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TITLE 327 WATER POLLUTION CONTROL BOARD

Proposed Rule
LSA Document #03-130

DIGEST

Adds 327 IAC 5-3.5 to establish a process and application requirements for obtaining a variance from the existing water quality criterion used to establish a water quality-based effluent limitation for mercury in wastewater discharges permitted under the National Pollutant Discharge Elimination System (NPDES) program. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: #03-130(WPCB), June 1, 2003, Indiana Register (26 IR 3171).
Second Notice of Comment Period and Notice of First Hearing: #03-130(WPCB), June 1, 2004, Indiana Register (27 IR 2884).
Date of First Hearing: September 8, 2004.

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 June 1, 2004, at 27 IR 2884. 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:

LSA Document #03-130 [SMV]
MaryAnn Stevens
Rules Section
Office of Water Quality
Indiana Department of Environmental Management
P.O. Box 6015
Indianapolis, Indiana 46206-6015.

Hand delivered comments will be accepted by the IDEM receptionist on duty at the twelfth floor reception desk, Office of Water Quality, Indiana Government Center-North, Room 1255, 100 North Senate Avenue, Indianapolis, Indiana. Comments may be delivered by facsimile to (317) 232-8406. Please confirm the timely receipt of faxed comments by calling the Office of Water Quality Rules Section at (317) 233-8903. 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, hand delivered, or faxed by November 22, 2004.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

IDEM requested public comment from June 1, 2004, through June 30, 2004, on IDEM's draft rule language. IDEM received comment letters from the following parties by the comment period deadline:

BP Products North America, Inc., Linda J. Wilson, Environmental Superintendent (BP)
Gary Sanitary District, Charles G. Peller, Jr., P.E., Director (GARY)

Indianapolis, City of, James A. Garrard, Director of Department of Public Works (INDP)
Ispat Inland, Inc., John D. Fekete, Director of Environmental Affairs (III)
Michigan City, Sanitary District, Dan R. Olson, Wastewater Treatment Plant Superintendent (SDMC)
Meyer & Wyatt, P.C., James B. Meyer, Attorney (MW)
Save the Dunes Council, Charlotte Read (SDC)
United States Steel Company, Gregory G. Mackley, Area Manager, Environmental Technical Services (USS)

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

Comment: IDEM is strongly encouraged to expedite the rulemaking process to establish a streamlined process and permit conditions specific to mercury variances. (INDP)

Response: IDEM agrees.

Comment: The mercury workgroup's desire to craft a simple rule may fail to produce meaningful reductions of mercury in Indiana waters. The draft rule contains no goal that dischargers are ultimately expected to comply with state mercury water quality standards within a reasonable time. (SDC)

Response: By current statute, a variance may not be extended beyond 10 years. The rule is intended to be simple by virtue of being less involved than the process of applying for an individual variance, but dischargers will be required to establish a program to produce mercury reduction in order to receive their first streamlined mercury variance (SMV) and show accomplishments under their program in order to be approved for the renewal SMV.

Comment: The requirements of the SMV draft rule, in principle, are acceptable, but the time frame established for the requirements is not. The draft rule language does not address the critical and legitimate noncompliance concerns of NPDES permit holders between the date of permit issuance and the date of issuance of the SMV. Under the most favorable scenario, the SMV will not be available to permit holders until after adoption by the water pollution control board, completion of the state's promulgation process, and review and acceptance by EPA. This is a time consuming process that delays the availability of a SMV. (GARY, MW, SDMC)

Response: A new section 10, transitional mercury effluent limitation, has been added to the draft rule to provide for the possible noncompliance concerns of permit holders with an effective mercury discharge limit (no compliance schedule) that cannot be met and who have not yet been issued an SMV.

Comment: The draft rule presents a feasible streamlined approach for reducing mercury discharges to the environment, and the intent of the PMPP and the approach for establishing an interim discharge limit have merit. (BP, III, USS)

Response: IDEM agrees.

Comment: The SMV draft rule published for second notice of comment period in the Indiana Register includes requirements that will ensure continued progress toward the reduction of mercury in the environment while providing a streamlined process that will benefit NPDES permit holders that cannot yet achieve the more stringent mercury discharge limits. (INDP)

Response: IDEM agrees.

Comment: Among the EPA requirements that must be met for a discharger to obtain a variance from state water quality criteria is the need to demonstrate that one of the conditions of 40 CFR 131.10(g) is met. In the case of Indiana's streamlined mercury variance, the demonstration may be for a class of dischargers that are similar enough that the state can use the same data to demonstrate that one of the conditions at 131.10(g) applies. However, it is not clear whether the SMV draft rule will meet the similarity test. (SDC)

Response: Paragraph (g) of 40 CFR 131.10 is specifically about removing a designated use for a waterbody. A variance is not a removal of a designation of use, it is a variance from a water quality standard. Therefore, 40 CFR 131.10(g) is not applicable to this rulemaking.

Comment: Dischargers with existing mercury effluent levels at or below thirty (30) ng/l (parts per trillion) will be eligible for the streamlined mercury variance under the provisions of the draft rule. This level is too lenient for dischargers that are achieving a lower level of mercury discharge. The 1999 Triennial Review of Water Quality Standards draft rule language included a more stringent multiple discharger mercury variance eligibility standard of twelve (12) ng/l. Dischargers above that level would have been required to apply for an individual variance. The SMV draft rule should also base its availability on the discharger's existing mercury effluent level being below twelve (12) ng/l. (SDC)

Response: IDEM is developing an SMV rule that will apply to as many dischargers as possible so the dischargers can begin the process of reducing the mercury in their effluents. The U.S. EPA Region V has previously approved an SMV rule for the state of Michigan that had a set interim compliance value of thirty (30) ng/l. Restricting the rule's applicability to facilities that have an existing discharge level of mercury below twelve (12) ng/l may require some facilities to obtain individual mercury variances and further delay the process of reducing mercury in their effluents.

Comment: The interim mercury discharge limit should be set according to the SMV applicant's current mercury discharge value. If the interim limit is higher than the applicant's current discharge level, backsliding would be possible. (SDC)

Response: The alternative mercury discharge limit will be set according to the applicant's current mercury discharge level.

Comment: The SMV draft rule should include other options such as: (1) imposing alternative effluent limits for a limited time

followed by more stringent effluent limits; (2) a compliance schedule with time tables for meeting mercury limits that extend beyond the permit's expiration date; and (3) the ability to require dischargers that discharge mercury over twelve (12) ng/l to apply for an individual variance based upon Indiana's existing rules. (SDC)

Response: The alternative effluent limit will be re-evaluated when the SMV is considered for renewal. The expectation is that the alternative effluent limit in a renewed SMV will be lower than the alternative effluent limit in the initial SMV because the Pollutant Minimization Program implemented by the discharger should reduce the level of mercury being discharged. The alternative effluent limit is based on the level of mercury found in the discharger's effluent. Since the SMV can exist for two (2) permit cycles and the compliance schedule will be placed in the permit during the first permit cycle, there will not be a compliance schedule in the permit renewal.

Comment: IDEM has issued both an NPDES and a construction permit for the city of Hobart's new wastewater treatment plant. This treatment plant will discharge effluent into waters of the Great Lakes Basin and, therefore, must meet Indiana's mercury water quality standard of one and three tenths (1.3) ng/l. The issuance of this NPDES permit indicates that IDEM believes Hobart has the end-of-pipe treatment technology capable to allow the municipality to meet the discharge limit and that it is cost effective for Hobart to use it. (SDC)

Response: The city of Hobart and its engineering firm believe that an entirely new wastewater treatment plant built to serve the city will operate correctly and be in compliance with the NPDES discharge limits including the limit for mercury. Hobart understands that there is no ability to apply for a variance, individual or streamlined, from a water quality standard for a new facility within the Great Lakes system. Hobart's ability and methodology for meeting this limit has yet to be demonstrated and will ultimately, if the facility is constructed, be used to gauge the ability of other wastewater treatment plants of meeting tighter mercury limits.

Comment: The city of Indianapolis submitted an application in 1998 for a variance from the revised mercury discharge limits that were to be included in the city's NPDES permit. A supplemental application was submitted to IDEM in July 2001. These applications demonstrated that no proven technologies exist to achieve the new mercury limits and that the only possible technology has been used only in pilot-scale industrial settings, would be cost prohibitive, and would cause significant multimedia impacts. IDEM issued the NPDES permits for Indianapolis's two treatment plants in October 2001 with the new mercury limits and a three (3) year compliance schedule. The city's variance application is currently still pending. A SMV rule is necessary because other municipalities and NPDES permit holders face situations similar to the Indianapolis experience. (INDP)

Response: The SMV will allow a streamlined process for receiving a variance from the mercury water quality standard.

Comment: The SMV draft rule must limit the number of variances, whether streamlined or otherwise, that a discharger of mercury is eligible to receive. (SDC)

Response: The variance statute, IC 13-14-8-9, limits the number of variances to an NPDES permit to two (2). The SMV, therefore, is limited statutorily to an initial variance and one (1) renewal.

Comment: IDEM has stated that EPA commented that the SMV does not trigger an antidegradation review; however, clarification of this antidegradation issue is needed from EPA. (SDC)

Response: IDEM will act in accordance with 40 CFR 132, Appendix F, when IDEM submits the SMV to EPA for review. One of the elements of Appendix F is to demonstrate that the SMV conforms to the requirements of Indiana's antidegradation procedures. IDEM will make that demonstration based on the rule language and not specific cases.

Comment: The applicability section at 327 IAC 5-3.5-2(a) is intended to ensure that the SMV is available only to facilities that cannot meet the current mercury discharge limits. However, as currently drafted, section 2(a) could be misconstrued to mean that the SMV would not be available to a facility that may have achieved the discharge limit a single time. To prevent this overly stringent application of the rule, section 2(a) should be revised with the underlined new phrases to read as follows: "A streamlined mercury variance (SMV) shall be available for the duration of the NPDES permit issued to a wastewater discharging facility that has a NPDES permit in effect containing a discharge limitation for mercury that, <u>for technology-based reasons,</u> cannot be achieved <u>at all times</u> by the facility.". (INDP)

Response: The rule language in section 2(a) has been modified with the addition of "consistently"as follows: "A streamlined mercury variance (SMV) shall be available for the duration of the NPDES permit issued to a wastewater discharging facility that has an NPDES permit in effect containing a discharge limitation for mercury that cannot be achieved consistently by the facility.".

Comment: A discharger should be able to apply for a SMV during the permit renewal process based on effluent data that demonstrates a reasonable potential to exceed a mercury criterion. Section 2(a) should be revised with the underlined new phrase to read as follows: "A streamlined mercury variance (SMV) shall be available for the duration of the NPDES permit issued to a wastewater discharging facility that has a NPDES permit in effect containing, <u>or expected to contain upon renewal,</u> a discharge limitation for mercury that cannot be achieved by the facility.". (BP, III, USS)

Response: Section 4 of the SMV rule clearly states when a facility may apply for an SMV. IDEM believes section 2 should remain as a broad general applicability section. Therefore, the suggested change has not been made.

Comment: Section 2(c)(2) should be clarified by linking the term "average" to section 8 where "average" is defined as a twelve (12) month rolling average. Section 2(c)(2) should be revised with the underlined new phrase to read as follows: "Applicants seeking

an interim limit whose effluent contains mercury at an average concentration, as determined in section 8(a) of this rule, greater than thirty (30) ng/l (parts per trillion).". (BP, III, USS)

Response: IDEM accepts this comment and the suggested wording has been included in the rule.

Comment: The SMV draft rule as written presents some timing problems. Section 2(a) provides that a SMV shall be available for the duration of the NPDES permit; however, section 7(a) provides for renewal of a SMV either one hundred eighty (180) days before a permit expires or within one hundred eighty (180) days after the issuance of a revised permit that establishes a revised mercury discharge. Under this framework, if the initial SMV is issued within the one hundred eighty (180) days before a permit expires and the permit renewal does not contain a revised mercury discharge limit then the facility would not be able to obtain a renewal of the SMV. This exact situation could happen to the city of Indianapolis if the initial SMV is not issued more than one hundred eighty (180) days prior to the September 30, 2006, expiration date of the city's NPDES permits for the Belmont and Southport treatment plants. Further complicating the timing problem of the SMV rule is the question of whether and when the rule is adopted by the water pollution control board. Additional structural components of the draft rule concerning section 4(d) completeness review of SMV applications and section 5(e) timing for incorporation of the SMV into the NPDES permit may also affect the timing and ability to acquire a SMV by a discharger. In an attempt to address these potential timing problems, the following rule language with the underlined new wording is suggested:

Sec. 2. (a) A streamlined mercury variance (SMV) shall be available for the duration of the NPDES permit issued to a wastewater discharging facility that has a NPDES permit in effect containing a discharge limitation for mercury that, for technology-based reasons, cannot be achieved at all times by the facility. If the initial SMV is issued within one hundred eighty (180) days of the expiration of the NPDES permit, the initial SMV shall be available for the duration of the revised NPDES permit, if a revised permit is issued.

Sec. 4. (d) Within thirty (30) days of receipt of a SMV application or a revised SMV application, the department will determine whether the application is complete. Upon a determination that a SMV application is complete, the department will publish a notice of completeness and availability of the SMV in accordance with section 5 of this rule, public notice of SMV application. (INDP)

Response: A new section 10, transitional mercury effluent limitation, has been added to the draft rule to provide for the possible noncompliance concerns of permit holders with an effective mercury discharge limit (no compliance schedule) that cannot be met and who have not yet been issued an SMV.

Comment: To assure that the SMV rule is truly streamlined and a discharger with a five (5) year compliance schedule is assured that attainable final limits will be in place prior to expiration of the compliance schedule, IDEM needs to commit to responding to SMV applications efficiently. Section 4(d) should be expanded with the underlined suggested wording to read as follows: "Upon receipt of a complete SMV application, the department will publish a notice of completeness and availability of the SMV in accordance with section 5 of this rule, public notice of SMV application. The notice of completeness and availability will be published within thirty (30) days of receipt of a complete SMV application. If the notice is not published within thirty (30) days, then the SMV application is deemed not to have met the requirements of the rule and is denied. This denial is an appealable decision under IC 4-21.5.". (BP, III, USS)

Response: IDEM agrees to publish the notice of completeness and availability within thirty (30) days of receipt of a complete SMV application. The suggested first underlined sentence from the comment has been included in section 4(d) of the draft rule.

Comment: It is not clear whether IDEM envisions that the draft PMPP submitted for public comment in section 9 is the same or different document, though still draft, from the PMPP submitted to IDEM as part of the SMV application. It is also not clear whether the public-noticed PMPP could still be deemed incomplete by IDEM. To avoid confusion on the documents to be submitted with the initial SMV application, section 4(c) should be revised with the underlined new phrase to read as follows: "The initial SMV application must include all information, including the draft PMPP as described in section 9 of this rule, PMPP requirements.". (BP, III, USS)

Response: Section 4(c) has been modified to read as follows: "The initial SMV application must include all information, including the PMPP, required under section 9 of this rule, PMPP requirements.". In IDEM's terminology, the draft PMPP is the document that the facility publishes in a daily or weekly newspaper of general circulation throughout the area affected by the discharge (see section 9(c) of the draft rule). IDEM expects the facility to consider any comments submitted during this comment period and modify the draft PMPP if necessary. After completion of this activity, the PMPP is ready for inclusion in the facility's SMV application and no longer considered the draft PMPP. Accordingly, the first appearance of "draft PMPP" in section 9(c) has been modified to "PMPP".

Comment: There needs to be some methodology to avoid the need for full blown individual variance applications for permit renewals or the value of the SMV process will be greatly diminished due to the large number of expired permits. IDEM has indicated through its responses to the mercury first notice comments that the streamlined mercury variance is necessary to avoid redundant and unnecessary individual variance applications, and it also appears IDEM recognizes that if a SMV is not available before the end of a compliance schedule then that process is inadequate to protect NPDES permit holders from noncompliance. Despite this, IDEM has publicly stated that its goal is to reissue all administratively continued permits by the end of 2004 or early 2005. This will require

compliance schedules or costly, redundant, and unnecessary individual variance applications. Since renewal applications have been submitted by administratively continued permit holders, an individual variance application must be filed prior to the effective date of the permit or the permittee must file an appeal and submit the variance application within ninety (90) days of the effective date. An appeal will only temporarily stay the mercury effluent limitations. The foregoing gives rise to the following questions:

(1) Will IDEM agree to a longer-term stay until the SMV application has been filed by the permittee and the agency has acted upon it?

(2) Will IDEM review the individual variance applications and act on them prior to the availability of the SMV?

(3) How many individual variance requests has IDEM received and how many have been evaluated and a final decision made in the last ten (10) years?

(4) Will IDEM have a short hand, individual variance application process to avoid having the POTWs having to spend thousands of dollars to prepare a full-fledged, individual variance application?

(GARY, MW, SDMC)

Response: A new section 10, transitional mercury effluent limitation, has been added to the draft rule to provide for the possible noncompliance concerns of permit holders with an effective mercury discharge limit (no compliance schedule) that cannot be met and who have not yet been issued an SMV. IDEM believes this language alleviates the need for an extended stay and a shorthand individual variance. IDEM has received one (1) individual variance for mercury and has not yet made a final determination on that variance request.

Comment: It is imperative to resolve how a facility could preserve its right to file an individual variance application if the SMV is denied or determined by IDEM to not meet the requirements of the SMV rule. IDEM must develop rule language that allows time for the application for an individual variance application if a SMV is found incomplete and the applicant does not choose to appeal the decision. According to 327 IAC 5-3-4.1(b)(1), an individual variance application must be filed within ninety (90) days from the effective date of the permit, with the possibility of a ninety (90) day extension. However, it seems the SMV application process will take two hundred seventy (270) days from the permit effective date until the SMV is incorporated into the permit. Therefore, the SMV application variance timing would preclude developing and preparing an individual variance. The total time of two hundred seventy (270) days is based upon the following: (1) sixty (60) days to prepare a SMV application and a draft PMPP assuming the discharger has already begun work on a PMPP prior to the permit becoming effective; (2) sixty (60) days to submit a complete SMV application to IDEM including response to public comments on the draft PMPP; (3) thirty (30) days for IDEM to review the complete SMV application and public notice the SMV; and (4) one hundred twenty (120) days to allow for public comment and incorporation by IDEM of the SMV into the permit. (BP, III, USS)

Response: Section 10(b) has been added to the draft rule to provide for the opportunity to apply for an individual variance if the SMV is denied, notwithstanding the time frames in 327 IAC 5-3-4.1. Section 10(b)(2) also includes the following language: "The applicant may petition the commissioner for up to an additional ninety (90) day period to submit the application." to account for any possible longer time needed to apply for an individual variance.

Comment: When a permit is renewed based on a five (5) year cycle, water quality-based effluent limits (WQBELs) for mercury could be the same as in the expired (previous) permit. The expired (previous) permit would have had a five (5) year compliance schedule for the same WQBEL. It is not certain that another five (5) year compliance schedule could be used in the renewed permit for the same WQBEL. Therefore, there is the possibility that the unattainable WQBEL would be in effect immediately upon renewal. Section 7 needs to state that enforcement of a permit limit is delayed pending processing of a SMV application or individual application if the SMV is denied. As well, permit holders with a mercury limit need protection from legal exposure during the time between permit issuance and SMV approval and during the application process for an individual variance if the discharger is denied a SMV. (BP, III, USS)

Response: A new section 10, transitional mercury effluent limitation, has been added to the draft rule to provide for the possible noncompliance concerns of permit holders with an effective mercury discharge limit (no compliance schedule) that cannot be met and who have not yet been issued an SMV.

Comment: In section 7(b), the term "initial SMV" is confusing because in section 7(c) and 7(d) it is implied that the PMPP must be revised and a new interim (alternative) discharge limit shall be developed. It appears that the initial SMV will not be renewed and a revised SMV will be issued. (BP, III, USS)

Response: State statute allows a variance to be issued for only two (2) five-year periods. Thus, the first SMV application made by a facility is termed "initial" and, if a facility reapplies and is approved for the second SMV, it is termed the "renewed" SMV. Renewal of the initial SMV by IDEM will be based upon "demonstration that implementation of the PMPP has achieved progress toward the goal of reducing mercury from (the facility's) discharge." (see section 7 (b) of the rule). The interim limit for mercury during the initial SMV will be evaluated under section 8(b) of the rule for establishing an interim limit for the renewal SMV.

Comment: The phrase "except as provided in subsection (d)" should be added to the end of section 7(b) to account for the recognition in section 7(d) that there may be situations where no reasonable additional PMPP actions will reduce mercury. Without this additional language, there is concern that section 7(b) would prevent extension of the SMV unless progress in reducing mercury

can be demonstrated even though it is recognized later in section 7 that there are situations where nothing else can be done to reduce mercury. (BP, III, USS)

Response: IDEM accepts this comment and has added the suggested wording to section 7(b).

Comment: In section 7(c)(3), the term "influent" needs to be clarified to mean the influent to publicly owned treatment plants and not intake flow. Monitoring influent to an industrial wastewater treatment plant may not be relevant and would only be useful for certain industries and specific treatment plants. Any requirement of influent monitoring for industry should be presented in a PMPP and not via SMV renewal requirements. (BP, III, USS)

Response: Section 7(c)(3) has been modified to read as follows: "An analysis of the mercury concentrations determined through sampling at the facility's locations that have mercury monitoring requirements in the NPDES permit for the two (2) year period prior to the SMV renewal application.".

Comment: In section 7(c)(4), the term "alternative mercury discharge limit" is not defined. It appears this limit is to be developed according to section 8(b); therefore, a cite to this section and the use of the same term would be beneficial. (BP, III, USS)

Response: The reference to section 8(b) has been added to section 7(c)(4) as suggested.

Comment: Section 7(d) should be clarified by the inclusion of the following underlined language: "...in the influent <u>to and</u> effluent <u>from the wastewater treatment works</u>...". (BP, III, USS)

Response: The wording "in the influent and effluent" has been removed from section 7(d).

Comment: The draft rule requires ten (10) data points equally spaced over a twelve (12) month period in order to establish an interim SMV effluent limitation, but the rule does not address NPDES permits where the water quality-based effluent limitations were derived from the chronic aquatic criterion and compliance was based on the limit of quantification for the cold vapor atomic absorption method (US EPA Method 245.1 or 245.2). If these permit holders have no data or limited data using Methods 1631/1669, compliance with the CAC-based effluent limit is either unknown or based on minimal data. The problem is further exacerbated for Great Lakes system dischargers whose effluent limits will be based on the wildlife criterion. If final effluent limits cannot be met within three (3) years (five years for the Great Lakes system dischargers), then the PMPP process established in the draft rule creates unnecessary delays. The solution is a conditional SMV that provides time for collection of the required number of data points and starts the PMPP process simultaneously. (GARY, MW, SDMC)

Response: There are just a few facilities that find themselves in the situation where their existing permits contain currently applicable water quality based effluent limits (WQBELs) for mercury. In those situations, the existing WQBELs for mercury are less stringent than the new WQBELs for mercury based on human health or wildlife criteria. These facilities will be given a schedule of compliance to achieve the new WQBELs for mercury, and their interim limits will be the WQBELs in their existing permits. The SMV rule is being modified to provide facilities with an interim SMV effluent limit, but these facilities are required to provide IDEM with the analytical data for mercury required by section 8 of the rule to establish the interim SMV limit. The collection of the analytical data for mercury to develop the interim limit for the SMV is not prohibited until after a facility has a new permit. Facilities that find themselves in this situation should begin the process of collecting the data necessary to establish an interim SMV limit for mercury.

Comment: Section 8(a) should be revised with the underlined modifications to read as follows:

Sec. 8. (a) The interim limit for mercury discharge during the duration of a SMV shall be based on representative effluent data that have been analyzed using Analytical Method 1631. The interim limit shall be expressed as <u>the highest daily value for mercury</u> from a data set that includes a minimum of ten (10) <u>daily values from the most recent</u> twelve (12) month to twenty-four (24) month period. <u>A daily value is defined as either one (1) grab sample, the average of multiple grab samples taken in a day, or one (1) twenty-four (24) hour composite sample. The highest daily value will become the interim limit. Compliance with the interim limit is achieved if the average of the effluent daily value for the twelve (12) month rolling average is less than the interim limit.</u> A SMV is not available to an applicant that requests an interim limit greater than thirty (30) ng/l.

(BP, III, USS)

Response: The number of samples required to establish the SMV interim limit has been reduced to six (6) over a one (1) year period. Sampling Method 1669 cannot be used to collect a composite sample. The suggestion to elaborate on the definition of a twelve (12) month rolling average will be considered in the development of a final definition.

Comment: The SMV draft rule and its required pollution minimization program plan (PMPP) set no goals or time tables for showing reduction of mercury in the discharger's influent or effluent. Demonstrating compliance with the SMV will be based largely on the plan elements and the discharger's success in implementing the plan. The required annual reports must be constructed to demonstrate to the public whether mercury reductions are being achieved. (SDC)

Response: Draft guidance will be available to help NPDES permit holders develop and assess their pollutant minimization program plans. Facilities will need to report annually on the status of their progress, including identifying the sources worked with and any known or estimated reductions of mercury. This data coupled with analytical data will help assess what actions are having the greatest impact on the mercury effluent reductions.

Comment: The SMV issuance process is unnecessarily delayed by requiring the development of a PMPP, public participation, and

response to public comment prior to submission of the SMV application. A permit holder, depending on the condition of its individual permit, may be in noncompliance with its mercury effluent limitations during the approximately twelve (12) to eighteen (18) months needed to submit a SMV application and the up to ninety (90) days IDEM has to act on the application. As an alternative to the draft rule's SMV application process, it is suggested that IDEM issue a conditional initial SMV within a reasonable amount of time (for example, ninety (90) days) containing an interim effluent limit of thirty (30) ng/l or, if sufficient data is available, an interim limit established under section 8 of the SMV draft rule. The SMV would be conditioned based upon compliance with a schedule requiring the development of a PMPP, public participation, and responses to the public comment as outlined in section 9(a) through (e) of the SMV draft rule. Milestone dates, varying based on the size of the community, service area, and composition of industrial and commercial users, would be benchmarks for determining compliance and eligibility for retaining the conditional SMV effluent limit. Once the final SMV application it submitted to IDEM, the department would process the application and reopen the permit to replace the conditional effluent limit with an approved site-specific SMV limit. (GARY, MW, SDMC)

Response: For facilities without a compliance schedule, section 10 should alleviate the stated concerns. Facilities with a compliance schedule should not be in noncompliance with their mercury effluent limitations during the SMV process. In addition, IDEM believes the public participation prior to the filing of the application for an SMV is critical to the development of the PMPP. Therefore, IDEM believes the initial public participation period is necessary to the SMV process.

Comment: IDEM needs to recognize that the raw materials used in the steel making and petroleum refining industries, specifically, iron ore, coal, coke, limestone, and crude oil, naturally contain mercury. Industries using these raw materials will not be able nor should they be required to identify alternatives, a measure of performance, or schedule of actions to reduce mercury. Therefore, section 9(a)(3)(C) should be worded to clarify that the term "materials" does not include iron ore, coal, coke, limestone, and crude oil. (BP, III, USS)

Response: IDEM recognizes that the named raw materials naturally contain mercury and that there currently are limited options regarding low mercury alternatives. The current lack of alternates to these raw materials does not preclude the possibility that the level of mercury in the effluent could be reduced by best management practices or some other means. In the future, low mercury raw materials may become available that are economically feasible. For the purpose of the SMV application, this issue can be addressed at the present time in a brief discussion of the current availability or lack of availability of feasible alternatives. Language has been added in the rule to acknowledge that planned activities may be limited by economic feasibility.

Comment: It would be beneficial to clarify in section 9(a)(4) that the term "measure of performance" includes economic factors such as cost effectiveness. The mercury workgroup should consider a list of factors to identify measures of performance and schedule of actions. The list of factors could be included in the guidance that IDEM has committed to provide for assisting in developing, reviewing, and implementing PMPPs. (BP, III, USS)

Response: Section 9(a)(4) is linked to section 9(a)(3) where the rule has been modified to include the following language: "The list of planned activities may consider technical and economic feasibility...".

Comment: In section 9(a)(5), the term "influent and effluent" should be specifically stated as "influent to and effluent from the wastewater treatment plant". Requiring data on the quality of industrial facility influent is not necessary in all circumstances; therefore, in section 9(a)(5) "if applicable" should follow "influent to". The first mention of biosolids occurs in section 9(a)(5), and the intent is not clear. IDEM should provide indication of applicable circumstances for requiring data on biosolids. (BP, III, USS)

Response: Section 9(a)(5) of the rule has been modified to include the following language: "All available mercury monitoring data and any information on mercury in biosolids, if required by an NPDES permit or land application permit, for the two (2) year period preceding the SMV application.".

Comment: The requirement placed on publicly owned treatment works (POTWs) in section 9(b)(1)(E) of the SMV draft rule is not specific according to sources of mercury contribution as are the requirements found in clauses (A) through (D). The draft language of clause (E) could be misconstrued to require a preliminary evaluation of every home, automobile and appliance in a POTW's service area to determine if mercury is present. The following modification of clause (E) is suggested: "(E) Significant sources of residential and retail contributions of mercury, for example, heating, ventilation, and air conditioning contractors, automobile and appliance repair, veterinarians, and others specific to the community served.". (INDP)

Response: IDEM accepts this suggestion and has modified section 9(b)(1)(E) accordingly.

Comment: Section 9(b)(1)(E) of the SMV draft rule contains requirements that are clearly beyond the ability of a facility to control in that POTWs have no authority to regulate the type of thermostats used in residential buildings or retail establishments and cannot control the use of mercury in manufactured goods. (GARY, MW, SDMC)

Response: Section 9(b)(1)(E) has been modified according to the preceding comment's suggested language.

Comment: When does IDEM anticipate guidance documents to assist municipalities in the design of PMPPs? (GARY, MW, SDMC)

Response: IDEM has begun to develop guidance and the goal will be to have guidance available before the SMV rule becomes effective.

Comment: There is no mention in section 9 of IDEM approving a PMPP. If the PMPP is deemed complete as discussed in section

9(f), is the plan considered to be approved or is there another test required for approval of a PMPP? What must an applicant do to achieve PMPP approval? IDEM must clarify the relationship between section 9(f) and section 5(e) to assure effective development of PMPPs. (BP, III, USS)

Response: IDEM does not intend to issue a formal approval in the typical form of an approval letter. A facility applying for an SMV will know that its application met with IDEM's "approval" if the SMV is issued and the SMV is incorporated as a condition of the facility's NPDES permit according to section 6 of the rule.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On September 8, 2004, the water pollution control board conducted the first public hearing/board meeting concerning the streamlined mercury variance rule. Comments were made by the following parties:

Maggie McShane, Indiana Petroleum Council (IPC) and also representing BP Products North America (BP)

John Chavez, City of Indianapolis (INDP)

Tom Neltner, Improving Kids' Environment (IKE)

Glenn Pratt, citizen (GP)

Rae Schnapp, Wabash Riverkeepers (WR)

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

Comment: The Indiana Petroleum Council and BP Products support the preliminary adoption of the streamlined mercury rule but have concern regarding the limit of ten (10) years that a discharger may have a streamlined mercury variance. (IPC, BP)

Response: A variance according to Indiana statute is limited to two (2) five-year permit cycles; therefore, the SMV rule cannot allow an SMV for longer than ten (10) years. A revision to that state statute is necessary to extend the term of a variance from a water quality based effluent limit.

Comment: Any minor issues with the SMV rule should not be cause for delaying adoption of the rule. The minor issues of concern are in regard to the following: (1) section 9 of the rule and the requirements of a PMPP; (2) the new section 10 is an admirable start to resolve the problem of timing if an applicant is denied an SMV, but the section needs further clarification; and (3) section 10(a)(2) needs to include the authority under which IDEM may issue an interim limit for a discharging facility until the SMV is either approved or denied. (INDP)

Response: IDEM will continue to work out any problems with the PMPP and section 10 with the workgroup and other interested parties.

Comment: IDEM is to be complimented for beginning the workgroup process with questions on how to design the SMV rather than with predetermined answers. The SMV rule is not going to deal with the problem of mercury in fish. The state's role in reducing mercury is missing from the SMV rule. The water pollution control board should recommend to the air pollution control board that it hold multiple public meetings regarding mercury emissions from electrical power generating plants rather than the single meeting that has been scheduled. (IKE)

Response: The water board has sent a letter to the air board to ensure that coordination occurs between the two environmental boards; however, the schedule for public hearings on a citizen petition for control of mercury from coal-fired power plants is not relevant to the specifics of the preliminary adopted rule.

Comment: Under IC 13-14-8-4, the water pollution control board when adopting a rule is required to take into account a list of factors. Of those various factors, the SMV rule does not accomplish or promote the following: (1) technical feasibility including quality conditions that could reasonably be achieved through a coordinated control of all factors affecting the quality; and (2) the right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or the reasonable enjoyment of life and property. The SMV rule does not address mercury in combined sewer overflows (CSOs). There are no discharge limits placed in NPDES permits on CSOs. For this reason, the SMV rule falls short of providing quality conditions and an environment that is sufficiently uncontaminated. (IKE)

Response: The SMV is available for WQBELs for mercury, whether from a wastewater treatment plant or from a CSO discharge point. The water board considered the required factors under IC 13-14-8-4 when it preliminarily adopted the SMV rule.

Comment: The most significant sources of mercury contamination are historic, and the SMV rule needs to acknowledge that fact by requiring an applicant to identify historic mercury sources when making a source assessment for the PMPP. (GP)

Response: The preliminarily adopted rule will be revised to clarify this point.

Comment: The water pollution control board chairman began the public hearing by calling the rule under consideration for preliminary adoption the "statewide mercury variance rule". The record needs to accurately reflect that the rule is the "streamlined mercury variance rule". The rule as drafted has expanded beyond a variance for dischargers that have high levels of mercury in their intake waters. The rule needs to adhere to the Indiana statute and be available to dischargers for no more than the maximum of ten (10) years. The rule should contain reference to the fish consumption advisory listing and should require an applicant for the SMV to consider air sources of mercury when making the source inventory for the PMPP. (WR)

Response: The chairman noted his inadvertent misstatement. IDEM agrees that a discharger should consider any potential air

sources of mercury in its inventory from its facilities.

327 IAC 5-3.5

SECTION 1. 327 IAC 5-3.5 IS ADDED TO READ AS FOLLOWS:

Rule 3.5. Streamlined Mercury Variance Requirements and Application Process

327 IAC 5-3.5-1 Purpose
Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 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
Affected: IC 13-18-4

Sec. 1. The purpose of this rule is to establish a process and application requirements for obtaining a streamlined variance from a water quality criterion used to establish a water quality-based effluent limitation established for mercury in a NPDES permit. *(Water Pollution Control Board; 327 IAC 5-3.5-1)*

327 IAC 5-3.5-2 Applicability
Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 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
Affected: IC 13-14-8-9; IC 13-18-4

Sec. 2. (a) An SMV shall be available for the duration of the NPDES permit issued to a wastewater discharging facility that has an NPDES permit in effect containing a discharge limitation for mercury that cannot be achieved consistently by the facility.

(b) Application for a variance under this rule meets the requirements for a variance under IC 13-14-8-9 and rules adopted by the board.

(c) An SMV is not available for the following:
(1) New or recommencing Great Lakes system dischargers except as provided under 327 IAC 2-1.5-17(a)(3).
(2) Applicants seeking an interim limit whose effluent contains mercury at an average concentration, as determined under section 8(a) of this rule, greater than thirty (30) ng/l (parts per trillion).
(Water Pollution Control Board; 327 IAC 5-3.5-2)

327 IAC 5-3.5-3 Definitions
Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 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
Affected: IC 13-11-2; IC 13-18-4

Sec. 3. In addition to the definitions contained in IC 13-11-2 and 327 IAC 5, the following definitions apply throughout this rule:
(1) "Department" means the Indiana department of environmental management.
(2) "Facility" means any NPDES point source or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program. For a municipality, "facility" means a POTW.
(3) "Pollutant minimization program" or "PMP" means a program developed by an SMV applicant to identify and minimize the discharge of mercury into the environment.
(4) "Pollutant minimization program plan" or "PMPP" means the plan for development and implementation of the PMP.
(5) "Publicly owned treatment works" or "POTW" means a treatment works as defined by Section 212(2) of the Federal Water Pollution Control Act owned by the state or a municipality as defined by Section 502(4) of the Federal Water Pollution Control Act.
(6) "Streamlined mercury variance" or "SMV" means a process established under this rule for obtaining a variance from the water quality criterion used to establish a water quality-based effluent limitation (WQBEL) established for mercury in an NPDES permit.
(Water Pollution Control Board; 327 IAC 5-3.5-3)

327 IAC 5-3.5-4 Initial SMV application

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 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

Affected: IC 13-18-4

Sec. 4. (a) The initial SMV application shall be submitted on forms provided by the department.

(b) An applicant for an SMV may submit the application as a part of an application for a:
(1) new;
(2) renewed; or
(3) modified;
NPDES permit.

(c) The initial SMV application must include all information, including the PMPP, required under section 9 of this rule, PMPP requirements.

(d) Upon receipt of a complete SMV application, the department will publish a notice of completeness and availability of the SMV in accordance with section 5 of this rule, public notice of SMV application. The notice of completeness and availability will be published within thirty (30) days of receipt of a complete SMV application.

(e) In order for an application to be considered complete, the application must contain all information required under section 9 of this rule, PMPP requirements. *(Water Pollution Control Board; 327 IAC 5-3.5-4)*

327 IAC 5-3.5-5 Public notice of SMV application

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 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

Affected: IC 4-21.5; IC 13-18-4

Sec. 5. (a) The department shall publish notice of each complete SMV application for public comment:
(1) in the newspaper with the greatest circulation in the city or county of the applicant's location; and
(2) with a thirty (30) day public comment period.

(b) Public notice may be held simultaneously with the public notice procedures of a new, renewed, or modified NPDES permit.

(c) The department may hold a public hearing on the complete SMV application if a request is received during the public comment period. The public hearing may be held simultaneously with the public hearing or a new, renewed, or modified NPDES permit.

(d) The department shall consider public comments received during:
(1) the public comment period; and
(2) the public hearing, if one is held.

(e) The department may require an applicant to modify the SMV application if it is necessary in order for the SMV application to be consistent with the requirements of this rule.

(f) If the SMV application meets the requirements of this rule, the department shall incorporate the SMV into the NPDES permit in accordance with this rule within ninety (90) days, unless the applicant agrees to a longer time frame, following the close of the later of the following:
(1) The public comment period.
(2) The public hearing.

(g) A final determination under subsection (e) is an appealable decision under IC 4-21.5. *(Water Pollution Control Board; 327 IAC 5-3.5-5)*

327 IAC 5-3.5-6 Issuance of SMV

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 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

Affected: IC 13-14-8-9; IC 13-18-4

Sec. 6. When an SMV is issued under this rule, the SMV shall be incorporated as a condition of the applicant's NPDES permit through issuance, renewal, or modification of the NPDES permit. The SMV remains in effect until the NPDES permit expires under IC 13-14-8-9. *(Water Pollution Control Board; 327 IAC 5-3.5-6)*

327 IAC 5-3.5-7 Renewal of SMV

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 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

Affected: IC 13-14-8-9; IC 13-18-4

Sec. 7. (a) An eligible applicant may apply for a renewal of the SMV:

(1) one hundred eighty (180) days prior to the expiration of its NPDES permit; or

(2) within one hundred eighty (180) days after issuance of a revised NPDES permit that establishes a revised mercury discharge limit based on the water quality criteria.

(b) The department may renew an initial SMV in accordance with IC 13-14-8-9 if the applicant demonstrates that implementation of the PMPP has achieved progress toward the goal of reducing mercury from its discharge except as provided in subsection (d).

(c) A renewal application shall contain the following:

(1) All information required for an initial SMV application under section 4 of this rule, including revisions to the PMPP, if applicable.

(2) A report on implementation of each provision of the PMPP.

(3) An analysis of the mercury concentrations determined through sampling at the facility's locations that have mercury monitoring requirements in the NPDES permit for the two (2) year period prior to the SMV renewal application.

(4) A proposed alternative mercury discharge limit, if appropriate, to be evaluated by the department according to section 8(b) of this rule, based on the most recent two (2) years of representative sampling information from the facility.

(d) A PMPP must be revised if implementation of the original PMPP does not lead to demonstrable progress in minimizing the discharge of mercury. If the applicant can provide information, as part of a revision to a PMPP, that demonstrates there is no known reasonable additional action that will reduce mercury, the PMPP may remain as previously approved.

(e) A renewal SMV shall be issued in accordance with the requirements for the issuance of an initial SMV under this rule. *(Water Pollution Control Board; 327 IAC 5-3.5-7)*

327 IAC 5-3.5-8 SMV interim discharge limitation

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 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

Affected: IC 13-18-4

Sec. 8. (a) The interim limit for mercury discharge during the duration of an SMV shall be based on representative effluent data that have been analyzed using Analytical Method 1631. The interim limit shall be expressed as the highest daily value for mercury from a data set that includes a minimum of six (6) daily values that are generally evenly spaced over the most recent twelve (12) to twenty-four (24) month period and representative of the four (4) seasons. The highest daily value will become the value for the interim limit. Compliance with the interim limit is achieved if the average of the effluent daily value for the twelve (12) month rolling average is less than the interim limit. An SMV is not available to an applicant that requests an interim limit greater than thirty (30) ng/l.

(b) The interim discharge limit shall be evaluated upon receipt of a renewal SMV application based upon available, valid, and representative data of the effluent levels for mercury collected and analyzed over the most recent two (2) year period. Data collection and analyses must be done according to the analytical method approved by the department. *(Water Pollution*

Control Board; 327 IAC 5-3.5-8)

327 IAC 5-3.5-9 PMPP requirements

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 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

Affected: IC 13-18-4

Sec. 9. (a) A PMPP for a facility must be submitted with an application for an SMV. The PMPP must contain the following:

(1) Results of a preliminary inventory of potential uses and sources of mercury in all buildings and departments and a plan and schedule for providing the department results of a complete inventory.

(2) Preliminary identification of known mercury-bearing equipment, wastestreams, and mercury storage sites.

(3) A list of planned activities to be conducted to eliminate or minimize the release of mercury to the water. The list of planned activities may consider technical and economic feasibility and must include, at a minimum, the following:

(A) A review of purchasing policies and procedures.

(B) Necessary training and awareness for facility staff.

(C) Evaluation of alternatives to the use of any mercury-containing equipment or materials.

(D) Other specific activities related to the type of mercury on-site.

(E) An identification of the facility's responsibilities under P.L.225-2001.

(4) For each activity specified in subdivision (3), the plan must contain the following:

(A) The goal to be accomplished.

(B) A measure of performance.

(C) A schedule for action.

(5) All available mercury monitoring data and any information on mercury in biosolids, if required by an NPDES permit or land application permit, for the two (2) year period preceding the SMV application.

(6) Identification of the resources and staff necessary to implement the PMPP.

(7) Proof of completion of public notice activities required under this section.

(8) A schedule for submission of annual reports describing the facility's progress toward the following:

(A) Fulfilling each of the requirements of the PMPP.

(B) Results of mercury monitoring.

(C) Implementation of each planned activity to reduce or eliminate mercury from the facility's water.

Upon approval of the SMV, the applicant must submit an annual report according to the schedule in the PMPP.

(b) In addition to subsection (a), a PMPP for a POTW must include the following:

(1) Results of a preliminary evaluation of possible mercury sources in the facility's influent and a plan and schedule for providing the department results of a complete evaluation. The evaluation shall include, at a minimum, the following:

(A) Medical facilities, for example, the following:

(i) Hospitals.

(ii) Clinics.

(iii) Nursing homes.

(iv) Veterinary facilities.

(B) Dental clinics.

(C) Public and private educational laboratories.

(D) General industry.

(E) Significant sources of residential and retail contributions of mercury, for example, the following:

(i) Heating, ventilation, and air conditioning contractors.

(ii) Automobile and appliance repair.

(iii) Veterinarians.

(iv) Others specific to the community served.

(F) An identification of the responsibilities under P.L.225-2001 for the significant industrial users for the POTW.

(2) A list of planned activities designed to reduce or eliminate mercury loadings from the sources identified in subdivision (1).

(3) For each activity specified in subdivision (2), the plan must contain the following:

(A) The goal to be accomplished.

(B) A measure of performance.

(C) A schedule for action.

(4) In addition to activities required under subsection (a)(3), activities must also include an education program for the facility employees and the public within the service area of the facility.

(c) Prior to submitting the PMPP to the department as part of the SMV application, an applicant shall do the following:
(1) Publish notice of the availability of the draft PMPP in a daily or weekly newspaper of general circulation throughout the area affected by the discharge.
(2) Post a copy of the information required by this section at the following:
(A) The principal office of the municipality or political subdivision affected by the facility or discharge.
(B) The United States post office.
(C) If one is available, the library serving those premises.

(d) All notices published under this section shall contain the following information:
(1) The name and address of the applicant that prepared the PMPP.
(2) A general description of the elements of the PMPP.
(3) A brief description of the activities or operations that result in the discharge for which an SMV is being requested.
(4) A brief description of the purpose of this notice and the comment procedures.
(5) The name of a contact person, a mailing address, an Internet address, if available, and a telephone number where interested persons may obtain additional information and a copy of the PMPP.

(e) The applicant shall do the following:
(1) Provide a minimum comment period of thirty (30) days.
(2) Include a copy of the comments received and the applicant's responses to those comments in the SMV application submitted to the department.

(f) The department shall consider a PMPP to be complete if it meets the requirements of this section. *(Water Pollution Control Board; 327 IAC 5-3.5-9)*

327 IAC 5-3.5-10 Transitional mercury effluent limitation
Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 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
Affected: IC 4-21.5-3; IC 13-18-4

Sec. 10. (a) Either at the time a discharging facility applies for or when it receives a renewal of an NPDES permit with a previously established mercury limit from a prior NPDES permit and a compliance schedule for mercury is not established in the renewed permit, then the following may be done to assure compliance with the renewed permit:
(1) In a written document to the department, the discharging facility should:
(A) indicate that the discharging facility is planning to apply for an SMV in accordance with this rule; and
(B) provide information to establish an alternative limit consistent with section 8 of this rule.
(2) The department may issue an interim limit for the discharging facility until the SMV is either approved or denied.

(b) If an SMV is denied, a discharger may request an individual variance, notwithstanding the time limitations set in 327 IAC 5-3-4.1, by doing the following:
(1) Requesting the commissioner's consideration and written determination on a request for a mercury variance from a water quality standard as provided in 327 IAC 2-1-8.8 or 327 IAC 2-1.5-17.
(2) Applying for the mercury variance up to ninety (90) days after the denial of the SMV so long as all other requirements in 327 IAC 5-3-4.1 are met. The applicant may petition the commissioner for up to an additional ninety (90) day period to submit the application.
(3) Appealing the denial of the SMV in accordance with IC 4-21.5-3.
(Water Pollution Control Board; 327 IAC 5-3.5-10)

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 December 8, 2004 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 a proposed new rule concerning a streamlined mercury variance process for obtaining

a variance from the existing water quality criterion used to establish a water quality-based effluent limitation for mercury in wastewater discharges permitted under the National Pollutant Discharge Elimination System (NPDES) program.

The purpose of this hearing is to receive comments from the public prior to consideration of final adoption of this rule by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed new rule. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

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

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

Attn: ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015

or call (317) 233-0855 or (317) 232-6565 (TDD). 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 Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Room 1255 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Tim Method
Deputy Commissioner
Indiana Department of Environmental Management