm water discharges entering a water of the state are not subject to this rule and must apply for an individual NPDES storm water permit. Transportation facilities identified by SIC code 5171 (petroleum bulk stations and terminals) are not subject to this rule and shall, if facility conditions meet the rule applicability requirements, obtain permit coverage under 327 IAC 15-9.

(H) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated

to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of one million (1,000,000) gallons per day or more, or that are required to have an approved pretreatment program under 40 CFR 403***. Farmland, domestic gardens, or land used for sludge management where sludge is beneficially reused, and that is not physically located in the confines of the facility or areas that are in compliance with Section 405 of the Clean Water Act (33 U.S.C. 1345)**** are not subject to this rule under this clause.

(I) Facilities, that are involved in the processing, transfer, or storage of agricultural chemicals (chemical fertilizers and pesticides), which meet any of the following storage capacity criteria:

(i) Fluid bulk fertilizer in undivided quantities in excess of:

(AA) two thousand five hundred (2,500) gallons for one (1) vessel; or

(BB) seven thousand five hundred (7,500) gallons total for multiple vessels at a facility (3 × 2,500 gallon vessels).

(ii) Dry bulk fertilizer in undivided quantities exceeding twelve (12) tons.

(iii) Liquid pesticide in undivided quantities in excess of four hundred (400) gallons.

(iv) Dry pesticide in undivided quantities excess of one hundred (100) pounds that is in solid form prior to any application or mixing for application and includes formulations, such as dusts, wettable powders, dry flowable powders, and granules.

Only those portions of the facility that are involved in the material handling of agricultural chemicals (chemical fertilizers and pesticides) or which are otherwise identified under this clause are required to comply with this rule.

(J) Facilities engaged in selling fuel or lubricating oils to the trucking industry, where the facility has on-site vehicle maintenance activities, serves as a truck stop or plaza, and are classified as SIC code 5541 (gasoline service stations). Truck stops and plazas that do not have vehicle maintenance activities and gasoline dispensing facilities, such as automotive service stations, convenience stores and marinas, are not required to comply with this rule.

(b) When a facility, meeting the applicability requirements of subsection (a), is owned by one (1) person but the regulated industrial activity is conducted by another person, it is the duty of the person conducting the regulated industrial activity to apply for a permit under this rule.

(c) A facility classified in one (1) of the following subcategories of facilities that has storm water effluent guidelines for at least one (1) of its subcategories, in effect on February 12, 1992, shall apply for an individual NPDES storm water permit:

- (1) Cement manufacturing (40 CFR 411).
- (2) Feedlots (40 CFR 412).
- (3) Fertilizer manufacturing (40 CFR 418).
- (4) Petroleum refining (40 CFR 419).
- (5) Phosphate manufacturing (40 CFR 422).
- (6) Steam electric power generation (40 CFR 423).
- (7) Coal mining (40 CFR 434).
- (8) Mineral mining and processing (40 CFR 436).
- (9) Ore mining and dressing (40 CFR 440).
- (10) Asphalt (40 CFR 443).

(d) A facility subject to storm water effluent limitation guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Chapter I, Subchapter N* shall apply for an individual NPDES storm water permit.

*Copies of the Code of Federal Regulations (CFR) 40 CFR Chapter I, Subchapter N referenced in this section may be obtained from the Government Printing Office, Washington, D.C. 20402 or the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204.

**Copies of the Subtitle D of the Resource Conservation and Recovery Act (RCRA), (42 U.S.C. 6941) referenced in this section may be obtained from the Government Printing Office, Washington, D.C. 20402 or the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204.

***Copies of the Code of Federal Regulations (CFR) 40 CFR 403 referenced in this section may be obtained from the Government Printing Office, Washington, D.C. 20402 or the Indiana Department of Environmental Management, Office

of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204.

****Copies of Section 405 of the Clean Water Act (33 U.S.C. 1345) referenced in this section may be obtained from the Government Printing Office, Washington, D.C. 20402 or the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Water Pollution Control Board; 327 IAC 15-6-2; filed Aug 31, 1992, 5:00 p.m.: 16 IR 26; errata, 16 IR 751; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 22. 327 IAC 15-6-4 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-6-4 Definitions

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

Affected: IC 13-11-2; IC 13-12-3-1; IC 13-18-1

Sec. 4. In addition to the definitions contained in ~~IC 13-7-1, IC 13-1-3-1.5,~~ IC 13-11-2, 327 IAC 5, and 327 IAC 15-1-2, the following definitions apply throughout this rule:

(1) "Airport deicing operations" means the use of urea, glycol, or other potentially toxic compounds to remove ice from airplanes or runways. An airport or airport operation, using one hundred (100) tons or more of urea or one hundred thousand (100,000) gallons or more of glycol compounds, on an annual basis, must obtain an individual NPDES permit. On a case-by-case determination by the commissioner, an individual NPDES permit may be required for facilities that use amounts of deicing compounds less than these minimum annual amounts.

(2) "Best management practices" or "BMPs" means any of the following measures to prevent or reduce the pollution of waters of the state:

- (A) Schedules of activities.
- (B) Prohibitions of practice.
- (C) Treatment requirements.
- (D) Operation and maintenance procedures.
- (E) Use of containment facilities.
- (F) Other management practices.

BMPs may be employed, for example, to control plant site run-off, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage, resulting from regulated industrial activities.

(3) "Commissioner" refers to the commissioner of the department of environmental management.

(4) "Concentration" means the mass of any given material present in a unit volume of liquid. Unless otherwise indicated under this rule, concentration values must be expressed in milligrams per liter.

(5) "Department" refers to the department of environmental management.

(6) "Drainage" means the flow patterns of storm water run-off.

(7) "Drainage area" means the surface area draining storm water run-off.

(8) "Facility" means a parcel of land or site, together with all buildings, equipment, structures, and other stationary items that are:

- (A) located on a single site or on contiguous or adjacent sites; and
- (B) owned or operated by:
 - (i) the same person; or
 - (ii) any person that controls, is controlled by, or is under common control with the same person.

(9) "Good housekeeping" means maintaining a clean work environment to reduce or eliminate the potential mobilization of pollutants by storm water.

(10) "Impervious surface" means any surface that prevents storm water from readily infiltrating into the soils.

(11) "Individual NPDES permit" means a NPDES permit issued by the commissioner under 327 IAC 5 to a single facility that contains requirements specific to that individual facility.

(12) "Injection well" means any hole that is deeper than it is wide and through which fluids can enter the ground water. Injection wells are regulated under 40 CFR 145 and 40 CFR 144.

(13) "Material handling activity" means the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, byproduct, or waste product.

~~(+)~~ (14) "Measurable storm event" means a precipitation event which results in a total measured precipitation accumulation equal to, or greater than, one-tenth (0.1) inch of rainfall.

(15) “Municipal separate storm sewer system” or “MS4” means a conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains that is:

(A) owned or operated by a federal entity or state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over storm water, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under Section 208 of the Clean Water Act (33 U.S.C. 1288)* that discharges into waters of the state;

(B) designed or used for collecting or conveying storm water;

(C) not a combined sewer; and

(D) not part of a publicly owned treatment works (POTW) as defined in 40 CFR 122.2**.

(16) “No exposure” means a condition of a facility that exists when all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to precipitation or run-off.

(17) “Nonstructural control measure” means the use of nonphysical best management practices to reduce or eliminate mobilization of pollutants by storm water (for example, sweeping, inspections, training, and preventative maintenance).

(18) “Notice of intent letter” or “NOI letter” means a written notification indicating a facility’s intention to comply with the terms of this rule in lieu of applying for an individual NPDES permit. An NOI letter includes information required under section 5 of this rule.

(19) “Notice of termination letter” or “NOT letter” means a written notification indicating that facility has met the conditions to terminate its permit coverage under this rule.

(20) “Outfall” means the point of discharge from a point source.

(21) “Pervious surface” means a ground surface that readily allows storm water to infiltrate or percolate into the soils.

(22) “Point source” has the meaning set forth in 327 IAC 5-1.5-40.

(23) “Qualified professional” means an individual who is trained and experienced in storm water treatment techniques and related fields as may be demonstrated by state registration, professional certification, experience, or completion of coursework that enable the individual to make sound, professional judgments regarding storm water control or treatment and monitoring, pollutant fate and transport, and drainage planning.

(24) “Qualified storm event” means a discharge resulting from a measurable storm event at least seventy-two (72) hours after the previous measurable storm event. The term does not include discharges of snowmelt.

(25) “Risk identification” means a nonstatistical assessment to determine the potential for storm water to be exposed to pollutants, and the facility’s subsequent need for additional protection practices and measures.

(26) “Secondary containment structure” means a structure or a part of a structure that prevents or impedes a hazardous material that is released accidentally from entering surface water or ground water.

(27) “SIC code” means the four (4) digit standard industrial classification code applicable to a particular industrial activity in accordance with the Standard Industrial Classification Manual published by the Office of Management and Budget of the Executive Office of the President of the United States.

(28) “Storm water discharge” means the release or flow of storm water from a point source, which enters a water of the state.

~~(29) “Storm water discharge associated with exposed to industrial activity” means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to discharge that has been exposed to the manufacturing and processing activities, or raw materials or intermediate products storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under 40 CFR Part 122, in effect on February 12, 1992. facility. The term does not include activities conducted on facility property separate from the facility’s industrial activities, such as office buildings and accompanying parking lots, as long as the drainage from the excluded areas is not mixed with storm water drained from the included areas. For the categories of industries identified in clauses (A) through (F); section 2(a)(5) of this rule, the term includes but is not limited to; the following:~~

~~(A) Storm water discharges from industrial plant yards.~~

~~(B) Immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or byproducts used or created by the facility.~~

~~(C) Material handling sites.~~

~~(D) Refuse sites.~~

~~(E) Sites used for the application or disposal of process wastewaters (as defined at in 40 CFR Part 401. in effect on February 12, 1992).~~

~~(F) Sites used for the storage and maintenance of material handling equipment.~~

(G) Sites used for residual treatment, storage, or disposal.

(H) Shipping and receiving areas.

(I) Manufacturing buildings.

(J) Storage areas (including tank farms) for raw materials, and intermediate and finished products. and

(K) Areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the categories of industries identified in clause (J); the term includes only storm water discharges from all the areas (except access roads and rail lines) that are listed in the previous sentence where material handling equipment or activities; raw materials; intermediate products; final products; waste materials; byproducts; or industrial machinery are exposed to storm water. For the purposes of this paragraph; material handling activities include the storage; loading and unloading; transportation; or conveyance of any raw material; intermediate product; finished product; byproduct; or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities; such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. The following facility types are considered to be involved in industrial activity:

(A) Facilities subject to storm water effluent limitation guidelines; new source performance standards; or toxic pollutant effluent standards under 40 CFR Subchapter N as referenced in 327 IAC 5-12-3 (except facilities with toxic pollutant effluent standards which are exempted under clause (J)).

(B) Facilities classified under the following SIC codes:

(i) 24 (lumber and wood products, except 2434-wood kitchen cabinets);

(ii) 26 (paper and allied products, except 265-paperboard containers and boxes and 267);

(iii) 28 (chemicals and allied products, except 283-drugs);

(iv) 29 (petroleum and coal products);

(v) 311 (leather tanning and finishing);

(vi) 32 (stone, clay, and glass products, except 323-products of purchased glass);

(vii) 33 (primary metal industries);

(viii) 3441 (fabricated structural metal);

(ix) 373 (ship and boat building and repairing);

(C) Mining operations classified as SIC codes:

(i) 10 (metal mining);

(ii) 11 (anthracite mining);

(iii) 12 (coal mining);

(iv) 13 (oil and gas extraction); and

(v) 14 (nonmetallic minerals, except fuels);

(D) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA as defined in IC 13-7-2-15.

(E) Landfills, land application sites, and open dumps that receive, or have received, any industrial wastes (waste that is received from any of the facilities described under this subdivision) including those that are subject to requirements under Subtitle D of RCRA as defined in IC 13-7-2-15.

(F) Facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, including, but not limited to, those classified as SIC codes:

(i) 5015 (motor vehicles parts, used); and

(ii) 5093 (scrap and waste materials).

(G) Steam electric power generating facilities, including coal handling sites:

(H) Transportation facilities classified as SIC codes:

(i) 40 (railroad transportation);

(ii) 41 (local and interurban passenger transit);

(iii) 42 (trucking and warehousing, except 4221-25);

(iv) 43 (United States Postal Service);

(v) 44 (water transportation);

(vi) 45 (transportation by air); and

(vii) 5171 (petroleum bulk stations and terminals);

which have vehicle maintenance, solvent based industrial equipment cleaning, or airport de-icing areas. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication); solvent based industrial equipment cleaning operations; airport de-icing operations; or which are otherwise identified under this subsection are associated with industrial activity.

(f) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of one (1.0) million gallons per day or more, or that are required to have an approved pretreatment program under 40 CFR 403. Not included is farmland, domestic gardens, or land used for sludge management where sludge is beneficially reused, and which is not physically located in the confines of the facility or areas that are in compliance with the Federal Act.

(j) Facilities classified under the following SIC codes:

- (i) 20 (food and kindred products):
- (ii) 21 (tobacco products):
- (iii) 22 (textile mill products):
- (iv) 23 (apparel and other textile products):
- (v) 2434 (wood kitchen cabinets):
- (vi) 25 (furniture and fixtures):
- (vii) 265 (paperboard containers and boxes):
- (viii) 267:
- (ix) 27 (printing and publishing):
- (x) 283 (drugs):
- (xi) 285 (paints, varnishes, lacquers, enamels, and allied products):
- (xii) 30 (rubber and miscellaneous plastic products):
- (xiii) 31 (leather and leather products, except 311):
- (xiv) 323 (products of purchased glass):
- (xv) 34 (fabricated metal products, except 3441):
- (xvi) 35 (industrial machinery and equipment):
- (xvii) 36 (electronic and other electric equipment):
- (xviii) 37 (transportation equipment, except 373):
- (xix) 38 (instruments and related products):
- (xx) 39 (miscellaneous manufacturing industries):
- (xxi) 4221 (farm product warehousing and storage):
- (xxii) 4222 (refrigerated warehousing and storage):
- (xxiii) 4223:
- (xxiv) 4224 (household goods warehousing and storage):
- (xxv) 4225 (general warehousing and storage):

which are not otherwise included under clauses (B) through (f) only need to apply for regulation under this rule when storm water is potentially exposed to industrial activity:

(30) “Storm water pollution prevention plan” or “SWP3” means a written document that addresses storm water run-off pollution prevention for a specific industrial facility.

(31) “Structural control measure” means a physical structure designed to reduce or eliminate the mobilization of pollutants by storm water, for example, detention structures, berming, and vegetated swales.

*Copies of Section 208 of the Clean Water Act (33 U.S.C. 1288) referenced in this section may be obtained from the Government Printing Office, Washington, D.C. 20402 or the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204.

**Copies of the Code of Federal Regulations (CFR) 40 CFR 122.2 referenced in this section may be obtained from the Government Printing Office, Washington, D.C. 20402 or the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Water Pollution Control Board; 327 IAC 15-6-4; filed Aug 31, 1992, 5:00 p.m.: 16 IR 27; errata filed Sep 10, 1992, 12:00 p.m.: 16 IR 65; errata, 16 IR 751; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 23. 327 IAC 15-6-5 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-6-5 Additional NOI letter requirements

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

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

Sec. 5. In addition to the NOI letter requirements under 327 IAC 15-3, the following information must be submitted with the NOI letter under this rule:

- (1) Name of responsible corporate officer ~~and/or~~ **or** written authorization for an alternate ~~person~~ **individual** or position to act as the duly authorized representative for that ~~person~~; **individual**, if appropriate, who will be responsible for all signatory responsibilities for the facility under 327 IAC 15-4-3(g).
- (2) Identification of the ~~number and location of each point source discharge of storm water associated with industrial activity and the corresponding industrial activity associated with the drainage area of each point source discharge.~~ **Name and contact information of the individual who can provide assistance with information pertaining to the facility's permit.**
- (3) **A brief narrative description of the industrial processes performed at the facility.**
- (4) **Identification of the number and location of each outfall where storm water exposed to industrial activity discharges to a water of the state, including a narrative description of the industrial activity associated with the drainage area of each identified outfall.**
- ~~(5) Identification of substantially similar point source discharges~~ **outfalls** of storm water ~~on the site, identified in subdivision~~ **(2) and if appropriate, the outfall to be monitored as representative of all such discharge points. Also, explain discharges. Include an explanation of the rationale used to identify why certain point sources outfalls are similar.**
- (6) **The identification of past and present NPDES permits, if applicable.**
- (7) **The identification of the regulated MS4 entity receiving the storm water discharge, if applicable.**
- (8) **Proof of publication of the following statement in the newspaper of largest circulation in the area of the discharge: "(Facility name, address, address of the location of the discharging facility, and the stream(s) receiving the discharge(s)) is submitting an NOI letter to notify the Indiana Department of Environmental Management of our intent to comply with the requirements under 327 IAC 15-6 to discharge storm water exposed to industrial activities."**

(Water Pollution Control Board; 327 IAC 15-6-5; filed Aug 31, 1992, 5:00 p.m.: 16 IR 28; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 24. 327 IAC 15-6-6 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-6-6 Deadline for submittal of an NOI letter; additional information

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

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

Sec. 6. All information required under 327 IAC 15-3 and section 5 of this rule shall be submitted to the commissioner in accordance with 327 IAC 15-3-3. ~~except, for persons that operate under 327 IAC 15-5 and that are affected by this rule, For newly constructed industrial facilities, the NOI letter shall be submitted one hundred eighty (180) ninety (90) days before completion of construction. prior to start up of industrial operations. For existing industrial facilities regulated by this rule, the NOI letter must be submitted in accordance with 327 IAC 15-2-9. For existing industrial facilities that have not been regulated by this rule but now meet the applicability requirements of this rule, the NOI letter must be submitted within ninety (90) days of the effective date of this rule, unless permission for a later date has been granted by the commissioner.~~ *(Water Pollution Control Board; 327 IAC 15-6-6; filed Aug 31, 1992, 5:00 p.m.: 16 IR 28; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 25. 327 IAC 15-6-7 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-6-7 General requirements for a storm water pollution prevention plan (SWP3)

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

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

Sec. 7. (a) The person **having financial responsibility or operational control for a facility** regulated under this rule shall develop a ~~storm water pollution prevention plan which implement, update, and maintain a SWP3 that:~~

- (1) identifies potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges ~~associated with~~ **exposed to** industrial activity from the facility;
- (2) describes practices **and measures** to be used in reducing the potential for pollutants to be exposed to storm water; ~~and~~
- (3) assures compliance with the terms and conditions of this rule;
- (4) **lists, by position title, the member or members of a facility storm water pollution prevention team, who will be responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision; and**

(5) clearly identifies the responsibilities of each storm water pollution prevention team member.

(b) For each area of the plant that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a **The SWP3 must include a map and description of all areas of the facility that generate storm water discharges exposed to industrial activity and have a reasonable potential for storm water to be exposed to pollutants. As a minimum, the plan shall contain the following:**

(1) A description of potential pollutant sources as follows: copy of the complete NOI letter.

(A) The plan must provide a description of areas on the site reasonably expected to be sources which add significant amounts of pollutants to storm water discharges such as areas used for the following:

- (i) Loading or unloading of dry bulk materials or liquids.
- (ii) Outdoor storage of raw materials, intermediary products, or final products, or waste products.
- (iii) Outdoor process activities.
- (iv) Dust or particulate generating processes.
- (v) Unauthorized connections or management practices.
- (vi) Waste disposal practices.
- (vii) Areas upon which pesticides are applied.

(B) To provide such a description, the plan shall include, at a minimum, the following items:

(i) A site map indicating, at a minimum, the following:

- (AA) Each drainage and discharge conveyance and outline of the drainage area of each storm water outfall.
- (BB) Paved areas and buildings within the drainage area of each discharge point.
- (CC) Each past or present area used for outdoor storage or disposal of significant materials.
- (DD) Each existing structural control measure to reduce pollutants in storm water run-off.
- (EE) Materials loading and access areas.
- (FF) Each hazardous waste treatment, storage, or disposal facility, including each area not required to have a RCRA permit which is used for accumulating hazardous waste as defined in 327 IAC 5-1-2 under 40 CFR 262.34 as adopted in 329 IAC 3-14-3.
- (GG) Each well where fluids from the facility are injected underground.
- (HH) Springs and wetlands.
- (I) Other surface water bodies.
- (J) Soil types.
- (K) Existing and proposed underground storage tanks.
- (L) Snow dumping sites, if any.

(ii) An estimate of the area of impervious surfaces, including paved areas and building roofs, relative to the total area drained by each outfall.

(iii) A topographic map, or other if a topographic map is unavailable, extending one-fourth (1/4) of a mile beyond the property boundaries of the facility, depicting the facility and each of its intake and discharge structures, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area. This item may be included in the site map required under item (i).

(iv) A narrative description of the following:

- (AA) Significant materials that in the three (3) years prior to the submittal of the NOI letter have been treated, stored, or disposed on-site in a manner to allow exposure to storm water.
- (BB) Method of treatment, storage, or disposal.
- (CC) Past and present materials management practices employed to minimize contact of these materials with storm water run-off.
- (DD) Materials loading and access areas.
- (EE) The location and description of existing structural and nonstructural control measures to reduce pollutants in storm water run-off.
- (FF) A description of any treatment the storm water receives, including the ultimate disposal of any solid or fluid wastes other than by discharge.

(v) A list of significant spills and leaks of toxic pollutants or hazardous substances as defined in 327 IAC 5-1-2 that occurred at the facility within three (3) years prior to the submittal of the NOI letter. Such list shall be updated within ninety (90) days from when a significant spill or leak of toxic pollutants or hazardous substances occurs and shall include a description of the materials released, an estimate of the volume of the release, the location of the release, and a description of any remediation or cleanup measures taken.

(vi) For each area of the plant that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants; a prediction of the direction of flow; and an estimate of the types of pollutants which could be present in storm water discharges associated with industrial activity.

(vii) A summary of existing sampling data describing pollutants in storm water discharges.

(2) The facility shall be operated and maintained in such a manner that exposure of storm water to potential sources of significant pollutant material is minimized. To accomplish such an operation and maintenance program, the person shall develop management controls of storm water discharge/run-off appropriate for the facility and implement such controls. The storm water management controls shall include, at a minimum, the following components:

(A) A risk identification/assessment and material inventory which evaluates the potential for various areas of the plant to contribute pollutants to the storm water discharge by exposing the storm water to industrial activity. Such assessment and inventory shall consider factors such as the following:

(i) An inventory of the types of materials handled; the location of material handling activities; and types of material management activities.

(ii) Identification of the toxicity of chemicals utilized at the facility as well as the quantity of such chemicals used, produced, or discharged.

(iii) A history of significant leaks or spills of pollutants known to have occurred.

(B) A preventative maintenance program which includes routine inspection and maintenance of storm water management devices.

(C) A spill prevention and response program which identifies areas where potential spills can occur and their accompanying drainage points; and that minimizes the potential for spills to occur. The program shall include, at a minimum, procedures for the following:

(i) Proper spill response and clean-up.

(ii) Reporting a spill to the appropriate facility personnel and, if appropriate, local/state emergency response personnel.

(iii) Routine maintenance and inspection of spill response/cleanup materials and equipment.

(D) An exposure reduction assessment which identifies the potential to eliminate/reduce storm water exposure in areas identified above as having a risk of exposing the storm water to significant pollutants and appropriate procedures to accomplish such elimination/reduction.

(E) A schedule for implementing procedures as identified under clause (D).

(F) Certify that storm water discharges from the site have been evaluated for the presence of nonstorm water.

(2) A soils map indicating the types of soils found on the facility property, and showing the boundaries of the facility property outlined in a contrasting color. If a facility's property only has impervious surfaces, the soils map requirement can be omitted.

(3) A graphical representation, such as aerial photographs or site layout maps, drawn to an appropriate scale, which contains a legend and compass coordinates, indicating, at a minimum, the following:

(A) All on-site storm water drainage and discharge conveyances, which may include pipes, ditches, swales, and erosion channels, related to a storm water discharge.

(B) Known adjacent property drainage and discharge conveyances, if directly associated with run-off from the facility.

(C) All on-site and known adjacent property water bodies, including wetlands and springs.

(D) An outline of the drainage area for each storm water outfall.

(E) An outline of the facility property indicating directional flows, via arrows, of surface drainage patterns.

(F) An outline of impervious surfaces, which includes pavement and buildings, and an estimate of the impervious and pervious surface square footage for each drainage area placed in a map legend.

(G) On-site injection wells, as applicable.

(H) On-site wells used as potable water sources, as applicable.

(I) All existing structural control measures to reduce pollutants in storm water run-off.

(J) All existing and historical underground or aboveground storage tank locations, as applicable.

(K) All permanently designated plowed or dumped snow storage locations.

(L) All loading and unloading areas for solid and liquid bulk materials.

(M) All existing and historical outdoor storage areas for raw materials, intermediary products, final products, and waste materials.

(N) All existing or historical outdoor storage areas for fuels, processing equipment, and other containerized materials, for example, in drums and totes.

(O) Outdoor processing areas.

(P) Dust or particulate generating process areas.

- (Q) Outdoor waste storage or disposal areas.
- (R) Pesticide or herbicide application areas.
- (S) Vehicular access roads.

The on-site mapping of items listed in clauses (J) through (S) is required only in those areas that generate storm water discharges exposed to industrial activity and have a reasonable potential for storm water exposure to pollutants. The mapping of historical locations is only required if the historical locations have a reasonable potential for storm water exposure to historical pollutants.

(4) An area map that indicates:

- (A) the topographic relief or similar elevations to determine surface drainage patterns;
- (B) the facility boundaries outlined in a contrasting color;
- (C) all receiving waters; and
- (D) all known drinking water wells;

and includes, at a minimum, the features in clauses (A), (C), and (D) within a one-fourth (1/4) mile radius beyond the property boundaries of the facility. This map must be to scale and include legend and compass coordinates.

(5) A narrative description of areas that generate storm water discharges exposed to industrial activity and have a reasonable potential for storm water exposure to pollutants, including descriptions for any existing or historical areas listed in section 5(6)(J) through 5(6)(S) of this rule [*sic.*], and any other areas thought to generate storm water discharges exposed to industrial activity and be a reasonable potential source of storm water exposure to pollutants. The narrative descriptions for each identified area must include the following:

- (A) Type and typical quantity of materials present in the area.
- (B) Methods of storage, including presence of any secondary containment measures.
- (C) Any remedial actions undertaken in the area to eliminate pollutant sources or exposure of storm water to those sources. If a corrective action plan was developed, the type of remedial action and plan date shall be referenced.
- (D) Any significant release or spill history dating back a period of three (3) years from the date of the initial NOI letter, in the identified area, for materials spilled outside of secondary containment structures and impervious surfaces in excess of their reportable quantity, including the following:
 - (i) The date and type of material released or spilled.
 - (ii) The estimated volume released or spilled.
 - (iii) A description of the remedial actions undertaken, including disposal or treatment.

Depending on the adequacy or completeness of the remedial actions, the spill history shall be used to determine additional pollutant sources that may be exposed to storm water. In subsequent permit terms, the history shall date back for a period of five (5) years from the date of the NOI letter.

(E) Where the chemicals or materials have the potential to be exposed to storm water discharges, the descriptions for each identified area must include a risk identification analysis of chemicals or materials stored or used within the area. The analysis must include the following:

- (i) Toxicity data of chemicals or materials used within the area, referencing appropriate material safety data sheet information locations.
- (ii) The frequency and typical quantity of listed chemicals or materials, to be stored within the area.
- (iii) Potential ways in which storm water discharges may be exposed to listed chemicals and materials.
- (iv) The likelihood of the listed chemicals and materials to come into contact with storm water.

(6) A narrative description of existing and planned management practices and measures to improve the quality of storm water run-off entering a water of the state. Descriptions must be created for existing or historical areas listed in section 5(6)(J) through 5(6)(S) [*sic.*] and any other areas thought to generate storm water discharges exposed to industrial activity and be a potential source of storm water exposure to pollutants. The description must include the following:

- (A) Any existing or planned structural and nonstructural control practices and measures.
- (B) Any treatment the storm water receives prior to leaving the facility property or entering a water of the state.
- (C) The ultimate disposal of any solid or fluid wastes collected in structural control measures other than by discharge.

(7) If applicable, the specific control practices and measures for potential pollutant source areas must include the following:

- (A) Identification of areas that, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify and implement measures to limit erosion.
- (B) A plan to cover, or otherwise reduce the potential for pollutants in storm water discharge from, deicing salt and sand or other commercial or industrial material storage piles, except for exposure resulting from the addition or removal of materials from the pile. For piles that do not have the potential for polluting storm water run-off, the plan needs to

provide the basis for determining no exposure potential. The plan must be included in the SWP3.

(C) Storage piles of sand and salt or other commercial or industrial materials must be stored in a manner to reduce the potential for polluted storm water run-off and in accordance with the plan required under subdivision (6)(B).

(8) Information or other documentation required under subsection (d).

(9) The results of monitoring required in section 7.3 of this rule. The monitoring data must include completed field data sheets, chain-of-custody forms, and laboratory results. If the monitoring data is not placed into the facility's SWP3, the on-site location for storage of the information must be referenced in the SWP3. As two (2) or more sample monitoring events are completed, the laboratory results must be compared to indicate water quality improvements in the run-off from the facility. If the parameters and sample type are identical, historical storm water monitoring data at each discharge outfall identified in section 5(2) of the rule, or representative discharge outfall identified in section 5(5) of this rule, can be used in the comparison to provide data that is more reflective of initial water quality conditions.

(10) A mapped or narrative description of any such management practice or measure pursuant to subsection (c)(4) must be added to the SWP3.

(c) For areas of the facility that generate storm water discharges and have a reasonable potential for storm water exposure to pollutants, storm water exposure to pollutants must be minimized. To ensure this reduction, the following practices and measures must be planned and implemented:

(1) A written preventative maintenance program, including the following:

(A) Implementation of good housekeeping practices to ensure the facility will be operated in a clean and orderly manner and that pollutants will not have the potential to be exposed to storm water via vehicular tracking or other means.

(B) Maintenance of storm water management measures, for example, catch basins or the cleaning of oil or water separators. All maintenance must be documented and either contained in, or have the on-site record keeping location referenced in, the SWP3.

(C) Inspection and testing of facility equipment and systems that are in areas of the facility that generate storm water discharges and have a reasonable potential for storm water exposure to pollutants to ensure appropriate maintenance of such equipment and systems, and to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters.

(D) At a minimum, quarterly inspections of the storm water management measures and storm water run-off conveyances. Inspections must be documented and either contained in, or have the on-site record keeping location referenced in, the SWP3.

(E) An employee training program to inform personnel at all levels of responsibility that have the potential to engage in industrial activities that impact storm water quality of the components and goals of the SWP3. Training must occur at a minimum annually and should address topics such as spill response, good housekeeping and material management practices. All employee training sessions, including relevant storm water topics discussed and a roster of attendees, must be documented and either contained in, or have the on-site record keeping location referenced in, the SWP3.

(2) A written spill response program, including the following:

(A) Location, description, and quantity of all response materials and equipment.

(B) Response procedures for facility personnel to respond to a release.

(C) Contact information for reporting spills, both for facility staff and external emergency response entities.

(3) A written nonstorm water assessment, including the following:

(A) A certification letter stating that storm water discharges entering a water of the state have been evaluated for the presence of illicit discharges and nonstorm water contributions.

(B) Detergent or solvent-based washing of equipment or vehicles that would allow washwater additives to enter any storm drainage system or receiving water shall not be allowed at the facility.

(C) All interior maintenance area floor drains with the potential for maintenance fluids or other materials to enter storm sewers must be either sealed, connected to a sanitary sewer with prior authorization, or appropriately permitted under the NPDES wastewater program pursuant to 327 IAC 5. The sealing, sanitary sewer connecting, or permitting of drains under this item must be documented in the written nonstorm water assessment program.

(D) The certification shall include a description of the method used, the date of any testing, and the on-site drainage points that were directly observed during the test.

(4) If parameter reductions are not indicated in the comparison conducted under subsection (b)(9) and they cannot be attributed to laboratory error or significant variability in the rainfall events, the source of the pollutant parameter must be investigated, and either eliminated or reduced via a management practice or measure to the extent technologically practicable and cost beneficial. A lack of reduction does not, in and of itself, constitute a violation of this permit. However,

insufficient reductions may be used to identify facilities that would be more appropriately covered under an individual storm water NPDES permit. If parameter concentrations are at, or below, laboratory detection limitations, further reductions are not necessary.

(c) (d) The SWP3 must meet the following general requirements: of a storm water pollution prevention plan shall include the following:

- (1) The plan shall be certified by a qualified professional.
- (2) The plan shall be retained ~~on-site~~ **at the facility** and be available for review by a representative of the commissioner upon request, **or in the case of a storm water discharge exposed to industrial activity which discharges through a regulated municipal separate storm sewer system conveyance, by the operator or operators of the regulated municipal system.**
- (3) A schedule shall be included with the plan which allows for compliance with the terms of The plan **must be completed and implemented** on or before three hundred sixty-five (365) days after submission of ~~the~~ **a timely-submitted initial NOI letter**, or in the case of new facilities, prior to initiation of operation at the facility. **the expiration date of the previous five (5) year permit term.** The commissioner may grant an extension of this time frame based on a request by the person **having financial responsibility or operational control for a facility** showing reasonable cause.
- (4) The person regulated under this rule **having financial responsibility or operational control for a facility** shall report once per quarter its progress in developing and implementing the plan. Once the plan is completed and implemented, the reports may cease. The reports shall be sent to:

Indiana Department of Environmental Management
Permits Section
Office of Water Management
105 South Meridian Street
P.O. Box 6015
Indianapolis, Indiana 46206-6015

complete and submit to the commissioner a storm water pollution prevention plan certification checklist form within thirty (30) days of the plan completion date, but no later than three hundred sixty-five (365) days after the submission of a timely-submitted initial NOI letter, or the expiration date of the previous five (5) year permit term. This checklist must also be signed by a qualified professional.

- (5) ~~The person~~ **A permittee** regulated under this rule shall amend the plan by **either of the following:**
 - (A) Whenever there is a change in design, construction, operation, or maintenance at the facility, which may have a significant effect on the potential for the discharge of pollutants to surface waters of the state.
 - (B) Upon written notice by the commissioner that the ~~storm water pollution prevention plan SWP3~~ proves to be ineffective in achieving the ~~general objectives of controlling pollutants in storm water discharges associated with~~ **exposed to industrial activity. Within sixty (60) days of such notification from the commissioner, the permittee shall make the required changes to the SWP3 and shall submit the amended plan to the commissioner for review.**
- (6) **If a permittee has other written plans, required under applicable federal or state law, such as operation and maintenance, spill prevention control and countermeasures, or risk contingency plans, which fulfill certain requirements of a SWP3, these plans may be referenced, at the permittee's discretion, in the appropriate sections of the SWP3 to meet those section requirements.**
- (7) **A permittee may combine the requirements of the SWP3 with another written plan if:**
 - (A) **the plan is retained at the facility, and available for review;**
 - (B) **all the requirements of the SWP3 are contained within the plan; and**
 - (C) **a separate, labeled section is utilized in the plan for the SWP3 requirements.**

(d) Monitoring and reporting requirements shall be as follows:

(1) Each discharge outfall, or representative discharge outfall, composed entirely of storm water run-off, shall be monitored as follows:

Parameter	Units	Sample Type
Oil and grease	mg/l	grab
CBOD ₅	mg/l	grab and composite
COD	mg/l	grab and composite
TSS	mg/l	grab and composite
TKN	mg/l	grab and composite

F. phosphorous	mg/l	grab and composite
pH	s.u.	grab
Nitrate plus nitrite nitrogen	mg/l	grab and composite

(2) For those facilities subject to Federal Categorical Effluent Guidelines (40 CFR Subchapter N, in effect on February 12, 1992); Sara Title III facilities subject to report releases into the environment of chemicals which are classified as section 313 water priority chemicals used at the plant in the previous reporting year and which are reasonably expected to be in the discharge; or an individual NPDES permit for process discharge; those parameters required under these programs which are not listed in this subsection shall also be monitored and sampled by grab and composite; except cyanide; hexavalent chromium and volatile organic compounds; which shall be sampled by the grab sample method.

(3) Prior to implementation of the storm water pollution prevention plan; the person regulated under this rule shall sample and analyze the discharge from the outfall(s) regulated by this rule. During the second year of regulation under this rule; after implementation of the storm water pollution prevention plan; the person shall sample and analyze the discharge from the outfall(s) regulated under this rule for two (2) precipitation events. No further physical sampling is required unless the facility is notified to perform additional physical sampling by Indiana department of environmental management. During the third through the fifth year of regulation under this rule; visual inspections of each outfall or representative outfall as identified in the NOI letter shall be performed for two (2) storm events each year with results recorded and reported annually to the permits section. Visual inspections shall report the presence of turbidity; color; foam; solids; floatables; and an oil sheen.

(4) A grab sample shall consist of at least one hundred (100) milliliters collected during the first thirty (30) minutes; or as soon thereafter as practicable; of the discharge. The grab sample shall be analyzed separately from the composite sample. A composite sample shall consist of a flow or time-weighted sample; either by the time interval between each aliquot or by the volume of aliquot proportionate to the discharge flow at the time of sampling or the total discharge flow since collection of the previous aliquot. A composite sample shall be taken during a minimum of the first three (3) hours of a storm event.

(5) There shall be a minimum of three (3) months between reported sampling events.

(6) Samples taken in compliance with the monitoring requirements under subdivision (4) shall be taken at a point representative of the discharge but prior to entry into surface waters of the state of Indiana or a municipal separate storm sewer.

(7) Sampling type for discharges from a retention basin with a minimum twenty-four (24) hour detention capacity; or; for coal mines; ten (10) hour detention; shall be a grab sample for all parameters. Such a grab shall be taken within the first thirty (30) minutes of discharge from the pond after initiation of a storm event.

(8) All samples shall be collected from a discharge resulting from a measurable storm event at least seventy-two (72) hours from the previous measurable storm event and; where feasible; where the duration and total precipitation does not exceed fifty percent (50%) from the average or median precipitation event in the area; as determined by the nearest United States National Weather Service Information Center. Documentation of weather conditions that prevent sampling as described in this subsection must be provided to the commissioner.

(9) The analytical and sampling methods used shall conform to the current version of 40 CFR 136 as referenced in 327 IAC 5-2-13(e)(1).

(10) Samples and measurements taken as required under this subsection shall be representative of the volume and nature of the monitored discharge.

(e) Analysis shall be performed in accordance with 40 CFR 136; in effect on February 12, 1992; for quality assurance and quality control:

(f) Reporting requirements shall be as follows:

(1) All samples shall be reported as a value of concentration. Concentration is defined as the mass of any given material present in a unit volume of liquid. Unless otherwise indicated under this rule; concentration values shall be expressed in milligrams per liter.

(2) For each measurement or sample taken pursuant to the requirements of this rule; the facility shall record the following information:

- (A) The exact place; date; and time of sampling.
- (B) The person who performed the sampling or measurements.
- (C) The dates the analyses were performed.
- (D) The person who performed the analyses.
- (E) The analytical techniques or methods used.
- (F) The results of all required analyses and measurements.

(3) All records and information resulting from the monitoring activities required under this rule; including all records of analyses

performed and calibration and maintenance of instrumentation and recording from continuous monitoring instrumentation; shall be retained for a minimum of three (3) years. In cases where the original records are kept at another location; a copy of all such records shall be kept at the facility. The three (3) year period shall be extended:

(A) automatically during the course of any unresolved litigation regarding the discharge of pollutants by the facility or regarding promulgated effluent guidelines applicable to the facility; or

(B) as requested by the regional administrator or the Indiana department of environmental management.

(4) The person regulated under this rule shall submit an annual report to the Indiana department of environmental management containing results obtained during the previous year and shall be postmarked no later than the twenty-eighth day of January each year. The regional administrator may request the person to submit monitoring reports to the EPA if it is deemed necessary to assure compliance with the applicable general permit rule.

(5) Persons regulated under this rule who have a discharge regulated under this rule which enters a municipal separate storm sewer shall also submit a copy of the discharge monitoring report required under subsection (d) to the operator of the municipal system in accordance with the requirements under subsection (d).

(6) If the person regulated under this rule monitors any pollutant at the location designated in this section more frequently than required under this rule; using approved analytical methods as specified in this subsection, the results of such monitoring shall be reported as additional information in the annual report. Such increased frequency shall also be indicated in the report.

(Water Pollution Control Board; 327 IAC 15-6-7; filed Aug 31, 1992, 5:00 p.m.: 16 IR 28; errata filed Sep 10, 1992, 12:00 p.m.: 16 IR 65; errata, 16 IR 898; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 26. 327 IAC 15-6-7.3 IS ADDED TO READ AS FOLLOWS:

327 IAC 15-6-7.3 Monitoring requirements

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

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

Sec. 7.3. (a) Monitoring requirements shall be as follows:

(1) Each discharge outfall identified in section 5(2) of this rule, or representative discharge outfall identified in section 5(5) of this rule, composed entirely of storm water and allowable nonstorm water run-off, shall be monitored as follows:

<u>Parameter</u>	<u>Sample</u>		
	<u>Units</u>	<u>Type</u>	<u>Frequency</u>
Oil and grease	mg/l	grab	Annual
CBOD ₅ (Carbonaceous biochemical oxygen demand)	mg/l	grab	Annual
COD (Chemical oxygen demand)	mg/l	grab	Annual
TSS (Total suspended solids)	mg/l	grab	Annual
TKN (Total Kjeldahl nitrogen)	mg/l	grab	Annual
Total phosphorous	mg/l	grab	Annual
pH	s.u.	grab	Annual
Nitrate plus nitrite nitrogen	mg/l	grab	Annual

(2) Each discharge outfall subject to subdivision (1) shall be monitored for any pollutant attributable to a facility's industrial activity which is reasonably expected to be present in the discharge, as well as for any other pollutant that has the potential to be present in a storm water discharge as requested by the commissioner.

(3) Within one (1) year of the original or renewal NOI letter submittal and prior to implementation of the SWP3, a permittee regulated under this rule shall sample and analyze the discharge from the outfall identified in the approved NOI letter. The monitoring data taken from this first year event shall be used by the permittee as an aid in developing and implementing the SWP3. Subsequent annual sampling data shall be used to verify the effectiveness of the SWP3 and will aid the permittee with revising the SWP3 and implementation of additional BMPs, as necessary.

(4) The commissioner may require a permittee to sample additional storm events beyond the required five (5) annual events upon finding reasonable cause. The commissioner shall notify the facility in writing that additional sampling is required.

(5) A grab sample must be collected during the first thirty (30) minutes of discharge at the storm water outfalls identified in the NOI letter, or as soon thereafter as practicable.

(6) The pH measurement must be taken at the time the grab sample is collected, and by using a pH meter that has been properly calibrated according to manufacturer's specifications and provides results displayed in numeric units. A color comparison analysis for pH is not acceptable.

(7) There shall be a minimum of three (3) months between reported sampling events.

(8) Samples must be taken at a point representative of the discharge but prior to entry into surface waters of the state or a municipal separate storm sewer conveyance unless an alternative location has been granted by the commissioner. For discharges that flow through on-site detention basins, samples shall be taken at a point representative of the discharge from the basin.

(9) All samples must be collected from a discharge resulting from a measurable storm event at least seventy-two (72) hours from the previous measurable storm event. Documentation of weather conditions that prevent sampling as described in this subsection must be provided to the commissioner.

(10) The analytical and sampling methods used must meet the requirements of 327 IAC 5-2-13(d)(1) and 327 IAC 5-2-13(d)(2) for quality assurance and quality control.

(11) Run-off events resulting from snow or ice melt should not be sampled, and shall not be used to meet the minimum annual monitoring requirements.

(b) Reporting requirements shall be as follows:

(1) All samples must be reported as a value of concentration or loading.

(2) For each measurement or sample taken under this rule, the permittee shall record and submit the following information to the commissioner:

(A) The exact place, date, and time of the start of the discharge, the duration of the storm event sampled, a measurement of the rainfall in inches, and time of sampling.

(B) The duration between the storm event sampled and the end of the previous measurable storm event.

(C) The individual who performed the sampling or measurements.

(D) The dates the analyses were performed.

(E) The individual who performed the analyses.

(F) The analytical techniques or methods used.

(G) The results of all required analyses and measurements.

(H) A complete copy of the laboratory report, including chain-of-custody.

(3) All records and information resulting from the monitoring activities required under this rule, including all records of analyses performed and calibration and maintenance of instrumentation, must be retained for a minimum of either one (1) year following the date on an NOT letter, three (3) years following the expiration of the facility's permit, or longer if requested by the commissioner. As applicable, the records for calibration and maintenance of instrumentation can be maintained at an off-site laboratory, but must be available to the commissioner upon request. All calibration and maintenance records for on-site instruments, such as pH meters, used by a facility for compliance with this rule must be documented and either contained in, or have the on-site record keeping location referenced in, the SWP3.

(4) A permittee regulated under this rule shall submit sampling data results to the commissioner at the address specified in section 8.5 of this rule within thirty (30) days after laboratory analyses have been completed.

(5) A permittee regulated under this rule that has a discharge that enters a regulated municipal separate storm sewer conveyance shall also submit a copy of the sampling data results to the operator of the regulated municipal system conveyance upon request.

(6) If a permittee regulated under this rule monitors a pollutant more frequently than required under this rule, using analytical methods referenced in subsection (a)(10), the results of such monitoring must be reported as additional information in the annual report. Such increased frequency must also be indicated in the report.

(Water Pollution Control Board; 327 IAC 15-6-7.3)

SECTION 27. 327 IAC 15-6-7.5 IS ADDED TO READ AS FOLLOWS:

327 IAC 15-6-7.5 Annual reports

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

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

Sec. 7.5. A permittee regulated under this rule shall submit an annual report to the commissioner that contains the following information:

- (1) Any changes to the original NOI letter.
- (2) Any changes to the facility, the facility's operations or industrial activities.
- (3) During the second through fifth years of permit coverage, a copy of the comparison of all sampling data results included in the facility's SWP3 and required under section 7(b)(9) of this rule.
- (4) Any additional BMPs implemented, or corrective measures taken, as a result of sampling data results.

The annual report must contain information obtained during the previous year of regulation and be submitted initially no later than three hundred sixty-five (365) days from the initial NOI submittal date, or the expiration date of the previous five (5) year permit term. Subsequent annual report submittals shall be provided no later than three hundred sixty-five (365) days from the previous report in years two (2) through five (5). *(Water Pollution Control Board; 327 IAC 15-6-7.5)*

SECTION 28. 327 IAC 15-6-8.5 IS ADDED TO READ AS FOLLOWS:

327 IAC 15-6-8.5 Permit compliance schedule

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

Sec. 8.5. The following compliance schedule must be followed:

Permit Compliance Schedule

To apply for coverage	Submit a completed NOI letter
1 st year of permit coverage	Submit results of sampling data Develop and implement the SWP3 Submit SWP3 certification checklist Submit annual report
2 nd year of permit coverage	Submit results of sampling data Submit annual report
3 rd year of permit coverage	Submit results of sampling data Submit annual report
4 th year of permit coverage	Submit results of sampling data Submit annual report
5 th year of permit coverage	Submit results of sampling data Submit annual report
90 days before permit expires	Resubmit a completed NOI letter
Permit renewals	Repeat annual sampling schedule Submit SWP3 certification checklist during the first year of renewal coverage only if substantial changes have been made on site or to the plan since its inception Submit annual reports

The compliance schedule begins from the date on the initial NOI letter submittal, or the expiration date of the previous five (5) year permit term. All submittals to the commissioner must be sent to:

Attention: Rule 6 Storm Water Coordinator
 Indiana Department of Environmental Management
 Office of Water Quality
 100 North Senate Avenue
 P.O. Box 6015
 Indianapolis, Indiana 46206-6015.

(Water Pollution Control Board; 327 IAC 15-6-8.5)

SECTION 29. 327 IAC 15-6-10 IS ADDED TO READ AS FOLLOWS:

327 IAC 15-6-10 Duration of coverage and renewal

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

Sec. 10. A permit issued under this rule is valid for a period of five (5) years from the date that the commissioner receives an original NOI letter. To obtain renewal of coverage under this rule, the information required under 327 IAC 15-3 and section 5 of this rule must be submitted to the commissioner ninety (90) days prior to the expiration of coverage under this rule unless the commissioner determines that a later date is acceptable. Coverage under renewal NOI letters will begin on the date of expiration from the previous five (5) year permit. *(Water Pollution Control Board; 327 IAC 15-6-10)*

SECTION 30. 327 IAC 15-6-11 IS ADDED TO READ AS FOLLOWS:

327 IAC 15-6-11 Termination of coverage; permit not transferable

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

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

Sec. 11. (a) A complete, state-issued NOT letter request form shall be submitted by a permittee regulated under this rule to the commissioner for any of the following:

- (1) Closure of the facility.
- (2) Transfer of ownership or operator.
- (3) No exposure of all facility industrial activities to storm water.
- (4) All storm water run-off from the facility flows into a combined sewer system.
- (5) Storm water does not have the potential to impact a water of the state.

(b) A permittee regulated under this rule shall submit a complete, state-issued NOT letter request form to the commissioner upon closure of the facility or upon transfer of ownership or operator as defined in 327 IAC 15-2-8 within thirty (30) days of the date of closure or transfer. The new owner or operator must submit a new NOI letter within sixty (60) days of the date of closure or transfer.

(c) For a permittee to claim termination based on no exposure to industrial activities, a complete “No Exposure Certification” form referenced in section 12 of this rule must be submitted with the NOT letter request form.

(d) For a permittee to claim termination based on all storm water run-off flowing into a combined sewer system, a certification letter from the responsible party of the combined sewer system, on responsible party letterhead, shall be submitted with the NOT letter request form.

(e) The completed NOT request form will be reviewed by the commissioner within sixty (60) days of the submittal date. During this sixty (60) day review period, the permit shall remain effective. Once the review is complete, one (1) of the following may occur:

- (1) An NOT letter will be mailed to the requester.
- (2) An on-site verification inspection will be requested.
- (3) The NOT request will be denied.

If the permittee does not receive any of the above notifications within sixty (60) days of the NOT request submittal, the NOT request will be considered adequate.

(f) An NOT letter may be issued by the commissioner if:

- (1) effluent standards and limitations are promulgated for discharges subject to this rule; or
- (2) it is determined that a general permit is not adequate to protect water quality.

When a general permit is not adequate, an individual NPDES storm water permit will be issued. *(Water Pollution Control Board; 327 IAC 15-6-11)*

SECTION 31. 327 IAC 15-6-12 IS ADDED TO READ AS FOLLOWS:

327 IAC 15-6-12 Conditional no exposure exclusion

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

Affected: IC 13-11-2; IC 13-12-3-1; IC 13-18-1

Sec. 12. (a) In addition to the definitions contained in IC 13-11-2, 327 IAC 5, 327 IAC 15-1-2, and section 4 of this rule, the following definitions apply throughout this section:

(1) “Adequately maintained vehicle” means a vehicle (truck, automobile, forklift, trailer, or other general purpose vehicle) found on facility property that is not industrial machinery, and not leaking or otherwise a potential source of contaminants.

(2) “Final product” means a product that is not used in producing other products and is built and intended for use outdoors, provided the final product has not deteriorated or has otherwise become a potential source of contaminants.

(3) “Industrial materials and activities” means:

(A) material handling equipment or activities;

(B) industrial machinery;

(C) raw materials, intermediate products, byproducts, and final products; or

(D) waste products.

(4) “Intermediate product” means a product that is used in the composition of yet another product.

(5) “Material handling activity” means the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, byproduct, or waste product. The term does not include activities conducted on facility property separate from the facility’s industrial activities, such as office buildings and accompanying parking lots, as long as the drainage from the excluded areas is not mixed with storm water drained from the included areas.

(6) “Sealed container” means a container that has been banded or otherwise secured, without operational taps or valves, provided the container is not deteriorated and does not leak.

(7) “Storm-resistant shelter” means a completely roofed and walled building or structure, as well as, a structure with only a top cover but no side coverings, provided material under the structure is not otherwise subject to any run-on and subsequent run-off of storm water.

(b) A facility regulated under this rule may request an exclusion from permit coverage by:

(1) submitting a complete United States Environmental Protection Agency “No Exposure Certification” form 3510-11 (10-99) to the commissioner;

(2) allowing the commissioner to inspect the facility to determine compliance with the “no exposure” conditions;

(3) allowing the commissioner to make any “no exposure” inspection reports available to the public upon request; and

(4) for facilities that discharge through a regulated MS4 conveyance, upon request, submit a copy of the certification of “no exposure” to the MS4 operator, as well as allow inspection and public reporting by the MS4 operator.

(c) New or existing facilities that were not previously required to obtain a permit under this rule, but are subject to it, must either obtain permit coverage in accordance with sections 5 and 6 of this rule, or comply with the procedures in subsection (b).

(d) Facilities that have an existing permit under this rule must also submit an NOT letter with the “No Exposure Certification” form.

(e) To determine if a facility can apply for the no exposure certification, the following must be considered:

(1) A condition of no exposure exists at an industrial facility when all industrial materials and activities are protected by a storm-resistant shelter to prevent exposure to rain, snow, snowmelt, and run-off.

(2) The conditional no exposure exclusion is available on a facility-wide basis only, not for individual outfalls, and a no exposure certification must be provided for each facility qualifying for the no exposure exclusion.

(3) The no exposure certification requirement applies to all industrial facilities regulated under this rule, including light industrial facilities that were previously not required to submit documentation to be excluded from storm water permitting requirements.

(4) A storm-resistant shelter is not required for the following industrial materials and activities:

(A) Drums, barrels, tanks, and similar containers that are tightly sealed, provided these containers are not deteriorated and do not leak.

(B) Adequately maintained vehicles used in material handling.

(C) Final products, except those products that would be mobilized in storm water discharges (for example, rock salt), products that may, when exposed to storm water, oxidize, deteriorate, leak, or otherwise be a potential source of contaminants, or final products which are in actuality intermediate products.

(5) Particulate matter emissions from roof stacks and vents that are regulated by, and in compliance with, other environmental protection programs (for example, air quality control programs) and do not cause storm water

contamination are considered not exposed. Particulate matter or visible deposits of residuals from roof stacks and vents not otherwise regulated (for example, under an air quality control program) and evident in storm water discharges are considered exposed. Likewise, visible “track out” (pollutants carried on the tires of vehicles) and windblown raw materials are considered exposed.

(6) General and industrial refuse and trash are not considered exposed as long as the containers are completely covered and nothing can drain out holes in their bottoms, or is lost in loading onto a garbage truck. General and industrial refuse and trash that are left uncovered, however, are considered exposed.

(7) Storm water run-off from separate office buildings and their associated parking lots do not need to be considered when determining no exposure at an industrial facility.

(8) Temporary covers may be used to shelter materials and activities until permanent enclosure can be achieved. The temporary sheltering of industrial materials and activities is only allowed during facility renovation or construction.

(9) Aboveground storage tanks (ASTs) are generally considered not exposed and may be exempt from the prohibition against adding, or withdrawing materials, to, or from, external containers. For an AST to be operational and qualify for no exposure:

(A) it must be physically separated from, and not associated with, vehicle maintenance operations;

(B) there must be no piping, pumps, or other equipment leaking contaminants that could contact storm water; and

(C) it must be surrounded by some type of physical containment to prevent run-off in the event of a structural failure or leaking transfer valve.

(f) The no exposure certification must require the submission of the following information, at a minimum, to aid the department in determining if the facility qualifies for the no exposure exclusion:

(1) The person’s name, address, and phone number.

(2) The facility name and address, the county name, and the latitude and longitude where the facility is located.

(3) The certification must indicate that none of the following materials or activities are, or will be in the foreseeable future, exposed to precipitation:

(A) Using, storing, or cleaning industrial machinery or equipment, and areas where residuals from using, storing, or cleaning industrial machinery or equipment remain and are exposed to storm water.

(B) Materials or residuals on the ground or in storm water inlets from spills or leaks.

(C) Materials or products from past industrial activity.

(D) Material handling equipment (except adequately maintained vehicles).

(E) Materials or products during loading and unloading or transporting activities.

(F) Materials or products stored outdoors (except final products intended for outside use, for example, new cars, where exposure to storm water does not result in the discharge of pollutants).

(G) Materials contained in open, deteriorated, or leaking storage drums, barrels, tanks, and similar containers.

(H) Materials or products handled or stored on roads or railways owned or maintained by the facility.

(I) Waste material (except waste in covered, nonleaking containers, for example, dumpsters).

(J) Application or disposal of process wastewater (unless otherwise permitted).

(K) Particulate matter or visible deposits of residuals from roof stacks or vents not otherwise regulated, that is, under an air quality control permit, and evident in the storm water outflow.

(4) All “no exposure” certifications must include the following certification statement, and be signed in accordance with 327 IAC 15-4-3(g): “I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of “no exposure” and obtaining an exclusion from NPDES storm water permitting; and that there are no discharges of storm water contaminated by exposure to industrial activities or materials from the industrial facility identified in this document (except as allowed under subsection(d)(4) [*sic.*]). I understand that I am obligated to submit a no exposure certification form once every five (5) years to the department and, if requested, to the operator of the local regulated MS4 into which this facility discharges (where applicable). I understand that I must allow the department, or MS4 operator where the discharge is into the local regulated MS4, to perform inspections to confirm the condition of no exposure and to make such inspection reports publicly available upon request. I understand that I must obtain coverage under an NPDES permit prior to any point source discharge of storm water from the facility. 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 gathered and evaluated the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly involved in gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing

violations.”.

(g) Information contained in the “No Exposure Certification” form 3510-11 (10-99)* and the United States Environmental Protection Agency’s “Guidance Manual for Conditional Exclusion from Storm Water Permitting Based on “No Exposure” of Industrial Activities to Storm Water”(EPA 833-B-00-001 June 2000) shall be used by the commissioner to determine whether a facility is eligible for the exclusion. Definitions of terms provided in these documents shall apply to the commissioner’s interpretation of the no exposure exclusion.**

(h) A facility excluded under this section shall meet the following requirements:

(1) A copy of the “No Exposure Certification” form must be retained on site at the facility for a period of five (5) years following the date that the commissioner received the original form in order for the no exposure exclusion to remain applicable.

(2) The “No Exposure Certification” form must be submitted once every five (5) years to the commissioner.

(3) The certification for no exposure is nontransferable. If a new operator or owner takes over a facility, the new operator shall immediately complete and submit a new certification form in order to claim the exclusion.

(4) If changes at a facility result in industrial activities or materials becoming exposed to storm water, the no exposure exclusion ceases to apply. The person with financial responsibility or operational control for the facility must submit an NOI letter in accordance with section 5 of this rule at least two (2) days before the foreseen changes happen that cause the condition of exposure.

(5) If unforeseen events, such as spills, equipment malfunctions or acts of nature, cause industrial activities or materials to become exposed to storm water, the no exposure exclusion may still apply provided notification is given to the commissioner within twenty-four (24) hours of facility personnel becoming aware of the exposure and corrective measures are taken to reestablish a condition of no exposure prior to the next storm water discharge event.

(i) If the commissioner finds that, during a compliance inspection or at a later time, the facility has a reasonable potential to cause a violation or nonattainment of a water quality standard or does not meet the conditions for the no exposure exclusion, the commissioner may, upon notifying the facility in writing, deny or revoke the exclusion and require the facility to obtain permit coverage within thirty (30) days of the date on the notification letter.

(j) Failure to maintain the condition of no exposure or obtain coverage under an NPDES permit may lead to the unauthorized discharge of pollutants to waters of the state.

***Copies of the No Exposure Certification Form referenced in this section are available from the Indiana Department of Environmental Management, Office of Water Quality, 100 North Senate Avenue, P.O. Box 6015, Indianapolis, Indiana 46206-6015.**

****Copies of the Guidance Manual for Conditional Exclusion from Storm Water Permitting Based on “No Exposure” of Industrial Activities to Storm Water referenced in this section are available from the Indiana Department of Environmental Management, Office of Water Quality, 100 North Senate Avenue, P.O. Box 6015, Indianapolis, Indiana 46206-6015. (*Water Pollution Control Board; 327 IAC 15-6-12*)**

SECTION 32. 327 IAC 15-5-11 IS REPEALED.

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 February 12, 2003 at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Water Pollution Control Board will hold a public hearing on proposed amendments and new rules concerning storm water run-off associated with construction activity and storm water discharges associated with industrial activity.

The purpose of this hearing is to receive comments from the public prior to the board’s consideration of final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposal to final adopt the new rules and amendments. Oral statements will be heard, but for the accuracy of the record, all comments should be submitted in writing.

Technical information regarding this action may be obtained from Lori Gates, Office of Water Quality, Wet Weather Section,

(317) 233-6725 or (800) 451-6027 (in Indiana). Additional information regarding this action may be obtained from Kiran Verma, Rules Section, Office of Water Quality, (317) 234-0986 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) 233-0855. (TDD): (317) 232-6565. Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.

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

Mary Ellen Gray
Deputy Assistant Commissioner
Office of Water Quality