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TITLE 327 WATER POLLUTION CONTROL BOARD

FIRST NOTICE OF COMMENT PERIOD

#04-267(WPCB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING SANITARY SURVEYS, OPERATING REPORTS, CLASSIFICATION OF WATER TREATMENT PLANTS AND CERTIFIED OPERATORS IN RESPONSIBLE CHARGE OF PUBLIC WATER SYSTEMS, AND MINOR CHANGES TO DISINFECTANTS, DISINFECTION BYPRODUCTS, AND FILTER BACKWASH RECYCLING RULES

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to 327 IAC 8-2-8.2, 327 IAC 8-11-1, 327 IAC 8-12-2, and 327 IAC 8-12-3.6 concerning sanitary surveys, operating reports, minor corrections to classifications of water treatment plants and certified operators in responsible charge of public water systems as well as amendments to 327 IAC 8-2.5-6, 327 IAC 8-2.5-7, 327 IAC 8-2.5-8, 327 IAC 8-2.5-9, and 327 IAC 8-2.6-6 to incorporate minor corrections to disinfectants, disinfection byproducts, and filter backwash recycling rules. 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 8-2-8.2; 327 IAC 8-2.5-6; 327 IAC 8-2.5-7; 327 IAC 8-2.5-8; 327 IAC 8-2.5-9; 327 IAC 8-2.6-6; 327 IAC 8-11-1; 327 IAC 8-12-2; 327 IAC 8-12-3.6.

AUTHORITY: IC 13-14-8; IC 13-18-3-2; IC 13-18-11-1.5; IC 13-18-11-13.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

The National Drinking Water Regulations for Interim Enhanced Surface Water Treatment Rule (IESWTR), promulgated by the United States Environmental Protection Agency (U.S. EPA) at 63 FR 69478 on December 16, 1998, requires states to have the authority to require public water systems utilizing surface water or ground water under the direct influence of surface water to correct significant deficiencies found during sanitary surveys conducted by the state. In this rulemaking changes to specific sections in 327 IAC 8 are being made to allow the state to require these public water systems to correct deficiencies identified in the sanitary survey reports within the time frames set forth in the federal requirements. The above-mentioned federal rules also made changes to the Indiana surface water treatment rules that were promulgated in April 1993. The state also amended its drinking water standards rules in May 2003 to be in accord with the federal rules.

327 IAC 8-11-1 currently requires systems to submit weekly reports of operation to the commissioner. This will be changed to require submittal of reports monthly rather than weekly and will clarify the information required to be included in these reports. To meet the requirements for states to have primary enforcement responsibility for public water systems in the state, Indiana has to adopt and implement adequate procedures for the enforcement of such state regulations, which includes the requirement for systems to submit reports to the state that are found at 40 CFR 142.10(b)(6)(iv).

327 IAC 8-12-2 specifies the classification of water distribution systems and water treatment plants. It is proposed to make minor corrections to this rule to make it inclusive of all community and nontransient noncommunity public water systems.

327 IAC 8-12-3.6 specifies number of site visits required by certified operators in responsible charge to public water systems. It is proposed to reduce the number of site visits required at small systems with limited treatment facilities and small distribution systems. The state is required to have operator certification standards under federal requirements promulgated at 64 FR 5916 on February 5, 1999. To reflect these requirements Indiana promulgated its water treatment certified operators rules on November 20, 2000. Final additions to the final guidelines for the certification and recertification of the operators of community and nontransient noncommunity public water systems, and the final allocation methodology for funding to states for the operator certification expense reimbursement grants program were published on April 18, 2001, at 66 FR 19939.

Parties affected would include operators of community and nontransient noncommunity public water systems, transient surface water systems, or ground water under the direct influence of surface water.

On December 16, 1998, U.S. EPA promulgated the National Primary Drinking Water Regulations for Disinfectants and

Disinfection Byproducts (63 FR 69390), and on June 8, 2001, U.S. EPA promulgated the National Primary Drinking Water Standards for Filter Backwash Recycling (66 FR 31086). These rules were adopted by the Water Pollution Control Board and were filed by the Secretary of State on May 1, 2003. Minor changes that were requested by EPA are proposed to be made to these rules. These corrections will be made to 327 IAC 8-2.5-6, 327 IAC 8-2.5-7, 327 IAC 8-2.5-8, 327 IAC 8-2.5-9, and 327 IAC 8-2.6-6.

Alternatives To Be Considered Within the Rulemaking

Alternatives to this rulemaking would not be the most logical course of action. Indiana is required to keep primacy of the drinking water rules, implement the operator certification program, and make it more workable for the smaller systems.

(A) One alternative would be to leave existing rules unchanged and to operate under the existing rules, that is, with the necessary clarification.

(B) Another alternative would be to make changes to all sections of the rule.

(C) Another alternative would be to make changes to sections of the affected rules and wait until a later date to make the remaining changes, that is, adopt sanitary survey changes now and make other changes as part of a later rulemaking action.

Applicable Federal Law

The requirement for states to have the authority to require surface water or ground water under the influence of surface water systems to correct significant deficiencies found during sanitary surveys is required pursuant to 40 CFR 142.16. This section requires public water systems to respond in writing to significant deficiencies outlined in sanitary survey reports within forty-five (45) days after receipt of the report, indicating how and on what schedule the deficiencies will be corrected. The state must also have authority to assure that public water systems take the necessary steps to correct significant deficiencies that are within control of the public water systems and its governing body.

The guidelines specifying minimum standards for certification and recertification of operators of community and nontransient noncommunity water systems were published on February 5, 1999, to meet Section 1419(a) of the Safe Drinking Water Act (SDWA) amendments of 1996 (Public Law 104-182). A state must have adopted and be implementing an operator certification program that meets the requirements of these guidelines in order to maintain Drinking Water State Revolving Loan Fund (DWSRF) funding. We propose to make minor changes to our approved program. U.S. EPA must withhold twenty percent (20%) of the capitalization grant funds entitled to the state if the program is not being implemented.

Potential Fiscal Impact

The potential fiscal impacts, if any, will be due to the federally mandated requirements even if Indiana were not to promulgate the same requirements in its rules. Costs associated specifically with correction of significant deficiencies were not listed in the IESWTR fiscal impact analysis. Fiscal impact of the entire IESWTR was assessed at the time the remainder of the rule was implemented.

There are no additional costs associated to changing reporting requirements from weekly operating reports to monthly operating reports.

There are no additional costs associated with the revisions to the number of site visits required by certified operators at small, noncomplex systems. These systems may actually see a reduction in costs if they have hired an outside certified operator since contracts are normally established at a set charge per site visit. In addition, if Indiana does not implement this program as adopted, there is a possible risk of losing twenty percent (20%) of DWSRF capitalization grant funds from the federal government.

There are no additional fiscal impacts to any of the minor corrections being made to the Disinfectants and Disinfection Byproducts or Filter Backwash Recycling rules.

Public Participation and Workgroup Information

An external workgroup has not been formed specifically relating to this rulemaking; however, the sanitary survey changes and operational reporting requirements were addressed in part during the IDEM Operational Rules Workgroup meetings and the certified operator in responsible charge options were discussed during the IDEM Operator Certification Workgroup meetings. Operational Rules workgroup meetings were held on August 15, 2001, September 19, 2001, October 17, 2001, December 3, 2001, January 16, 2002, February 12, 2002, March 12, 2002, April 18, 2002, May 22, 2002, June 14, 2002, September 26, 2002, January 23, 2003, February 28, 2003, May 1, 2003, and June 6, 2003. Operator Certification workgroup meetings were held June 25, 1999, July 23, 1999, October 26, 1999, November 18, 1999, March 14, 2000, and July 6, 2000.

At this time, no workgroup is planned for this rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Kiran Verma, Rules Section, Office of Water Quality at (317) 234-0986 or (800) 451-6027 (in Indiana).

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 rule.

(2) The submission of suggestions for the development of draft rule language.

Mailed comments should be addressed to:

#04-267(WPCB) Sanitary Surveys, Operator Requirements and minor changes

Larry Wu, Chief

Rules Development 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, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 232-8406, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Section at (317) 233-8903.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by November 30, 2004.

Additional information regarding the rulemaking action may be obtained from Kiran Verma, Rules Section, Office of Water Quality, (317) 234-0986 or (800) 451-6027 (in Indiana). Technical information concerning these rules may be obtained from Stacy Jones, Drinking Water Branch, Office of Water Quality, (317) 308-3292 or (800) 451-6027 (in Indiana).

Tim Method

Deputy Commissioner

Indiana Department of Environmental Management