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

### **FIRST NOTICE OF COMMENT PERIOD**

#03-129(WPCB)

## **DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING WATER QUALITY ISSUES SUITABLE FOR FAST TRACK RULEMAKING**

### **PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on the amendment of rules in Title 327 concerning water quality standards, methods, and implementation procedures. This rulemaking has been named “fast track” because the regulatory issues involve minimal controversy allowing the rulemaking to proceed along a fast track. It is contemplated that at junctures during the rulemaking process some of the initially identified fast track issues may need more discussion and, therefore, would need to be reserved for a separate rulemaking. IDEM seeks comment on the affected citations listed and any other provisions of Title 327 that may be affected by this rulemaking.

**CITATIONS AFFECTED:** 327 IAC 1; 327 IAC 2-1; 327 IAC 2-1.5; 327 IAC 2-4; 327 IAC 5-2.

**AUTHORITY:** IC 13-13-5-1; 13-13-5-2; IC 13-14-8; 13-14-9; 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 13-18-4-3.

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

#### **Basic Purpose and Background**

Under 40 CFR 131.20, states with approved NPDES programs are required to review their water quality standards at least once every three (3) years. Through the triennial review process, IDEM separated the many water quality issues into several rulemakings, including this one, for fast track issues. An external triennial review steering committee helped identify needed rule changes based on best science, updates of existing rules, and technical corrections and clarifications that have a reasonable potential of minimal controversy.

A workgroup began meeting in December 2002 to discuss the issues identified by the steering committee and select the issues that would be appropriate candidates for the fast track rulemaking approach. The workgroup narrowed the issues to those in 327 IAC 1; 327 IAC 2-1; 327 IAC 2-1.5, 327 IAC 2-4, and 327 IAC 5-2 (rules within Articles 1, 2, and 5). The issues selected include: dissolved metals for aquatic life criteria; free cyanide aquatic life criteria; general narrative criteria; narrative criteria for whole effluent toxicity; site specific modifications; Article 5 implementation procedures; and bioaccumulative chemicals of concern (BCCs).

#### **Alternatives to be Considered within the Rulemaking**

The issues selected by the workgroup as candidates for this rulemaking were placed into the following categories: changes to existing rules based on best science; updates of existing rules; clarifications of existing rules; and technical corrections to the Great Lakes system rules. For most of the issues, the changes to the rules that would be necessary to resolve the issue are straightforward. Therefore, IDEM has also identified necessary rule changes for most of the issues and in some cases has included draft rule language. IDEM is interested in receiving comment on whether the candidate issues should be included in the fast track rulemaking and whether the proposed rule changes and draft rule language are appropriate. IDEM is also interested in any other issues that may be candidates for the fast track rulemaking. An alternative to each of the issues would be to leave existing rules unchanged.

#### **Category: Best Science**

The purpose of the following proposed changes is to update existing non-Great Lakes system rules based on best science. The issues in this category were addressed for the Great Lakes system during that rulemaking and are now included in the Great Lakes system rules adopted in 1997. While there are several rule provisions that could be updated based on best science, only those that the workgroup thought could be changed with minimal controversy were chosen for this rulemaking:

**(1) Dissolved Metals Aquatic Life Criteria:** Change the aquatic life criteria for the non-Great Lakes system from acid soluble metals to dissolved metals. In 1993, USEPA released a memorandum recommending that dissolved metals be used to set and

measure compliance with water quality standards instead of total recoverable metals. IDEM believes that the aquatic life criteria for the non-Great Lakes system should be changed to reflect USEPA's recommendation. To incorporate dissolved metals aquatic life criteria, the following changes are proposed:

**(A) 327 IAC 2-1-6(a)(3):** Delete this subdivision. This subdivision will no longer be necessary so it may be removed from the rules.

**(B) 327 IAC 2-1-6, Table 1:** Each aquatic life criterion for a metal in Table 1 will have to be multiplied by a conversion factor to calculate the dissolved metal criterion. IDEM is still considering how best to incorporate this calculation into the rules.

**(C) 327 IAC 2-1-6, Table 2:** Recalculate Table 2 based on dissolved metals.

**(D) 327 IAC 5-2-11.1(d):** Replace the rule language in this subsection with the following: "Water quality-based effluent limitations in an NPDES permit for metals calculated from a dissolved water quality criterion contained in 327 IAC 2-1-6(a)(2) Table 1, or subsequently developed under the procedures contained under 327 IAC 2-1-8, shall be expressed in the permit as the total recoverable metals fraction unless all approved analytical methods for the metal inherently measure only its dissolved form, such as hexavalent chromium."

**(E) 327 IAC 5-2-11.1(e):** Delete this subsection. This subsection will no longer be necessary so it may be removed from the rules.

**(F) 327 IAC 5-2-11.1:** Add a new subsection that addresses dissolved metals translators. The subsection could be similar to that in the Great Lakes system rules at 327 IAC 5-2-11.6(c)(2) except that the dissolved metals translator would be used to translate a dissolved metals criterion to a total recoverable metals criterion. The total recoverable metals criterion would then be used to calculate a total recoverable metals wasteload allocation.

**(2) Free Cyanide Aquatic Life Criteria:** Change the aquatic life criteria for cyanide for the non-Great Lakes system from total cyanide to free cyanide. EPA has decided that free cyanide should be used to set and measure compliance with water quality standards because it has been determined that most of the toxicity attributable to cyanide is due to free cyanide (rather than cyanide that is bound to other substances). IDEM believes that the aquatic life criteria for cyanide for the non-Great Lakes system should be changed to reflect USEPA's recommendation. To incorporate free cyanide aquatic life criteria, the following changes are proposed:

**(A) 327 IAC 2-1-6(a)(2) Table 1:** Under the "Other Substances" category in Table 1, add free cyanide and move the aquatic life criteria from total cyanide to free cyanide.

**(B) 327 IAC 5-2-11.1:** Add a new subsection similar to 327 IAC 5-2-11.6(f).

**(3) Site-Specific Methodologies:** Adopt site-specific methodologies into the non-Great Lakes system rules similar to those in the Great Lakes system rules at 327 IAC 2-1.5-16. The latest methodologies for calculating site-specific aquatic life, human health, and wildlife criteria and values were adopted into the Great Lakes system rules in 1997. The site-specific methodologies adopted in 1997 are well established and are the best methods currently available. However, these methodologies will require some revision considering that the methodologies for developing aquatic life, human health, and wildlife criteria are different in the Great Lakes system and non-Great Lakes system.

**(4) Site-Specific Criteria:** Adopt into the rules all site-specific criteria modifications that have been approved by IDEM.

**(5) Bioaccumulative Chemicals of Concern (BCCs):** Adopt the definition of a BCC and the list of BCCs in the Great Lakes system rules at 327 IAC 2-1.5-6 into the non-Great Lakes system rules. USEPA included a definition of a BCC as part of the Great Lakes Water Quality Guidance. IDEM believes that the definition of a BCC for the non-Great Lakes system should be changed to reflect USEPA's definition. To incorporate the new definition of a BCC, the following changes are proposed:

**(A) 327 IAC 2-1:** Add a new section identical to 327 IAC 2-1.5-6.

**(B) 327 IAC 2-1-6(a)(2) Table 1:** Delete the notations for BCCs and substances that are bioconcentrating and of concern. The notations may be removed because a list of BCCs will be included in a new section.

#### **Category: Updates of Existing Rule Language**

The purpose of the following proposed changes is to update references to the most current version or edition, to remove rule language that is no longer necessary, and to consolidate and update definitions in 327 IAC 2-1-9 and 327 IAC 2-1.5-2:

**(1) Incorporations by Reference:** Update the incorporations by reference in 327 IAC 1, 327 IAC 2, and 327 IAC 5 to the most current version or edition.

**(2) Approved Analytical Procedures and Test Methods:** The provisions concerning approved analytical procedures and test methods in 327 IAC 2-1-8, 327 IAC 2-1.5-10, 327 IAC 2-4-3, 327 IAC 5-2-13, and 327 IAC 5-2-15 should be updated to remove references to "Standard Methods for the Examination of Water and Wastewater" and add references to 40 CFR 136 if not already included in the rule. Other changes may be necessary to make these provisions consistent.

**(3) 327 IAC 2-1-5:** Replace "This determination will be made using Low-Flow Characteristics of Indiana Streams, 1983, United States Department of the Interior, Geological Survey, or any additional information compiled on a comparable basis." with "This determination will be made using Low-Flow Characteristics of Indiana Streams, 1996, United States Department of the Interior,

Geological Survey, or any additional information compiled on a comparable basis.”.

**(4) 327 IAC 2-1.5-8(k):** Delete this subsection and Table 8-11. This subsection was included in the Great Lakes system rules as a reference. Since the Great Lakes system rulemaking, IDEM has calculated (where possible) Tier I criteria or Tier II values for the substances listed in the table that were not included in the Great Lakes system rules.

**(5) 327 IAC 2-1.5-8(l):** Delete this subsection and Table 8-12. This subsection was included in the Great Lakes system rules to prompt IDEM to develop criteria or values for the substances listed in 327 IAC 2-1-6 that did not have criteria or values available at the time of the rulemaking. Tier I criteria or Tier II values for the substances in Table 8-12 have subsequently been calculated (where possible) and are available via the IDEM Web site.

**(6) Definitions:** There are terms that are defined differently in 327 IAC 2-1-9, 327 IAC 2-1.5-2, and 327 IAC 5-1.5. IDEM is proposing to apply a consistent definition to these terms. There are also terms that need to be added to the list of definitions in 327 IAC 2-1-9 based on the proposal to include narrative criteria for whole effluent toxicity in the rules for the non-Great Lakes system. Additionally, there are definitions in 327 IAC 2-1-9 and 327 IAC 2-1.5-2 that need to be updated to be consistent with the Indiana Code. The following changes are proposed to update definitions:

**(A) 327 IAC 2-1-9:** Replace the definition of the following terms in this section with the corresponding definition in 327 IAC 2-1.5-2: acute toxicity, bioconcentration, bioconcentration factor, carcinogen, chronic toxicity, final acute value,  $LC_{50}$ , lowest observed adverse effect level (LOAEL), and no observed adverse effect level (NOAEL). The definitions for these terms in 327 IAC 2-1.5-2 are based on the Water Quality Guidance for the Great Lakes System at 40 CFR 132.2.

**(B) 327 IAC 2-1-9(4):** Replace the definition of bioaccumulative chemical of concern with a reference to the section in 327 IAC 2-1 where the proposed new definition will be included. IDEM is proposing a new definition of bioaccumulative chemical of concern, and this definition, along with a list of bioaccumulative chemicals of concern, will be included in a separate section. See (5) under the Best Science category.

**(C) 327 IAC 2-1-9(24):** Delete the definition of limit of quantification. This term is not used in Article 2 so it may be removed from the definitions section.

**(D) 327 IAC 2-1-9(29):** Delete the definition of mean acute value. This term is only used in the existing definition of final acute value in 327 IAC 2-1-9(14).

**(E) 327 IAC 2-1-9:** Add the definition of genus mean acute value in 327 IAC 2-1.5-2(37) to this section. This term is included in the proposed new definition of final acute value.

**(F) 327 IAC 2-1-9:** Add the definition of species mean acute value in 327 IAC 2-1.5-2(74) to this section. This term is included in the proposed new definition of final acute value.

**(G) 327 IAC 2-1-9(32):** Replace the term “n-octanol/water partition coefficient ( $K_{ow}$ )” and its definition with the term “octanol-water partition coefficient” and its definition in 327 IAC 2-1.5-2(61). The definition in 327 IAC 2-1.5-2 is an updated version.

**(H) 327 IAC 2-1-9(25):** Delete the definition of log  $K_{ow}$ . This term will be included in the proposed new definition of octanol-water partition coefficient.

**(I) 327 IAC 2-1-9(35):** Replace the definition of point source with the following: ““Point source” has the meaning set forth in 327 IAC 5-1.5-40.”. The definition in 327 IAC 5-1.5-40 includes added specificity based on the definition in 40 CFR 122.2.

**(J) 327 IAC 2-1-9(45):** Replace the definition of toxic substances with the definition in 327 IAC 2-1.5-2(84). The definition in 327 IAC 2-1.5-2 is an updated version.

**(K) 327 IAC 2-1-9(50):** Replace the definition of zone of initial dilution with the definition in 327 IAC 2-1.5-2(94). The definition in 327 IAC 2-1.5-2 takes into consideration those cases where a one-to-one (1:1) dilution is not available directly after the end of the pipe.

**(L) 327 IAC 2-1-9:** Add the definition of the following terms in 2-1.5-2 to this section: acute toxic unit (TUa), chronic toxic unit (TUc), inhibition concentration 25 ( $IC_{25}$ ), and no observed effect concentration (NOEC). The definitions of these terms are required if narrative criteria for whole effluent toxicity are added to 327 IAC 2-1-6(a). See (2) under the Clarifications of Existing Rules category.

**(M) 327 IAC 2-1-9(12):** Replace the definition of discharge-induced mixing with the following: ““Discharge-induced mixing” or “DIM” means mixing initiated by the use of submerged, high rate diffuser outfall structures (or the functional equivalent) which provide turbulent initial mixing and will minimize organism exposure time.”. This proposed change will make this definition consistent with IC 13-18-4-8.

**(N) 327 IAC 2-1.5-2(63):** Replace the definition of outstanding national resource waters with the following: ““Outstanding national resource water” has the meaning set forth in IC 13-18-3-2(d).”.

**(O) 327 IAC 2-1.5-2(64):** Replace the definition of outstanding state resource waters with the following: ““Outstanding state source water” has the meaning set forth in IC 13-18-3-2(e).”.

## Category: Clarifications of Existing Rules

The purpose of the following proposed changes is to clarify how an existing requirement of the rules is to be implemented:

**(1) Narrative Criteria:** Adopt the narrative criteria in the Great Lakes system rules at 327 IAC 2-1.5-8(b) into the non-Great Lakes system rules at 327 IAC 2-1-6(a). The narrative criteria for the Great Lakes system are based on those for the non-Great Lakes system at 327 IAC 2-1-6(a) with minor modifications and the addition of narrative criteria for whole effluent toxicity. IDEM believes that the same minor modifications should be made to the narrative criteria for the non-Great Lakes system in addition to adding narrative criteria for whole effluent toxicity. The addition of narrative criteria for whole effluent toxicity is discussed in (2).

**(2) Whole Effluent Toxicity:** The non-Great Lakes system rules are not clear on how whole effluent toxicity should be addressed in NPDES permits. Procedures for calculating numeric criteria for whole effluent toxicity are included in the aquatic life methodologies at 327 IAC 2-1-8.2 and 2-1-8.3. These procedures are intended to provide a means to calculate site-specific criteria based on whole effluent toxicity that would apply alternatively or in addition to aquatic life criteria for individual pollutants. The procedures are not completely consistent with IDEM's current practice for implementing whole effluent toxicity. Narrative criteria for whole effluent toxicity with a numeric interpretation are included in the Great Lakes system rules. Implementation procedures for whole effluent toxicity are also included in the Great Lakes system rules. These criteria and implementation procedures are consistent with IDEM's current practice for implementing whole effluent toxicity for the non-Great Lakes system. The following changes are proposed to clarify how whole effluent toxicity will be addressed for the non-Great Lakes system:

**(A) Narrative Criteria for Whole Effluent Toxicity:** Adopt the narrative criteria for whole effluent toxicity in the Great Lakes system rules at 327 IAC 2-1.5-8(b)(1)(E)(ii) and 327 IAC 2-1.5-8(b)(2)(A)(iv) into the non-Great Lakes system rules at 327 IAC 2-1-6(a).

**(B) 327 IAC 5-2-11.1(b):** Add a subdivision specifying that for acute whole effluent toxicity,  $1.0 \text{ TU}_a$  will be applied directly to the undiluted discharge, or, if dilution by discharge-induced mixing is allowed,  $0.3 \text{ TU}_a$  will be applied outside the discharge-induced mixing zone.

**(C) 327 IAC 5-2-11.1(b)(2):** Replace "The CAC and the TLSC will be applied outside of the mixing zone." with "The CAC, the chronic whole effluent toxicity (WET) criterion, and the TLSC will be applied outside of the mixing zone."

**(D) 327 IAC 5-2-11.1(i):** Delete this subsection. This subsection will no longer be necessary because the definitions of acute and chronic toxic units will be included in 327 IAC 2-1-9 which is incorporated in Article 5 under 327 IAC 5-1.5-1.

**(3) Application of Temperature Criteria:** Include a provision in the Great Lakes system and non-Great Lakes system rules concerning where to measure for compliance with temperature criteria. Such a provision currently only exists for the Lake Michigan temperature criteria at 327 IAC 2-1.5-8(c)(4)(D)(i). A similar provision is needed at 327 IAC 2-1.5-8(c)(4) and 327 IAC 2-1.5-8(d)(2) for other waterbodies in the Great Lakes system. A similar provision is also needed at 327 IAC 2-1-6(b)(4) and 327 IAC 2-1-6(c)(3) for waterbodies in the non-Great Lakes system. IDEM is seeking comment on what should be included in the provision.

**(4) Alternate Mixing Zones:** In the Great Lakes system rules, water quality criteria for aquatic life, human health and wildlife apply outside an alternate mixing zone if an alternate mixing zone demonstration is conducted and approved under 327 IAC 5-2-11.4(b)(4). Most of the requirements for an alternate mixing zone demonstration are incorporated in 327 IAC 5-2-11.4(b)(4). However, some of the requirements for an alternate mixing zone for an acute aquatic life criterion are included in other portions of the rules. The terms "alternate mixing zone" and "discharge-induced mixing zone" are also used interchangeably in some portions of the rules. The purpose of the following changes is to apply the term "alternate mixing zone" consistently throughout the rules and to move all requirements for an alternate mixing zone for an acute aquatic life criterion into 327 IAC 5-2-11.4(b)(4):

**(A) 327 IAC 2-1.5-8(b)(1)(E)(i) and (ii):** Replace "discharge-induced mixing zone" with "alternate mixing zone".

**(B) 327 IAC 5-2-11.4(b)(2)(A)(i)(AA):** Replace "alternative mixing zone" with "alternate mixing zone".

**(C) 327 IAC 5-2-11.4(b)(2)(A)(i)(BB):** Replace "alternative mixing zone" with "alternate mixing zone".

**(D) 327 IAC 5-2-11.4(b)(2)(A)(ii)(AA):** Replace "unless an alternative mixing zone is demonstrated as appropriate in a mixing zone demonstration conducted pursuant to subdivision (4)." with "unless a mixing zone demonstration is conducted and approved under subdivision (4), in which case the chronic criteria or value shall be met outside the alternate mixing zone."

**(E) 327 IAC 5-2-11.4(b)(2)(A)(ii)(BB):** Replace "unless an alternative mixing zone is demonstrated as appropriate in a mixing zone demonstration conducted pursuant to subdivision (4), in which case  $1.0 \text{ TU}_c$  shall be met outside the discharge-induced mixing zone." with "unless a mixing zone demonstration is conducted and approved under subdivision (4), in which case  $1.0 \text{ TU}_c$  shall be met outside the alternate mixing zone."

**(F) 327 IAC 5-2-11.4(b)(3)(B)(i):** Replace "the final acute value (FAV) shall not be exceeded in the undiluted discharge unless the discharger utilizes a submerged, high rate diffuser outfall structure (or the functional equivalent) that provides turbulent initial mixing and minimizes organism exposure time; and a mixing zone demonstration is conducted and approved under subdivision (4), in which case the CMC shall be met outside the discharge-induced mixing zone." with "the CMC shall not be

exceeded outside the zone of initial dilution and the final acute value (FAV) shall not be exceeded in the undiluted discharge unless a mixing zone demonstration is conducted and approved under subdivision (4), in which case the CMC shall be met outside the alternate mixing zone.” This proposed change moves the requirement for a submerged, high rate diffuser (or the functional equivalent) and the requirement to meet the CMC outside the discharge-induced mixing zone to subdivision (4). See (I) and (J). This proposed change also adds “the CMC shall not be exceeded outside the zone of initial dilution” to this item. This addition will make this item consistent with 327 IAC 2-1.5-8(b)(1)(E)(i) and 327 IAC 5-2-11.4(c).

**(G) 327 IAC 5-2-11.4(b)(3)(B)(ii):** Replace “unless the discharger utilizes a submerged, high rate diffuser outfall structure (or the functional equivalent) that provides turbulent initial mixing and minimizes organism exposure time; and a mixing zone demonstration is conducted and approved under subdivision (4), in which case 0.3 TU<sub>a</sub> shall be met outside the discharge-induced mixing zone.” with “unless a mixing zone demonstration is conducted and approved under subdivision (4), in which case 0.3 TU<sub>a</sub> shall be met outside the alternate mixing zone.” This proposed change moves the requirement for a submerged, high rate diffuser (or the functional equivalent) and the requirement to meet the acute whole effluent toxicity criterion outside the discharge-induced mixing zone to subdivision (4). See (I) and (J).

**(H) 327 IAC 5-2-11.4(b)(4)(A):** Add an item to this clause specifying that sources discharging to streams and seeking an alternate mixing zone for an acute aquatic life criterion or value or an acute whole effluent toxicity (WET) criterion must define the location at which discharge-induced mixing ceases.

**(I) 327 IAC 5-2-11.4(b)(4):** Add a clause to this subdivision specifying that in no case shall a mixing zone for an acute aquatic life criterion or value or acute whole effluent toxicity criterion be granted unless the discharger utilizes a submerged, high rate diffuser outfall structure (or the functional equivalent) that provides turbulent initial mixing and minimizes organism exposure time.

**(J) 327 IAC 5-2-11.4(b)(4):** Add a clause to this subdivision specifying that in no case shall a mixing zone for an acute aquatic life criterion or value or acute whole effluent toxicity criterion be granted that exceeds the area where discharge-induced mixing occurs.

**(5) 327 IAC 5-2-11.1(b):** Add a subdivision to this subsection specifying that water quality-based effluent limitations for intermittent or controlled discharges may be calculated using stream flows other than those specified in this subsection if these alternate stream flows will ensure compliance with water quality criteria. The Great Lakes system rules include a similar provision at 327 IAC 5-2-11.4(b)(3)(A)(iii). Including this provision in the non-Great Lakes system rules will clarify IDEM’s ability to calculate water quality-based effluent limitations for intermittent or controlled discharges on a case-by-case basis using alternate stream flows.

**(6) 327 IAC 5-2-11.4(b)(3)(A)(i)(AA):** Replace “For an acute aquatic life criterion or value or an acute aquatic WET criterion, when a high rate diffuser is used, the one (1) day, ten (10) year stream design flow (Q<sub>1,10</sub>).” with “For an acute aquatic life criterion or value, the one (1) day, ten (10) year stream design flow (Q<sub>1,10</sub>) or for an acute aquatic WET criterion, when a high rate diffuser is used, the one (1) day, ten (10) year stream design flow (Q<sub>1,10</sub>).” This change is intended to clarify that for an acute aquatic life criterion or value, the Q<sub>1,10</sub> applies whether or not a high rate diffuser is used.

**(7) Changes Based on USEPA and IDEM Memorandum of Agreement:** As part of USEPA approving Indiana’s Great Lakes system rules, Indiana was required to enter into a Memorandum of Agreement (MOA) with USEPA (“Addendum to the National Pollutant Discharge Elimination System Memorandum of Agreement Between the State of Indiana and the United States Environmental Protection Agency Region 5 Concerning Indiana’s Great Lakes Water Quality Standards and Implementation Procedures Rulemaking,” signed by USEPA July 28, 2000). The MOA specifies how IDEM must interpret several provisions in the Indiana rules. IDEM believes that the following issues addressed in the MOA should be addressed as part of this rulemaking so that the rules are consistent with the requirements of the MOA:

**(A) 327 IAC 5-2-11.5(b)(1)(B)(ii):** Replace “An alternate method of determining the monthly PEQ may be used if the applicant demonstrates that this alternate method results in a monthly PEQ representative of actual conditions at the facility.” with “An alternate method of determining the monthly average may be used if the applicant demonstrates that this alternate method results in a monthly average representative of actual conditions at the facility. The monthly average determined under this item shall then be used to determine the monthly PEQ using the procedure in item (i).”.

**(B) 327 IAC 5-2-11.5(b)(3)(B)(iii):** Delete the rule language after the first sentence. This item would then include only the following language: “The permittee has demonstrated, through a biological assessment, that there are no acute or chronic effects on aquatic life in the receiving water.”.

**(C) 327 IAC 5-2-11.5(g):** Specify that this subsection is only applicable to situations where the intake and outfall points are located on the same body of water as defined in 327 IAC 5-2-11.5(b)(4)(B). The MOA addresses other issues with this subsection that may also need to be addressed through rulemaking. However, IDEM believes that the other issues are not appropriate for this rulemaking.

**(D) 5-2-11.6(g)(4):** Add the following sentence to the end of this subdivision: “For each mass limit developed under this

subdivision, the NPDES permit shall include a corresponding concentration limit.”.

**(E) 5-2-11.6(h)(7)(A)(iii):** Replace the language in this item with the following: “Monitoring necessary to monitor the progress toward the goal. This shall include, but is not limited to, the following: (AA) Semi-annual monitoring of potential sources of the pollutant. (BB) Quarterly monitoring for the pollutant in the influent of the wastewater treatment system.”.

**Category: Technical Corrections to the Great Lakes System Rules**

The purpose of the following proposed changes is to correct technical mistakes in the Great Lakes system rules that were discovered after the rules became effective:

**(1) 327 IAC 2-1.5-8, Table 8-1:** Modify Table 8-1 so that the criteria conversion factor for cadmium is based on hardness. The appropriate hardness based conversion factor is included in the most recent USEPA update to the cadmium aquatic life criteria (EPA 822-R-01-001) noticed in the Federal Register April 12, 2001 (66 FR 18935).

**(2) 327 IAC 5-2-11.4(c):** Move the dissolved metals translator provisions from 5-2-11.6(c)(2) to 327 IAC 5-2-11.4(c) and include the dissolved metals translator in the wasteload allocation equations. In accordance with the USEPA guidance document “The Metals Translator: Guidance for Calculating a Total Recoverable Permit Limit from a Dissolved Criterion,” EPA 823-B-96-007, June 1996, Appendix A, a dissolved metals translator is applied to a dissolved metals criterion to calculate a total recoverable metals criterion. The total recoverable metals criterion is then used in the wasteload allocation equation to calculate a total recoverable metals wasteload allocation. The rules currently apply a dissolved metals translator to a dissolved metals wasteload allocation which is inconsistent with USEPA guidance. The language in 5-2-11.6(c)(2) should also be changed to reflect that a dissolved metals translator is applied to a dissolved metals criterion.

**(3) 327 IAC 5-2-11.4(c)(1)(B):** Replace “ $WQC_a$  = The criterion maximum concentration (CMC) or secondary acute value (SAV) or three-tenths (0.3)  $TU_a$  for WET.” with “ $WQC_a$  = The criterion maximum concentration (CMC) or secondary acute value (SAV) or, if a mixing zone demonstration for acute WET is conducted and approved under subsection (b)(4), three-tenths (0.3)  $TU_a$  for WET.”.

**(4) 327 IAC 5-2-11.4(c)(1)(E):** Replace “ $Q_w$  = The portion of the receiving waterbody allocated for mixing pursuant to subsection (b).” with “ $Q_w$  = The portion of the receiving waterbody allocated for mixing pursuant to subsection (b). If  $C_b$  is greater than the water quality criterion or value, a value of zero (0) shall be used for  $Q_w$ .”. If the background concentration exceeds a water quality criterion or value, the wasteload allocation for that criterion or value, calculated using the wasteload allocation equations in 327 IAC 5-2-11.4(c), will be less than the criterion or value. In these cases, IDEM believes that it is appropriate for the wasteload allocation to equal the criterion. The proposed rule language is intended to allow this to occur.

**(5) 327 IAC 5-2-11.4(c)(1)(H):** Replace “ $Q_z$  = The zone of initial dilution.” with “ $Q_z$  = The portion of the receiving waterbody allocated for mixing in the zone of initial dilution. For discharges into tributaries that exhibit appreciable flows relative to their volumes,  $Q_z = Q_e$  or the  $Q_{1,10}$ , whichever is less. For discharges into the open waters of Lake Michigan,  $Q_z = Q_e$ . If  $C_b$  is greater than  $WQC_a$ , a value of zero (0) shall be used for  $Q_z$ .”. The zone of initial dilution is defined in 327 IAC 2-1.5-2(94) as an area and not a volume of water. The proposed rule language is intended to define the volume of the receiving waterbody that is available to dilute the effluent in the zone of initial dilution. Additionally, if the background concentration exceeds  $WQC_a$ , the wasteload allocation for  $WQC_a$ , calculated using the wasteload allocation equations in 327 IAC 5-2-11.4(c) associated with the zone of initial dilution, will be less than  $WQC_a$ . In these cases, IDEM believes that it is appropriate for the wasteload allocation to equal  $WQC_a$ . The proposed rule language is also intended to allow this to occur.

**(6) 5-2-11.5(b)(1)(B)(i):** Replace “When monthly average data are available, at least three (3) data points over the period of a month” with “When monthly average data are available, at least two (2) data points over the period of a month”.

**(7) 327 IAC 5-2-11.6(c)(2):** Move this subdivision to 327 IAC 5-2-11.4(c) and change the language to reflect that a dissolved metals translator is applied to a dissolved metals criterion.

**(8) 327 IAC 5-2-11.6(c)(2), Table 11.6-1:** Modify Table 11.6-1 so that the criteria conversion factor for cadmium is based on hardness and move this table to 327 IAC 5-2-11.4(c). The appropriate hardness based conversion factor is included in the most recent USEPA update to the cadmium aquatic life criteria (EPA 822-R-01-001) noticed in the Federal Register April 12, 2001 (66 FR 18935).

**(9) 327 IAC 5-2-11.6(c)(4)(A) and (B)** Remove references to subdivision (2) since it is proposed to move subdivision (2) to 327 IAC 5-2-11.4(c).

**(10) 327 IAC 5-2-11.6(c)(4) and (5):** The current procedure for calculating water quality-based effluent limitations is not complete with regards to whole effluent toxicity. IDEM is seeking comment on potential procedures for calculating water quality-based effluent limitations for whole effluent toxicity.

**(11) 327 IAC 5-2-11.6(c)(5):** Add a clause specifying that monthly average water quality-based effluent limitations may not exceed a wasteload allocation unless calculated using a facility-specific coefficient of variation (CV) and a value for n based on permit conditions. Using the default values for CV and n, the current procedure would allow a monthly average water quality-

based effluent limitation to exceed the wasteload allocation in some cases. This should only be allowed if a facility-specific CV and a value for n based on permit conditions are used.

#### **Applicable Federal Law**

Under section 303(c) of the Clean Water Act (33 U.S.C. 1313(c)), Indiana is required to review, and as appropriate, modify and adopt water quality standards. Additional requirements for water quality standards applicable to waters of the Great Lakes basin are set forth in Section 118 of the CWA (33 U.S.C. 1268). These laws are implemented at the federal level by 40 CFR 131 and 132.

#### **Potential Fiscal Impact**

There are issues proposed in this notice (for example, alternatives (2) listed under Best Science and (1) listed under Updates to Existing Rule Language) where there will be either a neutral or cost savings. It is not anticipated that there will be a significant fiscal impact for the regulated community due to these enumerated fast track issues.

#### **Public Participation and Workgroup Information**

An external workgroup has been established to discuss issues involved in this rulemaking. The workgroup began meeting in December 2002. To date, there have been three (3) meetings. The workgroup has been primarily focused on framing the issues to be solved by the rulemaking. The workgroup is made up of a cross-section of stakeholders, interested parties, and IDEM staff. Information on past workgroup meetings and scheduling and agendas of future meetings is available on the IDEM Web site at <http://www.IN.gov/idem/water/planbr/wqs/review/fasttrk.html>.

If you wish to provide comments to the workgroup on the rulemaking, attend meetings, obtain any additional information on the workgroup, or submit suggestions related to the workgroup process, please contact MaryAnn Stevens, Rules Section, Office of Water Quality at (317) 232-8635 or (800) 451-6027 (in Indiana). Please provide your name, phone number, and e-mail address, if applicable, where you can be contacted. The public is also encouraged to submit comments and questions to members of the workgroup who represent their particular interests in the rulemaking.

#### **STATUTORY AND REGULATORY REQUIREMENTS**

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

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

#### **REQUEST FOR PUBLIC COMMENTS**

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rulemaking.
- (2) The submission of suggestions for the development of draft rule language.

Mailed comments should be addressed to:

#03-129(WPCB) [Fast Track]  
MaryAnn Stevens, Senior Rulewriter  
Rules Section  
Office of Water Quality  
Indiana Department of Environmental Management  
P.O. Box 6015  
Indianapolis, Indiana 46206-6015.

Hand delivered comments will be accepted by the IDEM receptionist on duty at the twelfth floor reception desk, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana. Comments also may 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 Office of Water Quality, Rules Section at (317) 233-8903. Please note it is not necessary to follow a faxed comment letter with another sent through the postal system.

#### **COMMENT PERIOD DEADLINE**

Comments must be postmarked, faxed, or hand delivered by July 30, 2003.

Additional information regarding this rulemaking action may be obtained from MaryAnn Stevens, Rules Section, Office of Water Quality, (317) 232-8635 or technical information concerning fast track may be obtained from John Elliott, Permits Section, 317-233-0703 or David Kallander, Water Quality Section, 317-233-2472 or (800) 451-6027 (in Indiana).

Tim Method  
Deputy Commissioner  
Indiana Department of Environmental Management