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IN THIS ISSUE

INDIANA REGISTER

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RELATION OF THE INDIANA REGISTER TO THE INDIANA ADMINISTRATIVE CODE

The Indiana Register is an official monthly publication of the state of Indiana. The Indiana Legislative Council publishes the full text of proposed rules, final rules, and other documents, such as executive orders and attorney general's opinions, in the Indiana Register in the order in which the Indiana Legislative Council receives the documents.

The Indiana Administrative Code is an official annual publication of the state of Indiana. It codifies the current general and permanent rules of state agencies in subject matter order.

The Indiana Register acts as a source of information about the rules being proposed by state agencies and acts as an "advance sheet" to the Indiana Administrative Code. With few exceptions, an agency may not adopt a rule, i.e., a policy statement having the force of law, without publishing a substantially similar proposed version in the Indiana Register. Although a rule becomes effective without publication in the Indiana Register, an agency must file an adopted and approved rule with the Indiana Legislative Council. The Council publishes these final rules in the Indiana Register.

RETENTION SCHEDULE

A person must consult the following publications to find the current rules of state agencies:

(1) 2005 Indiana Administrative Code (CD-ROM version).

(2) Volume 28 of the Indiana Register (CD-ROM version).

The Indiana Administrative Code and Indiana Register are distributed in CD-ROM format only. Both are also accessible at www.in.gov/legislative/ic_iac/.

The 2004 Edition of the Indiana Administrative Code and other volumes of the Indiana Register may be discarded. (Please consider recycling.)

JUDICIAL NOTICE AND CITATION FORM

IC 4-22-9 provides for the judicial notice of rules published in the Indiana Register or the Indiana Administrative Code. Subject to any errata notice that may affect a rule, the latest published version of a final rule is prima facie evidence of that rule's validity and content.

Cite to a current general and permanent rule by Indiana Administrative Code citation, regardless of whether it has been published in a supplement to the Indiana Administrative Code. For example, cite the entire current contents of title 312 as "Title 312 of the Indiana Administrative Code," cite the entire current contents of the third article in title 312 as "312 IAC 3," cite the entire current contents of the fourth rule in article three as "312 IAC 3-4," and cite part or all of the current contents of the second section in rule four as "312 IAC 3-4-2." IC 4-22-9-6 provides that a citation in this form contains later adopted amendments. Cite a noncodified rule provision by LSA document number, SECTION number, and Indiana Register citation to the page at which the cited text begins. If a reference to a particular version of a rule or a page in the Indiana Register is appropriate, cite the volume, page, and year of publication as "25 Ind. Reg. 120 (2002)." A shorter Indiana Register citation form is "25 IR 120."

PRINTING CODE

This style type is used to indicate that substantive text is being inserted by amendment into a rule, and ~~this style type~~ is used to indicate that substantive text is being eliminated by amendment from a rule. ~~This style type~~ is replaced by a single large "X" to show the elimination of a form or other piece of artwork. **This style type** is used to indicate a rule is being added. *This style type* and **this style type** also are used to highlight nonsubstantive annotations to a rule and to indicate that an entry in a reference table or the index concerns a final rule.

REFERENCE TABLES AND INDEX

The page location of rules and other documents printed in the Indiana Register may be found by using the tables and index published in the Indiana Register. A citation listing of the general and permanent rules affected in a volume and a cumulative index are published in each issue. Cumulative tables that cite executive orders, attorney general's opinions, and other nonrule policy documents printed in a calendar year are published quarterly.

FILING AND PUBLISHING SCHEDULE

NOTICE AND PUBLICATION SCHEDULE. The Legislative Services Agency publishes documents filed by 4:45 p.m. on the tenth day of a month (no later than the twelfth day of a month, excluding holidays or weekends) in the following month's Indiana Register according to the schedule below:

PUBLICATION SCHEDULE

Closing Dates:	Publication Dates:	Closing Dates:	Publication Dates:
March 10, 2005	April 1, 2005	October 10, 2005	November 1, 2005
April 11, 2005	May 1, 2005	November 10, 2005	December 1, 2005
May 10, 2005	June 1, 2005	December 9, 2005	January 1, 2006
June 10, 2005	July 1, 2005	January 10, 2006	February 1, 2006
July 11, 2005	August 1, 2005	February 10, 2006	March 1, 2006
August 10, 2005	September 1, 2005	March 10, 2006	April 1, 2006
September 9, 2005	October 1, 2005	April 10, 2006	May 1, 2006

Documents will be accepted for filing on any business day from 8:00 a.m. to 4:45 p.m.

AROC NOTICES: Under IC 2-5-18-4, the Administrative Rules Oversight Committee is established to oversee the rules of any agency not listed in IC 4-21.5-2-4. As a result, certain notices to the AROC are required and are printed in the Indiana Register.

CORRECTIONS: IC 4-22-2-38 authorizes an agency to correct typographical, clerical, or spelling errors in a final rule without initiating a new rulemaking procedure. Correction notices are printed on errata pages in the Indiana Register.

EFFECTIVE DATE: IC 4-22-2-36 provides that, unless a later date is specified in the rule, a rule becomes effective thirty (30) days after filing with the Secretary of State.

EMERGENCY RULES: IC 4-22-2-37.1 provides summary rulemaking procedures for certain specified categories of rules.

INCORPORATION BY REFERENCE: IC 4-22-2-21 requires that a copy of matters that are incorporated by reference into a rule must be filed with the Attorney General, the Governor, and the Secretary of State along with the text of the incorporating final rule.

NONRULE POLICY DOCUMENTS: IC 4-22-7-7 requires that any nonrule document that interprets, supplements, or implements a statute and that the issuing agency may use in conducting its external affairs must be filed with the Legislative Services Agency and published in the Indiana Register.

NOTICE OF INTENT TO ADOPT A RULE: IC 4-22-2-23 requires an agency to publish a Notice of Intent to Adopt a Rule at least thirty (30) days before publication of the proposed rule.

PROMULGATION PERIOD: In order to be effective, the final version of an adopted rule must be approved by the Attorney General and the Governor within one (1) year after the date that the notice of intent is published. The final rule must then be filed with the Secretary of State.

PUBLIC HEARINGS: IC 4-22-2-24 requires that the public hearing on a proposed rule be scheduled at least twenty-one (21) days after a notice of the hearing is published in the Indiana Register and in a newspaper of general circulation in Marion County.

RULES READOPTION: IC 4-22-2.5 provides that a rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect, unless the rule contains an earlier expiration date.

State Agencies

ALPHABETICAL LIST

†Agency's rules are repealed, transferred, or otherwise voided.

NUMERICAL LIST

TITLE NUMBER

GENERAL GOVERNMENT

10 Office of Attorney General for the State
11 Consumer Protection Division of the Office of the Attorney General
†15 State Election Board
18 Indiana Election Commission
20 State Board of Accounts
25 Indiana Department of Administration
28 State Information Technology Oversight Commission
†30 State Personnel Board
31 State Personnel Department
33 State Employees' Appeals Commission
35 Board of Trustees of the Public Employees' Retirement Fund
40 State Ethics Commission
45 Department of State Revenue
50 Department of Local Government Finance
52 Indiana Board of Tax Review
55 Department of Commerce
58 Enterprise Zone Board
60 Oversight Committee on Public Records
62 Office of the Public Access Counselor
65 State Lottery Commission
68 Indiana Gaming Commission
†70 Indiana Horse Racing Commission
71 Indiana Horse Racing Commission
75 Secretary of State
80 State Fair Commission
85 Budget Agency

TRANSPORTATION AND PUBLIC UTILITIES

†100 Department of Transportation
105 Indiana Department of Transportation
†110 Aeronautics Commission of Indiana
†120 Department of Highways
130 Indiana Port Commission
135 Indiana Transportation Finance Authority
140 Bureau of Motor Vehicles
145 Reciprocity Commission of Indiana
†150 Office of Traffic Safety
†160 Department of Vehicle Inspection
170 Indiana Utility Regulatory Commission

CORRECTIONS, POLICE, AND MILITARY

203 Victim Services Division
205 Indiana Criminal Justice Institute
207 Coroners Training Board
210 Department of Correction
220 Parole Board
†230 Indiana Clemency Commission
240 State Police Department
250 Law Enforcement Training Board
260 State Department of Toxicology
270 Adjutant General
280 Public Safety Training Board
290 State Emergency Management Agency

NATURAL RESOURCES, ENVIRONMENT, AND AGRICULTURE

305 Indiana Board of Licensure for Professional Geologists
307 Indiana Board of Registration for Soil Scientists
†310 Department of Natural Resources
†311 State Soil and Water Conservation Committee
312 Natural Resources Commission
315 Office of Environmental Adjudication
†320 Indiana Environmental Management Board
†320.1 Solid Waste Management Board
323 Indiana Hazardous Waste Facility Site Approval Authority
†325 Air Pollution Control Board of the State of Indiana
†325.1 Air Pollution Control Board
326 Air Pollution Control Board
327 Water Pollution Control Board
328 Underground Storage Tank Financial Assurance Board
329 Solid Waste Management Board
†330 Stream Pollution Control Board of the State of Indiana
†330.1 Water Pollution Control Board
†340 Commissioner of Agriculture
341 Indiana Standardbred Board of Regulations
345 Indiana State Board of Animal Health
350 Agricultural Experiment Station
355 State Chemist of the State of Indiana
357 Indiana Pesticide Review Board
360 State Seed Commissioner
365 Creamery Examining Board
370 State Egg Board
375 Commissioner of Agriculture

HUMAN SERVICES

405 Office of the Secretary of Family and Social Services
407 Office of the Children's Health Insurance Program
410 Indiana State Department of Health
412 Indiana Health Facilities Council
414 Hospital Council
415 Commission on Forensic Sciences
430 Developmental Disabilities Residential Facilities Council
431 Community Residential Facilities Council
440 Division of Mental Health and Addiction
†450 Department on Aging and Community Services
460 Division of Disability, Aging, and Rehabilitative Services
470 Division of Family and Children
480 Violent Crime Compensation Division
490 Interdepartmental Board for the Coordination of Human Service Programs

TITLE NUMBER

EDUCATION AND LIBRARIES

†510 Commission on General Education
511 Indiana State Board of Education
514 Indiana School for the Deaf Board
515 Professional Standards Board
†520 Commission on Textbook Adoptions
†530 Commission on Teacher Training and Licensing
540 Indiana Education Savings Authority
550 Board of Trustees of the Indiana State Teachers' Retirement Fund
560 Indiana Education Employment Relations Board
570 Indiana Commission on Proprietary Education
†572 Indiana Commission on Vocational and Technical Education
575 State School Bus Committee
580 Indiana Medical and Nursing Distribution Loan Fund Board of Trustees
585 State Student Assistance Commission
590 Indiana Library and Historical Board
595 Library Certification Board

LABOR AND INDUSTRIAL SAFETY

610 Department of Labor
615 Board of Safety Review
620 Occupational Safety Standards Commission
†630 Industrial Board of Indiana
631 Worker's Compensation Board of Indiana
†635 Wage Adjustment Board
†640 Indiana Unemployment Insurance Board
†645 Department of Employment and Training Services
646 Department of Workforce Development
650 State Fire Marshal
655 Board of Firefighting Personnel Standards and Education
†660 Administrative Building Council of Indiana
†670 Elevator Safety Board
675 Fire Prevention and Building Safety Commission
680 Boiler and Pressure Vessel Rules Board
685 Regulated Amusement Device Safety Board

BUSINESS, FINANCE, AND INSURANCE

710 Securities Division
750 Department of Financial Institutions
760 Department of Insurance
762 Indiana Political Subdivision Risk Management Commission
770 Indiana Agricultural Development Corporation

OCCUPATIONS AND PROFESSIONS

804 Board of Registration for Architects and Landscape Architects
808 State Boxing Commission
812 Indiana Auctioneer Commission
816 Board of Barber Examiners
820 State Board of Cosmetology Examiners
824 Indiana Grain Buyers and Warehouse Licensing Agency
825 Indiana Grain Indemnity Corporation
828 State Board of Dentistry
830 Indiana Dietitians Certification Board
832 State Board of Funeral and Cemetery Service
836 Indiana Emergency Medical Services Commission
839 Social Worker, Marriage and Family Therapist, and Mental Health Counselor Board
840 Indiana State Board of Health Facility Administrators
844 Medical Licensing Board of Indiana
845 Board of Podiatric Medicine
846 Board of Chiropractic Examiners
848 Indiana State Board of Nursing
852 Indiana Optometry Board
856 Indiana Board of Pharmacy
857 Indiana Optometric Legend Drug Prescription Advisory Committee
858 Controlled Substances Advisory Committee
860 Indiana Plumbing Commission
862 Private Detectives Licensing Board
864 State Board of Registration for Professional Engineers
865 State Board of Registration for Land Surveyors
868 State Psychology Board
872 Indiana Board of Accountancy
876 Indiana Real Estate Commission
878 Home Inspectors Licensing Board
879 Manufactured Home Installer Licensing Board
880 Speech-Language Pathology and Audiology Board
884 Board of Television and Radio Service Examiners
888 Indiana Board of Veterinary Medical Examiners
†892 Indiana State Board of Examiners in Watch Repairing
896 Board of Environmental Health Specialists
898 Indiana Athletic Trainers Board

MISCELLANEOUS

905 Alcohol and Tobacco Commission
910 Civil Rights Commission
915 Veterans' Affairs Commission
920 Indiana War Memorials Commission
925 Meridian Street Preservation Commission
930 Indiana Housing Finance Authority

†Agency's rules are repealed, transferred, or otherwise voided.

TITLE 68 INDIANA GAMING COMMISSION

LSA Document #04-179(F)

DIGEST

Amends 68 IAC 15-3-3 to correct a misspelling. Amends 68 IAC 15-5-2 to determine who may sign an RG-1 and to determine tax calculation in the event a riverboat chooses to observe nonflexible scheduling or flexible scheduling. Amends 68 IAC 15-6-2 to determine what must happen to admissions when a riverboat chooses to observe nonflexible scheduling or flexible scheduling and chooses to observe 24 hour gaming. Amends 68 IAC 15-6-3 to determine what must happen to ticketing if a riverboat chooses to observe nonflexible scheduling or flexible scheduling. Amends 68 IAC 15-6-5 to determine who may sign an RG-1 and to determine what happens to computation of tax when a riverboat chooses to observe nonflexible scheduling or flexible scheduling. Effective 30 days after filing with the secretary of state.

68 IAC 15-3-3 **68 IAC 15-6-3**
68 IAC 15-5-2 **68 IAC 15-6-5**
68 IAC 15-6-2

SECTION 1. 68 IAC 15-3-3 IS AMENDED TO READ AS FOLLOWS:

68 IAC 15-3-3 Cash reserve requirements
Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3
Affected: IC 4-33

Sec. 3. (a) Riverboat licensees shall maintain, in cash or cash equivalents, an amount sufficient to protect patrons against defaults in gaming debts owed by the riverboat licensee. The cash reserve requirement may be maintained in any of the following combinations:

(1) Cash on hand in the riverboat licensee's cage that comprises the cage accountability.

(2) Cash in a bank account maintained in the state of Indiana.

(3) ~~Cast~~ **Cash** equivalents that are not otherwise committed or obligated.

(b) Riverboat licensees shall maintain cash or cash equivalents in one (1) of the following amounts to ensure payment of **a** winning patron wager:

(1) For the first full or partial quarter of operation, based on a calendar year, one hundred percent (100%) of the riverboat licensee's or riverboat license applicant's projected payout for a three (3) day period.

(2) For the next quarter, based on a calendar year, one hundred percent (100%) of the riverboat licensee's actual payout for a three (3) day period. The actual payout shall be computed by calculating the daily average payout for the previous quarter of operation and multiplying the daily average payout by three (3).

(c) The cash reserve requirement that a riverboat licensee must maintain shall be rounded off to the nearest **one** thousand dollars **($1,000).** The riverboat licensee shall not increase or decrease the cash reserve requirement each quarter unless the adjustment would increase or decrease the cash reserve requirement by at least fifty thousand dollars ($50,000). The riverboat licensee shall increase or decrease the cash reserve requirement by the twentieth day of the month following the end of the quarter.

(d) The cash or cash equivalents must be held in the name of the riverboat licensee.

(e) If the riverboat licensee's cash and cash equivalents fall below the amount outlined in subsection (b), the riverboat licensee shall immediately notify the executive director. If the cash reserve requirement does not comply with this rule, the executive director shall order the riverboat licensee to establish a cash reserve requirement that is in compliance within a period not to exceed twenty (20) days.

(f) The riverboat licensee shall provide the executive director with a statement of the cash reserve account by the twentieth day of each month or within ten (10) days of the receipt of the statement by the riverboat licensee. *(Indiana Gaming Commission; 68 IAC 15-3-3; filed Mar 9, 1998, 9:30 a.m.: 21 IR 2312; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; filed Feb 14, 2005, 10:10 a.m.: 28 IR 2014)*

SECTION 2. 68 IAC 15-5-2 IS AMENDED TO READ AS FOLLOWS:

68 IAC 15-5-2 Calculation of taxes
Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3
Affected: IC 4-33-13-1; IC 4-33-13-1.5

Sec. 2. (a) The riverboat licensee shall calculate the amount of wagering taxes to be paid by completing Form RG-1 in accordance with the applicable rules of the department, this rule, and any instructions that accompany Form RG-1. **Only the:**

(1) general manager;
(2) assistant general manager;
(3) finance officer; or
(4) others as approved by the commission;

may sign as an officer on the RG-1.

(b) Each riverboat licensee shall maintain an account at a designated financial institution capable of handling electronic fund transfers.

(c) The riverboat licensee shall submit the wagering tax liabilities via an Electronic Funds Transfer (EFT) system employing an automated clearinghouse debit method (ACH-debit) or other method approved by the department and the executive director.

(d) The riverboat licensee shall be required to file a Form RG-1 and remit the tax imposed by IC 4-33-13 to the department

before the close of the business day following the day the wagers are made. In addition, a copy of Form RG-1 shall be filed with the commission.

(e) The riverboat licensee shall be required to maintain funds, at all times, sufficient to cover all tax liabilities due to the department in accordance with IC 4-33-13.

(f) The riverboat licensee **that has not implemented flexible scheduling** shall compute the amount of wagering tax due ~~by multiplying the total of daily adjusted gross receipts by twenty percent (20%).~~ **as set forth in IC 4-33-13-1. The riverboat licensee that has implemented flexible scheduling shall compute the amount of wagering tax due as set forth in IC 4-33-13-1.5.**

(g) Daily ~~adjusted~~ gross receipts shall be computed ~~by~~ **in** the following manner:

(1) Add the following figures:

(A) Total receipts from table games in accordance with section 3 of this rule.

(B) Total receipts from electronic gaming devices in accordance with section 4 of this rule.

(C) Net tournament receipts in accordance with section 5 of this rule.

(D) Net debit card receipts in accordance with section 6 of this rule.

(E) Any tax remittance correction or adjustment, or both, in accordance with section 7 of this rule.

(2) Deduct the following figures:

(A) Allowable uncollectible gaming receivable deduction under 68 IAC 16-1-13 in accordance with section 8 of this rule.

(B) Any tax remittance correction or adjustment, or both, in accordance with section 7 of this rule.

~~(g)~~ **(h)** If the amount of wagering tax due on a gaming day is a negative figure, the riverboat licensee shall remit no wagering tax for that gaming day but shall pay the appropriate amount of admission tax calculated ~~pursuant to~~ **under** 68 IAC 15-6. Any negative wagering tax shall be carried over and calculated as an adjustment on Schedule E of Form RG-1 on the subsequent gaming days until the negative figure has been brought to a zero (0) balance. *(Indiana Gaming Commission; 68 IAC 15-5-2; filed Jul 18, 1996, 8:55 a.m: 19 IR 3305; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; filed Feb 14, 2005, 10:10 a.m.: 28 IR 2014)*

SECTION 3. 68 IAC 15-6-2 IS AMENDED TO READ AS FOLLOWS:

68 IAC 15-6-2 Admissions

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3
Affected: IC 4-33-9-2

Sec. 2. Admissions to the riverboat must be conducted in the following manner:

(1) **Should a riverboat licensee choose not to observe flexible scheduling, the requirements are as follows:**

(A) The embarkation period for each gaming excursion may not exceed a period of thirty (30) minutes.

~~(2)~~ **(B)** The disembarkation period for each gaming excursion may not exceed a period of thirty (30) minutes. During the disembarkation period, no new patrons shall be allowed to board the riverboat.

~~(3)~~ **(C)** The riverboat licensee may allow patrons to disembark during the embarkation period for the next gaming excursion or at anytime that the riverboat remains at the dock and gambling continues in accordance with IC 4-33-9-2. The riverboat licensee is responsible for ensuring it is in compliance with subdivision ~~(13)~~ **(10)** at all times. The admissions tax must be paid by the patron or the riverboat licensee for any patron who disembarks during the embarkation period for the next gaming excursion or who disembarks at any time during a gaming excursion after the conclusion of the thirty (30) minute disembarkation period.

~~(4)~~ **(D)** The admissions tax must be paid by the carryover patron or the riverboat licensee for each excursion that a patron remains on board.

(2) Should a riverboat licensee choose to observe flexible scheduling, the embarkation and disembarkation are not limited to any period and the patrons shall be allowed to board or exit at will.

~~(5)~~ **(3) Whether or not a riverboat licensee chooses to observe flexible scheduling:**

(A) all patrons boarding ~~the riverboat must pass through a turnstile or other approved patron counting equipment. (6) All patrons~~ **or** exiting the riverboat must pass through a turnstile or other approved patron counting equipment;

~~(7)~~ **(B)** the riverboat licensee is responsible for ensuring that the turnstile or equivalent keeps an accurate count of the patrons who board the riverboat; **and**

~~(8)~~ **(C)** if a patron exits the riverboat and passes through a turnstile or the equivalent, the patron may not reenter the riverboat until the patron ~~purchases a ticket~~ **pays whatever boarding fee is required of a patron boarding for the first time** or is issued a complimentary pass by the riverboat licensee.

~~(9)~~ **(4) Should a riverboat licensee choose not to observe flexible scheduling,** a passenger count must be completed for each gambling excursion.

(5) Should a riverboat licensee choose to observe flexible scheduling, a passenger count must be completed for the gaming day.

(6) Should a riverboat licensee choose to observe twenty-four (24) hour gaming, a passenger count must be computed at the end of each gaming day and shall include those patrons remaining on board the riverboat at the time of each new gaming day. The following four (4) counts will be recorded at the close of the gaming day:

(A) If applicable, the actual admissions ticket count.

(B) The patron ingress turnstile count.

(C) The patron egress turnstile count.

(D) If applicable, the total onboard count.

At the close of the gaming day, boarding and exiting will be momentarily suspended to allow for the recording of the meters and the taking of the turnstile counts. The onboard count shall be added to the new gaming day's ingress turnstile count. The recording, resetting, and onboard additions to the ingress turnstile shall be completed in the presence of and observed by a commission agent. For admission tax reporting for twenty-four (24) hour gaming, the count shall be adjusted to account for and include the onboard count.

~~(10)~~ **(7)** The riverboat licensee shall submit passenger count procedures to the executive director at least sixty (60) days before the commencement of gambling operations. The passenger count procedures shall include, but not be limited to, the following:

(A) A description of the type of equipment that will be utilized to complete a patron count.

(B) The form that will be utilized to report the patron count.

(C) The procedure that will be utilized to ensure patron boarding occurs only during the appropriate embarkation period **should a riverboat licensee choose not to observe flexible scheduling.**

(D) Emergency procedures that will be utilized in case the primary patron counting equipment malfunctions.

(E) The manner in which the riverboat licensee will ensure that the total number of passengers does not exceed the capacity of the riverboat as set forth in the certificate of inspection issued by the United States Coast Guard.

(F) Any other information deemed necessary by the executive director or the commission to ensure compliance with the Act and this title.

~~(11)~~ **(8)** The riverboat licensee shall notify the commission agent immediately if the primary patron counting system malfunctions.

~~(12)~~ **(9)** The following individuals are entitled to a tax-free pass and do not have to pass through the patron counting equipment when boarding the riverboat:

(A) Occupational licensees of the riverboat licensee.

(B) Other employees of the riverboat licensee who are boarding the riverboat in the performance of official duties.

(C) Commission:

(i) members; ~~commission~~

(ii) staff; and ~~commission~~

(iii) agents.

(D) Official guests approved by commission:

(i) members; ~~commission~~

(ii) staff; and ~~commission~~

(iii) agents.

(E) Vendors who have completed the appropriate vendor log in accordance with section 4 of this rule.

(F) Any other person authorized by the executive director or the commission to ensure compliance with the Act and this title.

~~(13)~~ **(10)** All persons boarding the riverboat on a tax-free pass must have an appropriate badge.

~~(14)~~ **(11)** At no time shall the riverboat licensee allow the total number of passengers to exceed the capacity of the riverboat as set forth in the certificate of inspection issued by the United States Coast Guard.

(Indiana Gaming Commission; 68 IAC 15-6-2; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3045; filed Aug 20, 1997, 7:11 a.m.: 21 IR 19; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; filed Feb 14, 2005, 10:10 a.m.: 28 IR 2015)

SECTION 4. 68 IAC 15-6-3 IS AMENDED TO READ AS FOLLOWS:

68 IAC 15-6-3 Ticketing

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3
Affected: IC 4-33-4-21.2

Sec. 3. **If applicable,** tickets for admittance on the riverboat shall have the following characteristics:

(1) Have two (2) perforated sections.

(2) One (1) section shall be retained by the riverboat licensee after the patron boards the riverboat. The patron shall retain the remaining section of the ticket.

(3) The ticket shall contain, at a minimum, the following information:

(A) A sequential number assigned by the riverboat licensee.

(B) The date and time of the excursion **if the riverboat licensee chooses not to observe flexible scheduling.**

(C) The date, if the riverboat licensee chooses to observe flexible scheduling.

~~(C)~~ **(D)** The number of the toll-free telephone line in accordance with IC 4-33-4-21.2 and ~~68 IAC 20-1.~~ **68 IAC 1-16-2.**

(4) **If the riverboat licensee chooses not to observe flexible scheduling,** an admission ticket shall be good for admittance to only one (1) excursion. A riverboat licensee may allow the patron to stay on board the riverboat as a carryover patron as long as the admission tax is paid in accordance with section ~~2(3)~~ **2(1)(C)** and ~~2(4)~~ **2(1)(D)** of this rule and so long as the total number of passengers remaining on the riverboat does not exceed the capacity of the riverboat as set forth in the certificate of inspection issued by the United States Coast Guard.

(5) If the riverboat licensee chooses to observe flexible scheduling, an admission ticket is valid for a one-time admittance by the ticket holding patron.

(Indiana Gaming Commission; 68 IAC 15-6-3; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3046; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; filed Feb 14, 2005, 10:10 a.m.: 28 IR 2016)

SECTION 5. 68 IAC 15-6-5 IS AMENDED TO READ AS FOLLOWS:

68 IAC 15-6-5 Computation of tax

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3
Affected: IC 4-33

Sec. 5. (a) The riverboat licensee shall complete an RG-1 for each gaming day and indicate the total number of admissions for each day. **Only the:**

(1) general manager;
(2) assistant general manager;
(3) finance officer; or
(4) others as approved by the commission;

may sign as an officer on the RG-1.

(b) The admissions tax shall be computed utilizing the patron count that results in the highest count from one (1) of the following methods of counting patrons:

(1) A turnstile or the equivalent.
(2) A manual count.
(3) A ticket stub count.
(4) Any other method of counting patrons that has been approved by the executive director as accurately tracking patron ingress and egress to ensure the accurate payment of the admission tax in accordance with the Act and this title.

(c) **If the riverboat licensee chooses not to observe flexible scheduling,** the tax on carryover patrons shall be computed utilizing Schedule A of the RG-1.

(d) If the riverboat licensee chooses to observe flexible scheduling, the tax on the highest of the counts in subsection (b) shall be computed utilizing Schedule A of the RG-1 with only one (1) figure filed for all admissions during the gaming day. *(Indiana Gaming Commission; 68 IAC 15-6-5; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3046; filed May 29, 1998, 5:05 p.m.: 21 IR 3701; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; filed Feb 14, 2005, 10:10 a.m.: 28 IR 2016)*

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IC 4-22-7-5(c) notice from Secretary of State regarding documents incorporated by reference: None received by Publisher

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #03-264(F)

DIGEST

Amends 325 IAC 20-25, the state styrene rule, concerning emissions from reinforced plastic composites fabricating emission units to consolidate requirements applicable to reinforced plastic composites production in 326 IAC 20-56. Adds 326 IAC 20-56 to incorporate by reference the national emission standards for hazardous air pollutants from reinforced plastic composites production. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: October 1, 2003, Indiana Register (27 IR 292).
Second Notice of Comment Period and Notice of First Hearing: January 1, 2004, Indiana Register (27 IR 1304).
Change in Notice of First Hearing: March 1, 2004, Indiana Register (27 IR 1936).
Date of First Hearing: May 5, 2004.
Proposed Rule and Notice of Public Hearing: July 1, 2004, Indiana Register (27 IR 3123).
Change in Notice of First Hearing: August 1, 2004, Indiana Register (27 IR 3590).
Date of Second Hearing: October 6, 2004.

326 IAC 20-25-1 **326 IAC 20-56**
326 IAC 20-25-2

SECTION 1. 326 IAC 20-25-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-25-1 Applicability

Authority: IC 13-14-8; IC 13-15-2-1; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-17-3

Sec. 1. (a) This rule applies to owners or operators of sources that emit or have the potential to emit ten (10) tons per year of any hazardous air pollutant (HAP) or twenty-five (25) tons per year of any combination of HAPs, and that meet all of the following criteria:

(1) Manufacture reinforced plastics composites parts, products, or watercraft.
(2) Have an emission unit where resins and gel coats that contain styrene are applied and cured using the open molding process.
(3) Have actual emissions of styrene equal to or greater than three (3) tons per year.

(b) Except as provided in section 3(d) of this rule, in the event there is a conflict between this rule and any existing federal or state statute or federal or state rule, the more stringent requirement shall apply.

(c) ~~If a source~~ **An emission unit that** is subject to 326 IAC 20-48 concerning emission standards for hazardous air pollutants for boat manufacturing ~~the source~~ is exempt from this rule after ~~the following compliance dates for 326 IAC 20-48:~~

~~(1)~~ August 23, 2004. ~~for an existing source that is a major source on or before August 22, 2001.~~

~~(2) One (1) year after becoming a major source for an existing or new nonmajor source.~~

~~(3) Upon startup for a new major source.~~

(d) A source that is subject to 326 IAC 20-56 concerning emission standards for hazardous air pollutants from reinforced plastic composites production is exempt from this

rule after April 21, 2006, for a major source that existed on or before August 2, 2001. *(Air Pollution Control Board; 326 IAC 20-25-1; filed Feb 5, 2001, 9:23 a.m.: 24 IR 2406; filed Mar 25, 2003, 8:10 a.m.: 26 IR 2607; filed Feb 14, 2005, 10:50 a.m.: 28 IR 2017)*

SECTION 2. 326 IAC 20-25-2 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-25-2 Definitions

Authority: IC 13-14-8; IC 13-15-2-1; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-17-3

Sec. 2. The following definitions apply throughout this rule:

(1) "Air-assisted airless spray technology" means a coating application system in which:

(A) the coating fluid (including gel coat or resin) is supplied to the gun under fluid pressure; and

(B) air is combined at the spray cap of the gun.

(2) "Airless spray technology" means a coating application system in which:

(A) the coating fluid (including gel coat or resin) is supplied to the gun under fluid pressure; and

(B) air is not added to the gun.

(3) "Base coat gel coat" means an interior gel coat, used in boat building, to protect the laminate.

(4) "Class I flame and smoke products" means the following:

(A) For products meeting a building code, products that meet any one (1) of the following flame spread and smoke intensity numbers as tested by American Society for Testing and Materials (ASTM) E84-99**:

(i) Interior; flame spread less than twenty-five (25) and smoke intensity less than four hundred fifty (450).

(ii) Exterior; flame spread less than twenty-five (25).

(iii) Duct; flame spread less than twenty-five (25) and smoke intensity less than fifty (50).

(B) For products designed for mass transit application, products that meet all of the following:

(i) Flame spread measured by ASTM E162-98** less than thirty-five (35).

(ii) Smoke intensity by ASTM E662-97** less than one and five-tenths (1.5) at one and five-tenths (1.5) minutes and less than two hundred (200) at four (4) minutes.

(5) "Clear gel coat" means a gel coat that contains no pigments.

(6) "Compression molding" means the use of a prepared compound, such as sheet molding compound (SMC), composed of resin and fiberglass fibers and a large hydraulic press to produce fiber reinforced plastic parts.

(7) "Controlled spray" means a work practice standard that reduces emissions by increasing material transfer and reducing overspray. The following are elements of controlled spraying ~~which~~ **that** work together to reduce emissions:

(A) Operation of the spray gun at the lowest fluid tip pressure, which produces an acceptable spray pattern.

(B) Operator training that teaches proper spray gun handling techniques.

(C) The use of close containment mold flanges to minimize overspray off the mold.

(8) "Cured resin or gel coat" means resin or gel coat that has changed irreversibly from a liquid to a solid.

(9) "Delivered to the applicator" means a resin or gel coat actually applied to an open mold, excluding any inert filler, fiberglass mat, or fiberglass roving.

~~(10) "Existing sources" means sources or emission units for which the owner or operator has received all necessary construction or reconstruction permits prior to June 28, 1998, as set forth in 326 IAC 2-4.1-1.~~

~~(11)~~ **(10)** "Filament ~~winding"~~ **application"** means ~~the application of resin to strands of glass using~~ **an open molding process for fabricating composites in which reinforcements are fed through** a resin bath ~~or other applicator and then winding the wet glass onto the mold or part.~~ **and wound onto a rotating mandrel. The materials on the mandrel may be rolled out or worked by using nonmechanical tools prior to curing. Resin application to the reinforcement on the mandrel by means other than the resin bath, such as spray guns, pressure-fed rollers, flow coaters, or brushes, is not considered filament application.**

~~(12)~~ **(11)** "Filled resin" means a resin containing inert filler material equal to or greater than thirty-five percent (35%) by weight.

~~(13)~~ **(12)** "Gel coat" means a thermosetting resin, either pigmented or clear, that contains styrene (CAS No. 100-42-5) and provides a cosmetic enhancement or protects the underlying layers of a plastic composites material. Gel coat does not include thermoplastic material, such as polyethylene or thermosetting coatings, that do not contain styrene, such as epoxies.

~~(14)~~ **(13)** "HAP monomer content" means the percent, by weight, of monomer that has been classified as a hazardous air pollutant (HAP) contained in a resin or gel coat, as delivered to the applicator, and excluding any inert filler, fiberglass mat, or fiberglass roving.

~~(15)~~ **(14)** "High-volume, low-pressure air atomized spray technology" means a coating application system that is operated at an air pressure of less than ten (10) pounds per square inch gauge (psig) at the air cap of the spray gun.

~~(16)~~ **(15)** "Inert filler" means any non-HAP material, such as silica microspheres or microballoons, added to a resin or gel coat to alter density of the resin or gel coat or change other physical properties of the resin or gel coat. The term does not include pigments.

~~(17)~~ **(16)** "Manual application" means hand application using bucket and paint brush or **bucket and** paint roller. ~~or other hand held methods of application.~~

(17) "Mechanical application" means application of resins or gel coats using an applicator from which the material is sprayed from the applicator using:

(A) air-atomization;

(B) air-assisted airless;

(C) airless;
(D) HVLP;
(E) LVLP; or
(F) nonatomized;
applicators or is mechanically dispensed within or onto a paint roller applicator, such as pressure-fed rollers.

(18) "Mold" means a hollow form or matrix for shaping a liquid or plastic substance.

(19) "New sources" means those sources or emission units that must comply with 326 IAC 2-4.1-1.

(20) "Nonatomized application equipment" means the devices where resin or gel coat material does any of the following:

(A) Flows from the applicator, in a steady state in a observable coherent flow, without droplets, for a minimum distance of three (3) inches from the applicator orifices, such as flow coaters, flow choppers, and fluid impingement equipment.

(B) Is mechanically dispensed within or on to a paint roller applicator, such as pressure fed rollers.

(C) Is deposited on fiber reinforcement moving through a resin or gel coat bath, such as resin impregnators.

(21) "Noncorrosion resistant resin" means a resin that does not meet the criteria of corrosion resistant resin in the specialty product resins definition.

(22) "Open molding process" means the application of resin or gel coat to an open mold ~~by any method.~~ **using mechanical or manual application, but excluding polymer casting and filament application.**

(23) "Pigmented gel coat" means a gel coat that contains a coloring substance.

(24) "Polymer casting" means a process for fabricating composites in which composite materials are ejected from a casting machine or poured into an open, partially open, or closed mold and cured. After the composite materials are poured into the mold, they are not rolled out or worked while the mold is open. The composite materials may or may not include reinforcements. Products produced by the polymer casting process include cultured marble products and polymer concrete.

~~(24)~~ **(25)** "Pressure fed roller" means a fabric roller that is fed a continuous supply of catalyzed resin from a mechanical fluid pump.

~~(25)~~ **(26)** "Production gel coat" means a gel coat that is used to manufacture parts, products, or watercraft and does not include patch repair or touch-up activities.

~~(26)~~ **(27)** "Production resin" means any thermosetting resin that is used to manufacture parts, products, or watercraft and does not include patch repair or touch-up activities.

~~(27)~~ **(28)** "Resin" means any thermosetting resin that contains styrene (CAS No. 100-42-5) **or** methyl methacrylate (CAS No. 80-62-6), or both, and is used to manufacture parts, products, or watercraft. Resin does not include:

(A) gel coat;
(B) tooling gel coat;
(C) thermoplastic resin, for example, rotationally molded polyethylene; or
(D) thermosetting resin;

that does not contain styrene or methyl methacrylate, for example, epoxies.

(29) "Resin and gel coat mixing container" means a container that is used for mixing resin or gel coat and is not concurrently used to supply resin or gel coat to an applicator.

~~(28)~~ **(30)** "Shrinkage controlled resin" means resin that relies on a balance of solution thermodynamics that permits three (3) phases (thermosetting polymer, styreneated thermoplastic, and styrene monomer) and produces less than or equal to one and five-tenths percent (1.5%) linear shrinkage when tested in neat (unfilled, nonreinforced) form by ASTM D2566-86**.

~~(29)~~ **(31)** "Specialty product resins" includes the following resins:

(A) Corrosion resistant resin is used to produce a product that meets any of the following criteria:

(i) Will be exposed to any of the following:

(AA) Materials with a pH equal to or greater than twelve (12.0) pH units or equal to or less than three (3.0) pH units.

(BB) Oxidizing agents.

(CC) Reducing agents.

(DD) Organic solvents.

(EE) Fuels or fuel additives as defined in 40 CFR 79.2*.

(ii) Complies with industry standards that require specific exposure testing for corrosive media.

(iii) Is manufactured to an accepted federal and industry standard for corrosion resistant, potable water contact or food contact applications.

(iv) Is manufactured specifically for an application that requires increased chemical inertness or resistance to chemical attack.

(B) High strength resin exhibiting a tensile strength of ten thousand (10,000) or more pounds per square inch when tested according to ASTM D638-98**.

(C) Resin used to meet military specifications.

(D) Skin coat resin, a thin protective layer of resin, used in watercraft production or other products, applied between the gel coat and laminate that provides corrosion resistance and prevents osmotic blistering.

~~(30)~~ **(32)** "Tooling gel coat" means the gel coat used in the construction of molds or prototypes (plugs).

~~(31)~~ **(33)** "Tooling resin" means the resin used in the construction of molds or prototypes (plugs).

~~(32)~~ **(34)** "Vacuum bagging" means a partially closed molding technology where, after resin has been applied, a flexible cover is placed over the wet surface, sealed, and a vacuum pump is used to draw the air out from under the cover and press the cover down onto the part.

~~(33)~~ **(35)** "Vapor suppressed resin" is a polyester resin material that contains additives to reduce volatile organic compound (VOC) evaporation loss to less than sixty (60)

grams per square meter of surface area as determined and certified by resin manufacturers.

~~(34)~~ **(36)** "Watercraft" means any motorized or nonmotorized device in which or by means of which a person may be transported upon the water, excluding seaplanes.

***This document is incorporated by reference.** Copies ~~of the Code of Federal Regulations referenced in this article~~ **may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20204 or** are available for **review and** copying ~~from~~ **at** the **Indiana Department of Environmental Management,** Office of Air ~~Management, Department of Environmental Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana ~~or may be obtained from the Government Printing Office, Washington, D. C. 20204.~~ **46204.**

****This document is incorporated by reference.** Copies ~~of American Society for Testing Materials methods~~ are available for **review and** copying ~~from~~ **at** the **Indiana Department of Environmental Management,** Office of Air ~~Management, Department of Environmental Management,~~ **Quality,** Indiana Government Center-North, **Tenth Floor,** 100 North Senate Avenue, Indianapolis, Indiana ~~ASTM, 1916 Race Street, Philadelphia, PA 19103-1187, or the public library.~~ **46204.** *(Air Pollution Control Board; 326 IAC 20-25-2; filed Feb 5, 2001, 9:23 a.m.: 24 IR 2407; filed Feb 14, 2005, 10:50 a.m.: 28 IR 2018)*

SECTION 3. 326 IAC 20-56 IS ADDED TO READ AS FOLLOWS:

Rule 56. Reinforced Plastic Composites Production

326 IAC 20-56-1 Applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-12-3-1; IC 13-17

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.5785 (68 FR 19402, April 21, 2003)*.

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart WWWW (68 FR 19402, April 21, 2003)*, National Emission Standards for Hazardous Air Pollutants for Reinforced Plastic Composites Production.

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 20-56-1; filed Feb 14, 2005, 10:50 a.m.: 28 IR 2020)*

326 IAC 20-56-2 Operator training

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-12-3-1; IC 13-17

Sec. 2 (a) Each owner or operator shall train all new and existing personnel, including contract personnel, who are involved in resin and gel coat spraying and applications that could result in excess emissions if performed improperly according to the following schedule:

(1) All personnel hired shall be trained within thirty (30) days of hiring.

(2) To ensure training goals listed in subsection (b) are maintained, all personnel shall be given refresher training annually.

(3) Personnel who have been trained by another owner or operator subject to this rule are exempt from subdivision (1) if written documentation that the employee's training is current is provided to the new employer.

(b) The lesson plans shall cover, for the initial and refresher training, at a minimum, all of the following topics:

(1) Appropriate application techniques.

(2) Appropriate equipment cleaning procedures.

(3) Appropriate equipment setup and adjustment to minimize material usage and overspray.

(c) The owner or operator shall maintain the following training records on site and make them available for inspection and review:

(1) A copy of the current training program.

(2) A list of the following:

(A) All current personnel, by name, that are required to be trained.

(B) The date the person was trained or date of most recent refresher training, whichever is later.

(d) Records of prior training programs and former personnel are not required to be maintained. *(Air Pollution Control Board; 326 IAC 20-56-2; filed Feb 14, 2005, 10:50 a.m.: 28 IR 2020)*

LSA Document #03-264(F)
Proposed Rule Published: July 1, 2004; 27 IR 3123
Hearing Held: October 6, 2004
Approved by Attorney General: January 12, 2005
Approved by Governor: February 10, 2005
Filed with Secretary of State: February 14, 2005, 10:50 a.m.
IC 4-22-7-5(c) notice from Secretary of State regarding documents incorporated by reference: Notice received by Publisher March 3, 2005: 40 CFR Part 63, National Emissions Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #03-282(F)

DIGEST

Amends 326 IAC 7-4-13 to make corrections and update information for sources listed in the rule. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: November 1, 2003, Indiana Register (27 IR 573).

Second Notice of Comment Period: February 1, 2004, Indiana Register (27 IR 1654).

Notice of First Hearing: April 1, 2004, Indiana Register (27 IR 2299).

Date of First Hearing: May 5, 2004.

Proposed Rule and Notice of Second Hearing: June 1, 2004, Indiana Register (27 IR 2768).

Change of Notice of Second Hearing: August 1, 2004, Indiana Register (27 IR 3591).

Date of Second Hearing: October 6, 2004.

326 IAC 7-4-13

SECTION 1. 326 IAC 7-4-13 IS AMENDED TO READ AS FOLLOWS:

326 IAC 7-4-13 Dearborn County sulfur dioxide emission limitations

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-3-12
Affected: IC 13-15; IC 13-17

Sec. 13. The following sources and facilities located in Dearborn County shall comply with the sulfur dioxide emission limitations in pounds per million Btu and other requirements:

	Source	Facility Description	Emission Limitations
(1)	Indiana Michigan Power Tanners Creek Station, **Source Identification No. 00002**	(A) Units 1, 2, and 3	1.2 each
		(B) Unit 4	**5.24**
		~~Prior to October 1, 1989~~	~~8.3~~
		~~Beginning October 1, 1989~~	~~6.6~~
		~~Beginning August 1, 1991~~	~~5.24~~

~~Beginning July 1, 1988, coal delivered to the Tanners Creek Station shall not exceed a sulfur dioxide emission rate equivalent to an emission limit of six and six-tenths (6.6) pounds per million Btu.~~

~~(2)~~	~~Schenley Distillers, Inc.~~	~~(A) Boilers 1, 2, 3, 6, 7, and 8~~	~~0.6 each~~
		~~(B) Boilers 4, 5, and 9~~	~~natural gas only~~
		~~(C) Boilers 6, 7, and 8~~	~~40 tons per year total~~
		~~(D) Monthly reports of total sulfur dioxide emissions from Boilers 6, 7, and 8 for the previous twelve (12) consecutive months shall be submitted to the department at the end of each quarter. Sulfur dioxide emissions shall be based on monthly fuel oil usage, average sulfur content, and heating value.~~	
~~(3)~~ **(2)**	~~Joseph E. Seagram and Sons, Inc.~~ **Pernod Ricard USA, Seagram Lawrenceburg Distillery, Source Identification No. 00005**	~~(A) Boilers 5 and 6~~ **Steam Boiler EU-96**	1.92 ~~each~~
		~~(B) If Boilers 5 and 6 are being operated at the same time, only one (1) of the boilers may use coal or fuel oil. Seagram shall maintain a record of the fuel type used at Boilers 5 and 6 in order to demonstrate compliance with the requirements of this rule. When both boilers are operating simultaneously, daily logs shall be kept. Such records shall be made available to the department upon request. Within thirty (30) days following the end of the calendar quarter in which both Boilers 5 and 6 operated simultaneously, Seagram shall report to the department the fuels used, including daily information for each day during which both boilers operated simultaneously.~~	
~~(4)~~ **(3)**	~~Diamond Thatcher Glass~~ **Anchor Glass Container Corporation, Source Identification No. 00007**	Furnaces 1 and 2	1.4 each

(Air Pollution Control Board; 326 IAC 7-4-13; filed Aug 28, 1990, 4:50 p.m.: 14 IR 77; filed Apr 18, 1995, 3:00 p.m.: 18 IR 2220; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed Feb 14, 2005, 11:05 a.m.: 28 IR 2021)

LSA Document #03-282(F)
Proposed Rule Published: June 1, 2004; 27 IR 2768
Hearing Held: October 6, 2004
Approved by Attorney General: January 12, 2005
Approved by Governor: February 10, 2005
Filed with Secretary of State: February 14, 2005, 11:05 a.m.
IC 4-22-7-5(c) notice from Secretary of State regarding documents incorporated by reference: None received by Publisher

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #03-283(F)

DIGEST

Amends 326 IAC 18-1-1, 326 IAC 18-1-2, 326 IAC 18-1-3, 326 IAC 18-1-4, 326 IAC 18-1-5, and 326 IAC 18-1-6 to delete requirements for waste disposal managers to be licensed to handle asbestos waste. Amends 326 IAC 18-1-9 to delete the asbestos waste disposal manager license fee. Amends 326 IAC 18-2-2 to delete waste disposal manager from the definition of licensed. Amends 326 IAC 18-2-3 to correct typographical errors and formatting. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: November 1, 2003, Indiana Register (27 IR 574).

Second Notice of Comment Period and Notice of First Public Hearing: April 1, 2004, Indiana Register (27 IR 2343).

Date of First Hearing: June 2, 2004.

Proposed Rule and Notice of Second Public Hearing: July 1, 2004, Indiana Register (27 IR 3127).

Change of Hearing Notice: August 1, 2004 (27 IR 3591).

Date of Second Hearing: October 6, 2004.

326 IAC 18-1-1
326 IAC 18-1-2
326 IAC 18-1-3
326 IAC 18-1-4
326 IAC 18-1-5
326 IAC 18-1-6
326 IAC 18-1-9
326 IAC 18-2-2
326 IAC 18-2-3

SECTION 1. 326 IAC 18-1-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 18-1-1 Applicability

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-6
Affected: IC 13-11-2-158; IC 13-17

Sec. 1. (a) This rule shall apply to persons who do any of the following:

(1) Inspect for asbestos-containing materials at a facility.
(2) Develop asbestos management plans for school buildings.
(3) Design asbestos projects for implementation at a facility.
(4) Supervise the implementation of asbestos projects at a facility.
(5) Implement asbestos projects at a facility.
~~(6) Manage disposal, at a waste disposal facility, of ACM removed from a facility as specified at 329 IAC 10-8-4.~~

(b) A person may apply to the department for a license to perform activities under any of the following disciplines:

(1) Inspector.
(2) Management planner.
(3) Project designer.
(4) Asbestos project supervisor.
(5) Asbestos worker.
(6) Asbestos contractor.
~~(7) Waste disposal manager.~~

(Air Pollution Control Board; 326 IAC 18-1-1; filed Sep 23, 1988, 1:45 a.m.: 12 IR 269; filed May 12, 1998, 9:15 a.m.: 21 IR 3747; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed Feb 14, 2005, 11:15 a.m.: 28 IR 2022)

SECTION 2. 326 IAC 18-1-2, AS AMENDED AT 28 IR 99, SECTION 82, IS AMENDED TO READ AS FOLLOWS:

326 IAC 18-1-2 Definitions

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-6
Affected: IC 13-11-2-158; IC 13-17

Sec. 2. The following definitions apply throughout this rule:

(1) "Approved initial training course" means a course approved by the department under 326 IAC 18-2 for purposes of providing initial training to persons to become licensed.
(2) "Approved refresher training course" means a course approved by the department under 326 IAC 18-2 for purposes of providing refresher training to licensed persons.
(3) "Asbestos" means the asbestiform varieties of the following:
(A) Chrysotile (serpentine).
(B) Crocidolite (riebeckite).
(C) Amosite (cummingtonite-grunerite).
(D) Anthophyllite.
(E) Tremolite.
(F) Actinolite.
(4) "Asbestos-containing building material" or "ACBM" means any ACM that is in or on structural members or other parts of a school.
(5) "Asbestos-containing material" or "ACM" means asbestos or any material containing more than one percent (1%) asbestos as determined by methods specified in 40 CFR 763, Appendix E, Subpart E, Section 1, Polarized Light Microscopy* including Category I and Category II asbestos-containing material and all friable material.
(6) "Asbestos-Containing Materials in Schools Rule" means the Asbestos-Containing Materials in Schools Rule under 40 CFR 763, Subpart E*.
~~(7) "Asbestos waste disposal manager" means a person who is present on-site during all ACM handling and disposal activities under 329 IAC 10-8.~~
~~(8)~~ **(7)** "Asbestos license" means a document issued by the

department to a person meeting the licensing requirements of this rule.

~~(9)~~ **(8)** "Asbestos Model Accreditation Plan Rule" means the Asbestos Model Accreditation Plan Rule under 40 CFR 763, Subpart E, Appendix C*.

~~(10)~~ **(9)** "Asbestos removal contractor" means a person who enters into one (1) or more contracts to implement an asbestos removal project at a facility.

~~(11)~~ **(10)** "Asbestos removal project" means any and all activities at a facility involving the removal, encapsulation, enclosure, abatement, renovation, repair, removal, storage, stripping, dislodging, cutting, or drilling that result in the disturbance or repair of any one (1) of the following:

(A) At least three (3) linear feet of RACM on or off pipes.

(B) At least three (3) square feet of RACM on or off other facility components.

(C) A total of at least seventy-five hundredths (0.75) cubic foot of RACM on or off all facility components.

These activities include, but are not limited to, work area preparation, implementation of engineering controls and work practices, and work area decontamination activities required by 326 IAC 14-10-4 or 29 CFR 1926.1101* (Occupational Safety and Health Administration, Occupational Exposure to Asbestos).

~~(12)~~ **(11)** "Certificate of accreditation" means a document issued by the department to a person who met the accreditation requirements of this rule prior to the rule being amended to change the term from accreditation to asbestos license.

~~(13)~~ **(12)** "Certificate of training" means a document issued by an approved initial or refresher training course provider to a person indicating that the person attended an approved initial or refresher training course and received a passing score on the written examination for such course. A certificate of training issued to a person seeking licensing by the department shall not be valid for purposes of this subdivision if such certificate of training is issued by a training course provider who is such person's partner or employer or a subsidiary entity of such person's employer.

~~(14)~~ **(13)** "Facility" means any:

(A) school building;

(B) institutional, commercial, public, or industrial building, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four (4) or fewer dwelling units);

(C) ship; and

(D) active or inactive waste disposal site.

For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. The term includes any structure, installation, or building that was previously subject to 326 IAC 14, regardless of its current use or function.

~~(15)~~ **(14)** "Facility component" means any part of a facility, including equipment.

~~(16)~~ **(15)** "Friable" means that the material, when dry, may be crumbled, pulverized, or reduced to powder by hand pressure or mechanical forces reasonably expected to act on the material and includes previously nonfriable material after such nonfriable material becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by hand pressure or mechanical forces reasonably expected to act on the material.

~~(17)~~ **(16)** "Inspection" means those activities undertaken to specifically determine the presence or location, or to assess the condition of, friable or nonfriable ACM, or suspected ACM, whether by visual or physical examination, or by collecting samples of such material. In addition, the term includes all reinspections of friable and nonfriable known or assumed ACM ~~which~~ **that** has been previously identified. The term excludes the activities of periodic surveillance, compliance inspections, and visual inspections as referenced in 40 CFR 763.90(i)*.

~~(18)~~ **(17)** "Inspector" means any person who conducts an inspection for ACM in a facility.

~~(19)~~ **(18)** "Interim accreditation", when referring to a training course, means that the U.S. EPA has determined that the training course meets the requirements of Section 206(c)(2) of the Toxic Substances Control Act (TSCA) Title II*.

~~(20)~~ **(19)** "Licensed", when referring to a person, means a person holding a current asbestos license issued by the department under this rule.

~~(21)~~ **(20)** "Major fiber release episode" means any disturbance of ACM, resulting in a visible emission, ~~which~~ **that** involves the falling or dislodging of more than three (3) square feet, three (3) linear feet, or seventy-five hundredths (0.75) cubic foot of friable ACM.

~~(22)~~ **(21)** "Management plan" means a document prepared under the Asbestos-Containing Materials in Schools Rule under 40 CFR 763, Subpart E* that addresses the manner in which ACM will be handled in a school building.

~~(23)~~ **(22)** "Management planner" means any person who prepares management plans for schools.

~~(24)~~ **(23)** "Nonfriable", when referring to material at a facility, means material ~~which,~~ **that,** when dry, may not be crumbled, pulverized, or reduced to powder by hand pressure or mechanical forces reasonably expected to act on the material.

~~(25)~~ **(24)** "Person" has the meaning ~~as~~ set forth in IC 13-11-2-158(a).

~~(26)~~ **(25)** "Photographic identification card" means any of the following:

(A) A valid driver's license or identification (ID) card issued by any state that displays the individual's photograph.

(B) A valid work visa issued by the United States Department of Justice.

(C) A valid United States passport.

~~(27)~~ **(26)** "Project designer" means a person who designs any of the following activities with respect to RACM in a facility:

(A) An asbestos project other than a small scale short

duration (SSSD) maintenance activity.

(B) A maintenance activity that disturbs RACM other than an SSSD maintenance activity.

(C) An asbestos project for a major fiber release episode.

~~(28)~~ **(27)** "Project supervisor" means a person who supervises or performs any of the following activities with respect to RACM in a facility:

(A) An asbestos project other than an SSSD activity.

(B) A maintenance activity that disturbs RACM other than an SSSD activity.

(C) An asbestos project for a major fiber release episode.

~~(29)~~ **(28)** "Regulated asbestos-containing material" or "RACM" means the following:

(A) Friable asbestos material.

(B) Category I nonfriable ACM that has become friable.

(C) Category I nonfriable ACM that will be or has been subjected to:

(i) sanding;

(ii) grinding;

(iii) cutting;

(iv) abrading; or

(v) burning.

(D) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this article.

The term does not include nonfriable asbestos-containing resilient floor covering materials unless the materials are sanded, beadblasted, or mechanically pulverized so that visible asbestos emissions are discharged or the materials are burned. Resilient floor covering materials include sheet vinyl flooring, resilient tile, or associated adhesives.

~~(30)~~ **(29)** "Response action" means a method, including:

(A) removal;

(B) encapsulation;

(C) enclosure;

(D) repair; and

(E) operation and maintenance;

that protects human health and the environment from RACM.

~~(31)~~ **(30)** "School" means any combination of grades *[sic., grade]* kindergarten, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, or 12.

~~(32)~~ **(31)** "School building" means the following:

(A) Any structure at a school suitable for use as a:

(i) classroom;

(ii) laboratory;

(iii) library;

(iv) school eating facility; or

(v) facility used for the preparation of food.

(B) Any gymnasium or other facility at a school ~~which~~ **that** is specially designed for athletic or recreational activities for an academic course in physical education.

(C) Any other facility used by a school for the instruction or housing of students or for the administration of educational or research programs.

(D) Any maintenance, storage, or utility facility, including any hallway, essential to the operation of any facility described in clauses (A) through (C).

(E) Any portico or covered exterior hallway or walkway ~~which~~ **that** is part of a school.

(F) Any exterior portion of a mechanical system used to heat, ventilate, or air condition (HVAC) interior space of a school.

~~(33)~~ **(32)** "Small-scale, short duration" or "SSSD" means any activity in which the amount of RACM being disturbed is less than three (3) linear feet on or off pipes or three (3) square feet on or off other facility components, or a total of less than seventy-five hundredths (0.75) cubic foot on or off all facility components.

~~(34)~~ **(33)** "Structural member" means any load-supporting member of a facility, such as beams and load-supporting walls, or any nonload-supporting member, such as ceilings and nonload-supporting walls.

~~(35)~~ **(34)** "Worker" means a person who performs any of the following activities with respect to RACM in a facility:

(A) An asbestos project other than an SSSD activity.

(B) A maintenance activity that disturbs RACM other than an SSSD activity.

(C) An asbestos project for a major fiber release episode.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 18-1-2; filed Sep 23, 1988, 1:45 p.m.: 12 IR 269; filed Jul 19, 1990, 4:50 p.m.: 13 IR 2110; filed Dec 5, 1990, 3:40 p.m.: 14 IR 612; filed Jul 5, 1995, 10:00 a.m.: 18 IR 2740; errata filed Jul 5, 1995, 10:00 a.m.: 18 IR 2795; filed May 12, 1998, 9:15 a.m.: 21 IR 3748; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; errata filed Dec 12, 2002, 3:35 p.m.: 26 IR 1572; filed Aug 26, 2004, 11:30 a.m.: 28 IR 99; filed Feb 14, 2005, 11:15 a.m.: 28 IR 2022)*

SECTION 3. 326 IAC 18-1-3 IS AMENDED TO READ AS FOLLOWS:

326 IAC 18-1-3 General provisions

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-6
Affected: IC 13-11-2-158; IC 13-17

Sec. 3. (a) No person shall conduct the following activities without licensing by the department:

(1) Inspect for ACM at a facility.

(2) Develop an asbestos management plan for a school building.

(3) Design an asbestos project to be implemented at a facility.

(4) Supervise the implementation of an asbestos project at a facility.

(5) Implement an asbestos project at a facility.
~~(6) Manage disposal, at a waste disposal facility, of ACM, as specified at 329 IAC 10-8-4.~~

(b) Those persons holding a valid Indiana certificate of accreditation on the effective date of this rule shall be considered licensed under this rule until the expiration date of their certificate of accreditation.

(c) A licensed person shall carry: ~~either of the following:~~
(1) a certificate of accreditation and a photographic identification card; **or**
(2) an asbestos license;
at all times while performing activities specified in subsection (a)(1) through ~~(a)(6)~~ **(a)(5)** unless otherwise specified in section ~~8(a)(2)~~ **8(2)** of this rule.

(d) An asbestos contractor shall implement asbestos projects by employing a licensed:
(1) asbestos worker; ~~an~~
(2) inspector; ~~a~~
(3) project supervisor; ~~a~~
(4) project designer; or ~~a~~
(5) management planner;
who fulfills the requirements of section 4(d) or 6(a) of this rule by successfully completing an approved training course provided by another Indiana approved training provider. *(Air Pollution Control Board; 326 IAC 18-1-3; filed Sep 23, 1988, 1:45 p.m.: 12 IR 270; filed Dec 5, 1990, 3:40 p.m.: 14 IR 614; filed May 12, 1998, 9:15 a.m.: 21 IR 3751; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed Feb 14, 2005, 11:15 a.m.: 28 IR 2024)*

SECTION 4. 326 IAC 18-1-4 IS AMENDED TO READ AS FOLLOWS:

326 IAC 18-1-4 Asbestos license; qualifications
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-6
Affected: IC 13-11-2-158; IC 13-17

Sec. 4. (a) In order to qualify for an initial asbestos license as an asbestos inspector, a person shall meet the following:
(1) Possess a high school degree or equivalent. Two (2) years of experience in one (1) or a combination of the following fields is equivalent to a high school degree:
(A) Asbestos inspection.
(B) Building construction.
(C) Building maintenance.
(D) General building inspection.
(2) Have attended an approved initial training course for asbestos inspection and received a passing score on the written examination for such course.

(b) In order to qualify for an initial asbestos license as an asbestos management planner, a person shall meet the following:
(1) Possess an associate's, bachelor's, or graduate degree in architecture, industrial hygiene, engineering, building system design, or a related field of study. One (1) year of experience in one (1) or more of the following fields and possession of a high school degree or equivalent, as provided in subsection (a)(1), may substitute for the required associate's, bachelor's, or graduate degree:
(A) Planning, supervision, or cost estimation of building construction.
(B) Planning, supervision, or cost estimation of asbestos projects.
(C) Asbestos inspection.
(D) General building inspection.
(2) Have attended an approved initial training course for asbestos inspection and an approved training course for asbestos management planning and received passing scores on the written examinations for such courses.

(c) In order to qualify for an initial asbestos license as an asbestos project designer, a person shall meet the following:
(1) Possess an associate's, bachelor's, or graduate degree in architecture, industrial hygiene, engineering, building system design, or a related field of study. One (1) year of experience in one (1) or more of the following fields and possession of a high school degree or equivalent, as provided in subsection (a)(1), may substitute for the required associate's, bachelor's, or graduate degree:
(A) Planning, supervision, or cost estimation of building construction.
(B) Planning, supervision, or cost estimation of asbestos projects.
(C) Asbestos inspection.
(D) General building inspection.
(2) Have attended an approved initial training course for asbestos project design and received a passing score on the written examination for such course.

(d) In order to qualify for an initial asbestos license as an asbestos project supervisor, a person shall meet the following:
(1) Have a minimum of six (6) months of experience as an asbestos project supervisor or as an asbestos worker.
(2) Have attended an approved initial training course for asbestos project supervision and received a passing score on the written examination for such course.

(e) In order to qualify for an initial asbestos license as an asbestos worker, a person shall have attended an approved initial training course for asbestos workers or an approved initial training course for asbestos project supervisors and received a passing score on the written examination for such course.

~~(f) In order to qualify for an initial asbestos license as an asbestos waste disposal manager, a person shall have attended an approved initial training course for asbestos workers or an approved initial training course for asbestos project supervisors and received a passing score on the written examination for such course.~~

~~(g)~~ **(f)** In order to qualify for an initial asbestos license as an

asbestos contractor, a person shall meet the following:

(1) Possess proof of financial responsibility with a current certificate of insurance documenting that the contractor carries asbestos liability insurance in the amount of at least five hundred thousand dollars ($500,000) for the implementation of asbestos projects. The company offering insurance coverage must be recognized or licensed by the Indiana department of insurance to provide asbestos coverage. The contractor shall notify the department in writing within five (5) working days of any change in the status of the contractor's financial responsibility.

(2) Have attended an approved initial training course for an asbestos project supervisor or an asbestos removal contractor and received a passing score on the written examination for such course. A contractor may designate an employee to fulfill the training requirements in this subdivision and in section 6(a)(2) of this rule. The contractor shall notify the department in writing if the contractor transfers the designated status to another employee within five (5) working days of the transfer. Such written notification shall include the name of the newly designated employee and evidence of that person's successful completion of training requirements in this subdivision and in section 6(a)(2) of this rule.

(3) Demonstrate that the contractor is competent in the field of asbestos project implementation.

(4) The department shall be listed as a certificate holder on the insurance certificate.

~~(h)~~ **(g)** Any individual who has had an eighteen (18) month time lapse between any two (2) training courses of the same discipline shall be required to attend an initial training course for the discipline in which he or she is seeking licensing. *(Air Pollution Control Board; 326 IAC 18-1-4; filed Sep 23, 1988, 1:45 p.m.: 12 IR 270; filed Jul 6, 1989, 1:15 p.m.: 12 IR 2026; filed Jul 19, 1990, 4:50 p.m.: 13 IR 2112; filed Jul 5, 1995, 10:00 a.m.: 18 IR 2743; filed May 12, 1998, 9:15 a.m.: 21 IR 3751; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed Feb 14, 2005, 11:15 a.m.: 28 IR 2025)*

SECTION 5. 326 IAC 18-1-5, AS AMENDED AT 28 IR 101, SECTION 83, IS AMENDED TO READ AS FOLLOWS:

326 IAC 18-1-5 Asbestos license; application

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-6
Affected: IC 13-11-2-158; IC 13-17

Sec. 5. (a) Any person seeking an initial asbestos license from the department as an asbestos inspector, a management planner, a project designer, a supervisor, **or** a worker ~~or an asbestos waste disposal manager,~~ shall complete the following:

(1) Submit a completed application on forms provided by the department.

(2) Provide a copy of all required certificates of training indicating that the person successfully completed the approved initial and any requisite refresher training courses as defined in section ~~2(2)~~ **2(1)** and ~~2(3)~~ **2(2)** of this rule and received passing scores on all written examinations for such courses.

(3) Pay the license application fee specified in section 9 of this rule.

(b) Any person seeking an initial asbestos license from the department as an asbestos contractor shall complete the following:

(1) Submit a completed written application on forms provided by the department.

(2) Provide a statement that the person has read and understands this rule, the Asbestos-Containing Materials in Schools Rule, and 326 IAC 14-10.

(3) Provide a copy of all required certificates of training indicating that the person, or the contractor's designated representative, successfully completed the approved initial and any requisite refresher training courses for asbestos project supervisor or asbestos contractor and received passing scores on all written examinations for such courses.

(4) Provide a complete list of prior contracts for the previous twelve (12) months for asbestos projects, including names, addresses, and telephone numbers of persons for whom projects were performed.

(5) Provide an up-to-date copy of the contractor's written standard operating procedures, which include current compliance procedures, for the following regulatory programs:

(A) 326 IAC 14-2 (Emission Standards for Sources of Asbestos).

(B) 326 IAC 14-10 (Asbestos Demolition and Renovation Operations).

(C) ~~326 IAC 18-1~~ **This rule** (Asbestos Management Personnel; Licensing).

(D) ~~329 IAC 10-8~~ **329 IAC 10-8.1** (Special Waste **Management and Disposal at Municipal Solid Waste Landfill, Nonmunicipal Solid Waste Landfills, and Restricted Waste Landfills).**

(E) 29 CFR 1926.1101* (Occupational Exposure to Asbestos, Final Rule).

(F) 29 CFR 1910.134* (Occupational Safety and Health Standards, Subpart I, Personal Protective Equipment).

(6) Provide a description of any asbestos projects that the contractor conducted that were prematurely terminated or not completed, including the circumstances surrounding termination.

(7) Provide a list of any contractual penalties that the contractor has paid for noncompliance with contract specifications.

(8) Provide copies of any and all:

(A) warning letters;
(B) notice and order of the commissioner;
(C) agreed orders;
(D) citations;
(E) notices of violation; or
(F) findings of violation;

levied against the contractor by any federal, state, or local governmental agency for violations of regulations or other

laws pertaining to asbestos activities, including names and locations of the projects, the dates, and a description of how the allegations were resolved.
(9) Provide a description detailing all:
(A) legal proceedings;
(B) lawsuits;
(C) warning letters to supervisors from the commissioner; or
(D) claims;
~~which~~ **that** have been filed or levied against the contractor or any of his past or present employees, while employed by said contractor, for asbestos-related activities.
(10) Provide documentation of the contractor's financial responsibility with a current certificate of insurance with at least five hundred thousand dollars ($500,000) of asbestos liability insurance. The company offering insurance coverage must be recognized or licensed by the Indiana department of insurance.
(11) Pay the license application fee as specified in section 9 of this rule.

(c) If the department determines the information on the application to be incomplete, the applicant will be requested to submit the missing information. If the information is not submitted within one (1) year of the department's receipt of the application, the application will expire and the fee is not transferable.

(d) In addition to the requirements of subsections (a)(2) and (b)(3), the department may require an applicant or a designated representative of a contractor, in the case of subsection (b)(3), to take an examination administered by the department. The examination shall cover only the discipline for which the applicant is seeking a license. The department shall deny the application if the applicant does not receive a passing score of seventy percent (70%). If the department denies the application, the certificate of training is invalid, and the applicant must retake and pass the initial training course for the discipline for which the applicant is seeking a license.

(e) The applicant shall provide two (2) copies of a clear and recent one and one-half (1½) inch by one and one-half (1½) inch identifying color photograph at the time of application to be attached to the face of the asbestos license by the department prior to issuance of the license by the department.

(f) The department shall review the application and shall make a determination as to the eligibility of the person. The department shall issue an asbestos license to any person who fulfills the requirements established by this rule. The department may deny an application for an asbestos license based on any of the criteria listed in section 7 of this rule, as applicable, or for failure to comply with any other provision of this rule.

(g) Applications must be completed in writing and submitted for processing. The department shall not process applications on a walk-in basis or process applications over the telephone. If the application is approved, the license will be sent to the applicant via the ~~U.S.~~ **United States** Postal Service to the address as listed on the application.

(h) An asbestos license shall be valid for one (1) year from the date of issuance.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 18-1-5; filed Sep 23, 1988, 1:45 p.m.: 12 IR 271; filed Jul 19, 1990, 4:50 p.m.: 13 IR 2113; filed May 12, 1998, 9:15 a.m.: 21 IR 3752; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; errata filed Dec 12, 2002, 3:35 p.m.: 26 IR 1572; filed Aug 26, 2004, 11:30 a.m.: 28 IR 101; filed Feb 14, 2005, 11:15 a.m.: 28 IR 2026)*

SECTION 6. 326 IAC 18-1-6 IS AMENDED TO READ AS FOLLOWS:

326 IAC 18-1-6 Renewal of asbestos license
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-6
Affected: IC 13-11-2-158; IC 13-17

Sec. 6. (a) Any person seeking to renew an asbestos license as an asbestos inspector, management planner, project designer, project supervisor, worker, **or** contractor ~~or asbestos waste disposal manager~~ shall meet the following requirements:
(1) Have possessed a valid asbestos license within the previous six (6) months.
(2) Have attended, within the previous twelve (12) months, an approved refresher training course for disciplines under which the person was previously accredited. In the case of a person seeking to renew an asbestos license as a management planner, the person will be required to have attended both the inspector refresher and the management planner refresher training courses.
(3) Submit a completed application on forms provided by the department and include a copy of the certificates of training indicating that the person successfully completed the refresher training course and written examination.
(4) Pay the license application fee as specified in section 9 of this rule.

(b) Any person seeking to renew an asbestos license as an asbestos removal contractor by the department shall include in the application updated information as required in section 5(b)(5) through 5(b)(10) of this rule if any information has changed during the previous twelve (12) months. The contractor shall routinely examine and update his standard operating procedures manual to reflect the compliance assurance methodologies that meet current federal, state, and local regulations or other laws pertaining to asbestos.

(c) If the department determines the information on the application to be incomplete, the applicant will be requested to submit the missing information. If the information is not submitted within one (1) year of the department's receipt of the application, the application will expire and the fee is not transferable.

(d) The applicant shall provide two (2) copies of a clear and recent one and one-half (1½) inch by one and one-half (1½) inch identifying color photograph at the time of application to be attached by the department to the face of the asbestos license prior to issuance of the license by the department.

(e) In addition to the requirements in subsection (a)(2) through (a)(3), the department may require an applicant or a designated representative of a contractor to take an examination administered by the department. The examination shall cover only the discipline for which the applicant is seeking the renewal license. The department shall deny the application if the applicant does not receive a passing score of seventy percent (70%). If the department denies the application, the certificate of training is invalid and the applicant must retake and pass the refresher training course for the discipline for which the applicant is seeking a license renewal.

(f) The department shall review the application and shall make a determination as to the eligibility of the person. The department shall issue an asbestos license to any person who fulfills the requirements established by this rule. However, the department may deny an application for renewal of an asbestos license based on any of the criteria listed in section 7 of this rule, as applicable, or for failure to comply with any other provision of this rule.

(g) Applications must be completed in writing and submitted for processing. The department shall not process applications on a walk-in basis or process applications over the telephone. If the application is approved, the license will be sent to the applicant via the United States Postal Service to the address as listed on the application.

(h) Any individual who has had an eighteen (18) month time lapse between any two (2) training courses of the same discipline shall be required to attend an initial training course for the discipline in which they are seeking to be licensed. *(Air Pollution Control Board; 326 IAC 18-1-6; filed Sep 23, 1988, 1:45 p.m.: 12 IR 272; filed Jul 5, 1995, 10:00 a.m.: 18 IR 2744; filed May 12, 1998, 9:15 a.m.: 21 IR 3754; filed May 26, 2000, 8:47 a.m.: 23 IR 2425; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed Feb 14, 2005, 11:15 a.m.: 28 IR 2027)*

SECTION 7. 326 IAC 18-1-9 IS AMENDED TO READ AS FOLLOWS:

326 IAC 18-1-9 License fee; application fee

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-6
Affected: IC 13-11-2-158; IC 13-17

Sec. 9. (a) Upon application for accreditation, an asbestos license, a person shall pay a fee as follows:

(1) Asbestos inspector: one hundred dollars ($100).
(2) Asbestos management planner: one hundred dollars ($100).
(3) Asbestos project designer: one hundred dollars ($100).
(4) Asbestos contractor: one hundred fifty dollars ($150).
(5) Asbestos project supervisor: one hundred dollars ($100).
(6) Asbestos worker: fifty dollars ($50).
~~(7) Asbestos waste disposal manager: fifty dollars ($50).~~

(b) Fees paid by mail shall be paid by check or money order and shall be made payable to the Asbestos Trust Fund.

(c) The application fee is not:

(1) transferable from one (1) type of asbestos license to another;
(2) transferable from one (1) person to another;
(3) transferable to any other type of license issued by the department; or
(4) refundable;

unless requested by the applicant and approved by the department within three (3) days of submittal to the department or prior to processing by the department, whichever is earlier.

(d) If the department determines the information on the application to be incomplete, the applicant will be requested to submit the missing information. If the information is not submitted within one (1) year of the department's receipt of the application, the application will expire and the fee is not transferable or refundable. *(Air Pollution Control Board; 326 IAC 18-1-9; filed Sep 23, 1988, 1:45 a.m.: 12 IR 273; filed May 12, 1998, 9:15 a.m.: 21 IR 3755; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477; filed Feb 14, 2005, 11:15 a.m.: 28 IR 2028)*

SECTION 8. 326 IAC 18-2-2, AS AMENDED AT 28 IR 103, SECTION 86, IS AMENDED TO READ AS FOLLOWS:

326 IAC 18-2-2 Definitions

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-6
Affected: IC 13-11-2-158; IC 13-17

Sec. 2. The following definitions apply throughout this rule:

(1) "Approved initial training course" means a course approved by the department under this rule, for purposes of providing initial training to persons to become licensed.
(2) "Approved refresher training course" means a course approved by the department under this rule, for purposes of providing refresher training to licensed persons.
(3) "Asbestos" means the asbestiform varieties of the following:
  (A) Chrysotile (serpentine).
  (B) Crocidolite (riebeckite).
  (C) Amosite (cummingtonite-grunerite).
  (D) Anthophyllite.
  (E) Tremolite.

(F) Actinolite.

(4) "Asbestos-containing material" or "ACM" means asbestos or any material containing more than one percent (1%) asbestos as determined using methods specified in 40 CFR 763, Subpart E, Appendix E, Section I, Polarized Light Microscopy* including Category I and Category II ACM and all friable material.

(5) "Asbestos removal project" means any and all activities at a facility involving the removal, encapsulation, enclosure, abatement, renovation, repair, removal, storage, stripping, dislodging, cutting, or drilling that results in the disturbance or repair of the following:

(A) At least three (3) linear feet of RACM on or off pipes.

(B) At least three (3) square feet of RACM on or off other facility components.

(C) A total of at least seventy-five hundredths (0.75) cubic foot of RACM on or off all facility components.

These activities include, but are not limited to, work area preparation, implementation of engineering controls and work practices, and work area decontamination activities required by 326 IAC 14-10-4 or 29 CFR 1926.1101* (Occupational Safety and Health Administration Occupational Exposure to Asbestos).

(6) "Day", for purposes of determining duration of approved training courses, means eight (8) hours including breaks and lunch.

(7) "Facility" means any:

(A) school building;

(B) institutional, commercial, public, or industrial, building, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four (4) or fewer dwelling units);

(C) ship; and

(D) active or inactive waste disposal site.

For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation, or building that was previously subject to 326 IAC 14 is included, regardless of its current use or function.

(8) "Facility component" means any part of a facility, including equipment.

(9) "Friable", when referring to material at a facility, means that the material, when dry, may be crumbled, pulverized, or reduced to powder by hand pressure or mechanical forces reasonably expected to act on the material and includes previously nonfriable material after such nonfriable material becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by hand pressure or mechanical forces reasonably expected to act on the material.

(10) "Hands-on training", when referring to a topic covered by a training course, means training ~~which~~ **that** gives students actual experience performing tasks associated with the accredited discipline as follows:

(A) For asbestos contractors, supervisors, **and** workers, ~~and disposal managers,~~ the inclusion of the following:

(i) Working with asbestos-substitute material.

(ii) Fitting and using respirators.

(iii) Use of glove bags.

(iv) Donning protective clothing.

(v) Constructing a decontamination unit.

(vi) Other related abatement work activities.

(B) For asbestos inspectors, the inclusion of the following:

(i) Simulated building walk-through inspection.

(ii) Respirator fit testing.

(11) "Licensed", when referring to a person, means a person holding a current asbestos license issued by the department under 326 IAC 18-1 in the following disciplines:

(A) Inspector.

(B) Management planner.

(C) Project designer.

(D) Asbestos supervisor.

(E) Asbestos worker.

(F) Asbestos contractor.

~~(G) Waste disposal manager.~~

(12) "Management plan" means a document prepared under the Asbestos-Containing Materials in Schools Rule that addresses the manner in which ACM will be handled in a school building.

(13) "Nonfriable", when referring to material at a facility, means material ~~which,~~ **that,** when dry, may not be crumbled, pulverized, or reduced to powder by either hand pressure or mechanical forces reasonably expected to act on the material.

(14) "Person" has the meaning set forth in IC 13-11-2-158(a).

(15) "Regulated asbestos-containing material" or "RACM" means the following:

(A) Friable asbestos material.

(B) Category I nonfriable ACM that has become friable.

(C) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, abrading, or burning.

(D) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this article.

The term does not include nonfriable asbestos-containing resilient floor covering materials unless the materials are sanded, beadblasted, or mechanically pulverized so that visible asbestos emissions are discharged or the materials are burned. Resilient floor covering materials include sheet vinyl flooring, resilient tile, or associated adhesives.

(16) "School" means any combination of grades *[sic., grade]* kindergarten, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, or 12.

(17) "School building" means any of the following:

(A) A structure at a school suitable for use as a:

(i) classroom;

(ii) laboratory;
(iii) library;
(iv) school eating facility; or
(v) facility used for the preparation of food.

(B) A gymnasium or other facility at a school that is specially designed for athletic or recreational activities for an academic course in physical education.

(C) Another facility used by a school for the instruction or housing of students or for the administration of educational or research programs.

(D) A maintenance, storage, or utility facility, including any hallway, essential to the operation of any facility described in clauses (A) through (C).

(E) A portico or covered exterior hallway or walkway that is part of a school.

(F) An exterior portion of a mechanical system used to heat, ventilate, or air condition (HVAC) the interior space of a school.

(18) "Training course provider" means a person who provides an approved initial training course or an approved refresher training course for the purpose of licensing persons under 326 IAC 18-1.

(19) "TSCA Title II" refers to 15 U.S.C. 2641 et seq. of the federal Toxic Substances Control Act as amended on October 22, 1986*.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 18-2-2; filed Sep 23, 1988, 1:45 a.m.: 12 IR 273; filed Jul 19, 1990, 4:50 p.m.: 13 IR 2114; filed May 12, 1998, 9:15 a.m.: 21 IR 3756; errata filed Dec 12, 2002, 3:35 p.m.: 26 IR 1572; filed Aug 26, 2004, 11:30 a.m.: 28 IR 103; filed Feb 14, 2005, 11:15 a.m.: 28 IR 2028)*

SECTION 9. 326 IAC 18-2-3, AS AMENDED AT 28 IR 104, SECTION 87, IS AMENDED TO READ AS FOLLOWS:

326 IAC 18-2-3 Initial training course requirements
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-6
Affected: IC 13-11-2-158; IC 13-17

Sec. 3. (a) In order to qualify for approval, an asbestos inspector training course shall include a written examination as outlined in section 5 of this rule and meet the following requirements:

(1) An asbestos inspector training course shall be at least three (3) days in duration and shall include **the following:**

(A) Lectures.
(B) Demonstrations.
(C) Four (4) hours of hands-on training.
(C) Individual respirator fit testing. ~~and~~
(D) A course review.

Audiovisual materials shall be used to complement lectures where appropriate.

(2) An asbestos inspector training course shall adequately address the following topics:

(A) Background information on asbestos to include the following:

(i) The identification of asbestos and examples and discussion of the uses and locations of asbestos in buildings.
(ii) The physical appearance of asbestos.

(B) Potential health effects related to asbestos exposure to include the following:

(i) The nature of asbestos-related diseases.
(ii) Routes of exposure.
(iii) Dose-response relationships and the lack of a safe exposure level.
(iv) The synergistic effect between cigarette smoking and asbestos exposure.
(v) The latency period for asbestos-related diseases.
(vi) A discussion of the relationship of asbestos exposure to asbestosis, lung cancer, mesothelioma, and cancer of other organs.

(C) Functions, qualifications, and role of inspectors to include **discussion of** the following:

(i) ~~Discussion of~~ Prior experience and qualifications for inspectors and management planners.
(ii) ~~Discussion of~~ The functions of an accredited inspector as compared to those of an accredited management planner.
(iii) ~~Discussion of~~ The inspection process, including inventory of ACM and physical assessment.

(D) Legal liabilities and defenses to include the following:

(i) Responsibilities of the inspector and management planner.
(ii) A discussion of comprehensive general liability policies, claims-made and occurrence policies, **and** environmental and pollution liability policy clauses.
(iii) State liability insurance requirements.
(iv) Bonding and the relationship of insurance availability to bond availability.

(E) Understanding building systems to include the following:

(i) The interrelationship between building systems, including an overview of common building physical plan layout.
(ii) Heat, ventilation, and air conditioning (HVAC) system types, physical organization, and where asbestos is found on HVAC components.
(iii) Building mechanical systems, their types and organization, and where to look for asbestos on such systems.
(iv) Inspecting electrical systems, including appropriate safety precautions.
(v) Reading blueprints and as-built drawings.

(F) Public, employee, or building occupant relations to include the following:

(i) Notification of employee organizations about the inspection.
(ii) Signs to warn building occupants.
(iii) Tact in dealing with occupants and the press.
(iv) Scheduling of inspections to minimize disruption.
(v) Education of building occupants about actions being taken.

(G) Preinspection planning and review of previous inspection records to include the following:
(i) Scheduling the inspection and obtaining access.
(ii) Building record review.
(iii) Identification of probable homogeneous areas from blueprints or as-built drawings.
(iv) Consultation with maintenance or building personnel.
(v) Review of previous inspection, sampling, and abatement records of a building.
(vi) The role of the inspector in exclusions for previously performed inspections.

(H) Inspecting for friable and nonfriable ACM and assessing the condition of friable ACM to include the following:
(i) Procedures to follow in conducting visual inspections for friable and nonfriable ACM.
(ii) Types of building materials that may contain asbestos.
(iii) Touching materials to determine friability.
(iv) Open return air plenums and their importance in HVAC systems.
(v) Assessing damage, significant damage, potential damage, and potential significant damage.
(vi) Amount of suspected ACM, both in total quantity and as a percentage of the total area.
(vii) Type of damage.
(viii) Accessibility.
(ix) Material's potential for disturbance.
(x) Known or suspected causes of damage or significant damage.
(xi) Deterioration as assessment factors.

(I) Bulk sampling or documentation of asbestos in schools to include the following:
(i) Detailed discussion of the **"A** Simplified Sampling Scheme for Friable Surfacing Materials (U.S. EPA 560/5-85-030a October 1985)*".
(ii) Techniques to ensure sampling in a randomly distributed manner for other than friable surfacing materials.
(iii) Sampling of nonfriable materials.
(iv) Techniques for bulk sampling.
(v) Sampling equipment the inspector should use.
(vi) Patching or repair of damage done in sampling.
(vii) An inspector's repair kit.
(viii) Discussion of polarized light microscopy.
(ix) Choosing an accredited laboratory to analyze bulk samples.
(x) Quality control and quality assurance procedures.

(J) Inspector respiratory protection and personal protective equipment to include the following:
(i) Classes and characteristics of respirator types.
(ii) Limitations of respirators.
(iii) Proper selection, inspection, donning, use, maintenance, and storage procedures for respirators.
(iv) Methods for field testing of the facepiece-to-mouth seal (positive and negative pressure fitting tests).
(v) Qualitative and quantitative fit testing procedures.
(vi) Variability between field and laboratory protection factors.
(vii) Factors that alter respirator fit, for example, facial hair.
(viii) The components of a proper respiratory protection program.
(ix) Selection and use of personal protective clothing.
(x) Use, storage, and handling of nondisposable clothing.

(K) Record keeping and writing the inspection report to include the following:
(i) Labeling of samples and keying sample identification to sampling location.
(ii) Recommendations on sample labeling.
(iii) Detailing of ACM inventory.
(iv) Photographs of selected sampling areas and examples of ACM condition.
(v) Information required for inclusion in the management plan by Section 203(i)(1) TSCA Title II*.

(L) Regulatory review to include the following:
(i) National Emission Standards for Hazardous Air Pollutants (NESHAP) found at 40 CFR 61, Subparts A (General Provisions) and M (National Emission Standard for Asbestos)*.
(ii) U.S. EPA worker protection rule found at 40 CFR 763, Subpart G*.
(iii) TSCA Title II*.
(iv) Occupational Safety and Health Administration (OSHA) asbestos construction standard found at 29 CFR 1926.1101* (Occupational Safety and Health Administration Occupational Exposure to Asbestos).
(v) OSHA respirator requirements found at 29 CFR 1910.134*.
(vi) The friable ACM in schools rule found at 40 CFR 763, Subpart E*.
(vii) Applicable state and local regulations and differences in federal or state requirements where they apply and the effects, if any, on public and nonpublic schools or commercial or public buildings.
(viii) 326 IAC 14-2, 326 IAC 14-10, this article, 329 IAC 10-4-2, ~~329 IAC 10-8-4~~ **329 IAC 10-8.1,** and any local or municipal regulations, ordinances, or other local laws pertaining to asbestos.

(M) Field trip comprised of a walk-through inspection to include the following:
(i) On-site discussion on information gathering and determination of sampling locations.
(ii) On-site practice in physical assessment.
(iii) Classroom discussion of field exercise.

(N) A course review of the key aspects of the training course.

(b) In order to qualify for approval, an asbestos management planner training course shall include a written examination as outlined in section 5 of this rule and meet the following requirements:

(1) Verify that each attendee possesses a current and valid inspector training certificate prior to admission to the management planner training course.

(2) An asbestos management planner training course shall be at least two (2) days in duration and shall include **the following:**

(A) Lectures.

(B) Demonstrations. ~~and~~

(C) A course review.

Audiovisual materials shall be used to complement lectures where appropriate.

(3) An asbestos management planner training course shall adequately address the following topics:

(A) Course overview to include the following:

(i) The role of the management planner.

(ii) Operations and maintenance programs.

(iii) Setting work priorities.

(iv) Protection of building occupants.

(B) Evaluation and interpretation of survey results to include the following:

(i) Review of TSCA Title II requirements for inspection and management plans as given in Section 203(i)(1) of TSCA Title II*.

(ii) Interpretation of field data and laboratory results.

(iii) Comparison between field inspector's data sheet with laboratory results and site survey.

(C) Hazard assessment to include the following:

(i) Amplification of the difference between physical assessment and hazard assessment.

(ii) The role of the management planner in hazard assessment.

(iii) Explanation of significant damage, damage, potential damage, and potential significant damage.

(iv) Use of a description (or decision tree) code for assessment of ACM.

(v) Assessment of friable ACM.

(vi) Relationship of accessibility, vibration sources, use of adjoining space, and air plenums and other factors to hazard assessment.

(D) Legal implications to include the following:

(i) Liability.

(ii) Insurance issues specific to planners.

(iii) Liabilities associated with interim control measures and in-house maintenance, repair, and removal.

(iv) Use of results from previously performed inspections.

(E) Evaluation and selection of control options to include the following:

(i) Overview of encapsulation, enclosure, interim operations and maintenance, and removal.

(ii) Advantages and disadvantages of each method.

(iii) Response actions described via a decision tree or other appropriate method.

(iv) Work practices for each asbestos project.

(v) Staging and prioritizing of work in both vacant and occupied buildings.

(vi) The need for containment barriers and decontamination in asbestos projects.

(F) Role of other professionals to include the following:

(i) Use of industrial hygienists, engineers, and architects in developing technical specifications for asbestos projects.

(ii) Any requirements that may exist for architect sign-off of plans.

(iii) Team approach to design of high quality job specifications.

(G) Developing an operations and maintenance plan to include the following:

(i) Purpose of the plan.

(ii) Discussion of applicable U.S. EPA guidance documents.

(iii) What actions should be taken by custodial staff.

(iv) Proper cleaning procedures.

(v) Steam cleaning and high efficiency particulate aerosol (HEPA) vacuuming.

(vi) Reducing disturbance of ACM.

(vii) Scheduling operations and maintenance for off-hours.

(viii) Rescheduling or canceling renovation in areas with ACM.

(ix) Boiler room maintenance.

(x) Disposal of ACM.

(xi) In-house procedures for ACM-bridging and penetrating encapsulants.

(xii) Pipe fittings.

(xiii) Metal sleeves.

(xiv) Polyvinyl chloride (PVC), canvas, and wet wraps.

(xv) Muslin with straps.

(xvi) Fiber mesh cloth.

(xvii) Mineral wool and insulating cement.

(xviii) Discussion of employee protection programs and staff training.

(xix) Case study in developing an operations and maintenance plan (development, implementation process, and problems that have been experienced).

(H) Regulatory review to include the following:

(i) OSHA asbestos construction standard found at 29 CFR 1926.1101* (Occupational Safety and Health Administration, Occupational Exposure to Asbestos).

(ii) The NESHAP found at 40 CFR 61, Subparts A (General Provisions) and M (National Emission Standard for Asbestos)*.

(iii) U.S. EPA worker protection rule found at 40 CFR 763, Subpart G*.

(iv) TSCA Title II*.

(v) 326 IAC 14-2, 326 IAC 14-10, this article, 329 IAC 10-4-2, ~~329 IAC 10-8-4~~ **329 IAC 10-8.1,** and any local or municipal regulations, ordinances, or other local laws pertaining to asbestos.

(I) Record keeping for the management planner to include the following:
(i) Use of field inspector's data sheet along with laboratory results.
(ii) Ongoing record keeping as a means to track asbestos disturbance.
(iii) Procedures for record keeping.
(J) Assembling and submitting the management plan to include the following:
(i) Plan requirements in TSCA Title II, Section 203(i)(1)*.
(ii) The management plan as a planning tool.
(K) Financing abatement action to include the following:
(i) Economic analysis and cost estimates.
(ii) Development of cost estimates.
(iii) Present costs of abatement versus future operations and maintenance costs.
(iv) Grants and loans under the Asbestos School Hazard Abatement Act (20 U.S.C. 4011 et seq.)*.
(L) A course review of the key aspects of the training course.

(c) In order to qualify for approval, an asbestos project designer training course shall include a written examination as outlined in section 5 of this rule and meet the following requirements:
(1) An asbestos project designer training course shall be at least three (3) days in duration and shall include **the following:**
(A) Lectures.
(B) Demonstrations.
(C) A field trip. ~~and~~
(D) A course review.
Audiovisual materials shall be used to complement lectures where appropriate.
(2) An asbestos project designer training course shall adequately address the following topics:
(A) Background information on asbestos to include the following:
(i) Identification of asbestos.
(ii) Examples and discussion of the uses and locations of asbestos in buildings.
(iii) Physical appearance of asbestos.
(B) Potential health effects related to asbestos exposure to include the following:
(i) Nature of asbestos-related diseases.
(ii) Routes of exposure.
(iii) Dose-response relationships and the lack of a safe exposure level.
(iv) The synergistic effect between cigarette smoking and asbestos exposure.
(v) The latency period of asbestos-related diseases.
(vi) A discussion of the relationship between asbestos exposure and asbestosis, lung cancer, mesothelioma, and cancer of other organs.
(C) Overview of abatement construction projects to include the following:
(i) Abatement as a portion of a renovation project.
(ii) OSHA requirements for notification of other contractors on a multiemployer site 29 CFR 1926.1101* (Occupational Safety and Health Administration, Occupational Exposure to Asbestos.
(D) Safety system design specifications to include the following:
(i) Design, construction, and maintenance of containment barriers and decontamination enclosure systems.
(ii) Positioning of warning signs.
(iii) Electrical and ventilation system lock-out.
(iv) Proper working techniques for minimizing fiber release.
(v) Entry and exit procedures for the work area.
(vi) Use of wet methods.
(vii) Use of negative pressure exhaust ventilation equipment.
(viii) Use of HEPA vacuums.
(ix) Proper cleanup and disposal of asbestos.
(x) Work practices as they apply to encapsulation, enclosure, and repair.
(xi) Use of glove bags and a demonstration of glove bag use.
(xii) Proper techniques for initial cleaning.
(E) **A** field trip comprised of a visit to an abatement site or other suitable building site, including on-site discussions of abatement design, and building walk-through inspection, including discussion of rationale for the concept of functional spaces during the walk-through.
(F) Employee personal protective equipment to include the following:
(i) Classes and characteristics of respirator types.
(ii) Limitations of respirators.
(iii) Proper selection, inspection, donning, use, maintenance, and storage procedures.
(iv) Methods for field testing of the facepiece-to-face seal (positive and negative pressure fitting tests).
(v) Qualitative and quantitative fit testing procedures.
(vi) Variability between field and laboratory protection factors.
(vii) Factors that alter respirator fit, for example, facial hair.
(viii) Components of a proper respiratory protection program.
(ix) Selection and use of personal protective clothing.
(x) Use, storage, and handling of nondisposable clothing.
(G) Additional safety hazards encountered during abatement activities and how to deal with them, including the following:
(i) Electrical hazards.
(ii) Heat stress.
(iii) Air contaminants other than asbestos.
(iv) Fire and explosion hazards.

(H) Fiber aerodynamics and control to include the following:
(i) Aerodynamic characteristics of asbestos fibers.
(ii) Importance of proper containment barriers.
(iii) Settling time for asbestos fibers.
(iv) Wet methods in abatement.
(v) Aggressive air monitoring following abatement.
(vi) Aggressive air movement and negative pressure exhaust ventilation as a clean-up method.
(I) Designing abatement solutions to include the following:
(i) Discussions of removal, enclosure, and encapsulation methods.
(ii) Asbestos waste disposal.
(J) Final clearance process to include the following:
(i) Discussion of the need for a written sampling rationale for aggressive final air clearance.
(ii) Requirements of a complete visual inspection.
(iii) The relationship of the visual inspection to final air clearance.
(K) Budgeting and cost estimation to include the following:
(i) Development of cost estimates.
(ii) Present cost of abatement versus future operations and maintenance costs.
(iii) Setting priorities for abatement jobs to reduce costs.
(L) Writing abatement specifications to include the following:
(i) Preparation of and need for a written project design.
(ii) Means and methods specifications versus performance specifications.
(iii) Design of abatement in occupied buildings.
(iv) Modification of guide specifications to a particular building.
(v) Worker and building occupant health and medical considerations.
(vi) Replacement of ACM with nonasbestos substitutes.
(M) Preparing abatement drawings to include the following:
(i) Significance and need for drawings.
(ii) Use of as-built drawings.
(iii) Use of inspection photographs and on-site reports.
(iv) Methods of preparing abatement drawings.
(v) Diagramming containment barriers.
(vi) Relationship of drawings to design specifications.
(vii) Particular problems in abatement drawings.
(N) Contract preparation and administration.
(O) Legal liabilities and defenses to include the following:
(i) Insurance considerations.
(ii) Bonding.
(iii) Hold harmless clauses.
(iv) Use of abatement contractor's liability insurance.
(v) Claims-made versus occurrence policies.
(P) Replacement of asbestos with asbestos-free substitutes.
(Q) Role of other consultants to include the following:
(i) Development of technical specification sections by industrial hygienists or engineers.
(ii) The multidisciplinary team approach to abatement design.
(R) Occupied buildings to include the following:
(i) Special design procedures required in occupied buildings.
(ii) Education of occupants.
(iii) Extra monitoring recommendations.
(iv) Staging of work to minimize occupant exposure.
(v) Scheduling of renovation to minimize exposure.
(S) Relevant federal, state, and local regulatory requirements with a discussion of procedures and standards, including, but not limited to, the following:
(i) Requirements of TSCA Title II*.
(ii) The NESHAP, found at 40 CFR 61, Subparts A (General Provisions) and M (National Emission Standard for Asbestos)*.
(iii) OSHA standards for permissible exposure to airborne concentrations of asbestos fibers and respiratory protection found at 29 CFR 1910.134*.
(iv) EPA worker protection rule found at 40 CFR 763, Subpart G*.
(v) OSHA asbestos construction standard found at 29 CFR 1926.1101* (Occupational Safety and Health Administration, Occupational Exposure to Asbestos).
(vi) OSHA hazard communication standard found at 29 CFR 1926.59*.
(vii) 326 IAC 14-2, 326 IAC 14-10, this article, 329 IAC 10-4-2, ~~329 IAC 10-8-4~~ **329 IAC 10-8.1,** and any local or municipal regulations, ordinances, or other local laws pertaining to asbestos.
(T) A course review of the key aspects of the training course.

(d) In order to qualify for approval, an asbestos project supervisor or contractor training course shall include a written examination as outlined in section 5 of this rule and meet the following requirements:
(1) An asbestos project supervisor or contractor training course shall be at least five (5) days in duration and shall include **the following:**
(A) Lectures.
(B) Demonstrations.
(C) At least fourteen (14) hours of hands-on training.
(D) Individual respirator fit testing. ~~and~~
(E) A course review.
Audiovisual materials shall be used to complement lectures where appropriate.
(2) An asbestos project supervisor or contractor training course shall adequately address the following topics:
(A) Physical characteristics of asbestos and ACM to include the following:
(i) Identification of asbestos.
(ii) Aerodynamic characteristics.
(iii) Typical uses.
(iv) Physical appearance.
(v) A review of hazard assessment considerations.
(vi) A summary of abatement control options.

(B) Potential health effects related to asbestos exposure to include the following:
(i) Nature of asbestos-related diseases.
(ii) Routes of exposure.
(iii) Dose-response relationships and the lack of a safe exposure level.
(iv) Synergism between cigarette smoking and asbestos exposure.
(v) Latency period for diseases.
(C) Employee personal protective equipment to include the following:
(i) Classes and characteristics of respirator types.
(ii) Limitations of respirators and their proper selection, inspection, donning, use, maintenance, and storage procedures.
(iii) Methods for field testing of the facepiece-to-face seal (positive and negative pressure fitting tests).
(iv) Qualitative and quantitative fit testing procedures.
(v) Variability between field and laboratory protection factors.
(vi) Factors that alter respirator fit, for example, facial hair.
(vii) The components of a proper respiratory protection program.
(viii) Selection and use of personal protective clothing.
(ix) Use, storage, and handling of nondisposable clothing.
(x) Regulations covering personal protective equipment.
(D) State-of-the-art work practices to include the following:
(i) Proper work practices for asbestos abatement activities, including descriptions of proper construction and maintenance of barriers and decontamination enclosure systems.
(ii) Positioning of warning signs.
(iii) Electrical and ventilation system lock-out.
(iv) Proper working techniques for minimizing fiber release.
(v) Use of wet methods.
(vi) Use of negative pressure exhaust ventilation equipment.
(vii) Use of HEPA vacuums.
(viii) Proper clean-up and disposal procedures.
(ix) Work practices for removal, encapsulation, enclosure, and repair of ACM.
(x) Emergency procedures for unplanned releases.
(xi) Potential exposure situations.
(xii) Transport and disposal procedures.
(xiii) Recommended and prohibited work practices.
(xiv) New abatement-related techniques and methodologies.
(E) Personal hygiene to include the following:
(i) Entry and exit procedures for the work area.
(ii) Use of showers.
(iii) Avoidance of eating, drinking, smoking, and chewing (gum or tobacco) in the work area.
(iv) Potential exposures, such as family exposure, shall also be included.
(F) Hazards encountered during abatement activities and how to deal with them, including the following:
(i) Electrical hazards.
(ii) Heat stress.
(iii) Air contaminants other than asbestos.
(iv) Fire and explosion hazards.
(v) Scaffold and ladder hazards.
(vi) Slips, trips, and falls.
(vii) Confined spaces.
(G) Medical monitoring to include the following:
(i) OSHA requirements for a pulmonary function test.
(ii) Chest x-ray and a medical history for each employee.
(H) Air monitoring procedures to determine airborne concentrations of asbestos fibers to include the following:
(i) A description of aggressive sampling.
(ii) Sampling equipment and methods.
(iii) Reasons for air monitoring.
(iv) Types of samples.
(v) Interpretation of results, specifically from analyses performed by polarized light, phase-contrast, and electron microscopy.
(I) Relevant federal, state, and local regulatory requirements with a discussion of procedures and standards to include the following:
(i) Requirements of TSCA Title II*.
(ii) NESHAP found at 40 CFR 61, Subparts A (General Provisions) and M (National Emission Standard for Asbestos)*.
(iii) OSHA standards for permissible exposure to airborne concentrations of asbestos fibers and respiratory protection found at 29 CFR 1910.134*.
(iv) OSHA asbestos construction standard found at 29 CFR 1926.1101* (Occupational Safety and Health Administration, Occupational Exposure to Asbestos).
(v) EPA worker protection rule found at 40 CFR 763, Subpart G*.
(vi) 326 IAC 14-2, 326 IAC 14-10, this article, 329 IAC 10-4-2, ~~329 IAC 10-8-4,~~ **329 IAC 10-8.1,** and any local or municipal regulations, ordinances, or other local laws pertaining to asbestos.
(J) Respiratory protection programs and medical surveillance programs.
(K) Insurance and liability issues to include the following:
(i) Contractor issues.
(ii) Workers' compensation coverage and exclusions.
(iii) Third-party liabilities and defenses.
(iv) Insurance coverage and exclusions.
(L) Record keeping for asbestos abatement projects to include the following:
(i) Records required by federal, state, and local regulations.
(ii) Records recommended for legal and insurance purposes.
(M) Supervisory techniques for asbestos abatement activities to include supervisory practices ~~which~~ **that** enforce and reinforce the required work practices and discourage unsafe work practices.

(N) Contract specifications to include a discussion of key elements that are included in contract specifications.
(O) A course review of the key aspects of the training course.

(e) In order to qualify for approval, an asbestos worker training course shall include a written examination as outlined in section 5 of this rule and meet the following requirements:
(1) An asbestos worker training course shall be at least four (4) days in duration and shall include **the following:**
(A) Lectures.
(B) Demonstrations.
(C) At least fourteen (14) hours of hands-on training.
(D) Individual respirator fit testing. ~~and~~
(E) A course review.
Audiovisual materials shall be used to complement lectures where appropriate.
(2) An asbestos worker training course shall adequately address the following topics:
(A) Physical characteristics of asbestos to include the following:
(i) Identification of asbestos.
(ii) Aerodynamic characteristics.
(iii) Typical uses.
(iv) Physical appearance.
(v) A summary of abatement control options.
(B) Potential health effects related to asbestos exposure to include the following:
(i) Nature of asbestos-related diseases.
(ii) Routes of exposure.
(iii) Dose-response relationships and the lack of a safe exposure level.
(iv) Synergism between cigarette smoking and asbestos exposure.
(v) Latency period for diseases.
(vi) Discussion of the relationship of asbestos exposure to asbestosis, lung cancer, mesothelioma, and cancer of other organs.
(C) Employee personal protective equipment to include the following:
(i) Classes and characteristics of respirator types.
(ii) Limitations of respirators and their proper selection, inspection, donning, use, maintenance, and storage procedures.
(iii) Methods for field testing of the facepiece-to-face seal (positive and negative pressure fitting tests).
(iv) Qualitative and quantitative fit testing procedures.
(v) Variability between field and laboratory protection factors.
(vi) Factors that alter respirator fit, for example, facial hair.
(vii) The components of a proper respiratory protection program.
(viii) Selection and use of personal protective clothing, use, storage, and handling of nondisposable clothing.
(ix) Regulations covering personal protective equipment.
(D) State-of-the-art work practices to include the following:
(i) Proper asbestos abatement activities, including descriptions of proper construction and maintenance of barriers and decontamination enclosure systems.
(ii) Positioning of warning signs.
(iii) Electrical and ventilation system lock-out.
(iv) Proper working techniques for minimizing fiber release.
(v) Use of wet methods.
(vi) Use of negative pressure ventilation equipment.
(vii) Use of HEPA vacuums.
(viii) Proper clean-up and disposal procedures.
(ix) Work practices for removal, encapsulation, enclosure, and repair.
(x) Emergency procedures for sudden releases.
(xi) Potential exposure situations.
(xii) Transport and disposal procedures.
(xiii) Recommended and prohibited work practices.
(E) Personal hygiene to include the following:
(i) Entry and exit procedures for the work area.
(ii) Use of showers.
(iii) Avoidance of eating, drinking, smoking, and chewing (gum or tobacco) in the work area.
(iv) Potential exposures, such as family exposure.
(F) Hazards encountered during abatement activities and how to deal with them, including the following:
(i) Electrical hazards.
(ii) Heat stress.
(iii) Air contaminants other than asbestos.
(iv) Fire and explosion hazards.
(v) Scaffold and ladder hazards.
(vi) Slips, trips, and falls.
(vii) Confined spaces.
(G) Medical monitoring to include the following:
(i) OSHA and U.S. EPA requirements for a pulmonary function test.
(ii) Chest x-rays and a medical history for each employee.
(H) Air monitoring to include procedures to determine airborne concentrations of asbestos fibers, focusing on how personal air sampling is performed and the reasons for it.
(I) Relevant federal, state, and local regulatory requirements, procedures, and standards with particular attention directed at relevant U.S. EPA, OSHA, and state regulations concerning asbestos abatement workers with a discussion of procedures and standards to include the following:
(i) Requirements of TSCA Title II*.
(ii) NESHAP found at 40 CFR 61, Subparts A (General Provisions) and M (National Emission Standard for Asbestos)*.
(iii) OSHA standards for permissible exposure to airborne concentrations of asbestos fibers and respiratory protection found at 29 CFR 1910.134*.
(iv) OSHA asbestos construction standard found at 29 CFR 1926.1101*.

(v) EPA worker protection rule found at 40 CFR 763, Subpart G*.

(vi) 326 IAC 14-2, 326 IAC 14-10, this article, 329 IAC 10-4-2, ~~329 IAC 10-8-4,~~ **329 IAC 10-8.1,** and any local or municipal regulations, ordinances, or other local laws pertaining to asbestos.

(J) Establishment of respiratory protection programs.

(K) A course review of the key aspects of the training course.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 18-2-3; filed Sep 23, 1988, 1:45 p.m.: 12 IR 1250; filed Jul 6, 1989, 1:15 p.m.: 12 IR 2028; errata filed Jul 18, 1989, 5:00 p.m.: 12 IR 2286; filed Jul 19, 1990, 4:50 p.m.: 13 IR 2116; filed Jul 5, 1995, 10:00 a.m.: 18 IR 2745; errata filed Jul 5, 1995, 10:00 a.m.: 18 IR 2795; filed May 12, 1998, 9:15 a.m.: 21 IR 3758; errata filed Dec 12, 2002, 3:35 p.m.: 26 IR 1572; filed Aug 26, 2004, 11:30 a.m.: 28 IR 104; filed Feb 14, 2005, 11:15 a.m.: 28 IR 2030)*

LSA Document #03-283(F)
Proposed Rule Published: July 1, 2004; 27 IR 3127
Hearing Held: October 6, 2004
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IC 4-22-7-5(c) notice from Secretary of State regarding documents incorporated by reference: None received by Publisher

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #04-43(F)

DIGEST

Amends 326 IAC 6-1-12 concerning revisions to the particulate matter emission limitations at Reilly Industries, Inc. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: March 1, 2004, Indiana Register (27 IR 2081).

Second Notice of Comment Period and Notice of First Hearing: May 1, 2004, Indiana Register (27 IR 2581).

Date of First Hearing: September 1, 2004.

Proposed Rule and Notice of Second Hearing: October 1, 2004, Indiana Register (28 IR 241).

Date of Second Hearing: November 3, 2004.

326 IAC 6-1-12

SECTION 1. 326 IAC 6-1-12 IS AMENDED TO READ AS FOLLOWS:

326 IAC 6-1-12 Marion County

Authority: IC 13-14-8; IC 13-17-3-4
Affected: IC 13-12; IC 13-14-4-3; IC 13-16-1

Sec. 12. (a) In addition to the emission limitations contained in section 2 of this rule, the following limitations apply to sources in Marion County:

MARION COUNTY

Source	NEDS Plant ID	Point Input ID	Process	Emission Limits tons per year	lbs/million Btu	grains/dscf
Asph. Mat. & Const. Inc.	0098	01	Oxid. Tank	.3		.004
Bridgeport Brass	0005	01	Boiler 1	21.5	.350	
	0005	02	Boiler 2	21.5	.350	
	0005	03	Boiler 3	21.5	.350	
Central Soya	0008	09A	Elevator Gallery Belt Trippers (East and West)	0.92		.006
	0008	09B	Elevator Gallery Belt Loaders (East and West)	0.70		.006
	0008	09C	Elevator Grain Dryer Conveying Legs	1.01		.006
	0008	10A	Elevator #1 Truck & Rail Receiving System and Basement	7.23		.006
	0008	10B	Elevator #2 Truck & Rail Receiving System	4.95		.006
Cent. St. Hospital	0009	01	Boilers 7 & 8	22.0	.350	
	0009	02	Boiler 3	17.0	.350	

Chevrolet	0010	0103	Boilers 1-3	65.8	.300	
Chrys. (El.) Shade	0011	01	All Boilers	67.8	.324	
Chrys. (Fdy.) S. Tibbs	0012	01	Cup.-Scrub	34.2		.085
	0012	02	D. Cl. Ck. 4 St.	4.9		.038
	0012	07	Hz. C. Ov. B. Ck.	4.2		.008
	0012	08	Hz. C. Ov. A. Ck.	3.1		.006
	0012	09	Hz. C. Ov. A. By	6.2		.029
	0012	10	Hz. C. Pst. Cr.	less than 1 T/yr		.001
	0012	11	Hz. C. Ov. B. Ry.	.4		.005
	0012	12	Hz. Rv. Ov. Jkt.	less than 1 T/yr		.001
	0012	13	Hz. Ry. Ov. A. CCC	less than 1 T/yr		.002
	0012	14	Bg. Ex. Rb. 1 St.	2.6		.020
	0012	16	Hyd. Fdy. Gre.	1.2		.004
	0012	18	Ck. Unload.	5.9		.021
	0012	19	Flsk. Sk.-Out	50.8		.030
	0012	22	Snd. Trnsfr.	2.6		.019
	0012	25	Cr. Grinding	.01		.001
	0012	26	Cr. Grinding	1.6		.007
	0012	28	Cl. Op. Cr. K. O.	8.2		.034
	0012	29	Cl. Room	6.8		.020
	0012	30	Cl. Room	4.2		.020
	0012	31	Chp. Op.	16.7		.020
	0012	34	Cst. Cl.	57.5		.020
Community Hospital	0014	01	Keller Boiler	.5	.014	
Design Mix	0091	01	Roty. Dry.	9.8		.092
Allison Transmission	0017	01-05	Boilers 1, 2, 3, 4, 5	39.3 combined	.15 each	
Rolls-Royce Corporation	0311	01	Boilers 0070-01 through 0070-04	130.0/yr	.337	
	0311	02	Boilers 0070-58 and 0070-59		.15	
	0311	03	Boilers 0070-62 through 0070-65		.15	
Illinois Cereal Mills, Incorporated	0020	01	Cleaver Brooks Boiler	1.0	.014	
	0020	02	Old Mill–Dust	4.3		.030
	0020	05	Old Mill–Dust	4.3		.030
	0020	06	Warehouse–Dust	5.8		.030
	0020	07	New Mill Dryers	3.0		.030
	0020	08	New Mill Dryers	3.0		.030
	0020	09	New Mill Dryers	3.0		.030
	0020	10	New Mill Dryers	3.0		.030
	0020	11	New Mill Dryers	9.4		.030
	0020	12	New Mill Coolers	3.1		.030
	0020	13	New Mill Cleaner	3.3		.030
	0020	14	Elevator Dust	1.6		.030
	0020	15	Headhouse Suction	3.1		.030
	0020	16	Corn Cleaner	1.0		.131

	0020	17	Corn Cleaner	1.0		.131
	0020	18	Headhouse Suction	6.0		.030
	0020	19	Old Mill Dust	5.9		.030
	0020	20	Large Hammermill	8.2		.030
	0020	03	Old Mill Dust	4.3		.030
	0020	04	Old Mill Dust	4.3		.030
Farm Bureau (Fert.)	0653	02	Gr. Dry Cooler	15.2		.013
	0653	04	Ammoniator	3.9		.047
	0653	05	Cooler Gr.	6.3		.026
	0653	06	Screen Gr.	less than 1 T/yr		.005
	0653	07	Bag. Ship.	.1		.004
FMC Bearing	0025	01	Boilers 1-3	17.0	.300	
FMC Chain	0062	0105	Boilers	7.6	.300	
	0062	07	Anneal. Ov.	.1		.004
Ford Motor Co.	0021	01	Boiler 3	38.6	.270	
	0021	02	Boiler 2	55.1	.270	
	0021	03	Boiler 1	16.5	.270	
Ft. Benjamin Harrison	0022	01	Boiler 1	16.7	.350	
	0022	02	Boiler 2	16.7	.350	
	0022	03	Boiler 3	16.7	.350	
	0022	04	Boiler 4	16.7	.350	
Glass Containers	0293	01	Glass Melting Furnace	43.0		(1 lb/ton)
Indep. Concrete Pipe	0457	01	Ct. St. Bn. 04	.21		.014
	0457	02	Ct. St. Bn. 03	.41		.014
Indpls. Rubber Co.	0064	01	Boilers	70.0	.350	
Ind. Asph. Pav. Co.	0027	01	Roty. Dry. 1	7.8		.074
	0027	02	Roty. Dry. 2	3.9		.066
Ind. Veneers	0031	01	Wd. & Cl. Boil.	13.9	.330	
IPL (Perry K)	0034	01	Boiler 11 (natural gas, coke oven gas)		*.125	
	0034	01	Boiler 12 (coal)		*.175	
	0034	02	Boiler 13 (natural gas, coke oven gas)		*.082	
	0034	02	Boiler 14 (natural gas, coke oven gas)	484.4	*.082	
	0034	03	Boiler 15 (coal)		*.106	
	0034	03	Boiler 16 (coal)		*.106	
	0034	03	Boiler 17 (oil)		*.015	
	0034	03	Boiler 18 (oil)		*.015	
IPL (Stout)	0033	09	Boiler 9	1.9	*.015	
	0033	10	Boiler 10	2.2	*.015	
	0033	11	Boiler 50	82.2	*.135	
	0033	12	Boiler 60	82.2	*.135	
	0033	13	Boiler 70	830.7	*.1	
	0033	14	Gas Turbine 1	.28	*.015	
	0033	15	Gas Turbine 2	.28	*.015	
	0033	16	Gas Turbine 3	.28	*.015	

Nat'l. R.R. (Amtrak)	0646	01	Boiler 1	23.0	.350	
	0646	02	Boiler 2	23.0	.350	
National Starch	0042	06	61-9	4.1		.016
	0042	11	56-2	11.3		0.010
	0042	12	71-2	2.6		.030
	0042	13	61-6	.1		.030
	0042	22	56-1	7.02		0.020
	0042	29	40-4	44.1		0.020
	0042	30	40-3	42.3		0.020
	0042	31	40-2	31.9		0.020
	0042	43A	42-1	.9		.030
	0042	46	61-14A	.6		.029
	0042	47	61-14	1.2		.028
	0042	55	42-8	4.2		.030
	0042	56A	42-7A	1.7		.032
	0042	56B	42-7B	1.7		.032
	0042	56C	42-7C	1.7		.032
	0042	57A	42-3A	1.8		.032
	0042	57B	42-3B	1.8		.032
	0042	57C	42-3C	1.8		.032
	0042	57D	42-3D	1.8		.032
	0042	57E	42-3E	1.8		.032
	0042	57F	42-3F	1.8		.032
	0042	59	42-4	2.3		.029
	0042	60	42-10	2.4		.030
	0042	63	42-6	2.5		.030
	0042	64	71-1	.9		.030
	0042	67A	71-5A	.3		.026
	0042	67B	71-5B	.3		.026
	0042	67C	71-5C	.3		.026
	0042	67D	71-5D	.3		.026
	0042	67E	71-5E	.3		.026
	0042	67F	71-5F	.3		.026
	0042	67G	71-5G	.3		.026
	0042	67H	71-5H	.3		.026
	0042	67I	71-5I	.3		.026
	0042	67J	71-5J	.3		.026
	0042	67K	71-5K	.3		.026
	0042	67L	71-5L	.3		.026
	0042	68A	71-4A	.3		.026
	0042	68B	71-4B	.3		.026
	0042	68C	71-4C	.3		.026
	0042	68D	71-4D	.3		.026
	0042		575-1	32.4		.018
	0042		575-2	32.4		0.011
- 100% natural gas	0042	04	Boiler 4			
Navistar International	0039	1a	E.M. 1 Baghouse	45.7		.019
	0039	1b	E.M. 2 Baghouse	53.5		.020
	0039	02	Boiler 1	14.0	.30	
	0039	03	Boiler 2	13.0	.30	

	0039	04	Boiler 3	34.9	.30	
	0039	05	Phase 1 Baghouse	35.4		.020
	0039	06	Phase 3 Baghouse	55.1		.020
	0039	07	M-3 Baghouse	72.4		.015
	0039	98	Phase 4 Baghouse	99.6		.02
	0039	99	Phase 5 Baghouse	62.0		.02
	0039	08	Cst. Cl. Cr. 1	.0		.0
	0039	09	Pngbrn. Shtb.	.0		.0
	0039	10	Cst. Clg. Cr. 2	.0		.0
Quemetco (RSR Corp)	0079	01	Rev. Fur. 01	5.8		.016
RCA	0047	02	2 Boil Oil	28.7	.15	
Refined Metals	0036	01	Blast Furnace	2.8		.003
	0036	02	Pot Furnace	less than 1 T/yr		.0005
Reilly Industries, Inc.						
~~- 100% natural gas~~	0049	01	186 N		**.15**	
	0049	02	2722 W	~~3.5~~ **12.2**	.15	
	0049	03	2726 S	~~7.8~~	.15	
	0049	04	2728 S	2.2	.15	
- 100% natural gas	0049	05	2607 T			
	0049	06	2714 V	3.1	.15	
	0049	07	2707 V	.4	.011	
	0049	08	2724 W			
- 100% natural gas	0049	09	702611			
- 100% natural gas	0049	10	722804	.2	.011	
	0049	11	732714	7.5	.15	
	0049	12	2706 Q	.1	.011	
- 100% natural gas	0049	13	2713 W			
- 100% natural gas	0049	14	2714 W			
	0049	18	2729 Q	.1	.011	
	0049	20	2740 Q	2.0	.15	
	~~0049~~	~~21~~	~~112 E~~	~~.5~~	~~.15~~	
Richardson Co.	0065	01	Boil. 2 Oil	1.5	.015	
St. Vincent's Hospital	0476	0103	Boilers 1-3	.7	.011	
Sludge Incinerator	0032	01	Incinerator #5	17.9		.030
	0032	02	Incinerator #6	17.9		.030
	0032	03	Incinerator #7	17.9		.030
	0032	04	Incinerator #8	17.9		.030
	0032	05	Incinerators #1-4	72.5		.030
Stokely Van Camp	0056	0103	Boiler	93.3	.350	
Praxair	0060	01	3 Boilers	35.5	.350	

*Compliance shall be determined using 40 CFR 60, Appendix A, Method 5**.

(b) Sources shall be considered in compliance with the tons per year emission limits established in subsection (a) if within five percent (5%) of the emission limit.

(c) Processes 40-4, 40-3, 40-2, 575-1, **and** 575-2 and Boiler 4 at National Starch, identified in subsection (a) as one hundred percent (100%) natural gas burners, shall burn only natural gas.

(d) **In addition to complying with subsections (a) and (b), Reilly Industries shall comply with the following:**

(1) Processes ~~186 N,~~ 2607 T, 702611, 722804, 2713 W, and 2714 W at Reilly Industries, identified in subsection (a) as one hundred percent (100%) natural gas burners, shall burn only natural gas.

(2) Maintain monthly fuel usage records for processes 186 N, 2722 W, and 2726 S that contain sufficient information to estimate emissions including:

(A) boiler identification;

(B) fuel usage for each type of fuel;
(C) heat content of fuel; and
(D) emission factor used to calculate emissions.
(3) Within thirty (30) days of the end of each calendar quarter, a written report shall be submitted to the department and the Indianapolis office of environmental services division of the monthly emissions for each of the previous twelve (12) months for boilers 186 N, 2722 W, and 2726 S, including the information in subdivision (2).
(4) Compliance with the annual tons per year limitation shall be based on the sum of the monthly emissions for each twelve (12) month period.
(5) The fuel usage records shall be maintained at the source for three (3) years and available for an additional two (2) years. The records shall be made available to the department or its designated representative upon request.

(e) In addition to complying with subsections (a) through (b), Navistar International Transportation Corporation shall comply with the following:
(1) The height of each of the two (2) stacks on the M-3 baghouse (Point ID 07) shall be increased by fifty (50) feet by August 31, 1990.
(2) Within thirty (30) days of the effective date of this rule, Navistar shall submit to the department the following:
(A) A certification as to the complete and permanent shutdown of the sources identified as Point ID 8, 9, and 10 of subsection (a) and No. 2 Large Mold Line, M-2 Mold Line, M-4 Mold Line, and the core-making and core-knockout operations for these mold lines.
(B) A written list of sources not identified in subsection (a) with a potential to emit ten (10) or greater tons per year.
(3) Within thirty (30) days of the end of each calendar quarter, a written report shall be submitted to the department of the monthly emissions from each emission point identified in subsection (a) ~~which~~ **that** contains information necessary to estimate emissions including:
(A) for boilers:
(i) fuel type;
(ii) usage;
(iii) ash content; and
(iv) heat content; and
(B) for other processes, the:
(i) appropriate production data;
(ii) emission factors; and
(iii) proper documentation of the emission factors.
(4) The tons per year limitation shall be met based on the sum of the monthly emissions for each twelve (12) month period.
(5) A written report detailing Navistar's operation and maintenance program to provide for proper operation of and to prevent deterioration of the air pollution control equipment on the emission points identified as Point ID 1a, 1b, 5, 6, 7, 98, and 99 in subsection (a) to be submitted to the department by July 31, 1990.

(f) In addition to complying with subsections (a) through (b), Rolls-Royce Corporation shall comply with the following:
(1) Boilers 0070-01 through 0070-04 may use only:
(A) #2 fuel oil;
(B) #4 fuel oil;
(C) natural gas; or
(D) landfill gas;
as a fuel.
(2) Boilers 0070-58, 0070-59, and 0070-62 through 0070-65 may use only:
(A) #6 fuel oil;
(B) #4 fuel oil;
(C) #2 fuel oil;
(D) natural gas; or
(E) landfill gas;
as a fuel.
(3) Boilers 0070-01 through 0070-04, 0070-58, 0070-59, and 0070-62 through 0070-65 shall have the following limitations depending upon the fuel being used:
(A) When using only #4 fuel oil, the amount used for the listed boilers collectively is not to exceed thirty-seven million one hundred forty-two thousand eight hundred (37,142,800) gallons per year based on a three hundred sixty-five (365) day rolling figure.
(B) When using #6 fuel oil, #2 fuel oil, natural gas, or landfill gas, the limitation listed in clause (A) shall be adjusted as follows:
(i) When using #6 fuel oil, the gallons per year of #4 fuel oil shall be reduced by two and six-tenths (2.6) gallons per gallon used.
(ii) When using natural gas, the gallons per year of #4 fuel oil shall be reduced by eighty-eight hundred-thousandths (0.00088) gallon per cubic foot of natural gas burned.
(iii) When using #2 fuel oil, the gallons per year of #4 fuel oil shall be reduced by twenty-eight hundredths (0.28) gallon per gallon used.
(iv) When using landfill gas, the gallons per year of #4 fuel oil shall be reduced by one hundred sixteen hundred-thousandths (.00116) gallon per cubic foot of landfill gas burned.
(4) A log shall be maintained to document compliance with subdivision ~~(4).~~ **(3).** These records shall be maintained for at least the previous twenty-four (24) month period and shall be made available upon request by the department.

(g) In addition to complying with subsections (a) through (b), Allison Transmission shall comply with the following:
(1) Maintain monthly fuel usage records for each boiler identified in subsection (a) that ~~contains~~ **contain** sufficient information to estimate emissions including:
(A) boiler identification and heat capacity;
(B) fuel usage for each type of fuel; and
(C) heat content of fuel.
(2) Within thirty (30) days of the end of each calendar quarter, a written report shall be submitted to the department and the Indianapolis **office of** environmental ~~Resources Management~~

services division of the monthly emissions of the boilers identified in subsection (a) and including the information in subdivision (1).

(3) Compliance with the annual tons per year limitation shall be based on the sum of the monthly emissions for each twelve (12) month period.

(4) The fuel usage records shall be maintained at the source for three (3) years and available for an additional two (2) years. The records shall be made available to the department or its designated representative upon request.

**The following is incorporated by reference: 40 CFR 60, Appendix A, Method 5. Copies may be obtained from the Government Printing Office, 732 North Capitol Avenue, Washington, D.C. 20401 and is available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 6-1-12; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2472; filed Dec 14, 1989, 9:30 a.m.: 13 IR 868; filed Oct 4, 1995, 10:00 a.m.: 19 IR 186; errata filed Dec 11, 1995, 3:00 p.m.: 19 IR 674; errata filed Mar 19, 1996, 10:20 a.m.: 19 IR 2044; filed Sep 18, 1998, 11:35 a.m.: 22 IR 417; filed Feb 9, 1999, 4:22 p.m.: 22 IR 1954; filed Apr 27, 1999, 9:04 a.m.: 22 IR 2857; errata filed Dec 8, 1999, 12:38 p.m.: 23 IR 812; filed May 26, 2000, 8:33 a.m.: 23 IR 2419; filed May 26, 2000, 8:37 a.m.: 23 IR 2414; errata filed Aug 17, 2000, 2:25 p.m.: 24 IR 26; filed Nov 8, 2001, 2:02 p.m.: 25 IR 748; filed Feb 14, 2005, 11:00 a.m.: 28 IR 2037; errata filed Mar 1, 2005, 11:00 a.m.: 28 IR 2137)*

LSA Document #04-43(F)
Proposed Rule Published: October 1, 2004; 28 IR 241
Hearing Held: November 3, 2004
Approved by Attorney General: January 12, 2005
Approved by Governor: February 10, 2005
Filed with Secretary of State: February 14, 2005, 11:00 a.m.
IC 4-22-7-5(c) notice from Secretary of State regarding documents incorporated by reference: None received by Publisher

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #04-107(F)

DIGEST

Adds 326 IAC 20-71 through 326 IAC 20-79 to incorporate by reference the National Emission Standards for Hazardous Air Pollutants (NESHAPs) for asphalt processing and asphalt roofing manufacturing; brick and structural clay products manufacturing; clay ceramics manufacturing; coke ovens: pushing, quenching, and battery stacks; engine test cells/stands; hydrochloric acid production; printing, coating, and dyeing of fabrics and other textiles; surface coating of metal furniture; and surface coating of wood building products, respectively. Effective 30 days after filing with the secretary of state.

HISTORY

IC 13-14-9-8 Notice and Notice of First Hearing: May 1, 2004, Indiana Register (27 IR 2587).

Date of First Hearing: June 2, 2004.

Proposed Rule and Notice of Second Hearing: July 1, 2004, Indiana Register (27 IR 3168).

Change of Notice of Hearing: August 1, 2004, Indiana Register (27 IR 3592).

Change of Notice of Hearing: October 1, 2004, Indiana Register (28 IR 234).

326 IAC 20-71
326 IAC 20-72
326 IAC 20-73
326 IAC 20-74
326 IAC 20-75
326 IAC 20-76
326 IAC 20-77
326 IAC 20-78
326 IAC 20-79

SECTION 1. 326 IAC 20-71 IS ADDED TO READ AS FOLLOWS:

Rule 71. Asphalt Processing and Asphalt Roofing

326 IAC 20-71-1 Applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.8681* (68 FR 24578, May 7, 2003).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart LLLLL* (67 FR 24578, May 7, 2003, National Emission Standards for Hazardous Air Pollutants for Asphalt Roofing And Processing).

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 20-71-1; filed Feb 14, 2005, 10:00 a.m.: 28 IR 2043)*

SECTION 2. 326 IAC 20-72 IS ADDED TO READ AS FOLLOWS:

Rule 72. Brick and Structural Clay Products

326 IAC 20-72-1 Applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.8385* (68 FR 26722, May 16, 2003).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart JJJJJ* (68 FR 26722, May 16, 2003, National Emission Standards for Brick and Structural Clay Products).

***These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 20-72-1; filed Feb 14, 2005, 10:00 a.m.: 28 IR 2043)*

SECTION 3. 326 IAC 20-73 IS ADDED TO READ AS FOLLOWS:

Rule 73. Clay Ceramics Manufacturing

326 IAC 20-73-1 Applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.8535*(68 FR 26738, May 16, 2003).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart KKKKK*(68 FR 26738, May 16, 2003, National Emission Standards for Clay Ceramics Manufacturing).

***These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 20-73-1; filed Feb 14, 2005, 10:00 a.m.: 28 IR 2044)*

SECTION 4. 326 IAC 20-74 IS ADDED TO READ AS FOLLOWS:

Rule 74. Coke Ovens: Pushing, Quenching, and Battery Stacks

326 IAC 20-74-1 Applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.7281* (68 FR 18026, April 14, 2003).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart CCCCC*(68 FR 18025, April 14, 2003, National Emission Standards for Coke Ovens: Pushing, Quenching, and Battery Stacks).

***These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 20-74-1; filed Feb 14, 2005, 10:00 a.m.: 28 IR 2044)*

SECTION 5. 326 IAC 20-75 IS ADDED TO READ AS FOLLOWS:

Rule 75. Engine Test Cells/Stands

326 IAC 20-75-1 Applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.9285*(68 FR 28785, May 27, 2003).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart PPPPP* (68 FR 28785, May 27, 2003, National Emission Standards for Hazardous Air Pollutants: Engine Test Cells/Stands).

***These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 20-75-1; filed Feb 14, 2005, 10:00 a.m.: 28 IR 2044)*

SECTION 6. 326 IAC 20-76 IS ADDED TO READ AS FOLLOWS:

Rule 76. Hydrochloric Acid Production

326 IAC 20-76-1 Applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.8985* (68 FR 19090, April 17, 2003).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart NNNNN* (68 FR 19090, April 17, 2003, National Emission Standards for Hazardous

Air Pollutants for Hydrochloric Acid Production).

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 20-76-1; filed Feb 14, 2005, 10:00 a.m.: 28 IR 2044)*

SECTION 7. 326 IAC 20-77 IS ADDED TO READ AS FOLLOWS:

Rule 77. Printing, Coating, and Dyeing of Fabrics and Other Textiles

326 IAC 20-77-1 Applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.4281* (68 FR 32188, May 29, 2003).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart OOOO* (68 FR 32188, May 29, 2003, National Emission Standards for Hazardous Air Pollutants for Printing, Coating, and Dyeing of Fabrics and Other Textiles).

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 20-77-1; filed Feb 14, 2005, 10:00 a.m.: 28 IR 2045)*

SECTION 8. 326 IAC 20-78 IS ADDED TO READ AS FOLLOWS:

Rule 78. Surface Coating of Metal Furniture

326 IAC 20-78-1 Applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.4881* (68 FR 28620, May 23, 2003).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart RRRR* (68 FR 28620, May 23, 2003, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Metal Furniture).

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 20-78-1; filed Feb 14, 2005, 10:00 a.m.: 28 IR 2045)*

SECTION 9. 326 IAC 20-79 IS ADDED TO READ AS FOLLOWS:

Rule 79. Surface Coating of Wood Building Products

326 IAC 20-79-1 Applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.7181* (68 FR 31760, May 28, 2003).

(b) The air pollution control board incorporates by reference 40 CFR 63, Subpart QQQQ* (68 FR 31760, May 28, 2003, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Wood Building Products).

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 20-79-1; filed Feb 14, 2005, 10:00 a.m.: 28 IR 2045)*

LSA Document #04-107(F)
Proposed Rule Published: July 1, 2004; 27 IR 3168
Hearing Held: November 3, 2004
Approved by Attorney General: January 21, 2005
Approved by Governor: February 11, 2005
Filed with Secretary of State: February 14, 2005, 10:00 a.m.
IC 4-22-7-5(c) notice from Secretary of State regarding documents incorporated by reference: None received by Publisher

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #04-180(F)

DIGEST

Adds 326 IAC 1-1-6 concerning credible evidence. Effective

30 days after filing with the secretary of state.

HISTORY

IC 13-14-9-8 Notice and Notice of First Hearing: July 1, 2004, Indiana Register (27 IR 3351).

Date of First Hearing: September 1, 2004.

Proposed Rule and Notice of Second Hearing: October 1, 2004, Indiana Register (28 IR 248).

Date of Second Hearing: November 3, 2004.

326 IAC 1-1-6

SECTION 1. 326 IAC 1-1-6 IS ADDED TO READ AS FOLLOWS:

326 IAC 1-1-6 Credible evidence

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-3-12
Affected: IC 13-11; IC 13-17

Sec. 6. For the purpose of submitting compliance certifications or establishing whether or not a person has violated or is in violation of any emission limitation, standard, or rule in this title, nothing in this title shall preclude the use, including the exclusive use, of any credible evidence or information relevant to whether a source would have been in compliance with the emission limitation, standard, or rule, if the appropriate performance or compliance test or procedure had been performed. *(Air Pollution Control Board; 326 IAC 1-1-6; filed Feb 14, 2005, 10:45 a.m.: 28 IR 2046)*

LSA Document #04-180(F)
Proposed Rule Published: October 1, 2004; 28 IR 248
Hearing Held: November 3, 2004
Approved by Attorney General: January 19, 2005
Approved by Governor: February 11, 2005
Filed with Secretary of State: February 14, 2005, 10:45 a.m.
IC 4-22-7-5(c) notice from Secretary of State regarding documents incorporated by reference: None received by Publisher

TITLE 327 WATER POLLUTION CONTROL BOARD

LSA Document #03-129(F)

DIGEST

Amends 327 IAC 1-1, 327 IAC 2-1, 327 IAC 2-1.5, 327 IAC 2-4, 327 IAC 5-1.5, and 327 IAC 5-2 concerning water quality standards, methods, and implementation procedures. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: #03-129(WPCB), June 1, 2003, Indiana Register (26 IR 3166).

Second Notice of Comment Period and Notice of First Hearing: #03-129(WPCB), January 1, 2004, Indiana Register (27 IR 1314).

Date of First Hearing: June 9, 2004.

Third Notice of Comment Period and Notice of Second Hearing: #03-129(WPCB), August 1, 2004, Indiana Register (27 IR 3606).

Date of Second Hearing and Final Adoption: October 13, 2004.

327 IAC 1-1-1	**327 IAC 2-1.5-8**
327 IAC 1-1-2	**327 IAC 2-1.5-10**
327 IAC 1-1-3	**327 IAC 2-1.5-11**
327 IAC 2-1-5	**327 IAC 2-1.5-16**
327 IAC 2-1-6	**327 IAC 2-1.5-20**
327 IAC 2-1-8	**327 IAC 2-4-3**
327 IAC 2-1-8.1	**327 IAC 5-1.5-72**
327 IAC 2-1-8.2	**327 IAC 5-2-1.5**
327 IAC 2-1-8.3	**327 IAC 5-2-11.1**
327 IAC 2-1-8.9	**327 IAC 5-2-11.2**
327 IAC 2-1-9	**327 IAC 5-2-11.4**
327 IAC 2-1-12	**327 IAC 5-2-11.5**
327 IAC 2-1-13	**327 IAC 5-2-11.6**
327 IAC 2-1.5-2	**327 IAC 5-2-13**
327 IAC 2-1.5-6	**327 IAC 5-2-15**

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

327 IAC 1-1-1 References to Federal Act

Authority: IC 13-14-9; IC 13-18-3-2
Affected: IC 13-14-8

Sec. 1. Unless otherwise indicated, references in ~~these rules (327 IAC)~~ **this title** to the Federal Water Pollution Control Act or to the Clean Water Act (CWA) shall mean the Federal Water Pollution Control Act ~~as defined~~ in ~~IC 13-7-1-10.~~ **effect July 1, 2004.** *(Water Pollution Control Board; 327 IAC 1-1-1; filed Sep 24, 1987, 3:00 p.m.: 11 IR 579; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2046)*

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

327 IAC 1-1-2 References to the Code of Federal Regulations

Authority: IC 13-14-9; IC 13-18-3-2
Affected: IC 13-14-8

Sec. 2. Unless otherwise indicated, any reference to a provision of the Code of Federal Regulations (CFR) shall mean the July 1, ~~1986~~ **2004,** revision. *(Water Pollution Control Board; 327 IAC 1-1-2; filed Sep 24, 1987, 3:00 p.m.: 11 IR 579; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2046)*

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

327 IAC 1-1-3 Severability

Authority: IC 13-14-9; IC 13-18-3-2
Affected: IC 13-14-8

Sec. 3. If any provision of ~~these rules (327 IAC)~~ **this title** or

the application thereof to any person or circumstance is held invalid, the invalidity shall not affect any other provisions or applications of ~~these rules (327 IAC) which~~ **this title that** can be given effect without the invalid provision or application. *(Water Pollution Control Board; 327 IAC 1-1-3; filed Sep 24, 1987, 3:00 p.m.: 11 IR 579; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2046)*

SECTION 4. 327 IAC 2-1-5 IS AMENDED TO READ AS FOLLOWS:

327 IAC 2-1-5 Exception to quality standards applicability

Authority: IC 13-14-9; IC 13-18-3-2
Affected: IC 13-14-8

Sec. 5. All surface water quality standards in section 6 of this rule, except those provided in section 6(a)(1) of this rule, will cease to be applicable when the stream flows are less than the average minimum seven (7) consecutive day low flow ~~which~~ **that** occurs once in ten (10) years. This determination will be made using Low-Flow Characteristics of Indiana Streams, ~~1983,~~ **1996,** United States Department of the Interior, Geological Survey, or any additional information compiled on a comparable basis. *(Water Pollution Control Board; 327 IAC 2-1-5; filed Sep 24, 1987, 3:00 p.m.: 11 IR 581; filed Feb 1, 1990, 4:30 p.m.: 13 IR 1020; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2047)*

SECTION 5. 327 IAC 2-1-6 IS AMENDED TO READ AS FOLLOWS:

327 IAC 2-1-6 Minimum surface water quality standards

Authority: IC 13-14-8; IC 13-14-9; IC 13-18-3
Affected: IC 13-18-4; IC 13-30-2-1; IC 14-22-9

Sec. 6. (a) The following are minimum **surface** water quality conditions:

(1) All **surface** waters at all times and at all places, including **waters within** the mixing zone, shall meet the minimum conditions of being free from substances, materials, floating debris, oil, or scum attributable to municipal, industrial, agricultural, and other land use practices, or other discharges **that do any of the following:**

(A) ~~that~~ Will settle to form putrescent or otherwise objectionable deposits.

(B) ~~that~~ Are in amounts sufficient to be unsightly or deleterious.

(C) ~~that~~ Produce color, visible oil sheen, odor, or other conditions in such degree as to create a nuisance.

(D) Are in concentrations or combinations that will cause or contribute to the growth of aquatic plants or algae to such degree as to create a nuisance, be unsightly, or otherwise impair the designated uses.

~~(D) which~~ **(E)** Are in amounts sufficient to be acutely toxic to, or to otherwise severely injure or kill, aquatic life, other animals, plants, or humans. ~~(i)~~ To assure protection of aquatic life, concentrations of toxic substances shall not exceed the final acute value (FAV = 2 (AAC)) in the undiluted discharge or the acute aquatic criterion (AAC) outside the zone of initial dilution or, if applicable, the zone of discharge-induced mixing:

~~(AA)~~ **(i)** for certain substances, ~~the~~ **an** AAC ~~are~~ **is** established and set forth in **subdivision (3),** Table ~~1~~ **6-1 and subdivision (3), Table 6-2** (which table incorporates **subdivision (4),** Table ~~2);~~ ~~and~~ **6-3);**

~~(BB)~~ **(ii)** for substances for which an AAC is not specified in **subdivision (3),** Table ~~1, or if a different AAC can be scientifically justified based on new toxicological data or site-specific conditions concerning water quality characteristics or species present,~~ **6-1 or subdivision (3), Table 6-2,** an AAC can be calculated by the commissioner using the procedures in section 8.2 of this rule; and

(iii) the AAC determined under item (i) or (ii) may be modified on a site-specific basis to reflect local conditions in accordance with section 8.9 of this rule.

~~(ii)~~ This clause shall not apply to the chemical control of plants and animals when that control is performed in compliance with approval conditions specified by the Indiana department of natural resources as provided by ~~IC 14-2-1;~~ ~~and~~ **IC 14-22-9.**

~~(E) which are in concentrations or combinations that will cause or contribute to the growth of aquatic plants or algae to such degree as to create a nuisance, be unsightly, or otherwise impair the designated uses.~~

(2) At all times, all **surface** waters outside of mixing zones shall be free of substances in concentrations ~~which~~ **that** on the basis of available scientific data are believed to be sufficient to injure, be chronically toxic to, or be carcinogenic, mutagenic, or teratogenic to humans, animals, aquatic life, or plants. To assure protection against the adverse effects identified in this subdivision, the following requirements are established:

(A) A toxic substance or pollutant shall not be present in such waters in concentrations ~~which~~ **that** exceed the most stringent of the following continuous criterion concentrations (CCCs):

(i) A chronic aquatic criterion (CAC) to protect aquatic life from chronic toxic effects.

(ii) A terrestrial life cycle safe concentration (TLSC) to protect terrestrial organisms from toxic effects ~~which~~ **that** may result from the consumption of aquatic organisms ~~and/or~~ **or** water from the waterbody.

(iii) A human life cycle safe concentration (HLSC) to protect human health from toxic effects ~~which~~ **that** may result from the consumption of aquatic organisms ~~and/or~~ **or** drinking water from the waterbody.

(iv) For carcinogenic substances, a criterion to protect human health from unacceptable cancer risk of greater than one (1) additional occurrence of cancer per one hundred thousand (100,000) population.

(B) For certain substances, one (1) or more of the CCCs identified in clause (A) are established and set forth in

subdivision (3), Table ~~1~~ **6-1 and subdivision (3), Table 6-2** (which table incorporates **subdivision (4),** Table ~~2). If~~ **6-3).**

(C) For substances for which one (1) or more of the CCCs **identified in clause (A)** are ~~absent from~~ **not specified in subdivision (3),** Table ~~1 or if a different criterion or criteria can be scientifically justified based on new toxicological data or site-specific conditions of water quality or resident species,~~ **6-1 or subdivision (3), Table 6-2,** such criterion or criteria may be calculated by the commissioner using the corresponding procedures prescribed by sections 8.3 through 8.6 of this rule.

(D) A CCC determined under clause (B) or (C) may be modified on a site-specific basis to reflect local conditions in accordance with section 8.9 of this rule.

~~(C)~~ **(E)** The CAC and TLSC for a substance apply in all **surface** waters outside a mixing zone for a discharge of that substance. Similarly, in waters where a public ~~drinking~~ water **system** intake is not present or is unaffected by the discharge of a substance, the HLSC and the carcinogenic criterion for that substance based on consumption of organisms from the waterbody and only incidental ingestion of water shall apply to all **surface** waters outside the mixing zone for a discharge of that substance. In **surface** waters where a public ~~drinking~~ water **system** intake is present, the HLSC and the carcinogenic criterion for a substance based on consumption of organisms and potable water from the waterbody shall apply at the point of the public ~~drinking~~ water **system** intake.

~~(D) All CCCs shall be met at the point at which they apply (outside of the mixing zone or point of drinking water intake).~~

(3) The ~~toxicity criteria set forth for metals in Table 1 are expressed in terms of the acid-soluble fraction of the metals (unless specified otherwise) in order to be consistent with the ambient~~ **following establishes surface** water quality criteria ~~published by the U.S. Environmental Protection Agency (EPA)~~ for ~~these metals. In the absence of an analytical chemistry method approved by EPA for determination of the acid-soluble fraction of a metal, the criteria in Table 1 shall be enforced as total recoverable metals, except as otherwise provided in 327 IAC 5-2-11.1, until an acid-soluble analytical method is approved by EPA, and by the board through rulemaking.~~ **specific substances:**

Table ~~1~~ **6-1**

Surface Water Quality Criteria for Specific Substances

AAC (Maximum)		CCC ~~(4-Day Average)~~		
		Outside of Mixing Zone		Point of Water Intake
Substances		Aquatic Life (CAC) **(4-Day Average)**	Human Health **(30-Day Average)**	Human Health **(30-Day Average)**
Metals (µg/l)				
~~(Acid soluble, except as indicated)~~				
(Total recoverable)				
Antimony			45,000 (T)	146 (T)
Arsenic (III)@	~~360~~ #	~~190~~ #	0.175 (C)	0.022 (C)
Barium				1,000 (D)
Beryllium			1.17 (C)	0.068 (C)
Cadmium #@	$e^{(1.128 [\ln Hard^*] - 3.828)}$ #	$e^{(0.7852 [\ln Hard] - 3.490)}$ #		10 (D)
Chromium (III)#@	$e^{(0.819 [\ln Hard] + 3.688)}$ #	$e^{(0.8190 [\ln Hard] + 1.561)}$ #	3,433,000 (T)	170,000 (T)
Chromium (VI)@	~~(dissolved)~~ ~~16~~ #	~~11~~ #		50 (D)
Copper #	$e^{(0.9422 [\ln Hard] - 1.464)}$ #	$e^{(0.8545 [\ln Hard] - 1.465)}$ #		
Lead #	$e^{(1.273 [\ln Hard] - 1.460)}$ #	$e^{(1.273 [\ln Hard] - 4.705)}$ #		50 (D)
Mercury @$	2.4	0.012	0.15 (T)	0.14 (T)
Nickel #	$e^{(0.8460 [\ln Hard] + 3.3612)}$ #	$e^{(0.8460 [\ln Hard] + 1.1645)}$ #	100 (T)	13.4 (T)
Selenium	130* ~~*~~	35		10 (D)
Silver #	$e^{(1.72 [\ln Hard] - 6.52)}$/2** #			50 (D)
Thallium			48 (T)	13 (T)
Zinc #	$e^{(0.8473 [\ln Hard] + 0.8604)}$ #	$e^{(0.8473 [\ln Hard] + 0.7614)}$ #		
Organics (µg/l)				
Acrolein			780 (T)	320 (T)
Acrylonitrile			6.5 (C)	0.58 (C)
Aldrin @$	1.5~~***~~		0.00079 (C)	0.00074 (C)
Benzene @			400 (C)	6.6 (C)
Benzidine			0.0053 (C)	0.0012 (C)
Carbon Tetrachloride			69.4 (C)	4.0 (C)

Chlordane ~~@~~$	1.2~~***~~	0.0043	0.0048 (C)	0.0046 (C)
Chlorinated Benzenes				
Monochlorobenzene ~~@~~				488 (T)
1,2,4,5-Tetrachlorobenzene **$**			48 (T)	38 (T)
Pentachlorobenzene $			85 (T)	74 (T)
Hexachlorbenzene ~~@~~$			0.0074 (C)	0.0072 (C)
Chlorinated Ethanes				
1,2-dichloroethane			2,430 (C)	9.4 (C)
1,1,1-trichloroethane ~~@~~			1,030,000 (T)	18,400 (T)
1,1,2-trichloroethane ~~@~~			418 (C)	6.0 (C)
1,1,2,2-tetrachloroethane~~@~~			107 (C)	1.7 (C)
Hexachloroethane ~~@~~~~$~~			87.4 (C)	19 (C)
Chlorinated Phenols				
2,4,5-trichlorophenol				2,600 (T)
2,4,6-trichlorophenol ~~@~~			36 (C)	12 (C)
Chloroalkyl Ethers				
bis(2-chloroisopropyl) ether			4,360 (T)	34.7 (T)
bis(chloromethyl) ether			0.018 (C)	0.000038 (C)
bis(2-chloroethyl) ether			13.6 (C)	0.3 (C)
Chloroform			157 (C)	1.9 (C)
Chlorpyrifos ~~$~~	0.083	0.041		
DDT ~~@~~$	0.55~~***~~	0.0010	0.00024 (C)	0.00024 (C)
Dichlorobenzenes ~~@~~			2,600 (T)	400 (T)
Dichlorobenzidine ~~@~~			0.2 (C)	0.1 (C)
1,1-dichloroethylene			18.5 (C)	0.33 (C)
2,4-dichlorophenol ~~@~~				3,090 (T)
Dichloropropenes			14,100 (T)	87 (T)
Dieldrin ~~@~~$	1.3~~***~~	0.0019	0.00076 (C)	0.00071 (C)
2,4-dinitrotoluene ~~@~~			91 (C)	1.1 (C)
Dioxin (2,3,7,8-TCDD) ~~@~~$			0.0000001 (C)	0.0000001 (C)
1,2-diphenylhydrazine ~~@~~			5.6 (C)	0.422 (C)
Endosulfan ~~@~~	0.11~~***~~	0.056	159 (T)	74 (T)
Endrin ~~@~~$	0.09~~***~~	0.0023		1.0 (D)
Ethylbenzene ~~@~~			3,280 (T)	1,400 (T)
Fluoranthene ~~@~~~~$~~			54 (T)	42 (T)
Halomethanes			157 (C)	1.9 (C)
Heptachlor ~~@~~$	0.26~~***~~	0.0038	0.0028 (C)	0.0028 (C)
Hexachlorobutadiene ~~@~~$			500 (C)	4.47 (C)
Hexachlorocyclohexane (HCH)				
alpha HCH ~~@~~$			0.31 (C)	0.09 (C)
beta HCH ~~@~~$			0.55 (C)	0.16 (C)
gamma HCH (Lindane) ~~@~~$	1.0~~***~~	0.080	0.63 (C)	0.19 (C)
Technical HCH ~~@~~$			0.41 (C)	0.12 (C)
Hexachlorocyclopentadiene ~~@~~				206 (T)
Isophorone			520,000 (T)	5,200 (T)
Nitrobenzene				19,800 (T)
Nitrophenols				
4,6-dinitro-o-cresol			765 (T)	13.4 (T)
Dinitrophenol			14,300 (T)	70 (T)
Nitrosamines				
N-nitrosodiethylamine			12.4 (C)	0.008 (C)
N-nitrosodimethylamine			160 (C)	0.014 (C)
N-nitrosodibutylamine			5.9 (C)	0.064 (C)

N-nitrosodiphenylamine ~~@~~			161 (C)	49 (C)
N-nitrosopyrrolidine			919 (C)	0.16 (C)
Parathion ~~@~~	0.065	0.013		
Pentachlorophenol ~~@~~	$e^{(1.005\ [pH]-4.830)}$	$e^{(1.005\ [pH]-5.290)}$		1,000 (T)
Phenol ~~$~~				3,500 (T)
Phthalate Esters				
Dimethyl phthalate			2,900,000 (T)	313,000 (T)
Diethyl phthalate			1,800,000 (T)	350,000 (T)
Dibutyl phthalate ~~@$~~			154,000 (T)	34,000 (T)
Di-2-ethylhexyl phthalate ~~$~~			50,000 (T)	15,000 (T)
Polychlorinated Biphenyls (PCBs) ~~@~~$		0.014	0.00079 (C)	0.00079 (C)
Carcinogenic Polynuclear Aromatic Hydrocarbons (PAHs) ~~@$~~			0.31 (C)	0.028 (C)
Tetrachloroethylene ~~@~~			88.5 (C)	8 (C)
Toluene ~~@~~			424,000 (T)	14,300 (T)
Toxaphene ~~@~~$	0.73	0.0002	0.0073 (C)	0.0071 (C)
Trichloroethylene ~~@~~			807 (C)	27 (C)
Vinyl Chloride			5,246 (C)	20 (C)
Other Substances				
Asbestos (fibers/liter)				300,000 (C)
Chlorides (mg/l)	860	230		
Chlorine (Total Residual) (µg/l)	19	11		
Chlorine[a] (mg/l) (intermittent, total residual)		0.2		
Cyanide (Free) (µg/l)	**22**	**5.2**		
Cyanide (Total) (µg/l)	~~22~~	~~5.2~~		200 (D)
Nitrate-N + Nitrite-N (mg/l)				10 (D)
Nitrite-N (mg/l)				1.0 (D)

~~Dissolved solids shall not exceed 750 mg/l in all waters.~~

Fluoride shall not exceed **two** (2.0) mg/l in all **surface** waters **outside of the mixing zone** except the Ohio River and Interstate Wabash River where it shall not exceed **one** (1.0) mg/l **outside of the mixing zone.**

Sulfates shall not exceed ~~250~~ **one thousand (1,000)** mg/l in all **surface** waters **outside of the mixing zone.**

~~#See Table 2 for calculated~~ **#The** AAC and CAC ~~values at various hardness levels. The criteria from Table 2 may be utilized in the alternative to criteria from Table 1 to determine protective concentrations for the seven (7) metallic substances for acute and chronic toxicity based on the characteristic hardness for a particular waterbody. For hardness values other than those specifically listed in Table 2, the standard proportional interpolation technique should be used to obtain the corresponding criteria values.~~ **for this substance are established in Table 6-2.**

~~*Natural logarithm of hardness in milligrams per liter $CaCO_3$.~~

~~**~~ *One-half (½) of the final acute value (FAV) as calculated by procedures developed by U.S. EPA in 1980. This value would correspond to acute aquatic values calculated using IDEM procedures or U.S. EPA procedures developed in 1985 in which the calculated FAV is divided by two (2) to reduce acute toxicity.

T derived from threshold toxicity.

C derived from nonthreshold cancer risk.

D derived from drinking water standards, equal to or less than threshold toxicity.

~~@This substance, which has a log octanol-water partition coefficient greater than or equal to two (2.0), is considered to be bioconcentrating and of concern.~~

$This substance is ~~considered to be~~ a bioaccumulative chemical of concern.

[a]To be considered an intermittent discharge, total residual chlorine shall not be detected in the discharge for a period of more than forty (40) minutes in duration, and such periods shall be separated by at least five (5) hours.

Table 6-2
Surface Water Quality Criteria for Specific Substances

Substances	AAC (Maximum) (µg/l)	AAC Conversion Factors	CAC (4-Day Average) (µg/l)	CAC Conversion Factors
Metals (dissolved)[1]				
Arsenic (III)	**WER[2](360)**	**1.000**	**WER[2](190)**	**1.000**
Cadmium	**WER[2]($e^{(1.128\ [\ln(hardness)]-3.828)}$)**	**1.136672-[(ln hardness)(0.041838)]**	**WER[2]($e^{(0.7852\ [\ln(hardness)]-3.490)}$)**	**1.101672-[(ln hardness)(0.041838)]**
Chromium (III)	**WER[2]($e^{(0.819\ [\ln(hardness)]+3.688)}$)**	**0.316**	**WER[2]($e^{(0.8190\ [\ln(hardness)]+1.561)}$)**	**0.860**
Chromium (VI)	**WER[2](16)**	**0.982**	**WER[2](11)**	**0.962**
Copper	**WER[2]($e^{(0.9422\ [\ln(hardness)]-1.464)}$)**	**0.960**	**WER[2]($e^{(0.8545\ [\ln(hardness)]-1.465)}$)**	**0.960**
Lead	**WER[2]($e^{(1.273\ [\ln(hardness)]-1.460)}$)**	**1.46203-[(ln hardness)(0.145712)]**	**WER[2]($e^{(1.273\ [\ln(hardness)]-4.705)}$)**	**1.46203-[(ln hardness)(0.145712)]**
Nickel	**WER[2]($e^{(0.8460\ [\ln(hardness)]+3.3612)}$)**	**0.998**	**WER[2]($e^{(0.8460\ [\ln(hardness)]+1.1645)}$)**	**0.997**
Silver	**WER[2]($e^{(1.72\ [\ln(hardness)]-6.52)}$/2[3])**	**0.85**		
Zinc	**WER[2]($e^{(0.8473\ [\ln(hardness)]+0.8604)}$)**	**0.978**	**WER[2]($e^{(0.8473\ [\ln(hardness)]+0.7614)}$)**	**0.99**

[1] The AAC and CAC columns of this table contain total recoverable metals criteria (numeric and hardness-based). The criterion for the dissolved metal is calculated by multiplying the appropriate conversion factor by the AAC or CAC. This dissolved AAC or CAC shall be rounded to two (2) significant digits, except when the criteria are used as intermediate values in a calculation, such as in the calculation of water quality-based effluent limitations (WQBELs).
[2] A value of one (1) shall be used for the water-effect ratio (WER) unless an alternate value is established under section 8.9 of this rule.
[3] One-half (½) of the final acute value (FAV) as calculated by procedures developed by U.S. EPA in 1980. This value would correspond to acute aquatic values calculated using IDEM procedures or U.S. EPA procedures developed in 1985 in which the calculated FAV is divided by two (2) to reduce acute toxicity.

(4) The following establishes dissolved acute aquatic criteria (AAC) and chronic aquatic criteria (CAC) for certain metals at selected hardness values calculated from the equations and conversion factors in subdivision (3), Table 6-2 and using a value of one (1) for the WER:

Table ~~2~~ **6-3**
~~Acute (AAC) and chronic (CAC) aquatic criteria for certain metals at selected hardness values as calculated from equations in Table 1~~ Metals
Concentrations in Micrograms Per Liter; Hardness in Milligrams Per Liter $CaCO_3$[1]

	Arsenic (III)		Cadmium		Chromium (III)		**Chromium (VI)**		Copper		Lead		Nickel		Silver		Zinc	
Hardness	**AAC**	**CAC**	AAC	CAC	AAC	CAC	**AAC**	**CAC**	AAC	CAC	AAC	CAC	AAC	CAC	AAC	CAC	AAC	CAC
50	**360**	**190**	~~2~~	~~0.7~~	~~984~~	~~117~~	**16**	**11**	~~9~~	~~6~~	~~34~~	~~1~~	~~789~~	~~88~~	~~0.6~~	–	~~65~~	~~59~~
			1.7	**0.62**	**310**	**100**			**8.9**	**6.3**	**30**	**1.2**	**790**	**87**	**0.52**		**64**	**58**
100	**360**	**190**	~~4~~	~~1.1~~	~~1737~~	~~207~~	**16**	**11**	~~18~~	~~12~~	~~82~~	~~3~~	~~1418~~	~~158~~	~~2.~~	–	~~117~~	~~106~~
			3.7	**1.0**	**550**	**180**			**17**	**11**	**65**	**2.5**	**1400**	**160**	**1.7**		**110**	**100**
150	**360**	**190**	~~6~~	~~1.6~~	~~2420~~	~~289~~	**16**	**11**	~~26~~	~~17~~	~~137~~	~~5~~	~~1999~~	~~222~~	~~4~~	–	~~165~~	~~149~~
			5.7	**1.4**	**760**	**250**			**25**	**16**	**100**	**3.9**	**2000**	**220**	**3.5**		**160**	**150**
200	**360**	**190**	~~9~~	~~2.0~~	~~3064~~	~~365~~	**16**	**11**	~~34~~	21	~~197~~	~~8~~	~~2549~~	~~283~~	~~7~~	–	210	~~191~~
			7.8	**1.7**	**970**	**310**			**33**		**140**	**5.3**	**2500**	**280**	**5.7**			**190**
250	**360**	**190**	~~11~~	~~2.3~~	~~3679~~	~~438~~	**16**	**11**	~~42~~	~~26~~	~~262~~	~~10~~	~~3079~~	~~342~~	~~10~~	–	~~254~~	230
			10	**2.0**	**1200**	**380**			**40**	**25**	**170**	**6.7**	**3100**	**340**	**8.3**		**250**	
300	**360**	**190**	~~14~~	~~2.7~~	~~4270~~	~~509~~	**16**	**11**	~~50~~	~~30~~	~~331~~	~~13~~	~~3592~~	400	~~13~~	–	~~297~~	~~269~~
			12	**2.3**	**1300**	**440**			**48**	**29**	**210**	**8.1**	**3600**		**11**		**290**	**270**

350	**360**	**190**	~~16~~	~~3.0~~	~~4845~~	~~577~~	**16**	**11**	~~58~~	~~34~~	~~402~~	~~16~~	~~4093~~	~~455~~	~~18~~	–	~~338~~	~~306~~
			14	**2.6**	**1500**	**500**			**55**	**33**	**240**	**9.5**	**4100**	**450**	**15**		**330**	**300**
400	**360**	**190**	~~19~~	~~3.4~~	~~5405~~	~~644~~	**16**	**11**	~~65~~	~~39~~	~~477~~	~~19~~	~~4582~~	~~509~~	~~22~~	–	~~379~~	~~343~~
			17	**2.9**	**1700**	**550**			**63**	**37**	**280**	**11**	**4600**	**510**	**19**		**370**	**340**
450	**360**	**190**	~~21~~	~~3.7~~	~~5952~~	~~709~~	**16**	**11**	~~73~~	~~43~~	~~554~~	~~22~~	~~5063~~	~~563~~	~~27~~	–	~~419~~	~~379~~
			19	**3.1**	**1900**	**610**			**70**	**41**	**320**	**12**	**5100**	**560**	**23**		**410**	**370**
500	**360**	**190**	~~24~~	~~4.0~~	~~6488~~	~~773~~	**16**	**11**	~~81~~	~~47~~	~~634~~	~~25~~	~~5535~~	~~615~~	~~32~~	–	~~458~~	~~415~~
			21	**3.4**	**2100**	**670**			**78**	**45**	**350**	**14**	**5500**	**610**	**27**		**450**	**410**

[1] The dissolved metals criteria in this table have been rounded to two (2) significant digits in accordance with subdivision (3), Table 6-2. The equations and conversion factors in subdivision (3), Table 6-2 shall be used instead of the criteria in this table when dissolved metals criteria are used as intermediate values in a calculation, such as in the calculation of water quality-based effluent limitations (WQBELs).

(b) This subsection establishes minimum **surface** water quality for aquatic life. In addition to subsection (a), subdivisions (1) through (5) are established to ensure conditions necessary for the maintenance of a well-balanced aquatic community. ~~Subdivisions (1) through (5)~~ **The following** are applicable at any point in the waters outside of the mixing zone:

(1) There shall be no substances ~~which~~ **that** impart unpalatable flavor to food fish or result in ~~noticeably~~ offensive odors in the vicinity of the water.

(2) No pH values below six (6.0) ~~nor~~ **or** above nine (9.0), except daily fluctuations ~~which~~ **that** exceed pH nine (9.0) and are correlated with photosynthetic activity, shall be permitted.

(3) Concentrations of dissolved oxygen shall average at least five (5.0) milligrams per liter per calendar day and shall not be less than four (4.0) milligrams per liter at any time.

(4) The following **are** conditions for temperature:

(A) There shall be no abnormal temperature changes that may adversely affect aquatic life unless caused by natural conditions.

(B) The normal daily and seasonal temperature fluctuations that existed before the addition of heat due to other than natural causes shall be maintained.

(C) The maximum temperature rise at any time or place above natural temperatures shall not exceed five **(5)** degrees Fahrenheit ~~(5°F)~~ (two and eight-tenths **(2.8)** degrees Celsius) ~~(2.8°C))~~ in streams and three **(3)** degrees Fahrenheit ~~(3°F)~~ (one and seven-tenths **(1.7)** degrees Celsius) ~~(1.7°C))~~ in lakes and reservoirs.

(D) Water temperatures shall not exceed the maximum limits in the following table during more than one percent (1%) of the hours in the twelve (12) month period ending with any month. At no time shall the water temperature at such locations exceed the maximum limits in **the following** table ~~3~~ by more than three **(3)** degrees Fahrenheit ~~(3°F)~~ (one and seven-tenths **(1.7)** degrees Celsius): ~~(1.7°C)).~~

Table ~~3~~ **6-4**

	Ohio River Main Stem °F(°C)	Other Indiana Streams °F(°C)
January	50 (10.0)	50 (10.0)
February	50 (10.0)	50 (10.0)
March	60 (15.6)	60 (15.6)
April	70 (21.1)	70 (21.1)
May	80 (26.7)	80 (26.7)
June	87 (30.6)	90 (32.2)
July	89 (31.7)	90 (32.2)
August	89 (31.7)	90 (32.2)
September	87 (30.7)	90 (32.2)
October	78 (25.6)	78 (25.5)
November	70 (21.1)	70 (21.1)
December	57 (14.0)	57 (14.0)

(5) The following criteria will be used to regulate ammonia:

(A) Except for waters covered in clause (B), at all times, all **surface** waters outside of mixing zones shall be free of substances in concentrations ~~which,~~ **that,** on the basis of available scientific data, are believed to be sufficient to injure, be chronically toxic to, or be carcinogenic, mutagenic, or teratogenic to humans, animals, aquatic life, or plants.

(B) For those waters listed in subsection (c), the following ammonia criteria will apply outside the mixing zone:

Maximum Ammonia Concentrations
(Unionized Ammonia as N)***
(mg/l)
Temperature (°C)

pH	0	5	10	15	20	25	30
6.5	0.0075	0.0106	0.0150	0.0211	0.0299	0.0299	0.0299
6.6	0.0092	0.0130	0.0183	0.0259	0.0365	0.0365	0.0365
6.7	0.0112	0.0158	0.0223	0.0315	0.0444	0.0444	0.0444
6.8	0.0135	0.0190	0.0269	0.0380	0.0536	0.0536	0.0536
6.9	0.0161	0.0228	0.0322	0.0454	0.0642	0.0642	0.0642

7.0	0.0191	0.0270	0.0381	0.0539	0.0761	0.0761	0.0761
7.1	0.0244	0.0316	0.0447	0.0631	0.0892	0.0892	0.0892
7.2	0.0260	0.0367	0.0518	0.0732	0.1034	0.1034	0.1034
7.3	0.0297	0.0420	0.0593	0.0837	0.1183	0.1183	0.1183
7.4	0.0336	0.0474	0.0669	0.0946	0.1336	0.1336	0.1336
7.5	0.0374	0.0528	0.0746	0.1054	0.1489	0.1489	0.1489
7.6	0.0411	0.0581	0.0821	0.1160	0.1638	0.1638	0.1638
7.7	0.0447	0.0631	0.0892	0.1260	0.1780	0.1780	0.1780
7.8	0.0480	0.0678	0.0958	0.1353	0.1911	0.1911	0.1911
7.9	0.0510	0.0720	0.1017	0.1437	0.2030	0.2030	0.2030
8.0	0.0536	0.0758	0.1070	0.1512	0.2135	0.2135	0.2135
8.1	0.0537	0.0758	0.1071	0.1513	0.2137	0.2137	0.2137
8.2	0.0537	0.0758	0.1071	0.1513	0.2137	0.2137	0.2137
8.3	0.0537	0.0758	0.1071	0.1513	0.2137	0.2137	0.2137
8.4	0.0537	0.0758	0.1071	0.1513	0.2137	0.2137	0.2137
8.5	0.0537	0.0758	0.1071	0.1513	0.2137	0.2137	0.2137
8.6	0.0537	0.0758	0.1071	0.1513	0.2137	0.2137	0.2137
8.7	0.0537	0.0758	0.1071	0.1513	0.2137	0.2137	0.2137
8.8	0.0537	0.0758	0.1071	0.1513	0.2137	0.2137	0.2137
8.9	0.0537	0.0758	0.1071	0.1513	0.2137	0.2137	0.2137
9.0	0.0537	0.0758	0.1071	0.1513	0.2137	0.2137	0.2137

***To calculate total ammonia, divide the number in the table by the value determined by: $1/(10^{pK_a - pH} + 1)$.

Where: pK_a = 0.09018 + (2729.92/(T + 273.2))

pH = pH of water

T = °C

24-Hour Average Ammonia Concentrations
(Unionized Ammonia as N)***
(mg/l)

	Temperature (°C)						
pH	0	5	10	15	20	25	30
6.5	0.0005	0.0008	0.0011	0.0015	0.0015	0.0015	0.0015
6.6	0.0007	0.0010	0.0014	0.0019	0.0019	0.0019	0.0019
6.7	0.0009	0.0012	0.0017	0.0024	0.0024	0.0024	0.0024
6.8	0.0011	0.0015	0.0022	0.0031	0.0031	0.0031	0.0031
6.9	0.0014	0.0019	0.0027	0.0038	0.0038	0.0038	0.0038
7.0	0.0017	0.0024	0.0034	0.0048	0.0048	0.0048	0.0048
7.1	0.0022	0.0031	0.0043	0.0061	0.0061	0.0061	0.0061
7.2	0.0027	0.0038	0.0054	0.0077	0.0077	0.0077	0.0077
7.3	0.0034	0.0048	0.0068	0.0097	0.0097	0.0097	0.0097
7.4	0.0043	0.0061	0.0086	0.0122	0.0122	0.0122	0.0122
7.5	0.0054	0.0077	0.0108	0.0153	0.0153	0.0153	0.0153
7.6	0.0068	0.0097	0.0136	0.0193	0.0193	0.0193	0.0193
7.7	0.0086	0.0122	0.0172	0.0242	0.0242	0.0242	0.0242
7.8	0.0092	0.0130	0.0184	0.0260	0.0260	0.0260	0.0260
7.9	0.0098	0.0138	0.0196	0.0276	0.0276	0.0276	0.0276
8.0	0.0103	0.0146	0.0206	0.0294	0.0294	0.0294	0.0294
8.1	0.0103	0.0146	0.0206	0.0294	0.0294	0.0294	0.0294
8.2	0.0103	0.0146	0.0206	0.0294	0.0294	0.0294	0.0294
8.3	0.0103	0.0146	0.0206	0.0294	0.0294	0.0294	0.0294
8.4	0.0103	0.0146	0.0206	0.0294	0.0294	0.0294	0.0294
8.5	0.0103	0.0146	0.0206	0.0294	0.0294	0.0294	0.0294
8.6	0.0103	0.0146	0.0206	0.0294	0.0294	0.0294	0.0294
8.7	0.0103	0.0146	0.0206	0.0294	0.0294	0.0294	0.0294
8.8	0.0103	0.0146	0.0206	0.0294	0.0294	0.0294	0.0294
8.9	0.0103	0.0146	0.0206	0.0294	0.0294	0.0294	0.0294

9.0	0.0103	0.0146	0.0206	0.0294	0.0294	0.0294	0.0294

***To calculate total ammonia, divide the number in the table by the value determined by: $1/(10^{pK_a-pH} + 1)$.

Where: pK_a = 0.09018 + (2729.92/(T + 273.2))
pH = pH of water
T = °C

(c) This subsection establishes **surface** water quality for coldwater fish. In addition to subsections (a) through (b), the following ~~standards~~ **criteria** are established to ensure conditions necessary for the maintenance of a well-balanced, coldwater fish community and are applicable at any point in the waters outside of the mixing zone:

(1) Waters designated as salmonid waters and that shall be protected for coldwater fish are those waters designated by the Indiana department of natural resources for put-and-take trout fishing.

(2) In the waters listed in subdivision (1), dissolved oxygen concentrations shall not be less than six (6.0) milligrams per liter at any time and shall not be less than seven (7.0) milligrams per liter in areas where spawning occurs during the spawning season and in areas used for imprinting during the time salmonids are being imprinted.

(3) In those waters listed in subdivision (1), the maximum temperature rise above natural shall not exceed two **(2)** degrees Fahrenheit ~~(2°F)~~ (one and one-tenth ~~degree~~ **(1.1) degrees** Celsius) ~~(1.1°C))~~ at any time or place ~~nor,~~ **and,** unless due to natural causes, ~~shall~~ the temperature **shall not** exceed the following:

(A) Seventy **(70)** degrees Fahrenheit ~~(70°F)~~ (twenty-one and one-tenth **(21.1)** degrees Celsius) ~~(21.1°C))~~ at any time.

(B) Sixty-five **(65)** degrees Fahrenheit ~~(65°F)~~ (eighteen and three-tenths **(18.3)** degrees Celsius) ~~(18.3°C))~~ during spawning and imprinting periods.

(d) This subsection establishes bacteriological quality for recreational uses. In addition to subsection (a), the criteria in this subsection are to be used to evaluate waters for full body contact recreational uses, to establish wastewater treatment requirements, and to establish effluent limits during the recreational season, which is defined as the months of April through October, inclusive. E. coli bacteria, using membrane filter (MF) count, shall not exceed:

(1) one hundred twenty-five (125) per one hundred (100) milliliters as a geometric mean based on not less than five (5) samples equally spaced over a thirty (30) day period; ~~nor exceed~~ **and**

(2) two hundred thirty-five (235) per one hundred (100) milliliters in any one (1) sample in a thirty (30) day period.

If a geometric mean cannot be calculated because five (5) equally spaced samples are not available, then the criteria stated in subdivision (2) must be met.

(e) This subsection establishes surface water quality for public water supply. In addition to subsections (a) and (d), the following ~~standards~~ **criteria** are established to protect the surface water quality at the point at which water is withdrawn for treatment for public supply:

(1) The coliform bacteria group shall not exceed **the following:**

(A) Five thousand (5,000) per one hundred (100) milliliters **as** a monthly average value (either MPN or MF count). ~~nor exceed this number~~

(B) Five thousand (5,000) per one hundred (100) milliliters in more than twenty percent (20%) of the samples examined during any month. ~~nor exceed~~

(C) Twenty thousand (20,000) per one hundred (100) ~~milliliter~~ **milliliters** in more than five percent (5%) of ~~such~~ **the** samples **examined during any month.**

(2) Taste and odor producing substances, other than naturally occurring, shall not interfere with the production of a finished water by conventional treatment consisting of coagulation, sedimentation, filtration, and disinfection.

(3) The concentrations of either chlorides or sulfates shall not exceed two hundred fifty (250) milligrams per liter ~~other than~~ **unless** due to naturally occurring sources.

(4) The concentration of dissolved solids shall not exceed seven hundred fifty (750) milligrams per liter unless due to naturally occurring sources. A specific conductance of one thousand two hundred (1,200) micromhos per centimeter (at twenty-five (25) degrees Celsius) may be considered equivalent to a dissolved solids concentration of seven hundred fifty (750) milligrams per liter.

~~(4)~~ **(5)** Surface waters shall be considered acceptable for public ~~supplies~~ **water supply** if radium-226 and strontium-90 are present in amounts not exceeding three (3) and ten (10) picocuries per liter, respectively. In the known absence of strontium-90 and alpha emitters, the water supply is acceptable when the gross beta concentrations do not exceed one thousand (1,000) picocuries per liter.

~~(5)~~ **(6)** Chemical constituents in the waters shall not be present in such levels as to prevent, after conventional treatment, meeting the drinking water standards contained in 327 IAC 8-2, due to other than natural causes.

(f) This subsection establishes **surface** water quality for industrial water supply. In addition to subsection (a), the ~~standard~~ **criterion** to ensure protection of water quality at the point at which water is withdrawn for use (either with or without treatment) for industrial cooling and processing is that, other than from naturally occurring sources, the dissolved solids shall not exceed seven hundred fifty (750) milligrams per liter at any time. A specific conductance of one thousand two hundred (1,200) micromhos per ~~centimeters~~ **centimeter** (at twenty-five **(25)** degrees Celsius) ~~(25°C))~~ may be considered equivalent to

a dissolved solids concentration of seven hundred fifty (750) milligrams per liter.

(g) This subsection establishes **surface** water quality for agricultural uses. The ~~standards~~ **criteria** to ensure water quality conditions necessary for agricultural use are the same as those in subsection (a).

(h) This subsection establishes **surface** water quality for limited uses. The quality of waters classified for limited uses ~~pursuant to~~ **under** section 3(a)(5) of this rule shall, at a minimum, meet the following ~~standards:~~ **criteria:**

(1) The ~~standards~~ **criteria** contained in subsection (a).
(2) The ~~standards~~ **criteria** contained in subsection (d).
(3) The ~~standards~~ **criteria** contained in subsection (f), where applicable.
(4) The waters must be aerobic at all times.
(5) Notwithstanding ~~the preceding~~ subdivisions **(1) through (4),** the quality of a limited use stream at the point where it becomes physically or chemically capable of supporting a higher use or at its interface with a higher use water segment shall meet the ~~standards which~~ **criteria that** are applicable to the higher use water.

(i) This subsection establishes **surface** water quality for exceptional uses. Waters classified for exceptional uses warrant extraordinary protection. Unless ~~standards~~ **criteria** are otherwise specified on a case-by-case basis, the quality of all waters designated for exceptional use shall be maintained without degradation.

~~(j) Notwithstanding section 7 of this rule, the acute aquatic and chronic aquatic criteria (AAC and CAC) established in subsection (a) shall apply to the underground portion of the Lost River system and other underground streams and their tributaries that support fish or other higher aquatic life forms.~~ *(Water Pollution Control Board; 327 IAC 2-1-6; filed Sep 24, 1987, 3:00 p.m.: 11 IR 581; filed Feb 1, 1990, 4:30 p.m.: 13 IR 1020; errata, 13 IR 1861; errata filed Jul 6, 1990, 5:00 p.m.: 13 IR 2003; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1725; errata filed May 7, 1993, 4:00 p.m.: 16 IR 2189; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1348; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3376; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2047)*

SECTION 6. 327 IAC 2-1-8 IS AMENDED TO READ AS FOLLOWS:

327 IAC 2-1-8 Methods of analysis
Authority: IC 13-14-8; IC 13-14-9; IC 13-18-3
Affected: IC 13-18-4

Sec. 8. The analytical procedures used as methods of analysis to determine the chemical, bacteriological, biological, and radiological quality of waters sampled shall be in accordance with 40 CFR 136 ~~the sixteenth edition of Standard Methods for the Examination of Water and Wastewater,~~ or methods approved by the commissioner. ~~and the Environmental Protection Agency.~~ *(Water Pollution Control Board; 327 IAC 2-1-8; filed Sep 24, 1987, 3:00 p.m.: 11 IR 583; filed Feb 1, 1990, 4:30 p.m.: 13 IR 1033; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2055)*

SECTION 7. 327 IAC 2-1-8.1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 2-1-8.1 Calculation of criteria for toxic substances; general
Authority: IC 13-14-8; IC 13-14-9; IC 13-18-3
Affected: IC 13-18-4

Sec. 8.1. **(a)** Water quality standards for the state of Indiana indicate that all **surface** waters at all times and at all places, including the mixing zone, shall be free of substances or combinations of substances ~~which~~ **that** are in amounts sufficient to be acutely toxic to humans, other animals, plants, or aquatic life. Toxic substances include, but are not limited to, those substances identified under Section 307(a) of the Clean Water Act. The allowable concentration of a toxic substance in surface water shall be determined for that substance by the procedures in sections 8.2 through ~~8.8~~ **8.9** of this rule.

(b) The use of dissolved metal to set and measure compliance with water quality standards for aquatic life is the recommended approach because dissolved metal more closely approximates the bioavailable fraction of metal in the water column than does total recoverable metal. Reasons for the consideration of total recoverable metals criteria include risk management considerations not covered by evaluation of water column toxicity. The commissioner may, after considering sediment and food chain effects for a particular metal, decide to take a more conservative approach for the metal. This approach could include the expression of aquatic life criteria for the metal in the form of total recoverable metal. If the commissioner determines that it is appropriate to express aquatic life criteria for a particular metal in the form of dissolved metal, the criteria shall be determined as follows:

(1) If sufficient toxicological data in the form of dissolved metal are available, these data shall be used in sections 8.2, 8.3, and 8.9 of this rule to derive aquatic life criteria directly in the form of dissolved metal.
(2) If sufficient toxicological data in the form of dissolved metal are not available, aquatic life criteria shall be derived in the form of total recoverable metal using the procedures in sections 8.2, 8.3, and 8.9 of this rule and then multiplied by criteria conversion factors approved by the commissioner to express the criteria in the form of dissolved metal.
(3) If sufficient toxicological data in the form of dissolved metal are not available and criteria conversion factors for the particular metal have not been approved by the commissioner, aquatic life criteria shall be derived in the form of total recoverable metal using the procedures in sections 8.2, 8.3, and 8.9 of this rule and expressed in the form of total recoverable metal.

(Water Pollution Control Board; 327 IAC 2-1-8.1; filed Feb 1, 1990, 4:30 p.m.: 13 IR 1033; errata filed Jul 6, 1990, 5:00 p.m.: 13 IR 2003; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2055)

SECTION 8. 327 IAC 2-1-8.2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 2-1-8.2 Determination of acute aquatic criteria (AAC)

Authority: IC 13-14-8; IC 13-14-9; IC 13-18-3
Affected: IC 13-18-4

Sec. 8.2. In order to ensure that the concentration of a substance or combination of substances does not become acutely toxic to aquatic organisms, an acute aquatic criterion (AAC) will be determined by one (1) of the following methods:

(1) The following for Method 1:

(A) If no AAC is available in section ~~6(a)(2)~~ **6(a)(3),** Table ~~1~~ **6-1** of this rule **or section 6(a)(3), Table 6-2 of this rule** for the substance, ~~or if a different AAC can be scientifically justified based on new toxicological data, or site-specific conditions concerning water quality characteristics, or species present,~~ an AAC can be calculated using the procedures in **this** subdivision. ~~(2).~~

~~(B) Alternatively, or in addition to those criteria in section 6(a)(1)(D) of this rule, a site-specific acute aquatic criterion based on whole effluent toxicity can be utilized. This criterion shall not exceed ten percent (10%) mortality above control mortality, as measured by the most sensitive species tested, in one hundred percent (100%) effluent. The toxicity of the whole effluent shall be determined as follows:~~

~~(i) Three (3) species will be tested initially, and these will represent species from ecologically diverse taxa to the extent possible. The exact species to be tested will be determined by the commissioner on a case-by-case basis with the objective of using resident or representative species. Once the toxicity of the effluent has been characterized, only the most sensitive of the species tested need to be used in such further testing as may be required.~~

~~(ii) Whole effluent toxicity testing will be required on up to three (3) sets of composite effluent samples to determine the variability of the effluent.~~

~~(2) The following for Method 2:~~

~~(A)~~ **(B)** An acute criterion can be calculated using modified U.S. EPA procedures when acute toxicity data are available for at least five (5) North American genera of freshwater organisms, including representatives of the following families:

(i) The family Salmonidae.

(ii) The family Cyprinidae or Centrarchidae.

(iii) Another family, not represented in item (i) or (ii), in the Class Osteichthyes.

(iv) The family Daphnidae.

(v) Another aquatic macroinvertebrate family.

~~(B)~~ **(C)** Resident species data are preferred for the ~~above~~ required data set **in clause (B).** If one (1) or more of the required families are not a site resident, the requirement may be waived and appropriate substitution will be made. If data are not available for resident species, data for nonresident species may be substituted and will be assumed to be representative of resident species. ~~In addition, site-specific modifications to acute aquatic life criteria developed in accordance with this clause may be developed when the local water characteristics such as pH, hardness, temperature, or color alter the biological availability or toxicity of a pollutant.~~ The AAC is calculated using the following procedures:

(i) If the acute toxicity of the chemical has not been adequately shown to be related to a water quality characteristic, such as hardness, pH, or temperature, the AAC is calculated using the following procedures:

(AA) For each species for which at least one (1) acute value is available, the species mean acute value (SMAV) is calculated as the geometric mean of the results of all tests in which the concentrations of test material were stable as shown by measured values. For a species for which no such result is available, the SMAV should be calculated as the geometric mean of all available acute values, ~~i.e.,~~ **for example,** results of flow-through tests in which the concentrations were not measured and results of static and renewal tests based on initial concentrations of test material.

(BB) For each genus for which one (1) or more SMAVs are available, the genus mean acute value (GMAV) is calculated as the geometric mean of the SMAVs available for the genus.

(CC) The GMAVs are ordered from high to low.

(DD) Ranks (R) are assigned to the GMAVs from "1" for the lowest to "N" for the highest. If two (2) or more GMAVs are identical, successive ranks are arbitrarily assigned.

(EE) The cumulative probability, P, is calculated for each GMAV as R/(N + 1).

(FF) The (T) GMAVs (T = 2 for N = 5; T = 3 for N = 6 or 7; T = 4 for N = 8 or greater) are selected ~~which~~ **that** have cumulative probabilities closest to five-hundredths (0.05). If there are ~~less~~ **fewer** than fifty-nine (59) GMAVs, these will always be the two (2) (for N = 5), three (3) (for N = 6 or 7), or four (4) (for N = 8 or greater) lowest GMAVs.

(GG) Using the selected GMAVs and Ps, the final acute value (FAV) is calculated as:

$$S^2 = \frac{E^*((\ln GMAV)^2) - ((E(\ln GMAV))^2/T)}{E(P) - ((E(\sqrt{P}))^2/T)}$$

$$L = (E(\ln GMAV) - S(E(\sqrt{P})))/T$$

$$A = S(\sqrt{0.05}) + L$$

$$FAV = e^A$$

$$AAC = FAV/2$$

$$^*E = \text{Summation}$$

(HH) If, for a commercially, recreationally, or ecologi-

cally important species, the geometric mean of the acute values from flow-through tests in which the concentrations of test material were measured is lower than the calculated FAV, then that geometric mean is used as the FAV instead of the calculated FAV.

(ii) If data are available to show that acute toxicity to two (2) or more species is similarly related to a water quality characteristic, the AAC is calculated using the procedures as follows:

(AA) For each species for which comparable acute toxicity values are available at two (2) or more different values of the water quality characteristic, a least squares regression of the acute toxicity values on the corresponding values of the water quality characteristic is performed to obtain the slope of the curve that describes the relationship. Because the best documented relationship is that between hardness and acute toxicity of metals and a log-log relationship fits these data, geometric means and natural logarithms of both toxicity and water quality are used in the rest of this procedure to illustrate the method. For relationships based on other water quality characteristics, such as pH or temperature, no transformation or a different transformation might fit the data better, and appropriate changes will be made as necessary throughout this method.

(BB) Each acute slope is evaluated as to whether or not it is meaningful, taking into account the range and number of tested values of the water quality characteristic and the degree of agreement within and between species. If meaningful slopes are not available for at least one (1) fish and one (1) invertebrate, or if the available slopes are too dissimilar, or if too few data are available to adequately define the relationship between acute toxicity and the water quality characteristic, the AAC is calculated using the procedures in item (i).

(CC) Individually, for each species, the geometric mean of the available acute values is calculated and then each of the acute values for a species is divided by the mean for the species. This normalizes the acute values so that the geometric mean of the normalized values for each species individually and for any combination of species is one (1.0).

(DD) The values of the water quality characteristic are similarly normalized for each species individually.

(EE) All the normalized data are treated as if they were for the same species and a least squares regression of all the normalized acute values on the corresponding normalized values of the water quality characteristic is performed to obtain the pooled acute slope, V.

(FF) For each species the geometric mean, W, of the acute toxicity values and the geometric mean, X, of the water quality characteristic are calculated. (These were calculated in subitems (CC) through (DD).)

(GG) For each species the logarithmic intercept, Y, is calculated using the equation:

$$Y = \ln W - V(\ln X - \ln Z)$$

(HH) For each species calculate the SMAV at Z using the equation:

$$SMAV = e^{Y}$$

(II) Obtain the FAV at Z by using the procedures described in subitems (BB) through (HH), replacing "value" with "intercept".

(JJ) The final acute equation is written as:

$$\text{final acute value (FAV)} = e^{(V (\ln (\text{water quality characteristic}) + \ln A - V (\ln Z))}$$

Where: V = pooled acute slope (from subitem (EE))

A = FAV at Z (from subitem (II))

Since V, A, and Z are known, the FAV can be calculated for any selected value of the water quality characteristic.

(KK) The AAC is equal to the FAV/2.

~~(C)~~ **(D)** If data are not available for at least five (5) North American freshwater genera meeting the requirements in clause ~~(A),~~ **(B),** go to subdivision ~~(3).~~ **(2).**

~~(3)~~ **(2)** The following for Method ~~3:~~ **2:**

(A) If the required data to derive the AAC in subdivision ~~(2)(B)~~ **(1)(C)** are not present in the acute toxicity data base and at least one (1) LC_{50} value is available for a daphnid species and either fathead minnow, bluegill, or rainbow trout, ~~a~~ **an** FAV is calculated by dividing the lowest SMAV for the daphnid species, fathead minnow, bluegill, and rainbow trout by five (5) if rainbow trout are represented or ten (10) if rainbow trout are not represented. The AAC equals the FAV divided by two (2). If appropriate, the AAC will be made a function of a water quality characteristic in a manner similar to that described in subdivision ~~(2)(B)(ii).~~ **(1)(C)(ii).**

(B) If the data required in clause (A) are not available, no AAC can be calculated and the discharger will be required to develop the minimum data base (ninety-six (96) hour LC_{50} for rainbow trout, fathead minnow, or bluegill and a forty-eight (48) hour LC_{50} for a daphnid) needed to calculate the AAC.

(Water Pollution Control Board; 327 IAC 2-1-8.2; filed Feb 1, 1990, 4:30 p.m.: 13 IR 1033; errata filed Jul 6, 1990, 5:00 p.m.: 13 IR 2004; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1357; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3376; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2056)

SECTION 9. 327 IAC 2-1-8.3 IS AMENDED TO READ AS FOLLOWS:

327 IAC 2-1-8.3 Determination of chronic aquatic criteria (CAC)

Authority: IC 13-14-8; IC 13-14-9; IC 13-18-3
Affected: IC 13-18-4

Sec. 8.3. In order to ensure that the concentration of a substance or combination of substances does not produce chronic effects on aquatic organisms, a chronic aquatic criterion (CAC) will be determined by one (1) of the following methods:

(1) The following for Method 1:

(A) If no CAC is given for the substance in section ~~6(a)(2)~~ **6(a)(3),** Table ~~1~~ **6-1** of this rule, ~~or if different CAC can be scientifically justified based on new toxicological data, or site-specific conditions concerning water quality characteristics or species present,~~ **or section 6(a)(3), Table 6-2 of this rule,** a CAC can be calculated using the procedures in **this** subdivision. ~~(2).~~

~~(B) Alternatively, or in addition to the CAC in section 6(a)(2) of this rule, a site-specific CAC based on whole effluent toxicity can be utilized. This criterion shall not exceed the no observable effect level (NOEL) based on an appropriate chronic toxicity test, as measured by the most sensitive species tested, at an effluent dilution equal to that provided by no more than one-fourth (¼) of the $Q_{7,10}$ flow of the receiving stream. The toxicity of the whole effluent shall be determined as follows:~~

~~(i) Three (3) species will be tested initially, and these will represent species from ecologically diverse taxa to the extent possible. The exact species to be tested will be determined by the commissioner on a case-by-case basis with the objective of using resident or representative species. Once the toxicity of the effluent has been characterized, only the most sensitive of the species tested need be used in such further testing as may be required.~~

~~(ii) Whole effluent toxicity testing will be required on up to three (3) sets of composite effluent samples to determine the variability of the effluent.~~

~~(2) The following for Method 2:~~

~~(A)~~ **(B)** The CAC is derived in the same manner as the FAV in section ~~8.2(2)~~ **8.2(1)** of this rule by substituting CAC for FAV, chronic for acute, MATC (maximum acceptable toxicant concentration) for LC_{50}, SMCV (species mean chronic value) for SMAV, and GMCV (genus mean chronic value) for GMAV.

~~(B)~~ **(C)** If chronic toxicity data are not available for at least five (5) North American freshwater genera meeting the requirements in section ~~8.2(2)(A)~~ **8.2(1)(B)** of this rule, go to subdivision ~~(3).~~ **(2).**

~~(C) Site-specific modifications to chronic aquatic life criteria developed in accordance with this section may be developed when the local water characteristics, such as pH, hardness, temperature, or color, alter the biological availability or toxicity of a pollutant.~~

~~(3)~~ **(2)** The following for Method ~~3:~~ **2:**

(A) The CAC can be calculated by dividing the FAV by an acute-chronic ratio (or geometric mean of the acute-chronic ratios if more than one (1) is available) for at least one (1) North American freshwater species.

(B) If no acute-chronic ratio is available for at least one (1) North American freshwater species, go to subdivision ~~(4).~~ **(3).**

~~(4)~~ **(3)** The following for Method ~~4:~~ **3:**

(A) The CAC can be calculated by dividing the FAV by a factor of forty-five (45). If, for a commercially, recreationally, or ecologically important species, the geometric mean of the chronic values is lower than the calculated CAC, then that geometric mean is used as the CAC instead of the calculated CAC.

(B) If the data needed in clause (A) are not available, no CAC can be calculated and the discharger will be required to develop the minimum data base necessary to calculate the CAC (ninety-six (96) hour LC_{50} for rainbow trout, fathead minnow, or bluegill and a forty-eight (48) hour LC_{50} for a daphnid).

(Water Pollution Control Board; 327 IAC 2-1-8.3; filed Feb 1, 1990, 4:30 p.m.: 13 IR 1035; errata, 13 IR 1861; errata filed Jul 6, 1990, 5:00 p.m.: 13 IR 2004; errata filed Jul 24, 1990, 4:55 p.m.: 13 IR 2138; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1359; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2057)

SECTION 10. 327 IAC 2-1-8.9 IS ADDED TO READ AS FOLLOWS:

327 IAC 2-1-8.9 Site-specific modifications to criteria

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

Sec. 8.9. (a) Site-specific modifications to criteria must be protective of designated uses and aquatic life or human health. In addition, any site-specific modifications that result in less stringent criteria must be based on a sound scientific rationale and shall not be likely to jeopardize the continued existence of endangered or threatened species listed or proposed under Section 4 of the Endangered Species Act (ESA) or result in the destruction or adverse modification of such species' critical habitats. More stringent modifications shall be developed to protect endangered or threatened species listed or proposed under Section 4 of the ESA, where such modifications are necessary to ensure that water quality is not likely to jeopardize the continued existence of such species or result in the destruction or adverse modification of such species' critical habitats. More stringent modifications may also be developed to protect candidate (C1) species being considered by the U.S. Fish and Wildlife Service (FWS) for listing under Section 4 of the ESA, where such modifications are necessary to protect such species. Criteria may be modified on a site-specific basis to reflect local environmental conditions as restricted by the following provisions:

(1) Aquatic life criteria may be modified on a site-specific basis as follows:

(A) Aquatic life criteria may be modified on a site-specific basis to provide an additional level of protection.

(B) Less stringent site-specific modifications to chronic or acute aquatic life criteria may be developed when either of the following conditions applies:

(i) The local water quality characteristics, such as pH, hardness, temperature, or color, alter the biological availability or toxicity of a pollutant.

(ii) The sensitivity of the aquatic organisms species that occur at the site differs from the species actually tested in developing the criteria.

(C) Less stringent modifications may also be developed to acute and chronic aquatic life criteria to reflect local physical and hydrological conditions.

(D) Any modifications to protect threatened or endangered aquatic species required by this subsection may be accomplished using either of the following procedures:

(i) If the species mean acute value (SMAV) for a listed or proposed species or for a surrogate of such species is lower than the calculated final acute value (FAV), such lower SMAV may be used instead of the calculated FAV in developing site-specific modified criteria.

(ii) The site-specific criteria may be calculated using the recalculation procedure for site-specific modifications under section 13 of this rule.

(2) Human health criteria may be modified on a site-specific basis as follows:

(A) Human health criteria may be modified on a site-specific basis to provide an additional level of protection in accordance with the following:

(i) Human health criteria shall be modified on a site-specific basis to provide additional protection appropriate for highly exposed subpopulations.

(ii) Any person may request the commissioner to develop a site-specific modification of a human health criterion to make it more stringent.

(iii) The commissioner shall develop the site-specific modification of the human health criterion to make it more stringent when local fish consumption rates are higher than the rate used to derive human health criteria under sections 8.5 and 8.6 of this rule.

(B) Less stringent site-specific modifications to human health criteria may be developed when local fish consumption rates are lower than the rate used to derive human health criteria under sections 8.5 and 8.6 of this rule.

(C) Local fish consumption rates referenced in clauses (A) and (B) shall be determined by a fish consumption survey applicable to the site.

(b) The application requirements for site-specific modifications to criteria allowed under subsection (a) are as follows:

(1) Except as provided in subdivision (2), the application requirements for site-specific modifications to criteria shall be determined by the commissioner on a case-by-case basis.

(2) Applications for site-specific modifications to criteria allowed under subsection (a)(1)(B)(ii) and determined using the recalculation procedure under section 13 of this rule shall include:

(A) A list of all species of aquatic invertebrates, amphibians, and fishes that are known to occur at the site, along with the source of the information.

(B) A list of all aquatic plant, invertebrate, amphibian, and fish species that are critical species at the site, including all species that occur at the site and are listed as threatened or endangered under Section 4 of the ESA.

(C) A site-specific version of Table 1 from a criteria document produced by the U.S. EPA after 1984.

(D) A site-specific version of Table 3 from a criteria document produced by the U.S. EPA after 1984.

(E) A list of all species that were deleted.

(F) Each new calculated criterion (FAV, AAC, or CAC).

(G) Each lowered criterion if one (1) or more were lowered to protect a specific species.

(c) Upon receipt of an application for a site-specific modification to a criterion, the commissioner shall:

(1) For a site-specific modification listed under subsection (d):

(A) provide notice, request comment, and, if requested, schedule and hold a public meeting on the application in accordance with 327 IAC 5-2-11.2(b); and

(B) publish all pertinent information about the proposed site-specific modification on the department's Web site.

(2) For a site-specific modification not listed under subsection (d):

(A) approve or deny the application; and

(B) if the application is approved, initiate a rulemaking to have the site-specific modification incorporated into the water quality standards.

(d) Site-specific modifications to criteria do not require a rulemaking if they are:

(1) allowed under subsection (a) and to a criterion not specifically listed in this rule;

(2) allowed under subsection (a)(1)(B)(i) and determined using a WER;

(3) allowed under subsection (a)(1)(B)(ii) and determined using the recalculation procedure under section 13 of this rule; or

(4) required under subsection (a) and determined under subsection (a)(1)(D).

(e) Upon approval of a site-specific modification listed in subsection (d), the commissioner shall:

(1) publish a notice in the Indiana Register;

(2) place all pertinent information about the approved site-specific modification on the department's Web site;

(3) submit the site-specific modification to U.S. EPA for approval if it is for a site-specific modification to a criterion specifically listed in this rule but not for a site-specific modification to a criterion specifically listed in this rule and expressed as a function of the WER; and

(4) incorporate the site-specific modification into the water quality standards during the next revision of the water quality standards if it is for a site-specific modification to a criterion specifically listed in this rule.

(f) Site-specific modifications to criteria specifically listed in this rule, except for site-specific modifications to criteria specifically listed in this rule and expressed as a function of the WER, shall not be incorporated into a final NPDES permit or used for other Clean Water Act purposes until approved by U.S. EPA.

(g) The following site-specific modifications to water quality criteria have been granted:

Table 8.9-1
Site-Specific Surface Water Quality Criteria[1]

Waterbody	Starting Location	Ending Location	Substances	AAC (Maximum) (µg/l)	AAC Conversion Factors	CAC (4-Day Average) (µg/l)	CAC Conversion Factors
Richland Creek	The outfall of the Princeton POTW	The confluence of Richland Creek with McCarty Ditch	Copper (Dissolved)	WER[2]($e^{(0.9422[\ln(hardness)]-1.4076)}$)	0.960	WER[2]($e^{(0.8545[\ln(hardness)]-1.4097)}$)	0.960
			Cyanide (Free)	45.8		10.7	
			Lead (Dissolved)	WER[2]($e^{(1.273[\ln(hardness)]-1.2554)}$)	1.46203-[(ln hardness)(0.145712)]	WER[2]($e^{(1.273[\ln(hardness)]-3.7561)}$)	1.46203-[(ln hardness)(0.145712)]
Wabash River	The outfall of the Smurfit-Stone Corporation (river mile 387)	A point two (2) miles downstream	Cyanide (Free)	45.8		10.7	
Wabash River	The outfall of Eli-Lilly and Company (river mile 309)	A point two (2) miles downstream	Copper (Dissolved)	WER[2]($e^{(0.9422[\ln(hardness)]-1.4076)}$)	0.960	WER[2]($e^{(0.8545[\ln(hardness)]-1.4097)}$)	0.960
Wabash River	The outfall of Eli-Lilly and Company (river mile 236)	A point two (2) miles downstream	Lead (Dissolved)	WER[2]($e^{(1.273[\ln(hardness)]-1.2554)}$)	1.46203-[(ln hardness)(0.145712)]	WER[2]($e^{(1.273[\ln(hardness)]-3.7561)}$)	1.46203-[(ln hardness)(0.145712)]
West Fork White River	The outfall of the Belmont POTW (river mile 227)	The Marion-Johnson County line (river mile 220)	Cadmium (Dissolved)	WER[2]($e^{(1.128[\ln(hardness)]-1.708)}$)	1.136672-[(ln hardness)(0.041838)]	WER[2]($e^{(0.7852[\ln(hardness)]-2.9232)}$)	1.101672-[(ln hardness)(0.041838)]
			Copper (Dissolved)	WER[2]($e^{(0.9422[\ln(hardness)]-1.4076)}$)	0.960	WER[2]($e^{(0.8545[\ln(hardness)]-1.4097)}$)	0.960
			Cyanide (Free)	45.8		10.7	
			Lead (Dissolved)	WER[2]($e^{(1.273[\ln(hardness)]-1.2554)}$)	1.46203-[(ln hardness)(0.145712)]	WER[2]($e^{(1.273[\ln(hardness)]-3.7561)}$)	1.46203-[(ln hardness)(0.145712)]

[1] The AAC and CAC columns of this table contain hardness-based total recoverable metals criteria for cadmium, copper, and lead. The criterion for the dissolved metal is calculated by multiplying the appropriate conversion factor by the AAC or CAC. This dissolved AAC or CAC shall be rounded to two (2) significant digits, except when the criteria are used as intermediate values in a calculation, such as in the calculation of water quality-based effluent limitations (WQBELs).

[2] A value of one (1) shall be used for the water-effect ratio (WER) unless an alternate value is established under this section.

(Water Pollution Control Board; 327 IAC 2-1-8.9; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2058)

SECTION 11. 327 IAC 2-1-9 IS AMENDED TO READ AS FOLLOWS:

327 IAC 2-1-9 Definitions

Authority: IC 13-14-8; IC 13-14-9; IC 13-18-3
Affected: IC 13-11-2-265; IC 13-18-3-2; IC 13-18-4

Sec. 9. In addition to the definitions contained in IC 13-11-2 and 327 IAC 1, the following definitions apply throughout this title:

(1) "Acceptable daily intake" or "ADI" represents the maximum amount of a substance ~~which~~ **that** if ingested daily for a lifetime results in no adverse effects to humans.

(2) "Acute aquatic criterion" or "AAC" means the highest concentration of chemical that if met instream will protect the aquatic life present from mortality or other irreversible effects due to short term exposure. The AAC is equal to one-half (½) the final acute value (FAV).

(3) "Acute toxicity" means ~~the ability of a chemical to cause a debilitating or injurious change in an organism which results from a single or short term~~ **concurrent and delayed adverse effects that result from an acute** exposure ~~to the chemical.~~ **and occur within any short observation period, which begins when the exposure begins, may extend beyond the exposure period, and usually does not constitute a substantial portion of the life span of the organism.**

(4) "Adverse effect" means any deleterious effect to organisms due to exposure to a substance. The term includes effects that are or may become debilitating,

harmful, or toxic to the normal functions of the organism, but does not include nonharmful effects, such as tissue discoloration alone or the induction of enzymes involved in the metabolism of the substance.

~~(4)~~ **(5)** "Bioaccumulative chemical of concern" or "BCC" ~~means any chemical which, upon entering the surface waters, by itself or as its transformation product, bioaccumulates in aquatic organisms by a factor greater than one thousand (1,000) at six percent (6%) lipids.~~ **refers to the following substances:**

Table 9-1

Bioaccumulative Chemicals of Concern

CAS Number	Substance
309002	**Aldrin**
57749	**Chlordane**
72548	**4,4'-DDD; p,p'-DDD; 4,4'-TDE; p,p'-TDE**
72559	**4,4'-DDE; p,p'-DDE**
50293	**4,4'-DDT; p,p'-DDT**
60571	**Dieldrin**
72208	**Endrin**
76448	**Heptachlor**
118741	**Hexachlorobenzene**
87683	**Hexachlorobutadiene; hexachloro-1,3-butadiene**
608731	**Hexachlorocyclohexanes; BHCs**
319846	**alpha-Hexachlorocyclohexane; alpha-BHC**
319857	**beta-Hexachlorocyclohexane; beta-BHC**
319868	**delta-Hexachlorocyclohexane; delta-BHC**
58899	**Lindane; gamma-Hexachlorocyclohexane; gamma-BHC**
7439976	**Mercury**
2385855	**Mirex**
29082744	**Octachlorostyrene**
1336363	**PCBs; polychlorinated biphenyls**
608935	**Pentachlorobenzene**
39801144	**Photomirex**
1746016	**2,3,7,8-TCDD; dioxin**
634662	**1,2,3,4-Tetrachlorobenzene**
95943	**1,2,4,5-Tetrachlorobenzene**
8001352	**Toxaphene**

~~(5)~~ **(6)** "Bioconcentration" ~~is the increase in concentration of the chemical of concern and its metabolites in or on the target organisms (or specified tissues thereof) relative to the concentration of the chemical of concern in~~ **means the net accumulation of a substance by an aquatic organism as a result of uptake directly from** the ambient water **through gill membranes or other external body surfaces.**

~~(6)~~ **(7)** "Bioconcentration factor" or "BCF" ~~is the number used to relate substance residue~~ **means the ratio (in liters per kilogram) of a substance's concentration** in **tissue of an** aquatic ~~organisms~~ **organism** to ~~the~~ **its** concentration ~~of the substance~~ in the ~~waters~~ **ambient water,** in ~~which the organisms reside.~~ **situations where the organism is exposed through the water only and the ratio does not change substantially over time.**

~~(7)~~ **(8)** "Carcinogen" means a chemical ~~which~~ **that** causes an increased incidence of benign or malignant neoplasms, or a substantial decrease in the latency period between exposure and onset of neoplasms through oral or dermal exposure, or through inhalation exposure when the cancer occurs at nonrespiratory sites in at least one (1) mammalian species or man through epidemiological ~~and/or~~ **studies or** clinical studies, **or both.**

~~(8)~~ **(9)** "Chronic aquatic criterion" or "CAC" means the highest concentration of chemical that if met instream will protect the aquatic life present from toxic effects due to long term exposure, ~~e.g.,~~ **for example,** adverse effects on growth and reproduction.

~~(9)~~ **(10)** "Chronic toxicity" means ~~the ability of a chemical to cause an injurious or debilitating effect in an organism which results from repeated~~ **concurrent and delayed adverse effects that occur only as a result of a chronic** exposure. ~~to a chemical for a time period representing a substantial portion of the natural life expectancy of that organism.~~

~~(10)~~ **(11)** "Coliform bacteria" means all the aerobic and facultatively anaerobic, gram-negative, nonsporeforming bacilli that produce acid and gas from the fermentation of lactose.

~~(11)~~ **(12)** "Community" means a general collective term to describe the varieties of aquatic species and associated organisms living together in a waterbody.

(13) "Criteria conversion factors" refers to the conversion factors that are multiplied by acute and chronic aquatic criteria developed using toxicological data in the form of total recoverable metal to express the criteria in the form of dissolved metal. The conversion factor for a particular metal and criterion is the fraction of the metal corresponding to an estimate of the percent of the total recoverable metal that was dissolved in the aquatic toxicity tests that were most important in the derivation of the criterion for the metal.

(14) "Criterion" means a definite numerical value or narrative statement promulgated by the water pollution control board to maintain or enhance water quality to provide for and fully protect designated uses of the waters of the state.

~~(12)~~ **(15)** "Discharge-induced mixing" or "DIM" means mixing initiated by the use of submerged, high rate diffuser outfall structures ~~which~~ **(or the functional equivalent) that** provide turbulent initial mixing and will minimize organism exposure time.

~~(13)~~ **(16)** "Effluent" means a wastewater discharge from a point source to the waters of the state.

(17) "Endangered or threatened species" includes those species that are listed as endangered or threatened under Section 4 of the Endangered Species Act (ESA).

(18) "ESA" means the Endangered Species Act (ESA), 16

U.S.C. 1531 et seq.

(19) "Exceptional use water" means any water designated as an exceptional use water by the water pollution control board, regardless of when the designation occurred.

~~(14)~~ **(20)** "Final acute value" or "FAV" means:

(A) a calculated estimate of the concentration of a ~~substance~~ **test material such** that ~~is lower than all but five~~ **ninety-five** percent ~~(5%)~~ **(95%)** of the ~~mean acute values (MAVs) that cause a specific level of~~ **genera (with which acceptable** acute toxicity ~~to an aquatic taxon in laboratory test.~~ **tests have been conducted on the material) have higher genus mean acute values (GMAVs); or**

(B) the species mean acute value (SMAV) of an important or critical species, if the SMAV is lower than the calculated estimate.

~~(15)~~ **(21)** "Full body contact" means direct contact with the water to the point of complete submergence.

(22) "Genus mean acute value" or "GMAV" means the geometric mean of the SMAVs for the genus.

(23) "Genus mean chronic value" or "GMCV" means the geometric mean of the SMCVs for the genus.

~~(16)~~ **(24)** "Geometric mean" means the Nth root of the product of N quantities. Alternatively, the geometric mean can be calculated by adding the logarithms of the N numbers, dividing the sum by N, and taking the antilog of the quotient.

~~(17)~~ **(25)** "Great Lakes system" has the ~~same definition in this rule as contained under 327 IAC 2-1.5-2(42).~~ **meaning set forth in 327 IAC 2-1.5-2(44).**

~~(18)~~ **(26)** "Ground water" means ~~such accumulations of underground water, natural and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this state, but excluding manmade underground storage or conveyance structures.~~ **water located below the ground surface in interconnected voids and pore spaces in the zone of saturation.**

~~(19)~~ **(27)** "Human life cycle safe concentration" or "HLSC" is the highest concentration of a chemical to which a human is exposed continuously for a lifetime and ~~which~~ **that** results in no observable adverse effects to **a** human and its progeny.

~~(20)~~ **(28)** "Indigenous" means, generally, an organism native to and growing and reproducing in a particular region. For purposes of this rule, ~~this~~ **the** term also includes historically nonnative species introduced by the Indiana department of natural resources as part of a program of wildlife management whether such species reproduce or not.

~~(21)~~ **(29)** "LC_{50}" ~~means the median lethal~~ **refers to a statistically or graphically estimated** concentration ~~which~~ **that** is ~~the concentration of a test material in a suitable diluent at which~~ **expected to be lethal to** fifty percent (50%) of ~~the exposed organisms die during~~ a **group of organisms under** specified ~~time period.~~ **conditions.**

~~(22)~~ **(30)** "LD_{50}" means the median lethal dose of a chemical, which is the amount of a test material per body weight ~~which,~~ **that,** when administered, results in fifty percent (50%) mortality to the organisms during a specified time period.

~~(23)~~ **(31)** "Life cycle safe concentration" means the highest concentration of a chemical to which an organism is exposed continuously for a lifetime and ~~which~~ **that** results in no observable adverse effects to the organism and its progeny.

~~(24) "Limit of quantification" means a concentration of an analyte at which one can state with a degree of confidence, using the most sensitive analytical test method approved by EPA, for that sample matrix that an analyte is present at a specific concentration in the sample tested.~~

~~(25) "Log K_{ow}" means the log (base 10) of the n-octanol/water partition coefficient.~~

~~(26)~~ **(32)** "Lowest observable adverse effect level" or "LOAEL" means the lowest tested **dose or** concentration ~~causing the occurrence of an injurious or debilitating~~ **of a substance that resulted in an observed adverse** effect **in exposed test organisms when all higher doses or concentrations resulted in the same or more severe effects.**

~~(27)~~ **(33)** "MATC" means the maximum acceptable toxicant concentration obtained by calculating the geometric mean of the lower and upper chronic limits from a chronic test. A lower chronic limit is the highest tested concentration ~~which~~ **that** did not cause the occurrence of a specified adverse effect. An upper chronic limit is the lowest tested concentration ~~which~~ **that** did cause the occurrence of a specified adverse effect and above which all tested concentrations caused such an occurrence.

~~(28)~~ **(34)** "Maximum contaminant level" or "MCL" means the maximum permissible level of a contaminant in water ~~which~~ **that** is delivered to the free-flowing outlet of the ultimate user of a public water ~~supply~~ system.

~~(29) "Mean acute value" or "MAV" means the concentration of a substance that causes a specific level of acute toxicity to aquatic organisms in some taxonomic group.~~

~~(30)~~ **(35)** "Mixing zone" means an area contiguous to a discharge where the discharged wastewater mixes with the receiving ~~waters.~~ **water.** Where the quality of the effluent is lower than that of the receiving ~~waters,~~ **water,** it may not be possible to attain within the mixing zone all beneficial uses ~~which are~~ attained outside the zone. The mixing zone should not be considered a place where effluents are treated.

~~(31) "NOAEL" means the highest level of toxicant which results in no observable adverse effects to exposed test organisms.~~

~~(32) "n-octanol/water partition coefficient (K_{ow})" means the ratio of the octanol to water equilibrium concentrations of a compound.~~

~~(33)~~ **(36)** "Nonthreshold mechanism" means a process ~~which~~ **that** results in some possible effect no matter what level is present. There is no level ~~which~~ **that** may not produce an effect.

(37) "No observed adverse effect level" or "NOAEL" is the highest tested dose or concentration of a substance that resulted in no observed adverse effect in exposed test organisms where higher doses or concentrations resulted in an adverse effect.

(38) "Occur at the site" includes the species, genera, families, orders, classes, and phyla that:

(A) are usually present at the site;

(B) are present at the site only seasonally due to migration;

(C) are present intermittently because they periodically return to or extend their ranges into the site;

(D) were present at the site in the past, are not currently present at the site due to degraded conditions, and are expected to return to the site when conditions improve; or

(E) are present in nearby bodies of water, are not currently present at the site due to degraded conditions, and are expected to be present at the site when conditions improve.

The taxa that occur at the site cannot be determined merely by sampling downstream and upstream of the site at one (1) point in time. The term does not include taxa that were once present at the site but cannot exist at the site now due to permanent physical alteration of the habitat at the site, for example, alterations resulting from dams.

(39) "Octanol-water partition coefficient" or "K_{OW}" means the ratio of the concentration of a substance in the n-octanol phase to its concentration in the aqueous phase in an equilibrated two-phase octanol-water system. For log K_{OW}, the log of the octanol-water partition coefficient is a base ten (10) logarithm.

(40) "Outstanding national resource water" means a water designated as such by the general assembly after recommendations by the water pollution control board and the environmental quality service council under IC 13-18-3-2(o) and IC 13-18-3-2(p). The designation must describe the quality of the outstanding national resource water to serve as the benchmark of the water quality that shall be maintained and protected. Waters that may be considered for designation as outstanding national resource waters include waterbodies that are recognized as:

(A) important because of protection through official action, such as:

(i) federal or state law;

(ii) presidential or secretarial action;

(iii) international treaty; or

(iv) interstate compact;

(B) having exceptional recreational significance;

(C) having exceptional ecological significance;

(D) having other special environmental, recreational, or ecological attributes; or

(E) waters with respect to which designation as an outstanding national resource water is reasonably necessary for protection of other waterbodies designated as outstanding national resource waters.

(41) "Outstanding state resource water" means any water designated as such by the water pollution control board regardless of when the designation occurred or occurs. Waters that may be considered for designation as outstanding state resource waters include waterbodies that have unique or special ecological, recreational, or aesthetic significance.

~~(34)~~ **(42)** "Persistent substance" means a chemical that is long-lived in soil, aquatic environments, and animal and plant tissues and is not readily broken down by biological or physiochemical processes.

~~(35)~~ **(43)** "Point source" means ~~a~~ **the following:**

(A) Any discernible, confined, and discrete conveyance, **including, but not limited to, any of the following** from which ~~wastewater is~~ **pollutants are** or may be discharged: ~~to the waters of the state.~~

(i) Pipe.

(ii) Ditch.

(iii) Channel.

(iv) Tunnel.

(v) Conduit.

(vi) Well.

(vii) Discrete fissure.

(viii) Container.

(ix) Rolling stock.

(x) Concentrated animal feeding operation.

(xi) Landfill leachate collection system.

(xii) Vessel.

(xiii) Other floating craft.

(B) The term does not include return flows from irrigated agriculture or agricultural storm run-off. See 327 IAC 5-2-4(a)(4) for other exclusions.

~~(36)~~ **(44)** "Policy" ~~as employed herein,~~ means a statement of administrative practice or decision making guidelines to be followed or implemented to the maximum extent feasible with respect to an identified problematic situation but to be less than strictly enforceable in contrast to a standard or rule of law.

~~(37)~~ **(45)** "Public water supply" means ~~any wells, reservoirs, lakes, rivers, sources of supply, pumps, mains, pipes, facilities, and structures through which water is obtained, treated as may be required, and supplied through a water distribution system for sale to or consumption by the public for drinking, domestic, or other purposes, including state-owned facilities even though the~~ **a source of** water ~~may not be sold to the~~ **for a** public **water system.**

(46) "Public water system" has the meaning set forth in 42 U.S.C. 300f.

~~(38)~~ **(47)** "Risk" means the probability that a substance, when released to the environment, will cause an adverse effect in exposed humans or other living organisms.

~~(39)~~ **(48)** "Risk assessment" means the analytical process used to determine the level of risk.

(49) "Species mean acute value" or "SMAV" means the geometric mean of the results of all acceptable flow-through acute toxicity tests (for which the concentrations of the test material were measured) with the most sensitive tested life stage of the species. For a species for which no

such result is available for the most sensitive tested life stage, the SMAV is the geometric mean of the results of all acceptable acute toxicity tests with the most sensitive tested life stage.

(50) "Species mean chronic value" or "SMCV" means the geometric mean of the results of all acceptable life-cycle and partial life-cycle toxicity tests with the species; for a species of fish for which no such result is available, the SMCV is the geometric mean of all acceptable early life-stage tests.

~~(40) "Standard" means a definite numerical value or narrative statement promulgated by the board to maintain or enhance water quality to provide for and fully protect designated use of the waters of the state.~~

~~(41)~~ **(51)** "Steady-state" means an equilibrium condition has been achieved in the body burden of a substance in an organism. ~~This~~ **Steady-state** is assumed when the rate of loss of a substance matches its rate of uptake.

~~(42)~~ **(52)** "Surface waters of the state" or "surface water" ~~means such accumulations of water on the land surface, natural and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this state, but the term does not include any private pond or any pond, reservoir, or facility built for reduction or control of pollution or cooling water prior to discharge unless the discharge therefrom causes or threatens to cause water pollution.~~ **has the meaning set forth in IC 13-11-2-265, except that the term does not include underground waters with the exception of the following:**

(A) The underground portion of the Lost River and its underground tributaries.

(B) Any other underground stream that supports fish or other higher aquatic life forms and its underground tributaries.

~~(43)~~ **(53)** "Terrestrial life cycle safe concentration" or "TLSC" is the highest concentration of chemical to which wildlife is exposed continuously for a lifetime and ~~which~~ **that** results in no observable adverse effects to wildlife and its progeny.

~~(44)~~ **(54)** "Threshold mechanism" means a process ~~which~~ **that** results in some effect if a certain level is exceeded, but ~~which~~ **that** produces no effect below that level.

~~(45)~~ **(55)** "Toxic substances" means substances ~~which~~ **that** are or may become harmful to: ~~plant or animal.~~

(A) aquatic life;

(B) humans;

(C) other animals;

(D) plants; or ~~to~~

(E) food chains;

when present in sufficient concentrations or combinations. Toxic substances include, but are not limited to, those pollutants identified as toxic under Section 307(a)(1) of the Clean Water Act.

~~(46)~~ **(56)** "Variance" means a deviation from a water quality standard.

~~(47) "Waters of the state" means such accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this state, but the term does not include any private pond, or any pond, reservoir, or facility built for reduction or control of pollution or cooling of water prior to discharge unless the discharge therefrom causes or threatens to cause water pollution.~~

(57) "Water-effect ratio" or "WER" means the ratio that is computed as a specific pollutant's acute or chronic toxicity endpoint measured in water from the site covered by the criterion, divided by the respective acute or chronic toxicity endpoint in laboratory dilution water.

(58) "Waters of the state" has the meaning set forth in IC 13-11-2-265.

~~(48)~~ **(59)** "Water use designations" means a use of the waters of the state as established by this rule, including, but not limited to, **the following:**

(A) Industrial water supply.

(B) Agricultural use.

(C) Public water supply.

(D) Full body contact.

(E) Aquatic life.

(F) Limited use. ~~and~~

(G) Exceptional use.

~~(49)~~ **(60)** "Well-balanced aquatic community" means an aquatic community ~~which~~ **that:**

(A) is diverse in species composition;

(B) contains several different trophic levels; and

(C) is not composed mainly of ~~strictly~~ pollution tolerant species.

~~(50)~~ **(61)** "Zone of initial dilution" or "ZID" means ~~that~~ **the** area of the receiving ~~stream~~ **water directly** after the end of the pipe where an instantaneous volume of water gives **up to** a one-to-one **(1:1)** dilution of the discharge.

(Water Pollution Control Board; 327 IAC 2-1-9; filed Sep 24, 1987, 3:00 p.m.: 11 IR 584; filed Feb 1, 1990, 4:30 p.m.: 13 IR 1041; errata filed Jul 6, 1990, 5:00 p.m.: 13 IR 2004; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1360; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3376; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2060)

SECTION 12. 327 IAC 2-1-12 IS AMENDED TO READ AS FOLLOWS:

327 IAC 2-1-12 Incorporation by reference

Authority: IC 13-14-8; IC 13-14-9; IC 13-18-3
Affected: IC 13-18-4

Sec. 12. The following materials have been incorporated by reference into this rule. Each of the following items, in addition to its title, will list the name and address of where it may be located for inspection and copying:

(1) Clean Water Act (CWA) 33 U.S.C. 1251 et seq. in effect ~~December 16, 1996,~~ **July 1, 2004,** available from the Superintendent of Documents, Government Printing Office, Washing-

ton, D.C. 20402, or from the Indiana Department of Environmental Management, Office of Water ~~Management,~~ **Quality,** Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46206.

(2) Code of Federal Regulations (40 CFR 136) in effect ~~December 16, 1996,~~ **July 1, 2004,** available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, or the Indiana Department of Environmental Management, Office of Water ~~Management,~~ **Quality,** Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46206.

(Water Pollution Control Board; 327 IAC 2-1-12; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1363; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3376; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2064)

SECTION 13. 327 IAC 2-1-13 IS ADDED TO READ AS FOLLOWS:

327 IAC 2-1-13 Development of site-specific aquatic life criteria using the recalculation procedure

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

Sec. 13. (a) The definitions in section 9 of this rule and 327 IAC 2-1.5-2 and the following apply throughout this section:

(1) "Critical species" means a species:

(A) that is commercially or recreationally important at the site;

(B) that occurs at the site and is listed as threatened or endangered under Section 4 of the Endangered Species Act; or

(C) for which there is evidence that the loss of the species from the site is likely to cause an unacceptable impact on:

(i) a commercially or recreationally important species;
(ii) a threatened or endangered species;
(iii) the abundance of a variety of other species; or
(iv) the structure or function of the aquatic community.

(2) "Minimum data requirements" or "MDRs" means the minimum amount of toxicity data required under subsection (c) to develop a valid site-specific aquatic life criterion using the recalculation procedure. The initial MDRs for the recalculation procedure are listed in subsection (c).

(b) The recalculation procedure is intended to allow site-specific criteria to differ from the aquatic life criteria in this rule and 327 IAC 2-1.5. The site-specific criteria may be allowed if justified by demonstrated pertinent toxicological differences between the aquatic species that occur at the site and those that were used in the derivation of the criteria in this rule or 327 IAC 2-1.5. The recalculation procedure involves the recalculation of water quality criteria for a given site through the modification of the toxicity data set used to originally calculate the criteria. The process of modifying a toxicity data set for this procedure involves one (1) or more of the following steps:

(1) Correction of toxicity data in the criterion's data set.
(2) Addition of toxicity data to the criterion's data set.
(3) Deletion of toxicity data in the criterion's data set.

(c) Except as provided in subsection (g), the following MDRs must be available to calculate site-specific aquatic life criteria using the recalculation procedure:

(1) Results of acceptable acute or chronic tests with at least one (1) species of freshwater animal in at least eight (8) different families such that all of the following are included:

(A) The family Salmonidae in the class Osteichthyes.

(B) One (1) other family, preferably a commercially or recreationally important, warmwater species, in the class Osteichthyes, for example:

(i) bluegill; or
(ii) channel catfish.

(C) A third family in the phylum Chordata, for example:

(i) fish; or
(ii) amphibian.

(D) A planktonic crustacean, for example, a:

(i) cladoceran; or
(ii) copepod.

(E) A benthic crustacean, for example:

(i) ostracod;
(ii) isopod;
(iii) amphipod; or
(iv) crayfish.

(F) An insect, for example:

(i) mayfly;
(ii) dragonfly;
(iii) damselfly;
(iv) stonefly;
(v) caddisfly;
(vi) mosquito; or
(vii) midge.

(G) A family in a phylum other than Arthropoda or Chordata, for example:

(i) Rotifera;
(ii) Annelida; or
(iii) Mollusca.

(H) A family in any order of insect or any phylum not already represented.

(2) Acute-chronic ratios (ACRs) with at least one (1) species of aquatic animal in at least three (3) different families provided that of the three (3) species at least one (1) is:

(A) a fish;
(B) an invertebrate; and
(C) an acutely sensitive freshwater species.

(3) Results of at least one (1) acceptable test with a freshwater algae or vascular plant is desirable but not required for criterion derivation. If plants are among the aquatic organisms most sensitive to the material, results of

a test with a plant in another phylum (division) should also be available.

(d) If a specific requirement in subsection (c) cannot be satisfied, after deletion of toxicity data described in subsection (e), because that kind of species does not occur at the site, toxicity data from a taxonomically similar sensitive species must be substituted in order to meet the MDRs. The following procedures, listed in order of preference, shall be used to substitute a taxonomically similar species in order to meet the MDRs under subsection (c):

(1) If no species of the kind required occurs at the site, but a species in the same order does, the MDR can only be satisfied by toxicity data for a sensitive species that occurs at the site and is in that order.

(2) If no species in the order occurs at the site, but a sensitive species in the class does, the MDR can only be satisfied by toxicity data for a species that occurs at the site and is in that class.

(3) If no species in the same class occurs at the site, but a species in the phylum does, the MDR can only be satisfied by toxicity data for a sensitive species in that phylum.

(4) If no species in the same phylum occurs at the site, toxicity data from any sensitive species that occurs at the site and is not used to satisfy a different MDR can be used to satisfy the MDR.

(e) The following procedures in this subsection shall be used to develop the toxicity data set that must be used to recalculate a site-specific aquatic life water quality criterion:

(1) For each criterion to be recalculated that meets the MDRs in subsection (c), the original data set that was used to develop the criterion must first be corrected for any errors. Corrections to the data set involve modifying or removing toxicity data, SMAVs, GMAVs, or ACRs that have been found to be incorrect or in some way inappropriate for inclusion in the criterion's data set. Only corrections approved by the commissioner may be used.

(2) After corrections to the original data set have been made, additions to the data set must be made according to the following:

(A) Additions to the data set include adding new toxicity data:

(i) for species that have been determined by the commissioner to occur at the site but are not represented by the original data set; and

(ii) developed to meet the MDRs.

(B) Toxicity data added to a criterion's data set must meet the minimum data quality requirements in 327 IAC 2-1.5-11(c), 327 IAC 2-1.5-11(e)(3) through 2-1.5-11(e)(5), and 327 IAC 2-1.5-11(g) and be approved by the commissioner.

(C) Selective additions to the toxicity data set may not be made. The addition of toxicity data from resistant or insensitive species shall not be allowed. Only the addition of pertinent toxicity data approved by the commissioner shall be included in the calculation of the site-specific criterion.

(3) After corrections and additions to the data set have been made, deletions of toxicity data for species that have been determined by the commissioner not to occur at the site may be made subject to the following:

(A) Comprehensive information on which species occur at the site must be available before deletions from the data set will be permitted.

(B) A species may not be deleted from the data set based on incomplete information on that species.

(C) Acceptable pertinent toxicological data must be available for at least one (1) species in each class of aquatic plants, invertebrates, amphibians, and fish that contains a species that is a critical species at the site.

(D) For each aquatic plant, invertebrate, amphibian, and fish species that occurs at the site and is listed as threatened or endangered under Section 4 of the Endangered Species Act, data must be available or generated for an acceptable surrogate species. Data for each surrogate species must be used as if they are data for species that occur at the site.

(4) To generate the site-specific data set, species shall be deleted from the original data set using the following procedures:

(A) Once corrections and additions have been made to the original data set, species in the data set are grouped taxonomically by:

(i) phylum;

(ii) class;

(iii) order;

(iv) family;

(v) genus; and

(vi) species.

(B) All species that satisfy the definition of occur at the site, including any toxicity data for species that are surrogates of threatened or endangered species that occur at the site, must be included in the final site-specific data set.

(C) Circle each species that satisfies the definition of occur at the site including any surrogates of threatened or endangered species.

(D) The following procedures must be used to determine which of the remaining species from the original toxicity data set must be kept and which must be deleted:

(i) Use the following STEPS to determine which of the remaining species must be deleted and which must not be deleted:

STEP 1. Does the genus occur at the site?

If "No", go to STEP 2.

If "Yes", is there one (1) or more species in the genus that occurs at the site but is not in the data set?

If "No", delete the uncircled species*.

If "Yes", retain the uncircled species*.

STEP 2. Does the family occur at the site?

If "No", go to STEP 3.
If "Yes", is there one (1) or more genera in the family that occurs at the site but is not in the data set?
If "No", delete the uncircled species*.
If "Yes", retain the uncircled species*.
STEP 3. Does the order occur at the site?
If "No", go to STEP 4.
If "Yes", does the data set contain a circled species that is in the same order?
If "No", retain the uncircled species*.
If "Yes", delete the uncircled species*.
STEP 4. Does the class occur at the site?
If "No", go to STEP 5.
If "Yes", does the data set contain a circled species that is in the same class?
If "No", retain the uncircled species*.
If "Yes", delete the uncircled species*.
STEP 5. Does the phylum occur at the site?
If "No", delete the uncircled species*.
If "Yes", does the data set contain a circled species that is in the same phylum?
If "No", retain the uncircled species*.
If "Yes", delete the species*.

* = Continue the deletion process by starting at STEP 1 for any remaining species unless all species in the data set have been considered. The species that are circled and those that are retained constitute the site-specific data set.

(ii) This deletion process must be interpreted to ensure the following:

(AA) Each species that occurs both in the original data set and at the site also occurs in the site-specific data set.

(BB) Each species that occurs at the site but does not occur in the original data set is represented in the site-specific data set by all species in the original data set that are in the same genus.

(CC) Each genus that occurs at the site but does not occur in the original data set is represented in the site-specific data set by all genera in the original data set that are in the same family.

(DD) Each order, class, and phylum that occurs both in the original data set and at the site is represented in the site-specific data set by the one (1) or more species in the original data set that is most closely related to a species that occurs at the site.

(E) After deletion of species that do not occur at the site, if the data remaining in the site-specific data set do not meet the MDRs, additional toxicity testing shall be performed using acceptable procedures.

(F) Chronic tests do not have to be conducted because the original final acute-chronic ratio (FACR) may be used in the derivation of the site-specific final chronic value (FCV). If ACRs are available or are generated so that the chronic MDRs are satisfied using only species that occur at the site, a site-specific FACR may be derived and used in place of the original FACR.

(f) The following procedures in this subsection must be used to calculate the site-specific final acute value (FAV), the acute aquatic criterion (AAC) or criterion maximum concentration (CMC), and the chronic aquatic criterion (CAC) or criterion continuous concentration (CCC) using the site-specific data set developed using the procedures in subsection (e):

(1) The FAV and AAC or CMC must be calculated using the procedures in this subdivision. If the minimum toxicity data set requirements in subsection (c) are met following addition or deletion of one (1) or more sensitive species representative at the site, the site-specific FAV must be recalculated using all the available representative resident species toxicity data and the following procedures:

(A) For each genus for which one (1) or more species mean acute value (SMAV) is available, calculate a genus mean acute value (GMAV) first.

(B) Arrange in order all GMAVs from high to low.

(C) Assign a rank (R) to the GMAV from "1" for the lowest to "n" for the highest.

(D) Calculate the cumulative probability (P) for each GMAV rank ((R) / (n +1)).

(E) Select the four (4) lowest GMAVs that have cumulative probability closest to five-hundredths (0.05).

(F) Using the selected GMAVs and the cumulative probabilities, calculate the following:

(i) $FAV = e^{A}$

(ii) $A = S(\sqrt{0.05}) + L$

(iii) $L = \dfrac{\sum(\ln GMAV) - S(\sum(\sqrt{P}))}{4}$

(iv) $S^2 = \dfrac{\sum((\ln GMAV)^2) - \dfrac{(\sum(\ln GMAV))^2}{4}}{\sum(P) - \dfrac{(\sum(\sqrt{P}))^2}{4}}$

Where:
e^A = natural logarithm (ln) of A
GMAV = genus mean acute value
S^2 = variance (S = standard deviation)
P = cumulative probability for each GMAV at rank (R)/(n + 1)
$\sum$ = summation

(G) If the toxicity data show that acute toxicity for a substance is related to a water characteristic such as hardness, then a final acute equation must be calculated using the procedures in 327 IAC 2-1.5-11(f).

(H) To derive the site-specific AAC or CMC, the site-specific FAV is divided by two (2).

(2) The CAC or CCC shall be calculated using one (1) of the following procedures:

(A) The site-specific FAV will be divided by the FACR calculated as the geometric mean of the ACRs for a toxicant available in the original toxicity data set as well

as new ACRs derived from acceptable aquatic toxicity tests. The geometric mean of the ACRs will be calculated from ACRs that do not differ by a factor of ten (10) from all the freshwater aquatic species. This will also include the ACRs from coldwater aquatic organisms even if they were deleted from the original data set as being not representative of the site. The site-specific CAC or CCC shall be calculated as follows:

$$\text{Site-specific CAC or CCC} = \frac{\text{Site-specific FAV}}{\text{FACR}}$$

(B) If chronic toxicity data are available for at least eight (8) families as defined in subsection (c), a CAC or CCC can be derived in the same manner as the FAV by substituting:

(i) CAC or CCC for FAV;

(ii) chronic for acute;

(iii) maximum acceptable toxicant concentration for LC_{50};

(iv) species mean chronic value for SMAV; and

(v) genus mean chronic value for GMAV.

(C) If the toxicity data show that chronic toxicity for a substance is related to a water characteristic such as hardness, then a final chronic equation must be calculated using the procedures in 327 IAC 2-1.5-11(h).

(3) The site-specific FAV must be divided by the geometric mean of the ACRs for a toxicant. The geometric mean of the ACRs will be calculated from ACRs that do not differ by a factor of ten (10) from all the freshwater aquatic species. A minimum of three (3) ACRs must be available from three (3) species in three (3) different families, including a fish, an invertebrate, and an acutely sensitive freshwater species. This will also include the ACRs from coldwater aquatic organisms even if they were deleted from the original toxicity database in the recalculation of a site-specific criterion as not occurring at the site.

(4) The calculated FAV, AAC or CMC, and CAC or CCC must be lowered, if necessary, to:

(A) protect an aquatic plant, invertebrate, amphibian, or fish species that is a critical species at the site; and

(B) ensure that the criterion is not likely to jeopardize the continued existence of any endangered or threatened species listed under Section 4 of the Endangered Species Act or result in the destruction or adverse modification of such species' critical habitats.

(g) If the variety of aquatic invertebrates, amphibians, and fish is so limited that species in fewer than eight (8) families occur at the site, the following procedures must be used:

(1) For site-specific criteria that will be applicable outside the Great Lakes System, the following procedures must be used:

(A) Toxicity data must be available for at least one (1) species in each of the families that occurs at the site.

(B) The site-specific FAV shall be set equal to the lowest SMAV for the most sensitive aquatic species that occurs at the site.

(C) To derive the site-specific AAC, the site-specific FAV is divided by two (2).

(D) The site-specific CAC will be obtained as provided by subsection (f)(2) by dividing the site-specific FAV by the geometric mean ACR from all freshwater aquatic species or by a factor of eighteen (18) if no ACR is available from at least one (1) freshwater species.

(2) For site-specific criteria that will be applicable inside the Great Lakes System, Tier II values can be calculated using the site-specific data set developed in subsection (e) and the procedures in 327 IAC 2-1.5-12.

(Water Pollution Control Board; 327 IAC 2-1-13; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2065)

SECTION 14. 327 IAC 2-1.5-2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 2-1.5-2 Definitions

Authority: IC 13-14-8; IC 13-14-9; IC 13-18-3
Affected: IC 13-11-2-265; IC 13-18-3-2; IC 13-18-4

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

(1) "Acceptable daily exposure" or "ADE" means an estimate of the maximum daily dose of a substance ~~which~~ **that** is not expected to result in adverse noncancer effects to the general human population, including sensitive subgroups.

(2) "Acceptable endpoints" (subchronic and chronic), for the purpose of wildlife criteria derivation, means those endpoints that affect reproductive or developmental success, organismal viability or growth, or any other endpoint that is, or is directly related to, a parameter that influences population dynamics.

(3) "Acute-chronic ratio" or "ACR" means a standard measure of the acute toxicity of a material divided by an appropriate measure of the chronic toxicity of the same material under comparable conditions.

~~(4) "Acute toxic unit" or "TU_a" means $100/LC_{50}$ where the LC_{50} is expressed as a percent effluent in the test medium of an acute whole effluent toxicity (WET) test that is statistically or graphically estimated to be lethal to fifty percent (50%) of the test organisms.~~

~~(5)~~ **(4)** "Acute toxicity" means concurrent and delayed adverse effects that result from an acute exposure and occur within any short observation period, which begins when the exposure begins, may extend beyond the exposure period, and usually does not constitute a substantial portion of the life span of the organism.

(5) "Acute toxic unit" or "TU_a" means $100/LC_{50}$ where the LC_{50} is expressed as a percent effluent in the test medium of an acute whole effluent toxicity (WET) test that is statistically or graphically estimated to be lethal to fifty percent (50%) of the test organisms.

(6) "Adverse effect" means any deleterious effect to organisms due to exposure to a substance. The term includes effects

that are or may become debilitating, harmful, or toxic to the normal functions of the organism, but does not include nonharmful effects, such as tissue discoloration alone or the induction of enzymes involved in the metabolism of the substance.

(7) "Alternate mixing zone" means a mixing zone granted by the commissioner under 327 IAC 5-2-11.4(b)(4) for a particular pollutant and a particular criterion or value that is larger than that specified in 327 IAC 5-2-11.4(b)(2) or 327 IAC 5-2-11.4(b)(3).

~~(7)~~ **(8)** "Baseline BAF" means the following:

(A) For organic chemicals, a BAF that is based on the concentration of freely dissolved chemical in the ambient water and takes into account the partitioning of the chemical within the organism.

(B) For inorganic chemicals, a BAF that is based on the wet weight of the tissue.

~~(8)~~ **(9)** "Baseline BCF" means the following:

(A) For organic chemicals, a BCF that is based on the concentration of freely dissolved chemical in the ambient water and takes into account the partitioning of the chemical within the organism.

(B) For inorganic chemicals, a BCF that is based on the wet weight of the tissue.

~~(9)~~ **(10)** "Bioaccumulation" means the net accumulation of a substance by an organism as a result of uptake from all environmental sources.

~~(10)~~ **(11)** "Bioaccumulation factor" or "BAF" means the ratio (in L/kg) of a substance's concentration in tissue of an aquatic organism to its concentration in the ambient water, in situations where both the organism and its food are exposed and the ratio does not change substantially over time.

~~(11)~~ **(12)** "Bioaccumulative chemical of concern" or "BCC" has the meaning set forth in section 6 of this rule.

~~(12)~~ **(13)** "Bioconcentration" means the net accumulation of a substance by an aquatic organism as a result of uptake directly from the ambient water through gill membranes or other external body surfaces.

~~(13)~~ **(14)** "Bioconcentration factor" or "BCF" means the ratio (in liters per kilogram) of a substance's concentration in tissue of an aquatic organism to its concentration in the ambient water, in situations where the organism is exposed through the water only and the ratio does not change substantially over time.

~~(14)~~ **(15)** "Biota-sediment accumulation factor" or "BSAF" means the ratio (in kilograms of organic carbon per kilogram of lipid) of a substance's lipid-normalized concentration in tissue of an aquatic organism to its organic carbon-normalized concentration in surface sediment, in situations where:

(A) the ratio does not change substantially over time;

(B) both the organism and its food are exposed; and

(C) the surface sediment is representative of average surface sediment in the vicinity of the organism.

~~(15)~~ **(16)** "Carcinogen" means a substance that causes an increased incidence of benign or malignant neoplasms, or substantially decreases the time to develop neoplasms, in animals or humans. The classification of carcinogens is discussed in section ~~13(b)(1)~~ **14(b)(1)** of this rule.

~~(16)~~ **(17)** "Chronic effect", for purposes of wildlife criteria derivation, means:

(A) an adverse effect that is measured by assessing an acceptable endpoint; and

(B) results from continual exposure over several generations, or at least over a significant part of the test species' projected life span or life stage.

~~(17) "Chronic toxic unit" or "TU_c" means 100/NOEC or 100/IC_{25}, where the NOEC and IC_{25} are expressed as a percent effluent in the test medium.~~

(18) "Chronic toxicity" means concurrent and delayed adverse effects that occur only as a result of a chronic exposure.

(19) "Chronic toxic unit" or "TU_c" means 100/NOEC or 100/IC_{25}, where the NOEC and IC_{25} are expressed as a percent effluent in the test medium.

~~(19)~~ **(20)** "Clean Water Act" or "CWA" means the federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.).

~~(20)~~ **(21)** "Coliform bacteria" means all the aerobic and facultatively anaerobic, gram-negative, nonsporeforming bacilli that produce acid and gas from the fermentation of lactose.

~~(21)~~ **(22)** "Community" means a general collective term to describe the varieties of aquatic species and associated organisms living together in a waterbody.

(23) "Criteria conversion factors" refers to the conversion factors that are multiplied by acute and chronic aquatic criteria developed using toxicological data in the form of total recoverable metal to express the criteria in the form of dissolved metal. The conversion factor for a particular metal and criterion is the fraction of the metal corresponding to an estimate of the percent of the total recoverable metal that was dissolved in the aquatic toxicity tests that were most important in the derivation of the criterion for the metal.

~~(22) "Criteria"~~ **(24) "Criterion"** means a definite numerical value or narrative statement promulgated by the **water pollution control** board to maintain or enhance water quality to provide for and fully protect designated uses of the waters of the state.

~~(23)~~ **(25)** "Criterion continuous concentration" or "CCC" means an estimate of the highest concentration of a material in the water column to which an aquatic community can be exposed indefinitely without resulting in an unacceptable effect.

~~(24)~~ **(26)** "Criterion maximum concentration" or "CMC" means an estimate of the highest concentration of a material in the water column to which an aquatic community can be exposed briefly without resulting in an unacceptable effect.

~~(25)~~ **(27)** "Depuration" means the loss of a substance from an organism as a result of any active or passive process.

~~(26)~~ **(28)** "Designated uses" has the meaning set forth in

section 5 of this rule, whether or not they are being attained.

~~(27)~~ **(29)** "EC_{50}" refers to a statistically or graphically estimated concentration that is expected to cause one (1) or more specified effects in fifty percent (50%) of a group of organisms under specified conditions.

~~(28)~~ **(30)** "Effluent" means a wastewater discharge from a point source to the waters of the state.

~~(29)~~ **(31)** "Endangered or threatened species" includes those species that are listed as endangered or threatened under Section 4 of the Endangered Species Act (ESA).

~~(30)~~ **(32)** "ESA" means the Endangered Species Act (ESA), 16 U.S.C. 1531 ~~through 16 U.S.C. 1544.~~ **et seq.**

~~(31)~~ **(33)** "Existing uses" includes those uses actually attained in the waterbody on or after November 28, 1975, whether or not they are included under section 5 of this rule.

~~(32)~~ **(34)** "Final acute value" or "FAV" means:

(A) a calculated estimate of the concentration of a test material such that ninety-five percent (95%) of the genera (with which acceptable acute toxicity tests have been conducted on the material) have higher GMAVs; or

(B) the SMAV of an important or critical species, if the SMAV is lower than the calculated estimate.

~~(33)~~ **(35)** "Final chronic value" or "FCV" means:

(A) a calculated estimate of the concentration of a test material such that ninety-five percent (95%) of the genera (with which acceptable chronic toxicity tests have been conducted on the material) have higher GMCVs;

(B) the quotient of an FAV divided by an appropriate acute-chronic ratio; or

(C) the SMCV of an important or critical species, if the SMCV is lower than the calculated estimate or the quotient, whichever is applicable.

~~(34)~~ **(36)** "Final plant value" or "FPV" means the lowest plant value that was obtained with an important aquatic plant species in an acceptable toxicity test for which the concentrations of the test material were measured and the adverse effect was biologically important.

~~(35)~~ **(37)** "Food-chain multiplier" or "FCM" means the ratio of a BAF to an appropriate BCF.

~~(36)~~ **(38)** "Full body contact" means direct contact with the water to the point of complete submergence.

~~(37)~~ **(39)** "Genus mean acute value" or "GMAV" means the geometric mean of the SMAVs for the genus.

~~(38)~~ **(40)** "Genus mean chronic value" or "GMCV" means the geometric mean of the SMCVs for the genus.

~~(39)~~ **(41)** "Geometric mean" means the Nth root of the product of N quantities. Alternatively, the geometric mean can be calculated by adding the logarithms of the N numbers, dividing the sum by N, and taking the antilog of the quotient.

~~(40)~~ **(42)** "Great Lakes" means Lake Erie and Lake Michigan.

~~(41)~~ **(43)** "Great Lakes states" means:

(A) Illinois;

(B) Indiana;

(C) Michigan;

(D) Minnesota;

(E) New York;

(F) Ohio;

(G) Pennsylvania; and

(H) Wisconsin.

~~(42)~~ **(44)** "Great Lakes system" means all the streams, rivers, lakes, and other waters of the state within the drainage basin of the Great Lakes within Indiana.

~~(43)~~ **(45)** "Great Lakes water quality wildlife criterion" or "GLWC" means the concentration of a substance that is likely to, if not exceeded, protect avian and mammalian wildlife populations inhabiting the Great Lakes basin from adverse effects resulting from the ingestion of water and aquatic prey taken from surface waters of the Great Lakes system. These criteria are based on existing toxicological studies of the substance of concern and quantitative information about the exposure of wildlife species to the substance, that is, food and water consumption rates. Since toxicological and exposure data for individual wildlife species are limited, a GLWC is derived using a methodology similar to that used to derive noncancer human health criteria. Separate avian and mammalian values are developed using taxonomic class-specific toxicity data and exposure data for five (5) representative Great Lakes basin wildlife species. The following wildlife species selected are representative of avian and mammalian species resident in the Great Lakes basin that are likely to experience the highest exposures to bioaccumulative contaminants through the aquatic food web:

(A) Bald eagle.

(B) Herring gull.

(C) Belted kingfisher.

(D) Mink.

(E) River otter.

~~(44)~~ **(46)** "Ground water" means ~~such accumulations of underground water, natural and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this state, but excluding manmade underground storage or conveyance structures.~~ **water located below the ground surface in interconnected voids and pore spaces in the zone of saturation.**

~~(45)~~ **(47)** "High quality waters" means waterbodies in which, on a parameter by parameter basis, the quality of the waters exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water. The term includes any waterbody for which the pollutant has not been detected in:

(A) the water column; and

(B) nontransient aquatic organisms at levels that would indicate that a water quality criterion is not being met.

~~(46)~~ **(48)** "Human cancer criterion" or "HCC" refers to a human cancer value (HCV) for a pollutant that meets the minimum data requirements for Tier I specified in section 14 of this rule.

~~(47)~~ **(49)** "Human cancer value" or "HCV" means the maximum ambient water concentration of a substance at which a lifetime of exposure will represent a plausible upper-

bound risk of contracting cancer of one (1) in one hundred thousand (100,000) using the exposure assumptions specified in section 14 of this rule from either:

(A) drinking the water, consuming fish from the water, and water-related recreational activities; or

(B) consuming fish from the water and water-related recreational activities.

~~(48)~~ **(50)** "Human noncancer criterion" or "HNC" refers to a human noncancer value (HNV) for a pollutant that meets the minimum data requirements for Tier I specified in section 14 of this rule.

~~(49)~~ **(51)** "Human noncancer value" or "HNV" means the maximum ambient water concentration of a substance at which adverse noncancer effects are not likely to occur in the human population from lifetime exposure using section 14 of this rule from either:

(A) drinking the water, consuming fish from the water, and water-related recreational activities; or

(B) consuming fish from the water and water-related recreation activities.

~~(50)~~ **(52)** "Inhibition concentration 25" or "IC_{25}" means the toxicant concentration that would cause a twenty-five percent (25%) reduction in a nonquantal biological measurement for the test population. For example, the IC_{25} is the concentration of toxicant that would cause a twenty-five percent (25%) reduction in mean young per female or in growth for the test population.

~~(51)~~ **(53)** "LC_{50}" refers to a statistically or graphically estimated concentration that is expected to be lethal to fifty percent (50%) of a group of organisms under specified conditions.

~~(52)~~ **(54)** "Linearized multistage model" means a conservative mathematical model for cancer risk assessment. This model fits linear dose-response curves to low doses. It is consistent with a no-threshold model of carcinogenesis, that is, exposure to even a very small amount of the substance is assumed to produce a finite increased risk of cancer.

~~(53)~~ **(55)** "Lowest observed adverse effect level" or "LOAEL" means the lowest tested dose or concentration of a substance that resulted in an observed adverse effect in exposed test organisms when all higher doses or concentrations resulted in the same or more severe effects.

~~(54)~~ **(56)** "Maximum contaminant level" or "MCL" means the maximum permissible level of a contaminant in water that is delivered to the free-flowing outlet of the ultimate user of a public water ~~supply~~ system.

~~(55)~~ **(57)** "Mixing zone" means an area contiguous to a discharge where the discharged wastewater mixes with the receiving water. Where the quality of the effluent is lower than that of the receiving water, it may not be possible to attain within the mixing zone all beneficial uses attained outside the zone. The mixing zone should not be considered a place where effluents are treated.

~~(56)~~ **(58)** "New Great Lakes discharger" has the meaning set forth in 327 IAC 5-1.5-36.

(59) "Nonthreshold mechanism" means a process that results in some possible effect no matter what level is present. There is no level that may not produce an effect.

~~(57)~~ **(60)** "No observed adverse effect level" or "NOAEL" is the highest tested dose or concentration of a substance that resulted in no observed adverse effect in exposed test organisms where higher doses or concentrations resulted in an adverse effect.

~~(58)~~ **(61)** "No observed effect concentration" or "NOEC" is the highest concentration of toxicant to which organisms are exposed in a full life cycle or partial life cycle (short term) test, that causes no observable adverse effects on the test organisms, that is, the highest concentration of toxicant in which the values for the observed responses are not statistically significantly different from the controls.

~~(59) "Nonthreshold mechanism" means a process that results in some possible effect no matter what level is present. There is no level that may not produce an effect.~~

~~(60)~~ **(62)** "Occur at the site" includes the species, genera, families, orders, classes, and phyla that:

(A) are usually present at the site;

(B) are present at the site only seasonally due to migration;

(C) are present intermittently because they periodically return to or extend their ranges into the site;

(D) were present at the site in the past, are not currently present at the site due to degraded conditions, and are expected to return to the site when conditions improve; or

(E) are present in nearby bodies of water, are not currently present at the site due to degraded conditions, and are expected to be present at the site when conditions improve.

The taxa that occur at the site cannot be determined merely by sampling downstream and upstream of the site at one (1) point in time. The term does not include taxa that were once present at the site but cannot exist at the site now due to permanent physical alteration of the habitat at the site, for example, alterations resulting from dams.

~~(61)~~ **(63)** "Octanol-water partition coefficient" or "K_{OW}" means the ratio of the concentration of a substance in the n-octanol phase to its concentration in the aqueous phase in an equilibrated two-phase octanol-water system. For log K_{OW}, the log of the octanol-water partition coefficient is a base ten (10) logarithm.

~~(62)~~ **(64)** "Open waters of Lake Michigan" means all of the waters within Lake Michigan lakeward from a line drawn across the mouth of tributaries to the lake, including all waters enclosed by constructed breakwaters. For the Indiana Harbor Ship Canal, the boundary of the open waters of Lake Michigan is delineated by a line drawn across the mouth of the harbor from the East Breakwater Light (1995 United States Coast Guard Light List No. 19675) to the northernmost point of the LTV Steel property along the west side of the harbor.

~~(63)~~ **(65)** "Outstanding national resource ~~waters"~~ **water"** means ~~those waters~~ **a water** designated as such by ~~Indiana.~~ **the general assembly after recommendations by the water pollution control board and the environmental quality**

service council under IC 13-18-3-2(o) and IC 13-18-3-2(p). The designation ~~shall~~ **must** describe the quality of ~~such waters~~ **the outstanding national resource water** to serve as the benchmark of the water quality that shall be maintained and protected. Waters that may be considered for designation as outstanding national resource waters include ~~but are not limited to,~~ waterbodies that are recognized as:

(A) important because of protection through official action, such as:

(i) federal or state law;

(ii) presidential or secretarial action;

(iii) international treaty; or

(iv) interstate compact;

(B) having exceptional recreational significance;

(C) having exceptional ecological significance;

(D) having other special environmental, recreational, or ecological attributes; or

(E) waters ~~whose~~ **with respect to which** designation as **an** outstanding national resource ~~waters~~ **water** is reasonably necessary for ~~the~~ protection of other ~~waters so~~ **waterbodies** designated **as outstanding national resource waters.**

~~(64)~~ **(66)** "Outstanding state resource ~~waters"~~ **water"** means ~~those waters~~ **any water** designated as such by ~~Indiana.~~ **the water pollution control board regardless of when the designation occurred or occurs. Waters that may be considered for designation as outstanding state resource waters include waterbodies that have unique or special ecological, recreational, or aesthetic significance.**

~~(65)~~ **(67)** "Point source" has the meaning set forth in 327 IAC 5-1.5-40.

~~(66)~~ **(68)** "Policy" means a statement of administrative practice or decision making guidelines to be followed or implemented to the maximum extent feasible with respect to an identified problematic situation but to be less than strictly enforceable in contrast to a standard or rule of law.

~~(67)~~ **(69)** "Public water supply" means ~~any wells, reservoirs, lakes, rivers, sources of supply, pumps, mains, pipes, facilities, and structures through which water is obtained, treated as may be required, and supplied through a water distribution system for sale to or consumption by the public for drinking, domestic, or other purposes, including state-owned facilities even though the water may not be sold to the~~ **a source of water for a** public **water system.**

(70) "Public water system" has the meaning set forth in 42 U.S.C. 300f.

~~(68)~~ **(71)** "Quantitative structure activity relationship" or "QSAR" or "structure activity relationship" or "SAR" refers to a mathematical relationship between a property (activity) of a chemical and a number of descriptors of the chemical. These descriptors are chemical or physical characteristics obtained experimentally or predicted from the structure of the chemical.

~~(69)~~ **(72)** "Relative source contribution" or "RSC" means the factor (percentage) used in calculating ~~a~~ **an** HNV or HNC to account for all sources of exposure to a contaminant. The RSC reflects the percent of total exposure that may be attributed to surface water through water intake and fish consumption.

~~(70)~~ **(73)** "Risk" means the probability that a substance, when released to the environment, will cause an adverse effect in exposed humans or other living organisms.

~~(71)~~ **(74)** "Risk assessment" means the analytical process used to determine the level of risk.

~~(72)~~ **(75)** "Risk associated dose" or "RAD" refers to a dose of a known or presumed carcinogenic substance in milligrams per kilogram per day, which, over a lifetime of exposure, is estimated to be associated with a plausible upper bound incremental cancer risk equal to one (1) in one hundred thousand (100,000).

(76) "Secondary continuous concentration" or "SCC" means an estimate of the highest concentration of a material in the water column to which an aquatic community can be exposed indefinitely without resulting in an unacceptable effect. The SCC differs from the CCC in that fewer data are required to calculate the SCC than the CCC.

(77) "Secondary maximum concentration" or "SMC" means an estimate of the highest concentration of a material in the water column to which an aquatic community can be exposed briefly without resulting in an unacceptable effect. The SMC differs from the CMC in that fewer data are required to calculate the SMC than the CMC.

~~(73)~~ **(78)** "Slope factor", also known as "q_1*", means the incremental rate of cancer development calculated through use of a linearized multistage model or other appropriate model. ~~It~~ **Slope factor** is expressed in milligrams per kilogram per day of exposure to the chemical in question.

~~(74)~~ **(79)** "Species mean acute value" or "SMAV" means the geometric mean of the results of all acceptable flow-through acute toxicity tests (for which the concentrations of the test material were measured) with the most sensitive tested life stage of the species. For a species for which no such result is available for the most sensitive tested life stage, the SMAV is the geometric mean of the results of all acceptable acute toxicity tests with the most sensitive tested life stage.

~~(75)~~ **(80)** "Species mean chronic value" or "SMCV" means the geometric mean of the results of all acceptable life-cycle and partial life-cycle toxicity tests with the species; for a species of fish for which no such result is available, the SMCV is the geometric mean of all acceptable early life-stage tests.

~~(76)~~ **(81)** "Steady-state" means an equilibrium condition has been achieved in the body burden of a substance in an organism. Steady-state is assumed when the rate of loss of a substance matches its rate of uptake.

~~(77)~~ **(82)** "Stream design flow" means the stream flow that represents critical conditions, upstream from the source, for protection of aquatic life, human health, or wildlife.

~~(78)~~ **(83)** "Subchronic effect" means an adverse effect,

measured by assessing an acceptable endpoint, resulting from continual exposure for a period of time less than that deemed necessary for a chronic test.

~~(79)~~ **(84)** "Surface waters of the state" or "surface water" ~~means:~~

~~(A) either:~~

~~(i) the accumulations of water, surface and underground, natural and artificial, public and private; or~~

~~(ii) a part of the accumulations of water;~~

~~that are wholly or partially within, flow through, or border upon Indiana; and~~

~~(B)~~ **has the meaning set forth in IC 13-11-2-265 except that** the term does not include

~~(i) a private pond; or~~

~~(ii) an off-stream pond, reservoir, or facility built for reduction or control of pollution or cooling of water before discharge;~~

~~unless the discharge from the pond, reservoir, or facility causes or threatens to cause water pollution.~~ **underground waters with the exception of the following:**

(A) The underground portion of the Lost River and its underground tributaries.

(B) Any other underground stream that supports fish or other higher aquatic life forms and its underground tributaries.

~~(80)~~ **(85)** "Threshold effect" means an effect of a substance for which there is a theoretical or empirically established dose or concentration below which the effect does not occur.

~~(81)~~ **(86)** "Tier I criteria" means numeric values derived by use of the Tier I procedures in sections 11 and 13 through 16 of this rule that either have been adopted as numeric criteria into a water quality standard or are used to implement narrative water quality criteria.

~~(82) "Tier I wildlife criterion" means criterion used to denote the number derived from data meeting the Tier I minimum database requirements and will be protective of the two (2) classes of wildlife. The term is synonymous with GLWC, and the two (2) are used interchangeably.~~

~~(83)~~ **(87)** "Tier II values" means numeric values derived by use of the Tier II procedures in sections 12 through 16 of this rule that are used to implement narrative water quality criteria.

~~(84)~~ **(88)** "Toxic substances" means substances that are or may become harmful to:

(A) aquatic life;
(B) humans;
(C) other animals;
(D) plants; or
(E) food chains;

when present in sufficient concentrations or combinations. Toxic substances include, but are not limited to, those pollutants identified as toxic under Section 307(a)(1) of the Clean Water Act.

~~(85)~~ **(89)** "Tributaries of the Great Lakes system" means all waters of the Great Lakes system that are not open waters of Lake Michigan. ~~or connecting channels.~~

~~(86)~~ **(90)** "Trophic level" means a functional classification of taxa within a community that is based on feeding relationships, for example, aquatic green plants comprise the first trophic level and herbivores comprise the second.

~~(87)~~ **(91)** "Uncertainty factor" or "UF" means one (1) of several numeric factors used in operationally deriving criteria from experimental data to account for the quality or quantity of the available data.

~~(88)~~ **(92)** "Uptake" means acquisition of a substance from the environment by an organism as a result of any active or passive process.

~~(89)~~ **(93)** "Variance" means a deviation from a water quality standard.

(94) "Water-effect ratio" or "WER" means the ratio that is computed as a specific pollutant's acute or chronic toxicity endpoint measured in water from the site covered by the criterion, divided by the respective acute or chronic toxicity endpoint in laboratory dilution water.

(95) "Waters of the state" has the meaning set forth in IC 13-11-2-265.

~~(90)~~ **(96)** "Water use designations" means a use of the waters of the state as established by this rule, including, but not limited to, the following:

(A) Industrial water supply.
(B) Agricultural use.
(C) Public water supply.
(D) Full body contact.
(E) Aquatic life.
(F) Limited use.

~~(91) "Waters of the state" means:~~

~~(A) either:~~

~~(i) the accumulations of water, surface and underground, natural and artificial, or public and private; or~~

~~(ii) a part of the accumulations of water;~~

~~that are wholly or partially within, flow through, or border upon Indiana; and~~

~~(B) the term does not include:~~

~~(i) a private pond; or~~

~~(ii) an off-stream pond, reservoir, or facility built for reduction or control of pollution or cooling of water before discharge;~~

~~unless the discharge from the pond, reservoir, or facility causes or threatens to cause water pollution.~~

~~(92)~~ **(97)** "Well-balanced aquatic community" means an aquatic community that: ~~is:~~

(A) **is** diverse in species composition;
(B) contains several different trophic levels; and
(C) is not composed mainly of pollution tolerant species.

(98) "Wildlife criterion" or "WC" means the criterion used to denote the number derived from data meeting the Tier I minimum database requirements and will be protective of the two (2) classes of wildlife. The term is synonymous with GLWC, and the two (2) are used interchangeably.

~~(93)~~ **(99)** "Wildlife value" or "WV" means:

(A) a value used to denote each representative species that results from using the equation presented in section 15 of this rule;

(B) the value obtained from averaging species values within a class; or

(C) any value derived from application of the site-specific procedure provided in section 16 of this rule.

The WVs calculated for the representative species are used to calculate taxonomic class-specific WVs. The WV is the concentration of a substance ~~which,~~ **that,** if not exceeded, should better protect the taxon in question.

~~(94)~~ **(100)** "Zone of initial dilution" or "ZID" means the area of the receiving water directly after the end of the pipe where an instantaneous volume of water gives up to a one-to-one (1:1) dilution of the discharge.

(Water Pollution Control Board; 327 IAC 2-1.5-2; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1363; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3376; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2068)

SECTION 15. 327 IAC 2-1.5-6 IS AMENDED TO READ AS FOLLOWS:

327 IAC 2-1.5-6 Bioaccumulative chemicals of concern

Authority: IC 13-14-8; IC 13-14-9; IC 13-18-3
Affected: IC 13-18-4; IC 13-30-2-1

Sec. 6. (a) A bioaccumulative chemical of concern (BCC) is any chemical that meets the following requirements:

(1) Has the potential to cause adverse effects.

(2) Has a half-life of at least eight (8) weeks in the water column, sediment, and biota.

(3) Upon entering the surface waters, by itself or as its toxic transformation product, accumulates in aquatic organisms by a human health bioaccumulation factor (BAF) greater than one thousand (1,000) after considering metabolism and other physicochemical properties that might enhance or inhibit bioaccumulation, in accordance with the procedure in section 13 of this rule. The minimum BAF information needed to define a chemical as a BCC is either of the following:

(A) For an organic chemical, either a field-measured BAF or a BAF derived using the BSAF methodology.

(B) For an inorganic chemical, including an organometal, either a field-measured BAF or a laboratory-measured BCF.

(b) Pollutants that are BCCs include, but are not limited to, the following:

Table 6-1
Bioaccumulative Chemicals of Concern

CAS Number	Substance
57749	Chlordane
72548	4,4'-DDD; p,p'-DDD; 4,4'-TDE; p,p'-TDE
72559	4,4'-DDE; p,p'-DDE
50293	4,4'-DDT; p,p'-DDT
60571	Dieldrin
118741	Hexachlorobenzene
87683	Hexachlorobutadiene; hexachloro-1,3-butadiene
608731	Hexachlorocyclohexanes; BHCs
319846	alpha-Hexachlorocyclohexane; alpha-BHC
319857	beta-Hexachlorocyclohexane; beta-BHC
319868	delta-Hexachlorocyclohexane; delta-BHC
58899	Lindane; gamma-Hexachlorocyclohexane; gamma-BHC
7439976	Mercury
2385855	Mirex
29082744	Octachlorostyrene
1336363	PCBs; polychlorinated biphenyls
608935	Pentachlorobenzene
39801144	Photomirex
1746016	2,3,7,8-TCDD; dioxin
634662	1,2,3,4-Tetrachlorobenzene
95943	1,2,4,5-Tetrachlorobenzene
8001352	Toxaphene

(c) The substances established in this subsection shall be treated as BCCs under this rule and under 327 IAC 5-2-11.3 through 327 IAC 5-2-11.6. If additional data becomes available (such as a field-measured BAF) for a substance established in this subsection that conclusively demonstrates that the substance should not be treated as a BCC, the commissioner may determine that it is not necessary to treat the substance as a BCC. Substances treated as BCCs include the following:

Table 6-2
Substances Treated as Bioaccumulative Chemicals of Concern

CAS Number	Substance
309002	Aldrin
~~84742~~	~~Dibutyl phthalate~~
72208	Endrin
76448	Heptachlor

(Water Pollution Control Board; 327 IAC 2-1.5-6; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1370; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3376; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2074)

SECTION 16. 327 IAC 2-1.5-8 IS AMENDED TO READ AS FOLLOWS:

327 IAC 2-1.5-8 Minimum surface water quality criteria

Authority: IC 13-14-8; IC 13-14-9; IC 13-18-3
Affected: IC 13-18-4; IC 13-30-2-1; IC 14-22-9

Sec. 8. (a) All surface water quality criteria in this section, except those provided in subsection (b)(1), will cease to be applicable when the stream flows are less than the applicable stream design flow for the particular criterion as determined under 327 IAC 5-2-11.4.

(b) The following are minimum **surface** water quality conditions:

(1) All **surface** waters within the Great Lakes system at all times and at all places, including waters within the mixing

zone, shall meet the minimum conditions of being free from substances, materials, floating debris, oil, or scum attributable to municipal, industrial, agricultural, and other land use practices, or other discharges that do any of the following:

(A) Will settle to form putrescent or otherwise objectionable deposits.

(B) Are in amounts sufficient to be unsightly or deleterious.

(C) Produce color, visible oil sheen, odor, or other conditions in such degree as to create a nuisance.

(D) Are in concentrations or combinations that will cause or contribute to the growth of aquatic plants or algae to such degree as to create a nuisance, be unsightly, or otherwise impair the designated uses.

(E) Are in amounts sufficient to be acutely toxic to, or to otherwise severely injure or kill, aquatic life, other animals, plants, or humans. To assure protection of aquatic life, the waters shall meet the following requirements:

(i) Concentrations of toxic substances shall not exceed the CMC **or SMC** outside the zone of initial dilution or the final acute value (FAV = 2 (CMC) **or 2 (SMC))** in the undiluted discharge unless, for a discharge to a receiving stream or Lake Michigan, an alternate mixing zone demonstration is conducted and approved in accordance with 327 IAC 5-2-11.4(b)(4), in which case, the CMC **or SMC** shall be met outside the ~~discharge-induced~~ **applicable alternate** mixing zone:

(AA) for certain substances, a CMC is established and set forth in subdivision (3), Table 8-1 (which table incorporates subdivision (4), Table 8-2);

(BB) for substances for which a CMC is not specified in subdivision (3), Table 8-1, a CMC shall be calculated by the commissioner using the procedures in section 11 of this rule, or if the minimum data requirements to calculate a CMC are not met, ~~a secondary maximum concentration~~ **an** SMC shall be calculated using the procedures in section 12 of this rule; and

(CC) the CMC or SMC determined under subitem (AA) or (BB) may be modified on a site-specific basis to reflect local conditions in accordance with section 16 of this rule.

(ii) A discharge shall not cause acute toxicity, as measured by whole effluent toxicity tests, at any point in the waterbody. Compliance with this criterion shall be demonstrated if a discharge does not exceed **one and zero-tenths** (1.0) TU_a in the undiluted discharge. For a discharge into a receiving stream or Lake Michigan, for which an alternate mixing zone demonstration is conducted and approved in accordance with 327 IAC 5-2-11.4(b)(4), compliance with this criterion shall be demonstrated if **three-tenths** (0.3) TU_a is not exceeded outside the ~~discharge-induced~~ **applicable alternate** mixing zone.

This clause shall not apply to the chemical control of plants and animals when that control is performed in compliance with approval conditions specified by the Indiana department of natural resources as provided by IC 14-22-9.

(2) At all times, all **surface** waters outside of the applicable mixing zones determined in accordance with ~~327 IAC 5-2-11.4(c) through 327 IAC 5-2-11.4(f)~~ **section 7 of this rule** shall be free of substances in concentrations that, on the basis of available scientific data, are believed to be sufficient to injure, be chronically toxic to, or be carcinogenic, mutagenic, or teratogenic to humans, animals, aquatic life, or plants. To assure protection against the adverse effects identified in this subdivision, a toxic substance or pollutant shall not be present in such waters in concentrations that exceed the most stringent of the following:

(A) A ~~criterion continuous concentration~~ CCC or ~~a secondary continuous concentration~~ **an** SCC to protect aquatic life from chronic toxic effects as follows:

(i) For certain substances, a CCC is established and set forth in subdivision (3), Table 8-1 (which table incorporates subdivision (4), Table 8-2).

(ii) For substances for which a CCC is not specified in subdivision (3), Table 8-1, a CCC shall be calculated by the commissioner using the procedures in section 11 of this rule, or if the minimum data requirements to calculate a CCC are not met, ~~a~~ **an** SCC shall be calculated using the procedures in section 12 of this rule.

(iii) The CCC or SCC determined under item (i) or (ii) may be modified on a site-specific basis to reflect local conditions in accordance with section 16 of this rule.

(iv) To assure protection of aquatic life, a discharge shall not cause chronic toxicity, as measured by whole effluent toxicity tests, outside of the applicable mixing zone. Compliance with this criterion shall be demonstrated if the waterbody does not exceed **one and zero-tenths** (1.0) TU_c at the edge of the mixing zone.

(B) ~~A human noncancer criterion or value~~ **An** HNC or HNV to protect human health from adverse noncancer effects that may result from the consumption of aquatic organisms or drinking water from the waterbody determined as follows:

(i) For certain substances, an HNC is established and set forth in subdivision (5), Table 8-3.

(ii) For substances for which an HNC is not specified in subdivision (5), Table 8-3, an HNC shall be calculated by the commissioner using the procedures in section 14 of this rule, or if the minimum data requirements to calculate ~~a~~ **an** HNC are not met, an HNV shall be calculated using the procedures in section 14 of this rule.

(iii) The HNC or HNV determined under item (i) or (ii) may be modified on a site-specific basis to reflect local conditions in accordance with section 16 of this rule.

(iv) The HNC-nondrinking or HNV-nondrinking for a substance shall apply to all **surface** waters outside the applicable mixing zone for a discharge of that substance. The HNC-drinking or HNV-drinking shall apply at the point of the public ~~drinking~~ water **system** intake.

(C) For carcinogenic substances, ~~a human cancer criterion or value~~ **an** HCC or HCV to protect human health from unacceptable cancer risk of greater than one (1) additional occurrence of cancer per one hundred thousand (100,000)

population as follows:

(i) For certain substances, an HCC is established and set forth in subdivision (5), Table 8-3.

(ii) For substances for which an HCC is not specified in subdivision (5), Table 8-3, an HCC shall be calculated by the commissioner using the procedures in section 14 of this rule or if the minimum data requirements to calculate ~~a~~ **an** HCC are not met, an HCV shall be calculated using the procedures in section 14 of this rule.

(iii) The HCC or HCV determined under item (i) or (ii) may be modified on a site-specific basis to reflect local conditions in accordance with section 16 of this rule.

(iv) The HCC-nondrinking or HCV-nondrinking for a substance shall apply to all **surface** waters outside the applicable mixing zone for a discharge of that substance. The HCC-drinking or HCV-drinking shall apply at the point of the public ~~drinking~~ water **system** intake.

(D) A ~~wildlife criterion~~ WC to protect avian and mammalian wildlife populations from adverse effects ~~which~~ **that** may result from the consumption of aquatic organisms or water from the waterbody as follows:

(i) For certain substances, a WC is established and set forth in **subdivision (6),** Table 8-4.

(ii) For substances for which a WC is not specified in subdivision (6), Table 8-4, a WC shall be calculated by the commissioner using the procedures in section 15 of this rule or if the minimum data requirements to calculate a WC are not met, a ~~wildlife value~~ WV may be calculated using the procedures in section 15 of this rule.

(iii) The WC or WV determined under item (i) or (ii) may be modified on a site-specific basis to reflect local conditions in accordance with section 16 of this rule.

(3) The following establishes **surface** water quality criteria for protection of aquatic life:

Table 8-1

Surface Water Quality Criteria for Protection of Aquatic Life[1]

CAS Number	Substances	CMC (Maximum) (µg/l)	CMC Conversion Factors	CCC (4-Day Average) (µg/l)	CCC Conversion Factors
	Metals (dissolved)[2]				
7440382	Arsenic (III)	**WER**[3](339.8)	1.000	**WER**[3](147.9)	1.000
7440439	Cadmium	**WER**[3]($e^{(1.128\ [\ln(hardness)]-3.6867)}$)	~~0.944~~ **1.136672-[(ln hardness)(0.041838)]**	**WER**[3]($e^{(0.7852\ [\ln(hardness)]-2.715)}$)	~~0.909~~ **1.101672-[(ln hardness)(0.041838)]**
7440473	Chromium (III)	**WER**[3]($e^{(0.819\ [\ln(hardness)]+3.7256)}$)	0.316	**WER**[3]($e^{(0.819\ [\ln(hardness)]+0.6848)}$)	0.860
7440473	Chromium (VI)	**WER**[3](16.02)	0.982	**WER**[3](10.98)	0.962
7440508	Copper	**WER**[3]($e^{(0.9422\ [\ln(hardness)]-1.700)}$)	0.960	**WER**[3]($e^{(0.8545\ [\ln(hardness)]-1.702)}$)	0.960
7439976	Mercury	**WER**[3](1.694)	~~0.850~~ **0.85**	**WER**[3](0.9081)	~~0.850~~ **0.85**
7440020	Nickel	**WER**[3]($e^{(0.846\ [\ln(hardness)]+2.255)}$)	0.998	**WER**[3]($e^{(0.846\ [\ln(hardness)]+0.0584)}$)	0.997
7782492	Selenium			5	0.922
7440666	Zinc	**WER**[3]($e^{(0.8473\ [\ln(hardness)]+0.884)}$)	0.978	**WER**[3]($e^{(0.8473\ [\ln(hardness)]+0.884)}$)	0.986
	Organics (total)				
60571	Dieldrin	0.24	NA	0.056	NA
72208	Endrin	0.086	NA	0.036	NA
56382	Parathion	0.065	NA	0.013	NA
87865	Pentachlorophenol ~~[3]~~ **[4]**	$e^{(1.005[pH]-4.869)}$	NA	$e^{(1.005[pH]-5.134)}$	NA
	Other Substances				
	Chlorides (total)	860000	NA	230000	NA
	Chlorine (total residual)	19	NA	11	NA
	Chlorine (intermittent, total residual) ~~[4]~~ **[5]**	200	NA		NA
57125	Cyanide (free)	22	NA	5.2	NA

[1] Aquatic organisms should not be affected unacceptably if the four (4) day average concentration of any substance in this table does not exceed the CCC more than once every three (3) years on the average and if the one (1) hour average concentration does not exceed the CMC more than once every three (3) years on the average, except possibly where a commercially or recreationally important species is very sensitive.

[2] The CMC and CCC columns of this table contain total recoverable metals criteria (numeric and hardness-based). The criterion for the dissolved metal is calculated by multiplying the appropriate conversion factor by the CMC or CCC. This dissolved CMC or CCC shall be rounded to two (2) significant digits, except when the criteria are used as intermediate values in a calculation, such as in the calculation of water quality-based effluent ~~limits~~ **limitations** (WQBELs).

[3] A value of one (1) shall be used for the WER unless an alternate value is established under section 16 of this rule.

~~[3]~~ **[4]** A CMC and CCC calculated for pentachlorophenol using the equation in this table shall be rounded to two (2) significant digits, except when the criteria are used as intermediate values in a calculation, such as in the calculation of ~~water quality-based effluent limits~~ WQBELs.

~~[4]~~ **[5]** To be considered an intermittent discharge, total residual chlorine shall not be detected in the discharge for a period of more than forty (40) minutes in duration, and such periods shall be separated by at least five (5) hours.

(4) The following establishes dissolved ~~criterion maximum concentrations~~ CMCs and ~~criterion continuous concentrations~~ CCCs for certain metals at selected hardness values calculated from the equations and ~~conversions~~ **conversion** factors in subdivision (3), Table 8-1 **and using a value of one (1) for the WER, where applicable:**

Table 8-2
Metals Concentrations in Micrograms Per Liter; Hardness in Milligrams Per Liter $CaCO_3$[1]

	Arsenic (III)		Cadmium		Chromium (III)		**Chromium (VI)**		Copper		**Mercury**		Nickel		**Selenium**		Zinc	
Hardness	**CMC**	**CCC**	CMC	CCC	CMC	CCC	**CMC**	**CCC**	CMC	CCC	**CMC**	**CCC**	CMC	CCC	**CMC**	**CCC**	CMC	CCC
50	**340**	**150**	2.0	1.3	320	42	**16**	**11**	7.0	5.0	**1.4**	**0.77**	260	29	**–**	**4.6**	65	66
100	**340**	**150**	4.3	2.2	570	74	**16**	**11**	13	9.0	**1.4**	**0.77**	470	52	**–**	**4.6**	120	120
150	**340**	**150**	~~6.7~~ **6.6**	~~3.1~~ **3.0**	790	100	**16**	**11**	20	13	**1.4**	**0.77**	660	73	**–**	**4.6**	170	170
200	**340**	**150**	~~9.3~~ **9.0**	~~3.9~~ **3.7**	1,000	130	**16**	**11**	26	16	**1.4**	**0.77**	840	93	**–**	**4.6**	210	210
250	**340**	**150**	12	~~4.6~~ **4.4**	1,200	160	**16**	**11**	32	20	**1.4**	**0.77**	1,000	110	**–**	**4.6**	250	260
300	**340**	**150**	~~15~~ **14**	~~5.3~~ **5.0**	1,400	180	**16**	**11**	38	23	**1.4**	**0.77**	1,200	130	**–**	**4.6**	300	300
350	**340**	**150**	~~18~~ **17**	~~6.0~~ **5.6**	1,600	210	**16**	**11**	44	26	**1.4**	**0.77**	1,400	150	**–**	**4.6**	340	340
400	**340**	**150**	~~20~~ **19**	~~6.6~~ **6.2**	1,800	230	**16**	**11**	50	29	**1.4**	**0.77**	1,500	170	**–**	**4.6**	380	380
450	**340**	**150**	~~23~~ **22**	~~7.3~~ **6.8**	2,000	250	**16**	**11**	55	32	**1.4**	**0.77**	1,700	190	**–**	**4.6**	420	420
500	**340**	**150**	~~26~~ **24**	~~7.9~~ **7.3**	2,100	280	**16**	**11**	61	35	**1.4**	**0.77**	1,800	200	**–**	**4.6**	460	460

[1] The dissolved metals criteria in this table have been rounded to two (2) significant digits in accordance with subdivision (3), Table 8-1. The equations and conversion factors in subdivision (3), Table 8-1 shall be used instead of the criteria in this table when dissolved metals criteria are used as intermediate values in a calculation, such as in the calculation of WQBELs.

(5) The following establishes **surface** water quality criteria for protection of human health:

Table 8-3
Surface Water Quality Criteria for Protection of Human Health[1]

CAS Number	Substances	Human Noncancer Criteria (HNC) Drinking (µg/l)	Human Noncancer Criteria (HNC) Nondrinking (µg/l)	Human Cancer Criteria (HCC) Drinking (µg/l)	Human Cancer Criteria (HCC) Nondrinking (µg/l)
	Metals (total recoverable)				
7439976	Mercury (including methyl mercury)	0.0018	0.0018		
	Organics (total)				
71432	Benzene	19	510	12	310
57749	Chlordane	0.0014	0.0014	0.00025	0.00025
108907	Chlorobenzene	470	3,200		
50293	DDT	0.002	0.002	0.00015	0.00015
60571	Dieldrin	0.00041	0.00041	6.5×10^{-6}	6.5×10^{-6}
105679	2,4-dimethylphenol	450	8,700		
51285	2,4-dinitrophenol	55	2,800		
118741	Hexachlorobenzene	0.046	0.046	0.00045	0.00045
67721	Hexachloroethane	6	7.6	5.3	6.7
58899	Lindane	0.47	0.5		
75092	Methylene chloride	1,600	90,000	47	2600
1336363	PCBs (class)			6.8×10^{-6}	6.8×10^{-6}
1746016	2,3,7,8-TCDD (dioxin)	6.7×10^{-8}	6.7×10^{-8}	8.6×10^{-9}	8.6×10^{-9}
108883	Toluene	5,600	51,000		

8001352	Toxaphene			6.8×10^{-5}	6.8×10^{-5}
79016	Trichloroethylene			29	370
	Other Substances				
57125	Cyanide (total)	600	48,000		

[1]The HNC and HCC are thirty (30) day average criteria.

(6) The following establishes **surface** water quality criteria for protection of wildlife:

Table 8-4
Surface Water Quality Criteria for Protection of Wildlife[1]

CAS Number	Substances	Wildlife Criteria (µg/l)
	Metals (total recoverable)	
7439976	Mercury (including methylmercury)	0.0013
	Organics (total)	
50293	DDT and metabolites	1.1×10^{-5}
1336363	PCBs (class)	1.2×10^{-4}
1746016	2, 3, 7, 8-TCDD (dioxin)	3.1×10^{-9}

[1]The WC are thirty (30) day average criteria.

(c) This subsection establishes minimum **surface** water quality criteria for aquatic life. In addition to the criteria in subsection (b), this subsection ensures conditions necessary for the maintenance of a well-balanced aquatic community. The following conditions are applicable at any point in the waters outside of the applicable mixing zone, as determined in accordance with section 7 of this rule: ~~and 327 IAC 5-2-11.4(b):~~

(1) There shall be no substances ~~which~~ **that** impart unpalatable flavor to food fish or result in offensive odors in the vicinity of the water.

(2) No pH values below six (6.0) ~~nor~~ **or** above nine (9.0), except daily fluctuations that exceed pH **nine** (9.0) and are correlated with photosynthetic activity, shall be permitted.

(3) Concentrations of dissolved oxygen shall average at least five (5.0) milligrams per liter per calendar day and shall not be less than four (4.0) milligrams per liter at any time.

(4) The following are conditions for temperature:

(A) **There shall be** no abnormal temperature changes that may adversely affect aquatic life unless caused by natural conditions.

(B) The normal daily and seasonal temperature fluctuations that existed before the addition of heat due to other than natural causes shall be maintained.

(C) Water temperatures shall not exceed the maximum limits ~~as established~~ in ~~this clause~~ **the following table** during more than one percent (1%) of the hours in the twelve (12) month period ending with any month. At no time shall the water temperature at such locations exceed the maximum limits in the following table by more than three **(3)** degrees Fahrenheit ~~(3°F)~~ (one and seven-tenths **(1.7)** degrees Celsius): ~~(1.7°C)):~~

Table 8-5
Maximum Instream Water Temperatures

Month	St. Joseph River Tributary to Lake Michigan Upstream of the Twin Branch Dam °F(°C)	All Other Indiana Streams in the Great Lakes System °F(°C)
January	50 (10)	50 (10)
February	50 (10)	50 (10)
March	55 (12.8)	60 (15.6)
April	65 (18.3)	70 (21.1)
May	75 (23.9)	80 (26.7)
June	85 (29.4)	90 (32.2)
July	85 (29.4)	90 (32.2)
August	85 (29.4)	90 (32.2)
September	84 (29.4)	90 (32.2)
October	70 (21.1)	78 (25.5)
November	60 (15.6)	70 (21.1)
December	50 (10)	57 (14.0)

(D) The following temperature criteria shall apply to Lake Michigan:

(i) In all receiving waters, the points of measurement normally shall be in the first meter below the surface at such depths necessary to avoid thin layer surface warming due to extreme ambient air temperatures, but, where required to determine the true distribution of heated wastes and natural variations in water temperatures, measurements shall be at a greater depth and at several depths as a thermal profile.

(ii) There shall be no abnormal temperature changes so as to be injurious to fish, wildlife, or other aquatic life, or the growth or propagation thereof. In addition, plume interaction with the bottom shall be minimized and shall not injuriously affect fish, shellfish, and wildlife spawning or nursery areas.

(iii) The normal daily and seasonal temperature fluctuations that existed before the addition of heat shall be maintained.

(iv) At any time and at a maximum distance of a one thousand (1,000) foot arc inscribed from a fixed point adjacent to the discharge or as agreed upon by the commissioner and federal regulatory agencies:

(AA) the receiving water temperature shall not be more

than three **(3)** degrees Fahrenheit ~~(3°F)~~ (one and seven-tenths **(1.7)** degrees Celsius) ~~(1.7°C))~~ above the existing natural water temperature; and

(BB) thermal discharges to Lake Michigan shall comply with the following maximum temperature requirements:

(aa) Thermal discharges to Lake Michigan shall not raise the maximum temperature in the receiving water above those listed in the following table, except to the extent the permittee adequately demonstrates that the exceedance is caused by the water temperature of the intake water:

Table 8-6
Maximum Water Temperatures

Month	°F(°C)
January	45 (7)
February	45 (7)
March	45 (7)
April	55 (13)
May	60 (16)
June	70 (21)
July	80 (27)
August	80 (27)
September	80 (27)
October	65 (18)
November	60 (16)
December	50 (10)

(bb) If the permittee demonstrates that the intake water temperature is within three **(3)** degrees Fahrenheit ~~(3°F)~~ below an applicable maximum temperature under subitem (aa), Table 8-6, then no more than a three **(3)** degree Fahrenheit ~~(3°F)~~ exceedance of the maximum water temperature shall be permitted.

(v) The facilities described as follows that discharge into the open waters of Lake Michigan shall be limited to the amount essential for blowdown in the operation of a closed cycle cooling facility:

(AA) All facilities that have new waste heat discharges exceeding a daily average of five-tenths (0.5) billion British thermal units per hour. As used in this item, "new waste heat discharge" means a discharge that had not begun operations as of February 11, 1972.

(BB) All facilities with existing waste heat discharges that increase the quantity of waste heat discharged by more than a daily average of five-tenths (0.5) billion British thermal units per hour.

(vi) Water intakes shall be designed and located to minimize entrainment and damage to desirable organisms. Requirements may vary depending upon local conditions, but, in general, intakes shall have minimum water velocity and shall not be located in spawning or nursery areas of important fishes. Water velocity at screens and other exclusion devices shall also be at a minimum.

(vii) Discharges other than those now in existence shall be such that the thermal plumes do not overlap or intersect.

(viii) Facilities discharging more than a daily average of five-tenths (0.5) billion British thermal units of waste heat shall continuously record intake and discharge temperature and flow and make those records available to the public or regulatory agencies upon request.

(5) The following criteria shall be used to regulate ammonia:

(A) Concentrations of total ammonia (as N) shall not exceed the CMC outside the zone of initial dilution or the final acute value (FAV = 2 (CMC)) in the undiluted discharge unless, for a discharge to a receiving stream or Lake Michigan, an alternate mixing zone demonstration is conducted and approved in accordance with 327 IAC 5-2-11.4(b)(4), in which case, the CMC shall be met outside the ~~discharge-induced~~ **applicable alternate** mixing zone. The CMC of total ammonia (as N) is determined using the following equation:

$$CMC = \frac{(0.822)(0.52)(10^{(pK_a - pH)} + 1)}{(FT)(FPH)(2)}$$

Where: $FT = 10^{0.03(20-T)}$

$FPH = 1$; when: $8 \le pH \le 9$; or

$$\frac{1 + 10^{(7.4 - pH)}}{1.25}$$; when: $6.5 \le pH \le 8$

$$pK_a = 0.09018 + \frac{2729}{T + 273.2}$$

T = Temperature in °C

(B) The ~~criterion continuous concentration~~ CCC of total ammonia (as N) is determined using the following equation:

$$CCC = \frac{(0.822)(0.80)(10^{(pK_a - pH)} + 1)}{(FT)(FPH)(RATIO)}$$

Where: $FT = 10^{0.03(20-T)}$

$FPH = 1$; when: $8 \le pH \le 9$; or

$$\frac{1 + 10^{(7.4 - pH)}}{1.25}$$; when: $6.5 \le pH \le 8$

$RATIO = 13.5$; when: $7.7 \le pH \le 9$; or

$$\frac{(20)(10^{(7.7 - pH)})}{1 + 10^{(7.4 - pH)}}$$; when: $6.5 \le pH \le 7.7$

$$pK_a = 0.09018 + \frac{2729}{T + 273.2}$$

T = Temperature in °C

(C) The use of the equations in clause (A) results in the following CMCs for total ammonia (as N) at different temperatures and pHs:

Table 8-7
Criterion Maximum Concentrations for
Total Ammonia (as N)
Temperature (°C)

pH	0	5	10	15	20	25	30
6.5	28.48	26.61	25.23	24.26	23.64	23.32	23.29
6.6	27.68	25.87	24.53	23.59	22.98	22.68	22.65
6.7	26.74	24.99	23.69	22.78	22.20	21.92	21.90
6.8	25.64	23.96	22.72	21.85	21.30	21.03	21.01

6.9	24.37	22.78	21.60	20.78	20.26	20.01	20.00
7.0	22.95	21.45	20.35	19.58	19.09	18.86	18.86
7.1	21.38	19.98	18.96	18.24	17.80	17.59	17.60
7.2	19.68	18.40	17.46	16.81	16.40	16.22	16.24
7.3	17.90	16.73	15.88	15.29	14.93	14.78	14.81
7.4	16.06	15.02	14.26	13.74	13.42	13.30	13.35
7.5	14.23	13.31	12.64	12.19	11.92	11.81	11.88
7.6	12.44	11.65	11.07	10.67	10.45	10.37	10.45
7.7	10.75	10.06	9.569	9.238	9.052	9.003	9.088
7.8	9.177	8.597	8.181	7.907	7.760	7.734	7.830
7.9	7.753	7.268	6.924	6.701	6.589	6.584	6.689
8.0	6.496	6.095	5.813	5.636	5.555	5.569	5.683
8.1	5.171	4.857	4.639	4.508	4.457	4.486	4.602
8.2	4.119	3.873	3.707	3.612	3.584	3.625	3.743
8.3	3.283	3.092	2.967	2.900	2.891	2.942	3.061
8.4	2.618	2.472	2.379	2.335	2.340	2.399	2.519
8.5	2.091	1.979	1.911	1.886	1.903	1.968	2.089
8.6	1.672	1.588	1.540	1.529	1.555	1.625	1.747
8.7	1.339	1.277	1.246	1.246	1.279	1.353	1.475
8.8	1.075	1.030	1.011	1.021	1.060	1.137	1.260
8.9	0.8647	0.8336	0.8254	0.8418	0.8862	0.9650	1.088
9.0	0.6979	0.6777	0.6777	0.6998	0.7479	0.8286	0.9521

(D) The use of the equations in clause (B) results in the following CCCs for total ammonia (as N) at different temperatures and pHs:

Table 8-8
Criterion Continuous Concentrations for
Total Ammonia (as N)
Temperature (°C)

pH	0	5	10	15	20	25	30
6.5	2.473	2.310	2.191	2.106	2.052	2.025	2.022
6.6	2.473	2.311	2.191	2.107	2.053	2.026	2.023
6.7	2.473	2.311	2.191	2.107	2.054	2.027	2.025
6.8	2.473	2.311	2.192	2.108	2.055	2.028	2.027
6.9	2.474	2.312	2.193	2.109	2.056	2.030	2.030
7.0	2.474	2.312	2.193	2.110	2.058	2.033	2.033
7.1	2.475	2.313	2.195	2.112	2.060	2.036	2.037
7.2	2.475	2.314	2.196	2.114	2.063	2.040	2.043
7.3	2.476	2.315	2.198	2.116	2.066	2.044	2.050
7.4	2.477	2.317	2.200	2.119	2.070	2.050	2.058
7.5	2.478	2.319	2.202	2.123	2.075	2.058	2.069
7.6	2.480	2.321	2.206	2.128	2.082	2.067	2.082
7.7	2.450	2.294	2.181	2.106	2.063	2.052	2.071
7.8	2.092	1.959	1.865	1.802	1.769	1.763	1.785
7.9	1.767	1.657	1.578	1.527	1.502	1.501	1.525
8.0	1.481	1.389	1.325	1.285	1.266	1.269	1.295
8.1	1.179	1.107	1.057	1.027	1.016	1.022	1.049
8.2	0.9387	0.8828	0.8450	0.8232	0.8169	0.8263	0.8531
8.3	0.7481	0.7048	0.6762	0.6610	0.6589	0.6705	0.6976
8.4	0.5968	0.5634	0.5421	0.5321	0.5334	0.5468	0.5741
8.5	0.4766	0.4511	0.4357	0.4298	0.4337	0.4485	0.4760
8.6	0.3811	0.3619	0.3511	0.3485	0.3545	0.3704	0.3981
8.7	0.3052	0.2910	0.2839	0.2839	0.2916	0.3083	0.3362
8.8	0.2450	0.2347	0.2305	0.2326	0.2417	0.2591	0.2871
8.9	0.1971	0.1900	0.1881	0.1919	0.2020	0.2199	0.2480
9.0	0.1591	0.1545	0.1545	0.1595	0.1705	0.1889	0.2170

(d) This subsection establishes **surface** water quality for coldwater fish. The waters listed in section ~~5(a)(2)~~ **5(a)(3)** of this rule are designated as salmonid waters and shall be protected for coldwater fish. In addition to subsections (b) and (c), the following criteria are established to ensure conditions necessary for the maintenance of a well-balanced, coldwater fish community and are applicable at any point in the waters outside of the applicable mixing zone:

(1) Dissolved oxygen concentrations shall not be less than six (6.0) milligrams per liter at any time and shall not be less than seven (7.0) milligrams per liter in areas where spawning occurs during the spawning season and in areas used for imprinting during the time salmonids are being imprinted. Dissolved oxygen concentrations in the open waters of Lake Michigan shall not be less than seven (7.0) milligrams per liter at any time.

(2) The maximum temperature rise above natural shall not exceed two **(2)** degrees Fahrenheit ~~(2°F)~~ (one and one-tenth ~~degree~~ **(1.1) degrees** Celsius) ~~(1.1°C))~~ at any time or place ~~nor,~~ **and,** unless due to natural causes, ~~shall~~ the temperature **shall not** exceed the following:

(A) Seventy **(70)** degrees Fahrenheit ~~(70°F)~~ (twenty-one and one-tenth **(21.1)** degrees Celsius) ~~(21.1°C))~~ at any time.

(B) Sixty-five **(65)** degrees Fahrenheit ~~(65°F)~~ (eighteen and three-tenths **(18.3)** degrees Celsius) ~~(18.3°C))~~ during spawning or imprinting periods.

(e) This subsection establishes bacteriological quality for recreational uses as follows:

(1) In addition to subsection (b), the criteria in this subsection shall be used **to:**

(A) ~~to~~ evaluate waters for full body contact recreational uses;

(B) ~~to~~ establish wastewater treatment requirements; and

(C) ~~to~~ establish effluent limits during the recreational season, which is defined as the months of April through October, inclusive.

(2) E. coli bacteria, using membrane filter (MF) count, shall not exceed:

(A) one hundred twenty-five (125) per one hundred (100) milliliters as a geometric mean based on not less than five (5) samples equally spaced over a thirty (30) day period; ~~nor exceed~~ **and**

(B) two hundred thirty-five (235) per one hundred (100) milliliters in any one (1) sample in a thirty (30) day period.

If a geometric mean cannot be calculated because five (5) equally spaced samples are not available, then the criteria stated in subdivision (2) must be met.

(f) This subsection establishes surface water quality for public water ~~supplies.~~ **supply.** In addition to subsection (b), the following ~~standards~~ **criteria** are established to protect the surface water quality at the point at which water is withdrawn for treatment for public supply:

(1) The coliform bacteria group shall not exceed the following:

(A) Five thousand (5,000) per one hundred (100) milliliters as a monthly average value (either MPN or MF count).

(B) Five thousand (5,000) per one hundred (100) milliliters in more than twenty percent (20%) of the samples examined during any month.

(C) Twenty thousand (20,000) per one hundred (100) milliliters in more than five percent (5%) of the samples examined during any month.

(2) Taste and odor producing substances, other than those naturally occurring, shall not interfere with the production of a finished water by conventional treatment consisting of coagulation, sedimentation, filtration, and disinfection.

(3) The concentrations of either chlorides or sulfates shall not exceed two hundred fifty (250) milligrams per liter unless due to naturally occurring sources.

(4) The concentration of dissolved solids shall not exceed seven hundred fifty (750) milligrams per liter unless due to naturally occurring sources. A specific conductance of one thousand two hundred (1,200) micromhos per centimeter (at twenty-five (25) degrees Celsius) may be considered equivalent to a dissolved solids concentration of seven hundred fifty (750) milligrams per liter.

~~(4)~~ **(5)** Surface waters shall be considered acceptable for public ~~supplies~~ **water supply** if radium-226 and strontium-90 are present in amounts not exceeding three (3) and ten (10) picocuries per liter, respectively. In the known absence of strontium-90 and alpha emitters, the water supply is acceptable when the gross beta concentrations do not exceed one thousand (1,000) picocuries per liter.

~~(5)~~ **(6)** The combined concentration of nitrate-N and nitrite-N shall not exceed ten (10) milligrams per liter, and the concentration of nitrite-N shall not exceed one (1) milligram per liter.

~~(6)~~ **(7)** Chemical constituents in the waters shall not be present in such levels as to prevent, after conventional treatment, meeting the drinking water standards contained in 327 IAC 8-2, due to other than natural causes.

(g) This subsection establishes **surface** water quality for industrial water supply. In addition to subsection (b), the ~~standard~~ **criterion** to ensure protection of water quality at the point at which water is withdrawn for use (either with or without treatment) for industrial cooling and processing is that, other than from naturally occurring sources, the dissolved solids shall not exceed seven hundred fifty (750) milligrams per liter at any time. A specific conductance of one thousand two hundred (1,200) micromhos per ~~centimeters~~ **centimeter** (at twenty-five **(25)** degrees Celsius) ~~(25°C))~~ may be considered equivalent to a dissolved solids concentration of seven hundred fifty (750) milligrams per liter.

(h) This subsection establishes **surface** water quality for agricultural uses. The ~~standards~~ **criteria** to ensure water quality conditions necessary for agricultural use are the same as those in subsection (b).

(i) This subsection establishes **surface** water quality for limited uses. The quality of waters designated for limited uses under section 19(a) of this rule shall, at a minimum, meet the following criteria:

(1) The criteria contained in subsection (b).

(2) The criteria contained in subsection (e).

(3) The criteria contained in subsection (g).

(4) The waters must be aerobic at all times.

(5) Notwithstanding subdivisions (1) through (4), the quality of a limited use stream at the point where it becomes physically or chemically capable of supporting a higher use or at its interface with a higher use water segment shall meet the criteria that are applicable to the higher use water.

(j) Additional requirements for the open waters of Lake Michigan are as follows:

(1) In addition to complying with all other applicable subsections, open waters in Lake Michigan shall meet the following criteria:

Table 8-9
Additional Criteria for Lake Michigan

Parameters	Criteria
Dissolved oxygen	Dissolved oxygen concentrations shall not be less than seven (7.0) milligrams per liter at any time at all places outside the applicable mixing zone.
pH	No pH values below six (6.0) ~~nor~~ **or** above nine (9.0), except daily fluctuations that exceed pH 9.0 and are correlated with photosynthetic activity, shall be permitted.
Chlorides	860 mg/l criterion maximum concentration 230 mg/l criterion continuous concentration
Phenols	See subsection (c)(1)
Sulfates	250 mg/l[1]
Total phosphorus	See 327 IAC 5-10-2
Total dissolved solids	750 mg/l[1]
Fluorides	1.0 mg/l[1]
Dissolved iron	300 µg/l[1]

[1] ~~The above-noted criteria are~~ **This criterion is** established to minimize or prevent increased levels of ~~these substances~~ **this substance** in Lake Michigan. For the purposes of establishing water quality-based effluent limitations based on ~~the above-noted criteria, they~~ **this criterion, it** shall be treated as **a** four (4) day average ~~criteria.~~ **criterion.**

(2) During each triennial review of the water quality standards, prior to preliminary adoption of revised rules, the department shall prepare a report for the **water pollution control** board on the monitoring data for the constituents in the following table (Table 8-10), as measured at the drinking water intakes in Lake Michigan. If these data indicate that the levels of the constituents are either increasing or exceed the levels in the table, the report shall provide available information on the known and potential causes of the increased levels of these parameters, the known and potential impacts on aquatic life, wildlife, and human health, and any recommended revisions of the criteria.

Table 8-10

Parameters	Levels
pH	7.5-8.5 s.u.
Chlorides	
Monthly average	15 mg/l
Daily maximum	20 mg/l
Sulfates	
Monthly average	26 mg/l
Daily maximum	50 mg/l
Total phosphorus	
Monthly average	0.03 mg/l
Daily maximum	0.04 mg/l
Total dissolved solids	
Monthly average	172 mg/l
Daily maximum	200 mg/l

~~(k) The following table is for reference only to facilitate the comparison of the former water quality criteria with water quality criteria developed using the methodologies within this rule; these former water quality criteria shall not be used to establish water quality-based permit limits:~~

~~Table 8-11~~

~~Substances~~	~~Acute Aquatic Life~~	~~Chronic~~ ~~Outside of Mixing Zone~~ ~~Chronic Aquatic Life~~	~~Chronic~~ ~~Outside of Mixing Zone~~ ~~Human Health~~	~~Chronic~~ ~~Point of Water Intake~~ ~~Human Health~~
~~Metals (µg/l)~~				
~~(Acid soluble, except as indicated)~~				
~~Antimony~~			~~45,000 (T)~~	~~146 (T)~~
~~Arsenic (III)~~			~~0.175 (C)~~	~~0.022 (C)~~
~~Barium~~				~~1,000 (D)~~
~~Beryllium~~			~~1.17 (C)~~	~~0.068 (C)~~
~~Cadmium~~				~~10 (D)~~
~~Chromium (III)~~			~~3,433,000 (T)~~	~~170,000 (T)~~
~~Chromium (VI)~~				~~50 (D)~~
~~Lead~~	$e^{(1.273 [\ln Hard] - 1.460)}$	$e^{(1.273 [\ln Hard] - 4.705)}$		~~50 (D)~~
~~Nickel~~			~~100 (T)~~	~~13.4 (T)~~
~~Selenium~~				~~10 (D)~~
~~Silver~~	$e^{(1.72[\ln Hard] - 6.52)}/2$			~~50 (D)~~
~~Thallium~~			~~48 (T)~~	~~13 (T)~~
~~Organics (µg/l)~~				
~~Acrolein~~			~~780 (T)~~	~~320 (T)~~
~~Acrylonitrile~~			~~6.5 (C)~~	~~0.58 (C)~~
~~Aldrin~~	~~1.5~~		~~0.00079 (C)~~	~~0.00074 (C)~~
~~Benzidine~~			~~0.0053 (C)~~	~~0.0012 (C)~~
~~Carbon Tetrachloride~~			~~69.4 (C)~~	~~4.0 (C)~~
~~Chlordane~~	~~1.2~~	~~0.0043~~		
~~Chlorinated Benzenes~~				
~~1,2,4,5-Tetrachlorobenzene~~			~~48 (T)~~	~~38 (T)~~
~~Pentachlorobenzene~~			~~85 (T)~~	~~74 (T)~~
~~Hexachlorobenzene~~			~~0.0074 (C)~~	~~0.0072 (C)~~
~~Chlorinated Ethanes~~				
~~1,2-dichloroethane~~			~~2,430 (C)~~	~~9.4 (C)~~
~~1,1,1-trichloroethane~~			~~1,030,000 (T)~~	~~18,400 (T)~~
~~1,1,2-trichloroethane~~			~~418 (C)~~	~~6.0 (C)~~
~~1,1,2,2,-tetrachloroethane~~			~~107 (C)~~	~~1.7(C)~~
~~Chlorinated Phenols~~				

~~2,4,5-trichlorophenol~~				~~2,600 (T)~~
~~2,4,6-trichlorophenol~~			~~36 (C)~~	~~12 (C)~~
~~Chloroalkyl Ethers~~				
~~bis(2-chloroisopropyl) ether~~			~~4,360 (T)~~	~~34.7 (T)~~
~~bis(chloromethyl) ether~~			~~0.018 (C)~~	~~0.000038 (C)~~
~~bis(2-chloroethyl) ether~~			~~13.6 (C)~~	~~0.3 (C)~~
~~Chloroform~~			~~157 (C)~~	~~1.9 (C)~~
~~Chlorpyrifos~~	~~0.083~~	~~0.041~~		
~~DDT~~	~~0.55~~	~~0.001~~		
~~Dichlorobenzenes~~			~~2,600 (T)~~	~~400 (T)~~
~~Dichlorobenzidine~~			~~0.2 (C)~~	~~0.1 (C)~~
~~1,1-dichloroethylene~~			~~18.5 (C)~~	~~0.33 (C)~~
~~2,4-dichlorophenol~~				~~3,090 (T)~~
~~Dichloropropenes~~			~~14,100 (T)~~	~~87 (T)~~
~~2,4-dinitrotoluene~~			~~91 (C)~~	~~1.1 (C)~~
~~1,2-diphenylhydrazine~~			~~5.6 (C)~~	~~0.422 (C)~~
~~Endosulfan~~	~~0.11~~	~~0.056~~	~~159 (T)~~	~~74 (T)~~
~~Endrin~~				~~1.0 (D)~~
~~Ethylbenzene~~			~~3,280 (T)~~	~~1,400 (T)~~
~~Fluoranthene~~			~~54 (T)~~	~~42 (T)~~
~~Halomethanes~~			~~157 (C)~~	~~1.9 (C)~~
~~Heptachlor~~	~~0.26~~	~~0.0038~~	~~0.0028 (C)~~	~~0.0028 (C)~~
~~Hexachlorobutadiene~~			~~500 (C)~~	~~4.47 (C)~~
~~Hexachlorocyclohexane (HCH)~~				
~~alpha HCH~~			~~0.31 (C)~~	~~0.09 (C)~~
~~beta HCH~~			~~0.55 (C)~~	~~0.16 (C)~~
~~gamma HCH (Lindane)~~	~~1.0~~	~~0.08~~	~~0.63 (C)~~	~~0.19 (C)~~
~~Technical HCH~~			~~0.41 (C)~~	~~0.12 (C)~~
~~Hexachlorocyclopentadiene~~				~~206 (T)~~
~~Isophorone~~			~~520,000 (T)~~	~~5,200 (T)~~
~~Nitrobenzene~~				~~19,800 (T)~~
~~4,6-dinitro-o-cresol~~			~~765 (T)~~	~~13.4 (T)~~
~~Nitrosamines~~				
~~N-nitrosodiethylamine~~			~~12.4 (C)~~	~~0.008 (C)~~
~~N-nitrosodimethylamine~~			~~160 (C)~~	~~0.014 (C)~~
~~N-nitrosodibutylamine~~			~~5.9 (C)~~	~~0.064 (C)~~
~~N-nitrosodiphenylamine~~			~~161 (C)~~	~~49 (C)~~
~~N-nitrosopyrrolidine~~			~~919 (C)~~	~~0.16 (C)~~
~~Pentachlorophenol~~				~~1,000 (T)~~
~~Phenol~~				~~3,500 (T)~~
~~Phthalate Esters~~				
~~Dimethyl phthalate~~			~~2,900,000 (T)~~	~~313,000 (T)~~
~~Diethyl phthalate~~			~~1,800,000 (T)~~	~~350,000 (T)~~
~~Dibutyl phthalate~~			~~154,000 (T)~~	~~34,000 (T)~~
~~Di-2-ethylhexyl phthalate~~			~~50,000 (T)~~	~~15,000 (T)~~
~~Polychlorinated Biphenyls (PCBs)~~		~~0.014~~	~~0.00079 (C)~~	~~0.00079 (C)~~
~~Carcinogenic Polynuclear Aromatic Hydrocarbons (PAHs)~~			~~0.31 (C)~~	~~0.028 (C)~~
~~Tetrachloroethylene~~			~~88.5 (C)~~	~~8 (C)~~
~~Toxaphene~~	~~0.73~~	~~0.0002~~		
~~Vinyl Chloride~~			~~5,246 (C)~~	~~20 (C)~~
~~Other Substances~~				
~~Asbestos (fibers/liter)~~				~~300,000 (C)~~
~~Nitrate-N + Nitrite-N (mg/l)~~				~~10 (D)~~
~~Nitrite-N (mg/l)~~				~~1.0 (D)~~

~~Dissolved solids shall not exceed 750 mg/l in all waters.~~
~~Fluoride shall not exceed 2.0 mg/l in all waters.~~
~~Sulfates shall not exceed 250 mg/l in all waters.~~
~~NOTES:~~
~~(T) derived from threshold toxicity.~~
~~(C) derived from nonthreshold cancer risk.~~
~~(D) derived from drinking water standards, equal to or less than threshold toxicity.~~

~~(l) The department shall calculate additional criteria or values as follows:~~

~~(1) The department shall calculate Tier I criteria or Tier II values (Tier I criteria will be calculated whenever sufficient data are available) using the methodologies under sections 11 through 15 of this rule, and shall publish them in the Indiana Register by July 1, 1997, for the following parameters:~~

~~Table 8-12~~

~~Parameter~~	~~Criteria or Values to be Calculated~~
~~Acenaphthene~~	~~Aquatic life and human health~~
~~Acenaphthylene~~	~~Aquatic life[††] and human health[††]~~
~~Aldrin~~	~~Aquatic life, human health, and wildlife~~
~~Aluminum~~	~~Aquatic life and human health~~
~~Anthracene~~	~~Aquatic life and human health~~
~~Arsenic~~	~~Human health~~
~~Benzene~~	~~Aquatic life~~
~~Benzo(a)anthracene~~	~~Aquatic life and human health[††]~~
~~Benzo(a)Pyrene~~	~~Aquatic life and human health[††]~~
~~Benzo(b)fluoranthene~~	~~Aquatic life and human health[††]~~
~~bis(2-ethylhexyl) phthalate~~	~~Aquatic life and human health~~
~~Cadmium~~	~~Human health~~
~~Chloroform~~	~~Aquatic life and human health~~
~~Chromium, Trivalent~~	~~Human health~~
~~Chromium, Hexavalent~~	~~Human health~~
~~Chrysene~~	~~Aquatic life[††] and human health[††]~~
~~DDT~~	~~Aquatic life~~
~~Dibenzofuran~~	~~Aquatic life and human health~~
~~Ethylbenzene~~	~~Aquatic life and human health~~
~~Ethylene glycol~~	~~Aquatic life and human health~~
~~Fluoranthene~~	~~Aquatic life and human health~~
~~Fluorene~~	~~Aquatic life and human health~~
~~Fluoride~~	~~Aquatic life and human health[††]~~
~~Iron~~	~~Aquatic life~~
~~Lead~~	~~Aquatic life and human health~~
~~Manganese~~	~~Aquatic life and human health~~
~~2-Methylnaphthalene~~	~~Aquatic life[††] and human health~~
~~Methylene chloride~~	~~Aquatic life~~
~~Methyl tert-Butyl Ether~~	~~Aquatic life and human health~~
~~Naphthalene~~	~~Aquatic life and human health~~
~~Nickel~~	~~Human health~~
~~Phenanthrene~~	~~Aquatic life and human health~~
~~Pyrene~~	~~Aquatic life[††] and human health~~
~~Selenium~~	~~Acute aquatic life and human health~~
~~Silver~~	~~Aquatic life and human health~~
~~Tetrachloroethylene~~	~~Aquatic life and human health~~
~~Toluene~~	~~Aquatic life~~
~~1,1,1-Trichloroethane~~	~~Aquatic life and human health~~
~~1,3,5-Trimethylbenzene~~	~~Aquatic life[††] and human health~~
~~Xylene~~	~~Aquatic life[††] and human health~~

~~[††]For the above-noted criteria, insufficient data are available to calculate Tier I criteria and Tier II values at this time. Unless data become available by May 1, 1997, IDEM may not be able to develop the above-noted criteria by July 1, 1997.~~

~~(2) By July 1, 1997, the department shall develop a schedule for determining criteria or values for the parameters that have criteria under 327 IAC 2-1-6, Table 1 that do not have criteria in this rule and for which criteria or values have not been calculated under subdivision (1).~~

(Water Pollution Control Board; 327 IAC 2-1.5-8; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1370; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3376; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2074)

SECTION 17. 327 IAC 2-1.5-10 IS AMENDED TO READ AS FOLLOWS:

327 IAC 2-1.5-10 Methods of analysis
Authority: IC 13-14-8; IC 13-14-9; IC 13-18-3
Affected: IC 13-18-4

Sec. 10. The analytical procedures used as methods of analysis to determine the chemical, bacteriological, biological, and radiological quality of waters sampled shall be in accordance with 40 CFR 136 ~~Standard Methods for the Examination of Water and Wastewater,~~ or methods approved by the commissioner. *(Water Pollution Control Board; 327 IAC 2-1.5-10; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1381; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2084)*

SECTION 18. 327 IAC 2-1.5-11 IS AMENDED TO READ AS FOLLOWS:

327 IAC 2-1.5-11 Determination of Tier I aquatic life criteria
Authority: IC 13-14-8; IC 13-14-9; IC 13-18-3
Affected: IC 13-18

Sec. 11. (a) The procedures in this section shall be used to determine acute and chronic Tier I aquatic life criteria.

(b) The following considerations regarding the toxic substance shall be considered during the development of **Tier I** criteria or **Tier II** values:

(1) Each separate chemical that does not ionize substantially in most natural bodies of water should usually be considered

a separate substance, except possibly for structurally similar organic compounds that only exist in large quantities as commercial mixtures of the various compounds and apparently have similar biological, chemical, physical, and toxicological properties.

(2) For chemicals that ionize substantially in most natural bodies of water, for example:

(A) some phenols and organic acids;

(B) some salts of phenols and organic acids; and

(C) most inorganic salts and coordination complexes of metals and metalloid;

all forms that would be in chemical equilibrium should usually be considered one (1) substance. Each different oxidation state of a metal and each different nonionizable covalently bonded organometallic compound should usually be considered a separate substance.

(3) The definition of the toxic substance should include an operational analytical component. Identification of a substance simply as sodium, for example, implies total sodium, but leaves room for doubt. If total is meant, it must be explicitly stated. Even total has different operational definitions, some of which do not necessarily measure all that is there in all samples. Thus, it is also necessary to reference or describe the analytical method that is intended. The selection of the operational analytical component should take into account the analytical and environmental chemistry of the material and various practical considerations, such as labor and equipment requirements, and whether the method would require measurement in the field or would allow measurement after samples are transported to a laboratory. **The operational analytical considerations shall be as follows:**

(A) The primary requirements of the operational analytical component shall be as follows:

(i) Appropriate for use on samples of receiving water.

(ii) Rarely result in underprotection or overprotection of aquatic organisms and their uses.

(iii) Compatible with the available toxicity and bioaccumulation data without making extrapolations that are too hypothetical. Toxicity is the property of a substance, or combination of substances, to adversely affect organisms.

(B) Because an ideal analytical measurement will rarely be available, an appropriate compromise measurement will usually have to be used. This compromise measurement must fit with the general approach that if an ambient concentration is lower than the criterion **or value,** unacceptable effects will probably not occur, that is, the compromise measure must not err on the side of underprotection when measurements are made on a surface water. What is an appropriate measurement in one (1) situation might not be appropriate for another. For example, because the chemical and physical properties of an effluent are usually quite different from those of the receiving water, an analytical method that is appropriate for analyzing an effluent might not be appropriate for expressing a criterion **or value,** and vice versa. A criterion **or value** should be based on an appropriate analytical measurement, but the criterion **or value** is not rendered useless if an ideal measurement either is not available or is not feasible. The analytical chemistry of the substance might have to be taken into account when defining the substance or when judging the acceptability of some toxicity tests, but a criterion **or value** must not be based on the sensitivity of an analytical method. When aquatic organisms are more sensitive than routine analytical methods, the proper solution is to develop better analytical methods.

(4) The use of dissolved metal to set and measure compliance with water quality standards for aquatic life is the recommended approach, because dissolved metal more closely approximates the bioavailable fraction of metal in the water column than does total recoverable metal. ~~One (1) reason is that a primary mechanism for water column toxicity is adsorption at the gill surface that requires metals to be in the dissolved form.~~ Reasons for the consideration of total recoverable metals criteria **or values** include risk management considerations not covered by evaluation of water column toxicity. The commissioner may, after considering sediment and food chain effects for a particular metal, decide to take a more conservative approach for the metal. ~~since metals are elements, hence persistent.~~ This approach could include the ~~use~~ **expression of aquatic life criteria or values for the metal in the form** of total recoverable metal. ~~in the development of a water quality criterion for a specific metal.~~ **If the commissioner determines that it is appropriate to express aquatic life criteria or values for a particular metal in the form of dissolved metal, the criteria or values shall be determined as follows:**

(A) If sufficient toxicological data in the form of dissolved metal are available, these data shall be used in this section and sections 12 and 16 of this rule to derive aquatic life criteria or values directly in the form of dissolved metal.

(B) If sufficient toxicological data in the form of dissolved metal are not available, aquatic life criteria or values shall be derived in the form of total recoverable metal using the procedures in this section and sections 12 and 16 of this rule and then multiplied by criteria conversion factors approved by the commissioner to express the criteria or values in the form of dissolved metal.

(C) If sufficient toxicological data in the form of dissolved metal are not available and criteria conversion factors for the particular metal have not been approved by the commissioner, aquatic life criteria or values shall be derived in the form of total recoverable metal using the procedures in this section and sections 12 and 16 of this rule and expressed in the form of total recoverable metal.

(c) The following data collection procedures shall be followed when developing Tier I aquatic life criteria:

(1) Collect all data available on the substance concerning toxicity to aquatic animals and plants.
(2) All data that are used should be available in typed, dated, and signed hard copy, for example:
(A) publication;
(B) manuscript;
(C) letter; or
(D) memorandum;
with enough supporting information to indicate that acceptable test procedures were used and that the results are reliable. In some cases, it may be appropriate to obtain written information from the investigator, if possible. Information that is not available for distribution shall not be used.
(3) Questionable data, whether published or unpublished, shall not be used. For example, data shall be rejected if they are from tests:
(A) that did not contain a control treatment;
(B) in which too many organisms in the control treatment died or showed signs of stress or disease; and
(C) in which distilled or deionized water was used as the dilution water without the addition of appropriate salts.
(4) Data on technical grade materials may be used if appropriate, but data on formulated mixtures and emulsifiable concentrates of the material shall not be used.
(5) For some highly volatile, hydrolyzable, or degradable materials, it may be appropriate to use only results of flow-through tests in which the concentrations of test material in test solutions were measured using acceptable analytical methods. A flow-through test is a test with aquatic organisms in which test solutions flow into constant-volume test chambers either intermittently, for example, every few minutes, or continuously, with the excess flowing out.
(6) Data shall be rejected if obtained using the following:
(A) Brine shrimp, because they usually only occur naturally in water with salinity greater than thirty-five (35) grams per kilogram.
(B) Species that do not have reproducing wild populations in North America.
(C) Organisms that were previously exposed to substantial concentrations of the test material or other contaminants.
(D) Saltwater species except for use in deriving ~~acute-chronic ratio~~ ACR.
(7) Questionable data, data on formulated mixtures and emulsifiable concentrates, and data obtained with species nonresident to North America or previously exposed organisms may be used to provide auxiliary information but shall not be used in the derivation of criteria.

(d) This subsection establishes the data requirements for the development of Tier I aquatic life criteria as follows:
(1) Certain data should be available to help ensure that each of the major kinds of possible adverse effects receives adequate consideration. An adverse effect is a change in an organism that is harmful to the organism. Exposure means contact with a chemical or physical agent. Results of acute and chronic toxicity tests with representative species of aquatic animals are necessary so that data available for tested species can be considered a useful indication of the sensitivities of appropriate untested species. Fewer data concerning toxicity to aquatic plants are usually available because procedures for conducting tests with plants and interpreting the results of such tests are not as well developed.
(2) To derive a ~~Great Lakes~~ Tier I criterion for aquatic organisms and their uses, the following must be available:
(A) Results of acceptable acute (or chronic) tests (see subsections (e) and (g)) with at least one (1) species of freshwater animal in at least eight (8) different families such that all of the following are included:
(i) The family Salmonidae in the class Osteichthyes.
(ii) One (1) other family (preferably a commercially or recreationally important, warmwater species) in the class Osteichthyes, for example:
(AA) bluegill; or
(BB) channel catfish.
(iii) A third family in the phylum Chordata, for example:
(AA) fish; or
(BB) amphibian.
(iv) A planktonic crustacean, for example:
(AA) a cladoceran; or
(BB) copepod.
(v) A benthic crustacean, for example:
(AA) ostracod;
(BB) isopod;
(CC) amphipod; or
(DD) crayfish.
(vi) An insect, for example:
(AA) mayfly;
(BB) dragonfly;
(CC) damselfly;
(DD) stonefly;
(EE) caddisfly;
(FF) mosquito; or
(GG) midge.
(vii) A family in a phylum other than Arthropoda or Chordata, for example:
(AA) Rotifera;
(BB) Annelida; or
(CC) Mollusca.
(viii) A family in any order of insect or any phylum not already represented.
(B) Acute-chronic ratios (see subsection (g)) with at least one (1) species of aquatic animal in at least three (3) different families provided that of the three (3) species **at least one (1) is:**
(i) ~~at least one (1) is~~ a fish;
(ii) ~~at least one (1) is~~ an invertebrate; and
(iii) ~~at least one (1) species is~~ an acutely sensitive freshwater species (the other two (2) may be saltwater species).
(C) Results of at least one (1) acceptable test with a freshwater algae or vascular plant is desirable but not required

for criterion derivation (see subsection (i)). If plants are among the aquatic organisms most sensitive to the material, results of a test with a plant in another phylum (division) should also be available.

(3) If all required data are available, a numerical criterion can usually be derived except in special cases. For example, derivation of a chronic criterion might not be possible if the available ACRs vary by more than a factor of ten (10) with no apparent pattern. Also, if a criterion is to be related to a water quality characteristic (see subsections (f) and (h)), more data will be required.

(4) Confidence in a criterion usually increases as the amount of available pertinent information increases. Thus, additional data are usually desirable.

(e) The following procedures shall be used to calculate ~~a final acute value~~ **an** FAV:

(1) Appropriate measures of the acute (short term) toxicity of the material to a variety of species of aquatic animals are used to calculate the FAV. The calculated FAV is a calculated estimate of the concentration of a test material such that ninety-five percent (95%) of the genera (with which acceptable acute toxicity tests have been conducted on the material) have higher ~~genus mean acute values~~ GMAVs. An acute test is a comparative study in which organisms that are subjected to different treatments are observed for a short period usually not constituting a substantial portion of their life span. However, in some cases, the ~~species mean acute value~~ SMAV of a commercially or recreationally important species of the Great Lakes system is lower than the calculated FAV, then the SMAV replaces the calculated FAV in order to provide protection for that important species.

(2) Acute toxicity tests shall be conducted in accordance with this subsection.

(3) Except for results with saltwater annelids and mysids, results of acute tests during which the test organisms were fed should not be used, unless data indicate that the food did not affect the toxicity of the test material. (If the minimum acute-chronic ratio data requirements (as described in subsection (d)(2)(B)) are not met with freshwater data alone, saltwater data may be used.)

(4) Results of acute tests conducted in unusual dilution water, for example, dilution water in which total organic carbon or particulate matter exceeded five (5) milligrams per liter, shall not be used, unless a relationship is developed between acute toxicity and organic carbon or particulate matter or unless data show that the organic carbon or particulate matter do not affect toxicity.

(5) Acute values must be based upon endpoints ~~which~~ **that** reflect the total severe adverse impact of the test material on the organisms used in the test. Therefore, only the following kinds of data on acute toxicity to aquatic animals shall be used:

(A) Tests with daphnids and other cladocerans must be started with organisms less than twenty-four (24) hours old, and tests with midges must be started with second or third instar larvae. It is preferred that the results should be the forty-eight (48) hour EC_{50} based on the total percentage of organisms killed and immobilized. If such an EC_{50} is not available for a test, the forty-eight (48) hour LC_{50} should be used in place of the desired forty-eight (48) hour EC_{50}. An EC_{50} or LC_{50} of longer than forty-eight (48) hours can be used as long as the animals were not fed and the control animals were acceptable at the end of the test.

(B) It is preferred that the results of a test with embryos and larvae of barnacles, bivalve molluscs (clams, mussels, oysters, and scallops), sea urchins, lobsters, crabs, shrimp, and abalones be the ninety-six (96) hour EC_{50} based on the percentage of organisms with incompletely developed shells plus the percentage of organisms killed. If such an EC_{50} is not available from a test, of the values that are available from the test, the lowest of the following should be used in place of the desired ninety-six (96) hour EC_{50}:

(i) Forty-eight (48) **hour** to ninety-six (96) hour EC_{50}s based on percentage of organisms with incompletely developed shells plus percentage of organisms killed.

(ii) Forty-eight (48) **hour** to ninety-six (96) hour EC_{50}s based upon percentage of organisms with incompletely developed shells.

(iii) Forty-eight (48) hour to ninety-six (96) hour LC_{50}s.

If the minimum acute-chronic ratio data requirements (as described in subsection (d)(2)(B)) are not met with freshwater data alone, saltwater data may be used.

(C) It is preferred that the result of tests with all other aquatic animal species and older life stages of barnacles, bivalve molluscs (clams, mussels, oysters, and scallops), sea urchins, lobsters, crabs, shrimp, and abalones be the ninety-six (96) hour EC_{50} based on percentage of organisms exhibiting loss of equilibrium plus percentage of organisms immobilized plus percentage of organisms killed. If such an EC_{50} is not available from a test, of the values that are available from a test, the lower of the following should be used in place of the desired ninety-six (96) hour EC_{50}:

(i) The ninety-six (96) hour EC_{50} based on percentage of organisms exhibiting loss of equilibrium plus percentage of organisms immobilized.

(ii) The ninety-six (96) hour LC_{50}.

(D) Tests results that take into account the number of young produced, such as most tests with protozoans, are not considered acute tests, even if the duration was ninety-six (96) hours or less.

(E) If the tests were conducted properly, acute values reported as greater than values and those that are above the solubility of the test material should be used, because rejection of such acute values would bias the final acute value by eliminating acute values for resistant species.

(6) If the acute toxicity of the material to aquatic animals has been shown to be related to a water quality characteristic, such as hardness or particulate matter for freshwater animals, refer to subsection (f).

(7) The agreement of the data within and between species must be considered. Acute values that appear to be questionable in comparison with other acute and chronic data for the same species and for other species in the same genus must not be used. For example, if the acute values available for a species or genus differ by more than a factor of ten (10), rejection of some or all of the values would be appropriate, absent countervailing circumstances.

(8) If the available data indicate that one (1) or more life stages are at least a factor of two (2) more resistant than one (1) or more other life stages of the same species, the data for the more resistant life stages shall not be used in the calculation of the SMAV because a species cannot be considered protected from acute toxicity if all of the life stages are not protected.

(9) For each species for which at least one (1) acute value is available, the SMAV shall be calculated as the geometric mean of the results of all acceptable flow-through acute toxicity tests in which the concentrations of test material were measured with the most sensitive tested life stage of the species. For a species for which no such result is available, the SMAV shall be calculated as the geometric mean of all acceptable acute toxicity tests with the most sensitive tested life stage, for example, results of flow-through tests in which the concentrations were not measured and results of static and renewal tests based on initial concentrations (nominal concentrations are acceptable for most test materials if measured concentrations are not available) of test material. A renewal test is a test with aquatic organisms in which either the test solution in a test chamber is removed and replaced at least once during the test or the test organisms are transferred into a new test solution of the same composition at least once during the test. A static test is a test with aquatic organisms in which the solution and organisms that are in a test chamber at the beginning of the test remain in the chamber until the end of the test, except for removal of dead test organisms. The following conditions are applicable to this calculation:

(A) Data reported by original investigators must not be rounded off. Results of all intermediate calculations must not be rounded off to fewer than four (4) significant digits.

(B) The geometric mean of N numbers is the Nth root of the product of the N numbers. Alternatively, the geometric mean can be calculated by adding the logarithms of the N numbers, dividing the sum by N, and taking the antilog of the quotient. The geometric mean of two (2) numbers is the square root of the product of the two (2) numbers, and the geometric mean of one (1) number is that number. Either natural (base e) or common (base 10) logarithms can be used to calculate geometric means as long as they are used consistently within each set of data, for example, the antilog used must match the logarithms used.

(C) Geometric means, rather than arithmetic means, are used here because the distributions of sensitivities of individual organisms in toxicity tests on most materials and the distributions of sensitivities of species within a genus are more likely to be lognormal than normal. Similarly, geometric means are used for ACRs because quotients are likely to be closer to lognormal than normal distributions. In addition, division of the geometric mean of a set of numerators by the geometric mean of the set of denominators will result in the geometric mean of the set of corresponding quotients.

(10) For each genus for which one (1) or more SMAVs are available, the GMAV shall be calculated as the geometric mean of the SMAVs available for the genus.

(11) Order the GMAVs from high to low.

(12) Assign ranks, R, to the GMAVs from "1" for the lowest to "N" for the highest. If two (2) or more GMAVs are identical, assign them successive ranks.

(13) Calculate the cumulative probability, P, for each GMAV as R/(N + 1).

(14) Select the four (4) GMAVs ~~which~~ **that** have cumulative probabilities closest to five-hundredths (0.05) (if there are fewer than fifty-nine (59) GMAVs, these will always be the four (4) lowest GMAVs).

(15) Using the four (4) selected GMAVs and Ps, calculate:

(A) $FAV = e^{A}$

(B) $A = S(\sqrt{0.05}) + L$

(C) $L = \dfrac{\sum(\ln GMAV) - S(\sum(\sqrt{P}))}{4}$

(D) $S^2 = \dfrac{\sum((\ln GMAV)^2) - \dfrac{(\sum(\ln GMAV))^2}{4}}{\sum(P) - \dfrac{(\sum(\sqrt{P}))^2}{4}}$

(16) If, for a commercially or recreationally important species of the Great Lakes system, the geometric mean of the acute values from flow-through tests in which the concentrations of test material were measured is lower than the calculated FAV, then that geometric mean must be used as the FAV instead of the calculated FAV.

(f) When enough data are available to show that acute toxicity to two (2) or more species is similarly related to a water quality characteristic, the relationship shall be taken into account as described in subdivisions (1) through (6) or using analysis of covariance. The two (2) methods are equivalent and produce identical results. The manual method described in this subsection provides an understanding of this application of covariance analysis, but computerized versions of covariance analysis are much more convenient for analyzing large data sets. If two (2) or more factors affect toxicity, multiple regression analysis shall be used. An acute criterion based on a water quality characteristic shall be determined as follows:

(1) For each species for which comparable acute toxicity values are available at two (2) or more different values of the water quality characteristic, perform a least squares regression of the acute toxicity values on the corresponding values of the water quality characteristic to obtain the slope and its ninety-five percent (95%) confidence limits for each species.

(Because the best documented relationship is that between hardness and acute toxicity of metals in fresh water and a log-log relationship fits these data, geometric means and natural logarithms of both toxicity and water quality are used in the rest of this section. For relationships based on other water quality characteristics, such as pH **or** temperature, no transformation or a different transformation might fit the data better, and appropriate changes will be necessary throughout this section.)

(2) Decide whether the data for each species are relevant, taking into account the range and number of the tested values of the water quality characteristic and the degree of agreement within and between species. For example, a slope based on six (6) data points might be of limited value if it is based only on data for a very narrow range of values of the water quality characteristic. A slope based on only two (2) data points, however, might be useful if it is consistent with other information and if the two (2) points cover a broad enough range of the water quality characteristic. In addition, acute values that appear to be questionable in comparison with other acute and chronic data available for the same species and for other species in the same genus should not be used. For example, if after adjustment for the water quality characteristic, the acute values available for a species or genus differ by more than a factor of ten (10), rejection of some or all of the values would be appropriate, absent countervailing justification. **Return to subsection (e)(7), using the results of tests conducted under conditions and in waters similar to those commonly used for toxicity tests with the species** if **any of the following occur:**

(A) Useful slopes are not available for at least one (1) fish and one (1) invertebrate.

~~or if~~ **(B)** The available slopes are too dissimilar.

~~or if~~ **(C)** Too few data are available to adequately define the relationship between acute toxicity and the water quality characteristic. ~~return to subsection (e)(7), using the results of tests conducted under conditions and in waters similar to those commonly used for toxicity tests with the species.~~

(3) For each species, calculate the geometric mean of the available acute values and then divide each of the acute values for the species by the geometric mean for the species. This normalizes the acute values so that the geometric mean of the normalized values for each species individually and for any combination of species is one (1.0).

(4) Similarly normalize the values of the water quality characteristic for each species individually using the procedure in subdivisions (1) through (3).

(5) Individually for each species perform a least squares regression of the normalized acute values of the water quality characteristic. The resulting slopes and ninety-five percent (95%) confidence limits will be identical to those obtained in subdivision (1). If, however, the data are actually plotted, the line of best fit for each individual species will go through the point 1,1 in the center of the graph.

(6) Treat all of the normalized data as if they were all for the same species and perform a least squares regression of all of the normalized acute values on the corresponding normalized values of the water quality characteristic to obtain the pooled acute slope, V, and its ninety-five percent (95%) confidence limits. If all of the normalized data are actually plotted, the line of best fit will go through the point 1,1 in the center of the graph.

(7) For each species calculate the geometric mean, W, of the acute toxicity values and the geometric mean, X, of the values of the water quality characteristic. (These were calculated in subdivisions (3) and (4)).

(8) For each species, calculate the logarithm, Y, of the SMAV at a selected value, Z, of the water quality characteristic using the equation:

$$Y = \ln W - V(\ln X - \ln Z)$$

(9) For each species calculate the SMAV at Z using the equation:

$$SMAV = e^{Y}$$

(10) Alternatively, the SMAVs at Z can be obtained by skipping the step in subdivision (7), using the equations in subdivisions (8) and (9) to adjust each acute value individually to Z, and then calculating the geometric mean of the adjusted values for each species individually. This alternative procedure allows an examination of the range of the adjusted acute values for each species.

(11) Obtain the FAV at Z by using the procedure described in subsection (e)(10) through (e)(15).

(12) If, for a commercially or recreationally important species of the Great Lakes system, the geometric mean of the acute values at Z from flow-through tests in which the concentrations of the test material were measured is lower than the FAV at Z, then the geometric mean must be used as the FAV instead of the FAV calculated in subdivision (11).

(13) The final acute equation is written as:

$$(FAV) = e^{(V[\ln(\text{water quality characteristic})] + A - V[\ln Z])}$$

Where: V = pooled acute slope.

A = ln(FAV at Z).

Because V, A, and Z are known, the FAV can be calculated for any selected value of the water quality characteristic.

(g) The following procedures shall be used to calculate ~~a final chronic value~~ **an** FCV:

(1) Depending on the data that are available concerning chronic toxicity to aquatic animals, the FCV can be calculated in the same manner as the FAV or by dividing the FAV by the final acute-chronic ratio (FACR). In some cases, it might not be possible to calculate ~~a~~ **an** FCV. The FCV is one (1) of the following as applicable:

(A) A calculated estimate of the concentration of a test material such that ninety-five percent (95%) of the genera (with which acceptable chronic toxicity tests have been conducted on the material) have higher GMCVs.

(B) The quotient of an FAV divided by an appropriate ACR (ACR is a way of relating acute and chronic toxicities).

(C) The SMCV of an important or critical species, if the SMCV is lower than the calculated estimate or the quotient.

(2) Chronic values shall be based on results of flow-through (except renewal is acceptable for daphnids) chronic tests in which the concentrations of test material in the test solutions were properly measured at appropriate times during the test. A chronic test is a comparative study in which organisms that are subjected to different treatments are observed for a long period or a substantial portion of their life span.

(3) Results of chronic tests in which survival, growth, or reproduction in the control treatment was unacceptably low shall not be used. The limits of acceptability will depend on the species.

(4) Results of chronic tests conducted in unusual dilution water, for example, dilution water in which total organic carbon or particulate matter exceeded five (5) milligrams per liter, should not be used unless:

(A) a relationship is developed between chronic toxicity and organic carbon or particulate matter; or ~~unless~~

(B) data show that the organic carbon or particulate matter do not affect toxicity.

(5) Chronic values must be based on endpoints and lengths of exposure appropriate to the species. Therefore, only results of the following kinds of chronic toxicity tests shall be used:

(A) Life-cycle toxicity tests consisting of exposures of each of two (2) or more groups of individuals of a species to a different concentration of the test material throughout a life cycle. To ensure that all life stages and life processes are exposed, the following procedures shall be followed:

(i) Tests with fish should:

(AA) begin with embryos or newly hatched young less than forty-eight (48) hours old;

(BB) continue through maturation and reproduction; and ~~should~~

(CC) end not less than twenty-four (24) days (ninety (90) days for salmonids) after the hatching of the next generation.

For fish, data should be obtained and analyzed on survival and growth of adults and young, maturation of males and females, eggs spawned per female, embryo viability (salmonids only), and hatchability.

(ii) Tests with daphnids should begin with young less than twenty-four (24) hours old and last for not less than twenty-one (21) days, and for ceriodaphnids not less than seven (7) days. For daphnids, data should be obtained and analyzed on survival and young per female.

(iii) Tests with mysids should begin with young less than twenty-four (24) hours old and continue until seven (7) days past the median time of first brood release in the controls. For mysids, data should be obtained and analyzed on survival, growth, and young per female.

(B) Partial life-cycle toxicity tests consist of exposures of each of two (2) or more groups of individuals of a species of fish to a different concentration of the test material through most portions of a life cycle. Partial life-cycle tests are allowed with fish species that require more than a year to reach sexual maturity, so that all major life stages can be exposed to the test material in less than fifteen (15) months. A life-cycle test is a comparative study in which organisms that are subjected to different treatments are observed at least from a life stage in one (1) generation to the same life stage in the next generation. Exposure to the test material should:

(i) begin with immature juveniles at least two (2) months prior to active gonad development;

(ii) continue through maturation and reproduction; and

(iii) end not less than twenty-four (24) days (ninety (90) days for salmonids) after the hatching of the next generation.

Data should be obtained and analyzed on survival and growth of adults and young, maturation of males and females, eggs spawned per female, embryo viability (salmonids only), and hatchability.

(C) Early life-stage toxicity tests consisting of twenty-eight (28) to thirty-two (32) day (sixty (60) days post hatch for salmonids) exposures of the early life stages of a species of fish from shortly after fertilization through embryonic, larval, and early juvenile development. Data should be obtained and analyzed on survival and growth. (Note: Results of an early life-stage test are used as predictions of results of life-cycle and partial life-cycle tests with the same species. Therefore, when results of a life-cycle or partial life-cycle test are available, results of an early life-stage test with the same species should not be used. Also, results of early life-stage tests in which the incidence of mortalities or abnormalities increased substantially near the end of the test shall not be used because the results of such tests are possibly not good predictions of comparable life-cycle or partial life-cycle tests.)

(6) A chronic value may be obtained by analyzing chronic data using regression analysis or by calculating the geometric mean of the lower and upper chronic limits from a chronic test as follows:

(A) A lower chronic limit is the highest tested concentration:

(i) in an acceptable chronic test;

(ii) ~~which~~ **that** did not cause an unacceptable amount of adverse effect on any of the specified biological measurements; and

(iii) below which no tested concentration caused an unacceptable effect.

(B) An upper chronic limit is the lowest tested concentration:

(i) in an acceptable chronic test;

(ii) ~~which~~ **that** did cause an unacceptable amount of adverse effect on one (1) or more of the specified biological measurements; and

(iii) above which all tested concentrations also caused such an effect.

(C) Because various authors have used a variety of terms and definitions to interpret and report results of chronic tests, reported results should be reviewed carefully. The

amount of effect that is considered unacceptable is often based on a statistical hypothesis test, but might also be defined in terms of a specified percent reduction from the controls. A small percent reduction (for example, three percent (3%)) might be considered acceptable even if it is statistically significantly different from the control, whereas a large percent reduction (for example, thirty percent (30%)) might be considered unacceptable even if it is not statistically significant.

(7) If the chronic toxicity of the material to aquatic animals has been shown to be related to a water quality characteristic, such as hardness or particulate matter for freshwater animals, refer to subsection (h).

(8) If chronic values are available for species in eight (8) families as described in subsection (d)(2)(A), ~~a~~ **an** SMCV shall be calculated for each species for which at least one (1) chronic value is available by calculating the geometric mean of the results of all acceptable life-cycle and partial life-cycle toxicity tests with the species; for a species of fish for which no such result is available, the SMCV is the geometric mean of all acceptable early life-stage tests. Appropriate GMCVs shall also be calculated. A GMCV is the geometric mean of the SMCVs for the genus. The FCV shall be obtained using the procedure described in subsection (e)(10) through (e)(15), substituting SMCV and GMCV for SMAV and GMAV, respectively. See subdivision (10).

(9) The following procedures are for use when chronic values are not available for species in eight (8) taxonomic families as described in subsection (d)(2)(A):

(A) For each chronic value for which at least one (1) corresponding appropriate acute value is available, calculate an ACR, using for the numerator the geometric mean of the results of all acceptable flow-through (except static is acceptable for daphnids and midges) acute tests in the same dilution water in which the concentrations are measured. For fish, the acute tests should be conducted with juveniles. The acute tests should be part of the same study as the chronic test. If acute tests were not conducted as part of the same study, but were conducted as part of a different study in the same laboratory and dilution water, then they may be used. If no such acute tests are available, results of acute tests conducted in the same dilution water in a different laboratory may be used. If no such acute tests are available, an ACR shall not be calculated.

(B) For each species, calculate the SMACR as the geometric mean of all ACRs available for that species. If the minimum ACR data requirements (as described in subsection (d)(2)(B)) are not met with freshwater data alone, saltwater data may be used along with the freshwater data.

(C) For some materials, the ACR seems to be the same for all species, but for other materials the ratio seems to increase or decrease as the SMAV increases. Thus the FACR can be obtained in the following three (3) ways, depending on the data available (If the available SMACRs do not fit one (1) of these cases, a FACR may not be obtained and a Tier I FCV probably cannot be calculated.):

(i) If the species mean ACR seems to increase or decrease as the SMAVs increase, the FACR shall be calculated as the geometric mean of the ACRs for species whose SMAVs are close to the FAV.

(ii) If no major trend is apparent and the ACRs for all species are within a factor of ten (10), the FACR shall be calculated as the geometric mean of all of the SMACRs.

(iii) If the most appropriate SMACRs are less than two (2.0), and especially if they are less than one (1.0), acclimation has probably occurred during the chronic test. In this situation, because continuous exposure and acclimation cannot be assured to provide adequate protection in field situations, the FACR should be assumed to be two (2), so that the FCV is equal to the ~~Criterion Maximum Concentration~~ CMC. (See subsection (k)(1).)

(D) Calculate the FCV by dividing the FAV by the FACR. FCV = FAV ÷ FACR. If there is a final acute equation rather than ~~a~~ **an** FAV, see also subsection (f).

(10) If the SMCV of a commercially or recreationally important species of the Great Lakes system is lower than the calculated FCV, then that SMCV must be used as the FCV instead of the calculated FCV.

(h) When enough data are available to show that toxicity to two (2) or more species is similarly related to a water quality characteristic, the relationship shall be taken into account as described in this subsection. A final chronic equation can be derived in two (2) ways. The procedure described in subdivision (1) will result in the chronic slope being the same as the acute slope. The procedure described in subdivision (2) will usually result in the chronic slope being different from the acute slope. A chronic criterion based on a water quality characteristic shall be determined as follows:

(1) If ACRs are available for enough species at enough values of the water quality characteristic to indicate that the ACR appears to be the same for all species and appears to be independent of the water quality characteristic, then:

(A) calculate the FACR as the geometric mean of the available SMACRs;

(B) calculate the FCV at the selected value Z of the water quality characteristic by dividing the FAV at Z (see subsection (f)(11)) by the FACR; and

(C) use V = pooled acute slope (see subsection (f)(6)), and L = pooled chronic slope (see subdivision (2)(F)).

(2) When enough data are available to show that chronic toxicity to at least one (1) species is related to a water quality characteristic, the relationship should be taken into account as described in clauses (A) through (E) or using analysis of covariance. The two (2) methods are equivalent and produce identical results. The manual method described in this subdivision provides an understanding of this application of covariance analysis, but computerized versions of covariance analysis are much more convenient for analyzing large data sets. If two (2) or more factors affect toxicity, multiple

regression analysis shall be used. **The manual method for taking into account the relationship of chronic toxicity to a water quality characteristic is the following:**

(A) For each species for which comparable chronic toxicity values are available at two (2) or more different values of the water quality characteristic, perform a least squares regression of the chronic toxicity values on the corresponding values of the water quality characteristic to obtain the slope and its ninety-five percent (95%) confidence limits for each species. (Because the best documented relationship is that between hardness and acute toxicity of metals in fresh water and a log-log relationship fits these data, geometric means and natural logarithms of both toxicity and water quality are used in the rest of this section. For relationships based on other water quality characteristics, such as pH **or** temperature, no transformation, or a different transformation might fit the data better, and appropriate changes will be necessary throughout this section. It is probably preferable, but not necessary, to use the same transformation that was used with the acute values in subsection (f).)

(B) Decide whether the data for each species are relevant, taking into account the range and number of the tested values of the water quality characteristic and the degree of agreement within and between species. For example, a slope based on six (6) data points might be of limited value if it is based only on data for a very narrow range of values of the water quality characteristic. A slope based on only two (2) data points, however, might be more useful if it is consistent with other information and if the two (2) points cover a broad range of the water quality characteristic. In addition, chronic values that appear to be questionable in comparison with other acute and chronic data available for the same species and for other species in the same genus in most cases should not be used. For example, if after adjustment for the water quality characteristic, the chronic values available for a species or genus differ by more than a factor of ten (10), rejection of some or all of the values is, in most cases, absent countervailing circumstances, appropriate. If a useful chronic slope is not available for at least one (1) species or if the available slopes are too dissimilar or if too few data are available to adequately define the relationship between chronic toxicity and the water quality characteristic, it might be appropriate to assume that the chronic slope is the same as the acute slope, which is equivalent to assuming that the ACR is independent of the water quality characteristic. Alternatively, return to subsection (g)(8), using the results of tests conducted under conditions and in waters similar to those commonly used for toxicity tests with the species.

(C) Individually for each species, calculate the geometric mean of the available chronic values and then divide each chronic value for a species by the mean for the species. This normalizes the chronic values so that the geometric mean of the normalized values for each species individually, and for any combination of species, is one (1.0).

(D) Similarly, normalize the values of the water quality characteristic for each species individually.

(E) Individually for each species, perform a least squares regression of the normalized chronic toxicity values on the corresponding normalized values of the water quality characteristic. The resulting slopes and the ninety-five percent (95%) confidence limits will be identical to those obtained in this subdivision. Now, however, if the data are actually plotted, the line of best fit for each individual species will go through the point 1,1 in the center of the graph.

(F) Treat all of the normalized data as if they were all the same species and perform a least squares regression of all of the normalized chronic values on the corresponding normalized values of the water quality characteristic to obtain the pooled chronic slope, L, and its ninety-five percent (95%) confidence limits. If all normalized data are actually plotted, the line of best fit will go through the point 1,1 in the center of the graph.

(G) For each species, calculate the geometric mean, M, of the toxicity values and the geometric mean, P, of the values of the water quality characteristic. (These are calculated in clauses (C) and (D).)

(H) For each species, calculate the logarithm, Q, of the SMCV at a selected value, Z, of the water quality characteristic using the equation:

$$Q = \ln M - L(\ln P - \ln Z)$$

(Although it is not necessary, it is recommended that the same value of the water quality characteristic be used here as was used in subsection (f).)

(I) For each species, calculate ~~a~~ **an** SMCV at Z using the equation:

$$SMCV = e^{Q}$$

(Alternatively, the SMCV at Z can be obtained by skipping clause (G), using the equations in clause (H) and this clause to adjust each chronic value individually to Z, and then calculating the geometric means of the adjusted values for each species individually. This alternative procedure allows an examination of the range of the adjusted chronic values for each species.)

(J) Obtain the FCV at Z by using the procedure described in subsection (e)(10) through (e)(15).

(3) If the SMCV at Z of a commercially or recreationally important species of the Great Lakes system is lower than the calculated FCV at Z, then that SMCV shall be used as the FCV at Z instead of the calculated FCV.

(4) The final chronic equation is written as:

$$FCV = e^{(L[\ln(\text{water quality characteristic})] + \ln S - L[\ln Z])}$$

Where: L = pooled chronic slope.
S = FCV at Z.

Because L, S, and Z are known, the FCV can be calculated for any selected value of the water quality characteristic.

(i) ~~A final plant value~~ **An** FPV is the lowest plant value that was obtained with an important aquatic plant species in an

acceptable toxicity test for which the concentrations of the test material were measured and the adverse effect was biologically important. Appropriate measures of the toxicity of the material to aquatic plants are used to compare the relative sensitivities of aquatic plants and animals. Although procedures for conducting and interpreting the results of toxicity tests with plants are not well developed, results of tests with plants usually indicate that criteria ~~which~~ **that** adequately protect aquatic animals and their uses will, in most cases, also protect aquatic plants and their uses. When developing an FPV, the following apply:

(1) A plant value is the result of a ninety-six (96) hour test conducted with an alga or a chronic test conducted with an aquatic vascular plant. (A test of the toxicity of a metal to a plant shall not be used if the medium contained an excessive amount of a complexing agent, such as EDTA, that might affect the toxicity of the metal. Concentrations of EDTA above two hundred (200) µg/L should be considered excessive.)

(2) The FPV shall be obtained by selecting the lowest result from a test with an important aquatic plant species in which the concentrations of test material are measured and the endpoint is biologically important.

(j) Pertinent information that could not be used in earlier subsections may be available concerning adverse effects on aquatic organisms. The following are data that may affect a criterion if the data were obtained with an important species, the test concentrations were measured, and the endpoint was biologically important:

(1) Cumulative and delayed toxicity, reduction in survival, growth, or reproduction, or any other adverse effect that has been shown to be biologically important. Delayed toxicity is an adverse effect to an organism that results from, and occurs after the end of, its exposure to one (1) or more test materials.

(2) Species for which no other data are available.

(3) Behavioral, biochemical, physiological, microcosm, and field studies.

(4) Tests conducted in unusual dilution water (see subsections (e)(4) and (g)(4)).

(5) Chronic tests in which the concentrations were not measured (see subsection (g)(2)).

(6) Tests with previously exposed organisms (see subsection (c)(6)(C)).

(7) Tests on formulated mixtures or emulsifiable concentrates (see subsection (c)(4)).

(k) A criterion consists of two (2) concentrations, the ~~criterion maximum concentration~~ CMC and the ~~criterion continuous concentration~~ CCC, determined as follows:

(1) The CMC is equal to one-half (½) the FAV. The CMC is an estimate of the highest concentration of a material in the water column to which an aquatic community can be exposed briefly without resulting in an unacceptable effect.

(2) The CCC is equal to the lowest of the FCV or the FPV (if available) unless other data (see subsection (j)) show that a lower value should be used. The CCC is an estimate of the highest concentration of a material in the water column to which an aquatic community can be exposed indefinitely without resulting in an unacceptable effect. If toxicity is related to a water quality characteristic, the CCC is obtained from the final chronic equation or FPV (if available) that results in the lowest concentrations in the usual range of the water quality characteristic, unless other data (see subsection (j)) show that a lower value should be used.

(3) Round both the CMC and the CCC to two (2) significant digits.

(4) The criterion is stated as follows:

(A) The procedures described in the Tier I methodology indicate that, except possibly where a commercially or recreationally important species is very sensitive, aquatic organisms should not be affected unacceptably if the four (4) day average concentration of (insert name of substance) does not exceed (insert the CCC for the substance) µg/L more than once every three (3) years on the average and if the one (1) hour average concentration does not exceed (insert the CMC for the substance) µg/L more than once every three (3) years on the average.

(B) If the CMC averaging period of one (1) hour or the CCC averaging period of four (4) days is inappropriate for the pollutant, or if the once-in-three-year allowable excursion frequency is inappropriate for the pollutant or for the sites to which a criterion is applied, then the commissioner may specify alternative averaging periods or frequencies. The choice of an alternative averaging period or frequency shall be justified by a scientifically defensible analysis demonstrating that the alternative values will protect the aquatic life uses of the water. Appropriate laboratory data or well-designed field biological surveys shall be submitted to the U.S. EPA as justification for differing averaging periods or frequencies of exceedance.

(Water Pollution Control Board; 327 IAC 2-1.5-11; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1381; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3377; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2084)

SECTION 19. 327 IAC 2-1.5-16 IS AMENDED TO READ AS FOLLOWS:

327 IAC 2-1.5-16 Site-specific modifications to Tier I criteria and Tier II values

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

Sec. 16. (a) Site-specific modifications ~~of~~ **to Tier I** criteria and **Tier II** values ~~in this subsection~~ must be protective of designated uses and aquatic life, wildlife, or human health. In addition, any site-specific modifications that result in less stringent criteria must be based on a sound scientific rationale and shall not be likely to jeopardize the continued existence of endangered or threatened species listed or proposed under Section 4 of the Endangered Species Act (ESA) or result in the destruction or adverse modification of such species' critical

~~habitat.~~ **habitats.** More stringent modifications shall be developed to protect endangered or threatened species listed or proposed under Section 4 of the ESA, where such modifications are necessary to ensure that water quality is not likely to jeopardize the continued existence of such species or result in the destruction or adverse modification of such species' critical ~~habitat.~~ **habitats.** More stringent modifications may also be developed to protect candidate (C1) species being considered by the U.S. Fish and Wildlife Service (FWS) for listing under Section 4 of the ESA, where such modifications are necessary to protect such species. Criteria and values may be modified on a site-specific basis to reflect local environmental conditions as restricted by the following provisions:

(1) Aquatic life criteria or values may be modified on a site-specific basis as follows:

(A) Aquatic life criteria or values may be modified on a site-specific basis to provide an additional level of protection.

(B) Less stringent site-specific modifications to chronic or acute aquatic life criteria or values may be developed when either of the following conditions ~~apply:~~ **applies:**

(i) The local water quality characteristics such as pH, hardness, temperature, or color alter the biological availability or toxicity of a pollutant.

(ii) The sensitivity of the aquatic organisms species that occur at the site differs from the species actually tested in developing the criteria.

(C) Less stringent modifications also may be developed to acute and chronic aquatic life criteria or values to reflect local physical and hydrological conditions.

(D) Any modifications to protect threatened or endangered aquatic species required by this subsection may be accomplished using either of the two (2) following procedures:

(i) If the ~~species mean acute value~~ SMAV for a listed or proposed species or for a surrogate of such species is lower than the calculated ~~final acute value~~ FAV, such lower SMAV may be used instead of the calculated FAV in developing site-specific modified criteria.

(ii) The site-specific criteria may be calculated using the recalculation procedure for site-specific modifications **under 327 IAC 2-1-13.**

(2) Wildlife criteria or values may be modified on a site-specific basis as follows:

(A) Wildlife water quality criteria may be modified on a site-specific basis to provide an additional level of protection.

(B) Less stringent site-specific modifications to wildlife water quality criteria may be developed when a site-specific bioaccumulation factor (BAF) is derived that is lower than the system-wide BAF derived under section 13 of this rule. The modification must consider both the mobility of prey organisms and wildlife populations in defining the site for which criteria are developed. In addition, there must be a showing that the following conditions are met:

(i) Any increased uptake of the toxicant by prey species utilizing the site will not cause adverse effects in wildlife populations.

(ii) Wildlife populations utilizing the site or downstream waters will continue to be fully protected.

(C) Any modification to protect endangered or threatened wildlife species required by this subsection must consider both the mobility of prey organisms and wildlife populations in defining the site for which criteria are developed and may be accomplished by using the following recommended method:

(i) The procedure presented in section 15 of this rule is used, substituting appropriate species-specific toxicological, epidemiological, or exposure information, including changes to the BAF.

(ii) An interspecies uncertainty factor of one (1) shall be used where epidemiological data are available for the species in question. If necessary, species-specific exposure parameters may be derived as presented in section 15 of this rule.

(iii) An intraspecies uncertainty factor, to account for protection of individuals within a wildlife population, shall be applied in the denominator of the effect part of the wildlife equation in section 15 of this rule in a manner consistent with the other uncertainty factors described in section 15 of this rule.

(iv) The resulting wildlife value for the species in question should be compared to the two (2) class specific wildlife values that were previously calculated, and the lowest of the three (3) shall be selected as the site-specific modification.

(3) BAFs may be modified on a site-specific basis as follows:

(A) BAFs may be modified on a site-specific basis to larger values where reliable data show that local bioaccumulation is greater than the system-wide value.

(B) BAFs may be modified on a site-specific basis to lower values, where scientifically defensible, if:

(i) the fraction of the total chemical that is freely dissolved in the ambient water is different than that used to derive the system-wide BAFs, that is, the concentrations of particulate organic carbon and the dissolved organic carbon are different than those used to derive the system-wide BAFs;

(ii) input parameters of the model, such as the structure of the aquatic food web and the disequilibrium constant, are different at the site than those used to derive the system-wide BAFs;

(iii) the percent lipid of aquatic organisms that are consumed and occur at the site is different than that used to derive the system-wide BAFs; or

(iv) site-specific field-measured BAFs or biota-sediment accumulation factor (BSAFs) are determined.

(C) If site-specific BAFs are derived, they shall be derived using section 13 of this rule.

(D) Any more stringent modifications to protect threatened or endangered species required by this subsection shall be

derived using procedures set forth in the methodology in section 13 of this rule.

(4) Human health criteria or values may be modified on a site-specific basis as follows:

(A) Human health criteria or values may be modified on a site-specific basis to provide an additional level of protection **in accordance with the following:**

(i) Human health criteria or values shall be modified on a site-specific basis to provide additional protection appropriate for highly exposed subpopulations.

(ii) Any person may request the commissioner to develop a site-specific modification of a human health criterion or value to make it more stringent.

(iii) The commissioner shall develop the site-specific modification of the human health criterion or value to make it more stringent when either of the following conditions ~~apply:~~ **applies:**

~~(i)~~ **(AA)** Local fish consumption rates are higher than the rate used to derive a human health criterion or value applicable under section 14 of this rule.

~~(ii)~~ **(BB)** A site-specific BAF is derived that is higher than that used in deriving a human health criterion of value under section 14 of this rule.

(B) Less stringent site-specific modifications to human health criteria or values may be developed when ~~any~~ **either** of the following conditions ~~apply:~~ **applies:**

(i) Local fish consumption rates are lower than the rate used in deriving human health criteria or values under section 14 of this rule.

(ii) A site-specific BAF is derived that is lower than that used in deriving human health criteria or values under section 14 of this rule.

(C) Local fish consumption rates referenced in clauses ~~(A)(i)~~ **(A)(iii)(AA)** and (B)(i) shall be determined by a fish consumption survey applicable to the site.

(b) The application requirements for site-specific modifications to criteria or values allowed under subsection (a) are as follows:

(1) Except as provided in subdivision (2), the application requirements for site-specific modifications to criteria or values shall be determined by the commissioner on a case-by-case basis.

(2) Applications for site-specific modifications to criteria or values allowed under subsection (a)(1)(B)(ii) and determined using the recalculation procedure under 327 IAC 2-1-13 shall include:

(A) A list of all species of aquatic invertebrates, amphibians, and fishes that are known to occur at the site, along with the source of the information.

(B) A list of all aquatic plant, invertebrate, amphibian, and fish species that are critical species at the site, including all species that occur at the site and are listed as threatened or endangered under section 4 of the ESA.

(C) A site-specific version of Table 1 from a criteria document produced by the U.S. EPA after 1984.

(D) A site-specific version of Table 3 from a criteria document produced by the U.S. EPA after 1984.

(E) A list of all species that were deleted.

(F) Each new calculated criterion (FAV, CMC, SMC, CCC, or SCC).

(G) Each lowered criterion or value if one (1) or more were lowered to protect a specific species.

~~(b)~~ **(c)** Upon receipt of ~~a request~~ **an application** for a site-specific modification ~~of~~ **to** a ~~water quality~~ criterion or value, the commissioner shall:

(1) For a site-specific modification listed under subsection (d):

(A) provide notice, request comment, and, if requested, schedule and hold a public meeting on the application in accordance with ~~327 IAC 5-2-11.2.~~ **327 IAC 5-2-11.2(b); and**

(B) publish all pertinent information about the proposed site-specific modification on the department's Web site.

(2) For a site-specific modification not listed under subsection (d):

(A) approve or deny the application; and

(B) if the application is approved, initiate a rulemaking to have the site-specific modification incorporated into the water quality standards.

~~(c) When the commissioner proposes a site-specific modification to a criterion or value as allowed in this section, the tentative decision shall be incorporated into a draft permit which is made available for public comment under 327 IAC 5-3-9. The commissioner shall notify the other Great Lakes states of such a proposal and, for less stringent criteria, shall supply appropriate supporting documentation for the modification.~~

~~(d) A final decision regarding a site-specific modification to a criterion or value shall be incorporated into the final NPDES permit. In addition, a reopening clause shall be included in the NPDES permit allowing the permit to be modified or revoked and reissued to revise the WQBELs based on the modified criterion or value if the board fails to adopt or the U.S. EPA fails to approve the modified criterion or value.~~

~~(e) All~~ **(d)** Site-specific modifications to ~~water quality~~ criteria ~~shall be incorporated into these water quality standards rules during the next revision of the water quality standards. The U.S. EPA will have the opportunity to review the modified criterion~~ or ~~value upon submittal of the revised water quality standards rules adopted by the board.~~ **values do not require a rulemaking if they are:**

(1) allowed under subsection (a) and to a criterion not specifically listed in this rule or to a value;

(2) allowed under subsection (a)(1)(B)(i) and determined using a WER;

(3) allowed under subsection (a)(1)(B)(ii) and determined using the recalculation procedure under 327 IAC 2-1-13; or

(4) required under subsection (a) and determined under

subsection (a)(1)(D).

(e) Upon approval of a site-specific modification listed in subsection (d), the commissioner shall:

(1) publish a notice in the Indiana Register;

(2) place all pertinent information about the approved site-specific modification on the department's Web site;

(3) submit the site-specific modification to U.S. EPA for approval if it is for a site-specific modification to a criterion specifically listed in this rule but not for a site-specific modification to a criterion specifically listed in this rule and expressed as a function of the WER; and

(4) incorporate the site-specific modification into the water quality standards during the next revision of the water quality standards if it is for a site-specific modification to a criterion specifically listed in this rule.

(f) Site-specific modifications to criteria specifically listed in this rule, except for site-specific modifications to criteria specifically listed in this rule and expressed as a function of the WER, shall not be incorporated into a final NPDES permit or used for other Clean Water Act purposes until approved by U.S. EPA.

(g) The following site-specific modifications to water quality criteria have been granted:

Table 16-1

Site-Specific Surface Water Quality Criteria

Waterbody	Starting Location	Ending Location	Substances	CMC (Maximum) (µg/l)	CCC (4-Day Average) (µg/l)
East Branch Grand Calumet River	U.S. Steel Outfall 005	A point one (1) mile downstream	Cyanide (Free) (adult salmonids present)	35.0	8.2
			Cyanide (Free) (salmonids absent)	45.8	10.7

(Water Pollution Control Board; 327 IAC 2-1.5-16; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1407; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3378; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2093)

SECTION 20. 327 IAC 2-1.5-20 IS AMENDED TO READ AS FOLLOWS:

327 IAC 2-1.5-20 Incorporation by reference

Authority: IC 13-14-8; IC 13-14-9; IC 13-18-3
Affected: IC 13-18-4

Sec. 20. The following materials have been incorporated by reference ~~into~~ **in** this rule. Each of the following items, in addition to its title, will list the name and address of where it may be located for inspection and copying:

(1) Clean Water Act (CWA), 33 U.S.C. 1251 et seq., in effect ~~December 16, 1996,~~ **July 1, 2004,** is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, or from the Indiana Department of Environmental Management, Office of Water ~~Management,~~ **Quality,** Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46206.

(2) The map identifying 1995 United States Coast Guard Light List No. 19675 is available from the Indiana Department of Environmental Management, Office of Water ~~Management,~~ **Quality,** Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46206.

(3) Code of Federal Regulations (40 CFR 136) in effect ~~December 16, 1996,~~ **July 1, 2004,** are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or the Indiana Department of Environmental Management, Office of Water ~~Management,~~ **Quality,** Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46206.

(4) ASTM, 1990, Standard Practice for Conducting Bioconcentration Tests with Fishes and Saltwater Bivalve Molluscs, Standard E 1022, available from the Indiana Department of Environmental Management, Office of Water ~~Management,~~ **Quality,** Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46206.

(5) 1986 U.S. EPA Guidelines for Carcinogenic Risk Assessment (U.S. EPA, 1986), available from the U.S. Environmental Protection Agency, Office of Water Resource Center (WH-550A), 401 M Street, S.W., Washington, D.C. 20460, and the Indiana Department of Environmental Management, Office of Water ~~Management,~~ **Quality,** Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46206.

(6) U.S. EPA. 1993, Chapter 4, Wildlife Exposure Factors Handbook, Volumes I and II, available from U.S. Environmental Protection Agency, Office of Water Resource Center, 401 M Street, S.W., Washington, D.C. 20460 [EPA/600/R-93/187a and b], and the Indiana Department of Environmental Management, Office of Water ~~Management,~~ **Quality,** Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46206.

~~(7) "Standard Methods for the Examination of Water and Wastewater", Joint Editorial Board, American Public Health Association, American Water Works Association, and Water Environment Federation, 18th Edition, 1992. Available from American Public Health Association, 1015 Fifteenth Street, N.W., Washington, D.C. 20005, and the Indiana Department of Environmental Management, Office of Water Management, Indiana Government Center-North, 100 Senate Avenue, Indianapolis, Indiana 46206.~~

~~(8)~~ **(7)** 1980 National Guidelines, 45 FR 79352 and 45 FR 79354.

(Water Pollution Control Board; 327 IAC 2-1.5-20; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1412; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3378; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2096)

SECTION 21. 327 IAC 2-4-3 IS AMENDED TO READ AS FOLLOWS:

327 IAC 2-4-3 Sampling frequency; methods of analysis

Authority: IC 13-14-8; IC 13-14-9; IC 13-18-3
Affected: IC 13-18-4

Sec. 3. Sampling, measurements of flow, and characteristics of the effluent shall be performed at a frequency prescribed by the commissioner. All analytical work shall be in accordance with ~~the 16th edition of "Standard Methods for the Examination of Water and Wastewater" published by the American Public Health Association (APHA)~~ **40 CFR 136** or other methods approved by the commissioner. *(Water Pollution Control Board; 327 IAC 2-4-3; filed Sep 24, 1987, 3:00 p.m.: 11 IR 587; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2097)*

SECTION 22. 327 IAC 5-1.5-72 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-1.5-72 "Waters of the state of Indiana" or "waters of the state" defined

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3
Affected: IC 13-11-2-265; IC 13-18-4

Sec. 72. "Waters of the state of Indiana" or "waters of the state" has the meaning set forth in ~~327 IAC 2-1.5-2(91).~~ **IC 13-11-2-265.** *(Water Pollution Control Board; 327 IAC 5-1.5-72; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1421; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2097)*

SECTION 23. 327 IAC 5-2-1.5 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-2-1.5 Incorporation by reference

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3
Affected: IC 13-11-2; IC 13-18-4

Sec. 1.5. The following materials have been incorporated by reference ~~into~~ **in** this article. Each of the following items, in addition to its title, will list the name and address of where it may be located for inspection and copying:

(1) Clean Water Act (CWA), 33 U.S.C. 1251 et seq., in effect on ~~December 16, 1996,~~ **July 1, 2004,** is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, or from the Indiana Department of Environmental Management, Office of Water ~~Management,~~ **Quality,** Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46206.

(2) All Federal Registers listed in this rule are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, or the Indiana Department of Environmental Management, Office of Water ~~Management,~~ **Quality,** Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46206.

(3) Code of Federal Regulations (40 CFR 100–149, 40 CFR 400–424, and 40 CFR 425–699), in effect on ~~December 16, 1996,~~ **July 1, 2004,** are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, or the Indiana Department of Environmental Management, Office of Water ~~Management,~~ **Quality,** Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46206.

(4) Standard Form A Municipal (EPA Form 7550-22), available from the U.S. Environmental Protection Agency, Office of Water Resource Center, 401 M Street, S.W., Washington, D.C. 20460, or the Indiana Department of Environmental Management, Office of Water ~~Management,~~ **Quality,** Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46206.

(5) Pollution Prevention Act of 1990 (42 ~~USCA~~ **U.S.C.** 13101 ~~to 42 USCA 13109),~~ **et seq.),** available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, or the Indiana Department of Environmental Management, Office of Water ~~Management,~~ **Quality,** Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46206.

~~(6) "Standard Methods for the Examination of Water and Wastewater", Joint Editorial Board, American Public Health Association, American Water Works Association, and Water Environment Federation, 18th Edition, 1992. Available from American Public Health Association, 1015 Fifteenth Street, N.W., Washington, D.C. 20005, and the Indiana Department of Environmental Management, Office of Water Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46206.~~

(Water Pollution Control Board; 327 IAC 5-2-1.5; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1421; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3378; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2097)

SECTION 24. 327 IAC 5-2-11.1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-2-11.1 Establishment of water quality-based effluent limitations for dischargers not discharging to waters within the Great Lakes system

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3
Affected: IC 13-11-2; IC 13-18-4

Sec. 11.1. (a) The water quality standards established through the criteria set forth in 327 IAC 2-1-6 **and 327 IAC 2-1-8.9** or under the procedures described in 327 IAC 2-1-8.2 through 327 IAC 2-1-8.6 **and 327 IAC 2-1-8.9 shall:**

(1) ~~shall~~ be the basis for water quality-based effluent limita-

tions **(WQBELs)** applicable to point source dischargers, not discharging to waters within the Great Lakes system, through NPDES permits (except for instances where a variance has been approved under 327 IAC 2-1-8.8 and 327 IAC 5-3-4.1); and

(2) ~~shall~~ not be enforceable against point source dischargers until translated into effluent limitations ~~which~~ **that** are incorporated in NPDES permits in accordance with this article.

(b) This subsection describes how the **surface** water quality criteria in 327 IAC 2-1-6(a) **and 327 IAC 2-1-8.9(g)** or those criteria derived using the procedures in 327 IAC 2-1-8.2 through 327 IAC 2-1-8.6 **and 327 IAC 2-1-8.9** will be applied in determining appropriate ~~water quality-based effluent limitations~~ **WQBELs** to NPDES permits as follows:

(1) The final acute value (FAV = 2(AAC)) will be applied directly to the undiluted discharge, or, if dilution by discharge induced mixing is allowed, the AAC will be applied outside the discharge induced mixing zone. **If the AAC for a metal is expressed in the form of dissolved metal, the AAC shall be set equal to $C_{instream}$ determined for the AAC in accordance with subdivision (8).**

(2) The CAC and the TLSC will be applied outside of the mixing zone. In the absence of site-specific mixing zone data, the allowable mixing zone dilution shall be determined by applying the guideline in 327 IAC 2-1-4 to the $Q_{7,10}$ low flow of the receiving stream. **If the CAC for a metal is expressed in the form of dissolved metal, the CAC shall be set equal to $C_{instream}$ determined for the CAC in accordance with subdivision (8).**

(3) The HLSC shall be applied outside of the mixing zone, if based on the consumption of organisms and incidental water intake. If based on consumption of organisms and drinking water, the HLSC shall apply at the point of the **public** water ~~supply~~ **system** intake, if this does not cause the HLSC based on consumption of organisms and incidental water intake to be exceeded outside of the mixing zone. Allowable mixing zone dilution shall be determined by applying the guideline of 327 IAC 2-1-4 to the $Q_{7,10}$ low flow of the receiving stream if the HLSC is based on consumption of organisms and incidental water intake and the $Q_{7,10}$ flow at the point of **the public** water ~~supply~~ **system** intake (provided the effluent has had time to fully mix with the receiving water) shall be allowed for dilution if the HLSC is based on consumption of organisms and drinking water.

(4) The criterion to provide an acceptable degree of protection to public health for cancer effects shall apply outside of the mixing zone if the criterion is based on consumption of organisms and incidental water intake and at the point of **the public** water ~~supply~~ **system** intake if based on the consumption of organisms and drinking water, if this would not cause the criterion based on the consumption of organisms and incidental water intake to be exceeded outside of the mixing zone. For calculation of allowable dilution, one-fourth (¼) of the fiftieth percentile flow of the receiving stream shall be used if the criterion is based on consumption of organisms and incidental water intake, and the fiftieth percentile flow of the receiving stream at the point of **the public** water **system** intake can be used if the criterion is based on the consumption of organisms and drinking water.

(5) As used in this rule, "FAV", "AAC", "CAC", "TLSC", and "HLSC" have the ~~same~~ meanings ~~as defined~~ **set forth** in 327 IAC 2-1-9.

(6) For a new discharge of a BCC, the water quality standard for a BCC shall be applied directly to the undiluted discharge. Beginning January 1, 2004, the water quality ~~standard~~ **criteria** for a BCC shall be applied directly to the undiluted discharge for all discharges of a BCC. As used in this subdivision, "new discharge" means a discharge of a BCC that is initiated after the effective date of this subdivision.

(7) For intermittent or controlled discharges, the mixing zone dilution may be determined using stream flows other than those specified in this subsection if these alternate stream flows will ensure compliance with water quality criteria.

(8) The following procedures shall be used to calculate $C_{instream}$, the total recoverable metal concentration outside the mixing zone that equates to an AAC or CAC expressed in the form of dissolved metal:

(A) For an AAC expressed in the form of dissolved metal, $C_{instream}$ shall be calculated by dividing the AAC by the acute translator found in clause (D).

(B) For a CAC expressed in the form of dissolved metal, $C_{instream}$ shall be calculated by dividing the CAC by the chronic translator found in clause (D).

(C) If all approved analytical methods for the metal inherently measure only its dissolved form, such as hexavalent chromium, $C_{instream}$ shall not be calculated and the AAC and CAC expressed in the form of dissolved metal shall be applied in determining appropriate WQBELs.

(D) Unless a site-specific translator is determined in accordance with clause (E), the following translators shall be used:

Table 11.1-1
Metals Translators
Dissolved to Total Recoverable

Substances	Acute Translators	Chronic Translators
Arsenic (III)	1.000	1.000
Cadmium	1.136672-[(ln hardness)(0.041838)]	1.101672-[(ln hardness)(0.041838)]
Chromium (III)	0.316	0.860
Copper	0.960	0.960
Lead	1.46203-[(ln hardness)(0.145712)]	1.46203-[(ln hardness)(0.145712)]
Nickel	0.998	0.997
Silver	0.85	
Zinc	0.978	0.986

(E) A discharger or proposed discharger may request

the use of an alternate translator by using site-specific data. The discharger must conduct a site-specific study to identify the ratio of the dissolved fraction to the total recoverable fraction for a metal in the receiving waterbody outside the mixing zone. If the discharger provides an acceptable study and other provisions of 327 IAC 2-1 and this article are satisfied (such as antibacksliding and antidegradation), the commissioner shall use the site-specific translator. A translator derived for one (1) discharge into a waterbody segment may be applied to other discharges on the same waterbody segment if the translator would adequately represent the site-specific conditions applicable to the other discharges.

(c) In a case where a variance has been granted from a water quality standard under 327 IAC 2-1-8.8 and 327 IAC 5-3-4.1, ~~water quality-based effluent limitations~~ **WQBELs** for the pollutant that is the subject of the variance shall be calculated under subsection (b) on the basis of the variance rather than the water quality standard.

~~(d) In accordance with 327 IAC 2-1-6(a)(3), effluent limitations which are based on water quality criteria for metals from 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 as the total recoverable fraction unless any of the following occur:~~

~~(1) An acid-soluble analytical method for the metal has been approved by EPA and the board through rulemaking, in which case the effluent limitation may be expressed as acid-soluble fraction.~~

~~(2) For a specific permittee, the commissioner determines that it is feasible to identify the ratio of the soluble fraction to the total recoverable fraction for a metal in the permittee's discharge after mixing with the receiving stream, in which case the effluent limitation shall be expressed as the total recoverable fraction for which the numeric limit has been increased on the basis of the ratio.~~

(d) WQBELs in an NPDES permit for a metal calculated from a water quality criterion expressed in the form of dissolved metal that is:

(1) contained in 327 IAC 2-1; or

(2) subsequently developed under the procedures contained in 327 IAC 2-1;

shall be expressed in the permit as total recoverable metal unless

~~(3)~~ all approved analytical methods for the metal inherently measure only its dissolved form, ~~for example,~~ **such as** hexavalent chromium.

~~(e) It is the express intent of the board that, when an acid-soluble analytical method is approved for metals, the redesignation of numeric effluent limitations from total recoverable fraction to acid-soluble fraction shall not be construed as backsliding for purposes of Section 402(o) of the Clean Water Act (CWA) in cases where the effluent limitations are based on the acid-soluble criteria of 327 IAC 2-1-6(a)(2) Table 1.~~

(e) WQBELs for cyanide, calculated from a criterion for free cyanide contained in 327 IAC 2-1, shall be limited in the permit as free cyanide and monitored in the effluent using the "Cyanides Amenable to Chlorination" (CATC) method (40 CFR 136, Method 4500-CN G) or another method approved by the commissioner. The commissioner may include additional monitoring, limitations, or other requirements in a permit, on a case-by-case basis, if the additional requirements are necessary to ensure that water quality standards will be attained.

(f) When the ~~water quality-based effluent limitation~~ **WQBEL** for any substance is less than the limit of quantitation normally achievable and determined by the commissioner to be appropriate for that substance in the effluent, the permit shall contain the following provisions:

(1) The permittee shall be required to use an approved analytical methodology for the substance in the effluent to produce the LOD and LOQ achievable in the effluent. This analytical method, and the LOD and LOQ associated with this method, shall be specified in the permit in addition to the following requirements:

(A) The permit shall include conditions that state that effluent concentrations less than the limit of quantitation are in compliance with the effluent limitations.

(B) In addition, the permit shall require the permittee to implement one (1) or more of the following requirements:

(i) Develop a more sensitive analytical procedure.

(ii) Use an existing, more sensitive, analytical procedure that has not been approved by EPA.

(iii) Conduct studies to determine the bioaccumulative or bioconcentrative properties of the substance in aquatic species through caged-biota studies or fish tissue analyses of resident species.

(iv) Conduct effluent bioconcentration evaluations.

(v) Conduct whole effluent toxicity testing.

(vi) Other requirements, as appropriate, such as engineering assessments or sediment analyses.

For substances defined as ~~bioaccumulative chemicals of concern,~~ **BCCs,** at a minimum, either item (iii) or (iv) shall be included in the permit.

(2) If the measured effluent concentrations for a substance are above the ~~water quality-based permit limitations~~ **WQBELs** and above the ~~limit of detection~~ **LOD** specified by the permit in any three (3) consecutive analyses or any five (5) out of nine (9) analyses, or if any of the additional analyses required under subdivision (1)(B) indicate that the substance is present in the effluent at concentrations exceeding the ~~water quality-based permit limitations,~~ **WQBELs,** the permit shall contain provisions that require the discharger to:

(A) determine the source of this substance through evaluation of sampling techniques, analytical/laboratory proce-

dures, and industrial processes and wastestreams; and
(B) increase the frequency of sampling and testing for the substance.
(3) The permit shall contain provisions allowing the permit to be reopened, in accordance with section 16 of this rule, to include additional requirements or limitations if the information gathered under subdivisions (1) and (2) indicates that such additional requirements or limitations are necessary.

(g) The department shall use the representative ambient upstream concentration of a substance in determining the ~~water quality-based effluent limitations~~ **WQBELs** for that substance. This upstream concentration shall be determined by the department on a case-by-case basis, using existing, acceptable data for the receiving water. Where limited or no acceptable data exists, the permittee shall be required to supply the necessary data. Whenever the representative ambient upstream concentration for a substance in the receiving water is determined to be greater than any applicable water quality ~~standard~~ **criterion** for that substance, the following conditions apply:
(1) If the source of the wastewater is not the receiving water, the permit limitations shall be calculated using the applicable water quality ~~standard~~ **criterion** and a value of zero (0) for the upstream dilution flow. Except for substances defined as ~~bioaccumulative chemicals of concern,~~ **BCCs,** the department may establish limitations greater than the applicable water quality ~~standard~~ **criterion** for the substance as required in this subdivision, in a range up to, but not greater than, the lesser of the representative ambient upstream concentration of the substance in the receiving water or the representative ambient concentration of the substance in the body of water at the point of intake. The limitation shall only be increased above the ~~standard~~ **criterion** if it is demonstrated to the department that the concentration of the substance in the body of water at the point of intake exceeds the applicable ~~standard~~ **criterion** for that substance and that reasonable, practical, or otherwise required methods are implemented to minimize the addition of the substance to the wastewater.
(2) If the source of the wastewater is the receiving water, the effluent limitation for that substance shall equal the representative ambient upstream concentration of that substance in the receiving water as determined by the department. Where circumstances allow, such as the discharge of once through noncontact cooling water, this will be implemented through the use of net limitations, with a net limitation of zero (0) being applied to the effluent. The representative ambient upstream concentration applicable to this subdivision shall be established at the upper ninety-ninth percentile of the available acceptable upstream data or otherwise appropriately determined as the reasonably expected upstream concentration for that substance.

(h) In addition to the requirements of 40 CFR 122.43(a), NPDES permits shall include limitations more stringent than promulgated effluent limitations guidelines from Sections 301, 306, 307, 318, and 405 of the CWA where necessary to achieve water quality standards established under Section 303 of the CWA, including narrative criteria for water quality as follows:
(1) Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) ~~which~~ **that** the commissioner determines are, or may be, discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any narrative or numeric water quality ~~standard~~ **criterion** promulgated under 327 IAC 2-1-6.
(2) When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an instream excursion above a narrative or numeric ~~criteria~~ **criterion** within an Indiana water quality standard, the commissioner shall use procedures ~~which~~ **that** account for:
(A) existing controls on point and nonpoint ~~source~~ **sources** of pollution;
(B) the variability of the pollutant or pollutant parameter in the effluent;
(C) the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity); and
(D) where appropriate, the dilution of the effluent in the receiving water.
(3) When the commissioner determines, using the procedures in subdivision (2), that a discharge causes, has the reasonable potential to cause, or contributes to an instream excursion above the allowable ambient concentration of a numeric ~~criteria~~ **criterion** from 327 IAC 2-1-6 for an individual pollutant, the permit must contain effluent limitations for that pollutant.
(4) When the commissioner determines, using the procedures in subdivision (2), that a discharge causes, has the reasonable potential to cause, or contributes to an instream excursion above the numeric criterion for whole effluent toxicity, the permit must contain effluent limits for whole effluent toxicity.
(5) Except as provided in this subdivision, when the commissioner determines, using the procedures in subdivision (2), toxicity testing ~~date,~~ **data,** or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an instream excursion above a narrative criterion from 327 IAC 2-1-6, the permit must contain effluent limitations for whole effluent toxicity. Limitations on whole effluent toxicity are not necessary where the commissioner demonstrates in the fact sheet or briefing memo of the NPDES permit, using the procedures in subdivision (2), that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative water quality ~~standards.~~ **criteria.**
(6) Where a water quality criterion has not been established for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion from 327 IAC 2-1-6, the commissioner must establish effluent limits using one (1) or more of the following options:
(A) Establish effluent limits using a calculated numeric

water quality criterion for the pollutant ~~which~~ **that** the commissioner demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using a proposed state criterion, or an explicit policy or rule interpreting the narrative water quality criterion, supplemented with other relevant information that may include:

(i) EPA's Water Quality Standards Handbook, Second Edition–Revised (1994);

(ii) risk assessment data;

(iii) exposure ~~date;~~ **data;**

(iv) information about the pollutant from the Food and Drug Administration; and

(v) current EPA criteria documents.

(B) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under Section ~~307(a)~~ **304(a)** of the CWA, supplemented where necessary by other relevant information.

(C) Establish effluent limitations on an indicator parameter for the pollutant of concern, provided the following:

(i) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation.

(ii) The fact sheet required by 327 IAC 5-3-8 sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern that are sufficient to attain and maintain applicable water quality standards.

(iii) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards.

(iv) The permit contains a reopening clause allowing the permitting authority to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

(7) When developing ~~water quality-based effluent limits~~ **WQBELs** under this subsection, the commissioner shall ensure the following:

(A) The level of water quality to be achieved by limits on point sources established under this subsection is derived from, and complies with, all applicable water quality standards.

(B) Effluent limits developed to protect a narrative water quality criterion **or** a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available ~~waste load allocation~~ **WLA** for the discharge prepared by the commissioner and approved by EPA under 40 CFR 130.7.

~~(i) Water quality-based limitations may be expressed, where appropriate, in terms of toxicity or toxic units (TU), for example, the LC_{10} for fathead minnow of the effluent from outfall 001 shall be greater than one hundred percent (100%) or shall not exceed one (1) TU_a. As used in this subsection, "toxic unit" or "TU" means the unit used for whole effluent toxicity-based limitations for the protection of the receiving stream from toxic effects and is defined as one hundred (100) divided by the LC_{10} or the no observed effect level (NOEL).~~ *(Water Pollution Control Board; 327 IAC 5-2-11.1; filed Feb 1, 1990, 4:30 p.m.: 13 IR 1043; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1749; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1432; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3378; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2097)*

SECTION 25. 327 IAC 5-2-11.2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-2-11.2 Public notice of comment period and public meetings for site-specific modification of water quality criteria and values; implementation of antidegradation; alternate mixing zone demonstrations; variances

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3
Affected: IC 13-11-2; IC 13-15-4-1; IC 13-15-5-1; IC 13-18-4; IC 13-18-7; IC 13-23-13; IC 13-24-1; IC 13-25-5

Sec. 11.2. (a) This section is applicable to **an application for** the following:

(1) ~~An application for~~ Site-specific modification ~~of~~ **to water quality criteria under 327 IAC 2-1-8.9 and** Tier I water quality criteria and Tier II water quality values under ~~327 IAC 2-1.5-16(b).~~ **327 IAC 2-1.5-16.**

(2) ~~An application for~~ An antidegradation demonstration under section 11.3(b)(4) of this rule.

(3) ~~An application for~~ An antidegradation exception under section 11.7(c) of this rule.

(4) ~~An application for~~ An alternate mixing zone under section ~~11.4(b)(4)(D)~~ **11.4(b)(4)(F)** of this rule.

(5) ~~An application for~~ A variance under 327 IAC 5-3-4.1(c).

(b) Upon receipt of an application listed in subsection (a), the commissioner shall provide notice, request comment, and, if requested, schedule and hold a public meeting on the application in accordance with the following conditions:

(1) The commissioner shall provide notice of receipt of an application in the following manner:

(A) Publication of a notice in a daily or weekly newspaper in general circulation throughout the area affected by the discharge for which the application was submitted.

(B) Send the notice to interested persons on either ~~of~~ **mailing list identified under** the following: ~~mailing lists:~~

(i) ~~The mailing list identified under~~ 327 IAC 5-3-8(a).

(ii) ~~The mailing list identified under~~ 327 IAC 5-3-12(b)(1).

(C) Send the notice to the applicant.

(2) The notice under subdivision (1) shall contain the following:

(A) **The** name and address of the department.

(B) **The** name and address of the applicant.

(C) An identification of the type of application submitted, such as alternate mixing zone or variance.
(D) A brief description of the location of any existing or proposed discharge point subject to the application, including an identification of the receiving water.
(E) A brief description of the applicant's activities or operations that result in the discharge identified in the application.
(F) An identification of the substance for which the application was submitted.
(G) **The** name of an agency contact person and an address and telephone number where interested persons may obtain further information, including a copy of the application.
(H) A brief description of the comment procedures and the procedures to request a public meeting.

(3) If requested, the commissioner shall hold a public meeting on the application in accordance with the following provisions:
(A) The commissioner shall provide notice of the public meeting as follows:
(i) Publication of a notice in a daily or weekly newspaper in general circulation throughout the area affected by the discharge for which the application was submitted.
(ii) Send the notice to the following interested persons:
(AA) Persons on the mailing list identified under 327 IAC 5-3-8(a).
(BB) Persons on the mailing list identified under 327 IAC 5-3-12(b)(1).
(CC) Those persons that commented on the notice of receipt of the application.
(iii) Send the notice to the applicant.
(B) The notice required by clause (A) shall contain the date, time, and place of the public meeting and the information required under subdivision (2).
(C) ~~This~~ **The** meeting shall be held at least ten (10) days after the later of the following:
(i) The notice in accordance with clause (A)(i) appears in the newspaper.
(ii) The postmark date of the written notice sent to interested parties and to the applicant in accordance with clause (A)(ii) and (A)(iii).
(D) The meeting shall be recorded by any of the following:
(i) Audiotape.
(ii) Videotape.
(iii) Any other method of accurately and completely recording the details of the meeting.
(E) The commissioner shall request the applicant to provide a summary and rationale for the application at the meeting.
(F) At the commissioner's discretion, a public meeting may be noticed and held without having first received a request for a public meeting. In these instances, the notice for the public meeting may be contained in the notice of receipt of the application.

(4) The time period under IC 13-15-4-1 is hereby changed to increase the period by thirty (30) days for any permit application subject to the time period that is affected by the application. If a public meeting is requested, the time period under IC 13-15-4-1 is hereby changed to increase the period by an additional thirty (30) days.

(Water Pollution Control Board; 327 IAC 5-2-11.2; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1435; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3378; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2101)

SECTION 26. 327 IAC 5-2-11.4 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-2-11.4 Great Lakes system dischargers total maximum daily loads; wasteload allocations for point sources; load allocations for nonpoint sources; preliminary wasteload allocations

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3
Affected: IC 13-11-2; IC 13-18-4-7; IC 13-18-4-8

Sec. 11.4. (a) This subsection applies to the establishment of ~~total maximum daily loads~~ TMDLs for all pollutants and pollutant parameters in the Great Lakes system. Where specified, the following conditions also apply to ~~wasteload allocations~~ WLAs calculated in the absence of TMDLs and to preliminary WLAs:
(1) At a minimum, TMDLs shall be established in accordance with the listing and priority setting process established in Section 303(d) of the Clean Water Act (CWA) and at 40 CFR 130.7. Where water quality standards cannot be attained immediately, TMDLs must reflect reasonable assurances that water quality standards will be attained in a reasonable period of time. TMDLs may be based on attaining water quality standards over a period of time, with specific controls on individual sources being implemented in stages. Determining the reasonable period of time in which water quality standards will be met is a case-specific determination considering a number of factors, including, but not limited to, the following:
(A) Receiving water characteristics.
(B) Persistence, behavior, and ubiquity of pollutants of concern.
(C) Type of remediation activities necessary.
(D) Available regulatory and nonregulatory controls.
(E) Requirements for attainment of water quality standards.
(2) An assessment and remediation plan that the commissioner has certified as meeting the requirements of this section pertaining to TMDLs and public participation requirements applicable to TMDLs, and that has been approved by EPA as meeting those requirements under 40 CFR 130.6, may be used in lieu of a TMDL for purposes of this section. Assessment and remediation plans under this section may include, but are not limited to, **the following:**
(A) Lakewide Management Plans.
(B) Remedial Action Plans. ~~and~~
(C) State Water Quality Management Plans.
Also, any part of an assessment and remediation plan that also

satisfies one (1) or more requirements under Section 303(d) of the CWA or implementing regulations may be incorporated by reference into a TMDL as appropriate. Assessment and remediation plans under this section shall be tailored to the level of detail and magnitude for the watershed and pollutant being assessed.

(3) TMDLs, WLAs calculated in the absence of a TMDL, and preliminary WLAs must ensure attainment of applicable water quality standards including all numeric and narrative water quality criteria set forth in 327 IAC 2-1.5-8 **and 327 IAC 2-1.5-16,** and Tier I criteria and Tier II values established under 327 IAC 2-1.5-11 through 327 IAC 2-1.5-16.

(4) If a discharge contains one (1) or more substances for which a TMDL, WLA calculated in the absence of a TMDL, or preliminary WLA was based on ~~a human cancer criterion~~ **an** HCC, ~~human cancer value~~ HCV, ~~human noncancer criterion~~ HNC, or ~~human noncancer value~~ HNV, human health shall be protected from the potential adverse additive effects of mixtures of substances in an effluent in accordance with the following procedures:

(A) If an effluent for a particular discharger contains more than one (1) substance for which an HCC exists or for which an HCC or an HCV can be calculated, the additivity of the mixture of carcinogens shall be addressed as follows:

(i) Except as provided in item (ii), the TMDL, WLA calculated in the absence of a TMDL, or preliminary WLA based on an HCC or HCV shall be established to protect against additive effects possibly associated with simultaneous multiple chemical human exposure to carcinogens such that the following condition is met:

$$\sum \frac{C_i}{WLA_i} \leq 1; \quad \text{For } i = 1 \text{ to } n$$

Where: C = The adjusted TMDL, WLA calculated in the absence of a TMDL, or preliminary WLA concentration of each separate carcinogen that shall be used in the calculation of reasonable potential in section 11.5 of this rule and **water quality-based effluent limitations** (WQBELs) in section 11.6 of this rule.

WLA = The TMDL, WLA calculated in the absence of a TMDL, or preliminary WLA concentration based on the HCC or HCV for each respective carcinogen.

n = Number of WLAs based on an HCC or HCV.

(ii) Notwithstanding item (i):

(AA) the commissioner may consider, upon submission of the discharger, the use of an alternate, scientifically-based, procedure for ensuring the aggregate risk of the mixture of carcinogens remains below one (1) in one hundred thousand (100,000); or

(BB) if information is available to the commissioner demonstrating that available scientific information does not support the assumption of additivity, the TMDL, WLA calculated in the absence of a TMDL, or preliminary WLA shall not be adjusted for each such substance.

(B) If an effluent for a particular discharger contains more than one (1) substance for which ~~a~~ **an** HNC exists or for which ~~a~~ **an** HNC or HNV can be calculated, the additivity of the mixture of substances shall be addressed as follows:

(i) The incremental adverse effect of each substance shall be assumed to not be additive except as provided in item (ii).

(ii) If scientific information available to the commissioner demonstrates that the adverse effects of the components are additive, the TMDL, WLA calculated in the absence of a TMDL, or preliminary WLA **based on an HNC or HNV** for each additive noncarcinogenic substance shall be established to protect against additive ~~or~~ effects possibly associated with simultaneous multiple chemical human exposure such that the following condition is met:

$$\sum \frac{N_i}{WLA_i} \leq 1; \quad \text{For } i = 1 \text{ to } n$$

Where: N = The adjusted TMDL, WLA calculated in the absence of a TMDL, or preliminary WLA concentration of each separate **additive noncarcinogenic** substance that shall be used in the calculation of reasonable potential in section 11.5 of this rule and WQBELs in section 11.6 of this rule.

WLA = The TMDL, WLA calculated in the absence of a TMDL, or preliminary WLA concentration based on the HNC or HNV for each respective **additive noncarcinogenic** substance.

n = Number of WLAs based on an HNC or HNV **for additive noncarcinogenic substances.**

(C) Notwithstanding ~~the requirements of~~ clauses (A) and (B), the toxicity equivalency factors (TEFs) and bioaccumulation equivalency factors (BEFs) for the chlorinated dibenzo-p-dioxins (CDDs) and chlorinated dibenzofurans (CDFs) shall be accounted for as follows:

(i) The TEFs and BEFs in Table 11.4-1 in item (iv) shall be used when calculating a 2,3,7,8-TCDD toxicity equivalence concentration in effluent to be used when implementing both ~~human health noncancer~~ **HNC** and ~~cancer criteria.~~ **HCC.** The chemical concentration of each CDDs and CDFs in effluent shall be converted to a 2,3,7,8-TCDD toxicity equivalence concentration in effluent by:

(AA) multiplying the chemical concentration of each CDDs and CDFs in the effluent by the appropriate TEF in Table 11.4-1 in item (iv);

(BB) multiplying each product from subitem (AA) by the BEF for each CDDs and CDFs in Table 11.4-1 in

item (iv); and

(CC) adding all final products from subitem (BB).

(ii) The equation for calculating the 2,3,7,8-TCDD toxicity equivalence concentration in effluent is:

$$(TEC)_{tcdd} = \sum (C)_x (TEF)_x (BEF)_x$$

Where: $(TEC)_{tcdd}$ = 2,3,7,8-TCDD toxicity equivalence concentration in effluent.

$(C)_x$ = Concentration of total chemical x in effluent.

$(TEF)_x$ = TCDD toxicity equivalency factor for x.

$(BEF)_x$ = TCDD bioaccumulation equivalency factor for x.

(iii) The 2,3,7,8-TCDD toxicity equivalence concentration in effluent shall be used when developing TMDLs, ~~wasteload allocations~~ **WLAs** in the absence of a TMDL, or preliminary ~~wasteload allocations~~ **WLAs** under this section.

(iv) The following values shall be used for TEFs and BEFs for CDDs and CDFs:

Table 11.4-1
Toxicity Equivalency Factors (TEF) and Bioaccumulation Equivalency Factors (BEF) for CDDs and CDFs

Congener	TEF	BEF
2,3,7,8-TCDD	1.0	1.0
1,2,3,7,8-PeCDD	0.5	0.9
1,2,3,4,7,8-HxCDD	0.1	0.3
1,2,3,6,7,8-HxCDD	0.1	0.1
1,2,3,7,8,9-HxCDD	0.1	0.1
1,2,3,4,6,7,8-HpCDD	0.01	0.05
OCDD	0.001	0.01
2,3,7,8-TCDF	0.1	0.8
1,2,3,7,8-PeCDF	0.05	0.2
2,3,4,7,8-PeCDF	0.5	1.6
1,2,3,4,7,8-HxCDF	0.1	0.08
1,2,3,6,7,8-HxCDF	0.1	0.2
2,3,4,6,7,8-HxCDF	0.1	0.7
1,2,3,7,8,9-HxCDF	0.1	0.6
1,2,3,4,6,7,8-HpCDF	0.01	0.01
1,2,3,4,7,8,9-HpCDF	0.01	0.4
OCDF	0.001	0.02

(5) TMDLs shall include WLAs for point sources and ~~load allocations~~ LAs for nonpoint sources, including natural background, such that the sum of these allocations is not greater than the loading capacity of the water for the pollutant addressed by the TMDL, minus the sum of a specified margin of safety (MOS) and any capacity reserved for future growth. The components of the TMDL are as follows:

(A) Nonpoint source LAs that shall be based on any of the following:

(i) Existing pollutant loadings if changes in loadings are not reasonably anticipated to occur.

(ii) Increases in pollutant loadings that are reasonably anticipated to occur.

(iii) Anticipated decreases in pollutant loadings if such decreased loadings are technically feasible and are reasonably anticipated to occur within a reasonable time period as a result of implementation of BMPs or other load reduction measures. In determining whether anticipated decreases in pollutant loadings are technically feasible and can reasonably be expected to occur within a reasonable period of time, technical and institutional factors shall be considered. These decisions are case-specific and should reflect the particular TMDL under consideration.

(iv) Where appropriate and where sufficient data are available, contributions to the water column from sediments inside and outside of any applicable mixing zones.

(v) Where appropriate and where sufficient data are available, nonpoint source discharges resulting from wet weather events.

Monitoring data for these LAs shall be collected and analyzed in order to validate the TMDL's assumptions, to verify anticipated load reductions, to evaluate the effectiveness of controls being used to implement the TMDL, and to revise the WLAs and LAs as necessary to ensure that water quality criteria shall be achieved within the time period established in the TMDL.

(B) Each TMDL shall include ~~a margin of safety~~ **an** MOS sufficient to account for technical uncertainties in establishing the TMDL and shall describe the manner in which the MOS is determined and incorporated into the TMDL. The MOS may be provided by leaving a portion of the loading capacity unallocated or by using conservative modeling assumptions to establish WLAs and LAs. If a portion of the loading capacity is left unallocated to provide ~~a~~ **an** MOS, the amount left unallocated shall be described. If conservative modeling assumptions are relied on to provide ~~a~~ **an** MOS, the specific assumptions providing the MOS shall be identified.

(C) TMDLs may include reserved allocations of loading capacity to accommodate future growth and additional sources. Where such reserved allocations are not included in a TMDL, any increased loadings of the pollutant for which the TMDL was developed that are due to a new or expanded discharge shall not be allowed unless the TMDL is revised in accordance with these procedures to include an allocation for the new or expanded discharge.

(D) The sum of the WLAs is the portion of the loading capacity not assigned to nonpoint sources including background, or to an MOS, or reserved for future growth. Where appropriate and where sufficient data are available, WLAs shall also be developed for point source discharges resulting from wet weather events. Upon reissuance, NPDES permits for these point sources must include effluent limitations

consistent with WLAs in EPA-approved or EPA-established TMDLs.

(6) If separate TMDLs are prepared for different segments of the same watershed, and the separate TMDLs each include WLAs for the same pollutant for one (1) or more of the same point sources, then WQBELs for that pollutant for the point sources shall be consistent with the most stringent of those WLAs in order to ensure attainment of all applicable water quality standards.

(7) TMDLs shall be sufficiently stringent so as to prevent accumulation of the pollutant of concern in sediments to levels injurious to designated or existing uses, human health, wildlife, and aquatic life.

(8) The representative background concentration of pollutants shall be established in accordance with this section to develop TMDLs, WLAs calculated in the absence of a TMDL, ~~or~~ **and** preliminary WLAs. Background loadings may be accounted for in a TMDL through an allocation to a single background category or through individual allocations to the various background sources as follows:

(A) As used in this subsection, "background" represents all loadings resulting from the following:

(i) Flow from upstream waters into the specified watershed, waterbody, or waterbody segment for which a TMDL, WLA in the absence of a TMDL, or preliminary WLA for the purpose of determining the need for a WQBEL is being developed.

(ii) Atmospheric deposition or sediment release or resuspension.

(iii) Chemical reactions occurring within the watershed, waterbody, or waterbody segment.

(B) When determining what available data are acceptable for use in calculating background, the commissioner shall use best professional judgment, including consideration of the sampling location and the reliability of the data through comparison to reported analytical detection levels. Pollutant degradation and transport information may be considered when utilizing pollutant loading data. Where limited or no acceptable data exist, the commissioner may require the permittee to supply the necessary data. Best professional judgment shall be used to select the one (1) data set that most accurately reflects or estimates background concentrations when data in more than one (1) of the following data sets or categories exist:

(i) Acceptable available water column data.

(ii) Water column concentrations estimated through use of acceptable available caged or resident fish tissue data.

(iii) Water column concentrations estimated through use of acceptable available or projected pollutant loading data.

(C) The representative background concentration for a substance in the specified watershed, waterbody, or waterbody segment shall be established as follows:

(i) If all the values in the data set selected in clause (B) are at or above the ~~limit of detection~~ LOD, then the background concentration is the geometric mean of that data set.

(ii) If the data set consists of values above and below the LOD, the following procedure shall be used to determine the representative background concentration:

(AA) Each value in the data set with a value less than the LOD (nondetect) shall be assigned the value (V). The geometric mean of this adjusted data set is the representative background concentration. The value (V) is determined as follows:

$$V = (LOD) \times \left(1 - \frac{\text{Number of nondetects}}{\text{Total number of values}}\right)$$

(BB) If information is available that indicates an alternate methodology for evaluating the data set would result in a background concentration more representative of actual conditions, this alternative methodology may be used in place of the methodology contained in subitem (AA) upon approval of the commissioner.

(iii) When all of the acceptable available data in a data set or category, such as water column, caged or resident fish tissue, or pollutant loading data, are below the LOD for a substance, and the most sensitive approved analytical method available for that substance was used, then all the data for that pollutant in that data set shall be assumed to be zero (0).

(iv) Notwithstanding items (i) through (iii), the representative background concentration of whole effluent toxicity (WET) shall be assumed to be zero (0) unless data are available that indicates that the discharge of the WET and any background WET are additive.

(9) The effluent flow used to develop TMDLs, WLAs calculated in the absence of a TMDL, ~~or~~ **and** preliminary WLAs shall be determined as follows:

(A) For municipal, semipublic, and other sanitary or domestic wastewater discharges, the average design flow of the treatment facility shall be used.

(B) For industrial dischargers, the highest monthly average flow from the previous two (2) years of monitoring shall be used.

(C) Notwithstanding clauses (A) and (B), an alternate effluent flow value may be used, upon approval by the commissioner, if the discharger provides flow data that supports the alternate value (such as when a TMDL or WLA is calculated for wet weather conditions as provided in section 11.6(g)(4) of this rule). This flow data shall be included with the application for a new permit, a renewal of an existing permit, or with a request for modification of an existing permit, or when requested by the commissioner.

(D) TMDLs, WLAs calculated in the absence of a TMDL, ~~or~~ **and** preliminary WLAs shall indicate the point source effluent flows used in the analyses.

(10) The portion of the receiving waterbody allocated for mixing for TMDLs, WLAs calculated in the absence of a TMDL, ~~or~~ **and** preliminary WLAs shall be determined in

accordance with subsection (b).

(11) TMDLs, WLAs in the absence of a TMDL, and preliminary WLAs shall be based on the assumption that a pollutant does not degrade. However, the commissioner may take into account degradation of the pollutant if each of the following conditions are met:

(A) Scientifically valid field studies or other relevant information demonstrate that degradation of the pollutant is expected to occur under the full range of environmental conditions expected to be encountered.

(B) Scientifically valid field studies or other relevant information ~~address~~ **addresses** other factors that affect the level of pollutants in the water column, including, but not limited to, the following:

(i) Resuspension of sediments.

(ii) Chemical speciation.

(iii) Biological and chemical transformation.

(C) Notwithstanding clauses (A) and (B), TMDLs, WLAs in the absence of a TMDL, and preliminary WLAs conducted for chlorine and ~~whole effluent toxicity~~ **WET** shall be based on the assumption that the parameter does degrade unless data for the waterbody are available indicating otherwise.

(12) As used in this section, "loading capacity" refers to the greatest amount of loading that a water can receive without violating water quality standards. The loading capacity is initially calculated at the farthest downstream location in the watershed drainage basin. The maximum allowable loading consistent with the attainment of each applicable numeric criterion or value for a given pollutant is determined by multiplying the applicable criterion or value by the flow at the farthest downstream location in the tributary basin at the design flow condition described under subsection (b) and by using appropriate conversion factors. This loading is then compared to the loadings at sites within the basin to assure that applicable numeric criteria or values for a given pollutant are not exceeded at all applicable sites. The lowest load is then selected as the loading capacity.

(13) The ambient water quality characteristics used to develop TMDLs, WLAs calculated in the absence of a TMDL, ~~or~~ **and** preliminary WLAs shall be determined as follows:

(A) For ammonia (as N), metals dependent on hardness, and pentachlorophenol, the appropriate water quality characteristics shall be obtained at a location downstream of the point of discharge, or for Lake Michigan, outside the applicable mixing zone and shall be determined as follows:

(i) For ammonia (as N), the seventy-fifth percentile of the pH and temperature. If a seasonal TMDL, WLA calculated in the absence of a TMDL, or preliminary WLA is developed for ammonia, the pH and temperature data shall be obtained from the appropriate seasonal period.

(ii) For metals dependent on hardness, the fiftieth percentile of the hardness.

(iii) For pentachlorophenol, the fiftieth percentile of the ~~temperature.~~ **pH.**

(B) If any of the data required under clause (A) are not available for the waterbody, the data shall either be obtained from similar nearby streams or the permittee will be required to obtain the necessary data. For discharges to Lake Michigan, data from Lake Michigan shall be required.

(C) The use of the data required in clause (A) is intended to determine values of those water quality characteristics that are representative of those characteristics at design conditions. If it is demonstrated that an alternate method of determining these characteristics for a specific receiving waterbody would result in values more representative of the characteristics at design conditions, then this alternate method may be used to determine the water quality characteristics.

(b) The following requirements shall be applied in establishing the portion of the receiving waterbody allocated for mixing for TMDLs, WLAs in the absence of TMDLs, and preliminary WLAs:

(1) The following procedures shall be used to establish the portion of the receiving waterbody allocated for mixing for TMDLs, WLAs in the absence of TMDLs, and preliminary WLAs for a BCC:

(A) For purposes of this subsection, new and existing discharges are determined as follows:

(i) New discharges are defined as:

(AA) discharges from new Great Lakes dischargers; or

(BB) new or expanded discharges from an existing Great Lakes discharger.

(ii) Existing discharges are defined as all discharges of BCCs not included in item (i).

(B) There shall be no mixing zone available for a new discharge of a BCC to the Great Lakes system. WLAs established through TMDLs, WLAs in the absence of TMDLs, and preliminary WLAs for a new discharge of a BCC shall be set equal to the most stringent applicable water quality criteria or values for the BCC.

(C) A mixing zone may be allocated for a BCC for an existing discharge to the Great Lakes system ~~pursuant to~~ **under** subdivisions (2) and (3) until January 1, 2004, except for a discharge into the open waters of Lake Michigan. WLAs established through TMDLs, WLAs established in the absence of TMDLs, and preliminary WLAs for all discharges, both new and existing, into the open waters of Lake Michigan shall be set equal to the most stringent applicable water quality ~~criterion~~ **criteria** or ~~value~~ **values** for the BCC.

(D) Except as provided in clauses (E) and (F), NPDES permits shall not authorize mixing zones for existing discharges of a BCC to the Great Lakes system after January 1, 2004. After January 1, 2004, WLAs established through TMDLs, WLAs established in the absence of TMDLs, and preliminary WLAs for all discharges of a BCC to the Great Lakes system shall be set equal to the most stringent applicable water quality ~~criterion~~ **criteria** or ~~value~~

values for the BCC.

(E) The commissioner may grant mixing zones for any existing discharge of a BCC to the Great Lakes system beyond the date specified in clause (D) where it can be demonstrated, on a case-by-case basis, that failure to grant a mixing zone would preclude water conservation measures that would lead to the overall load reduction of the BCC, even though higher concentrations of the BCC occur in the effluent. Such mixing zones must also be consistent with subdivisions (2) and (3).

(F) The commissioner may grant mixing zones, consistent with subdivisions (2) and (3), beyond the date specified in clause (D) for any existing discharge of a BCC to the Great Lakes system upon the request of a discharger subject to the following limited circumstances:

(i) The commissioner determines the following:

(AA) The discharger is in compliance with and will continue to implement all applicable technology-based treatment and pretreatment requirements of Sections 301, 302, 304, 306, 307, 401, and 402 of the CWA, and is in compliance with its existing NPDES ~~water quality-based effluent limitations,~~ **WQBELs,** including those based on a mixing zone.

(BB) The discharger has reduced and will continue to reduce the loading of the BCC for which a mixing zone is requested to the maximum extent possible.

(ii) In making the determination in item (i), the commissioner shall consider the following information submitted by the discharger:

(AA) The availability, feasibility, cost effectiveness, and environmental benefits of additional controls or pollution prevention measures for reducing and ultimately eliminating the BCC for that discharger, including those used by similar dischargers. As used in this item, "pollution prevention" has the meaning set forth in the federal Pollution Prevention Act of 1990 (42 ~~USCA~~ **U.S.C.** 13101 ~~to 42 USCA 13109).~~ **et seq.).**

(BB) Whether the discharger or affected communities will suffer unreasonable economic effects if the mixing zone is eliminated.

(CC) The extent to which the discharger will implement an ambient monitoring plan to ensure compliance with water quality criteria at the edge of any authorized mixing zone or to ensure consistency with any applicable TMDL or such other strategy consistent with this section.

(DD) Other information the commissioner deems appropriate.

(iii) Any exceptions to the mixing zone elimination provision for an existing discharge of a BCC granted under this clause shall comply with the following:

(AA) Not result in any less stringent limitations than those existing upon or after the effective date of this rule.

(BB) Not likely jeopardize the continued existence of any endangered or threatened species listed under Section 4 of the ~~Endangered Species Act~~ ESA or result in the destruction or adverse modification of such species' critical ~~habitat.~~ **habitats.**

(CC) Be limited to one (1) permit term unless the commissioner makes a new determination in accordance with this subdivision for each successive permit application in which a mixing zone for the BCC is sought.

(DD) Reflect all information relevant to the size of the mixing zone considered under item (ii).

(EE) Protect all designated and existing uses of the receiving water.

(FF) Meet all applicable aquatic life, wildlife, and human health criteria and values at the edge of the mixing zone and, as appropriate, within the mixing zone or be consistent with any appropriate TMDL or such other strategy consistent with this section.

(GG) Ensure the discharger has developed and conducted a pollutant minimization program for the BCC if required to do so under section 11.6 of this rule.

(HH) Ensure that alternative means for reducing BCCs elsewhere in the watershed are evaluated.

(G) For each draft NPDES permit that would allow a mixing zone for one (1) or more BCCs after January 1, 2004, the fact sheet or statement of basis for the draft permit, shall:

(i) specify the mixing provisions used in calculating the permit limits; and

(ii) identify each BCC for which a mixing zone is proposed.

(2) The following addresses conditions for deriving TMDLs, WLAs in the absence of TMDLs, and preliminary WLAs for open waters of Lake Michigan, inland lakes, and other waters of the Great Lakes system with no appreciable flow relative to their volumes:

(A) For discharges into the open waters of Lake Michigan, the following requirements apply:

(i) To prevent acute toxicity to aquatic life, WLAs established in a TMDL, WLAs in the absence of a TMDL, and preliminary WLAs shall be determined as follows:

(AA) For allocations based on **an** acute aquatic life ~~criteria~~ **criterion** or ~~values,~~ **value,** the CMC **or SMC** 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 **or SMC** shall be met outside the ~~alternative~~ **applicable alternate** mixing zone.

(BB) For allocations implementing ~~an~~ **the narrative** acute ~~whole effluent toxicity~~ WET criterion, **one and zero-tenths** (1.0) TU_a shall not be exceeded in the undiluted discharge, unless a mixing zone demonstration is conducted and approved ~~pursuant to~~ **under** subdivision (4), in which case **three-tenths** (0.3) TU_a

shall be met outside the ~~alternative~~ **applicable alternate** mixing zone.

(ii) To prevent chronic toxicity to aquatic life, human health, and wildlife, WLAs established in a TMDL, WLAs in the absence of a TMDL, and preliminary WLAs shall be determined as follows:

(AA) For allocations based on **a** chronic ~~criteria~~ **criterion** or ~~values~~ **value** (CCC or ~~SCV;~~ **SCC;** HNC or HNV; HCC or HCV; or WC or WV), the chronic ~~criteria~~ **criterion** or value shall not be exceeded in the undiluted discharge unless ~~an alternative~~ **a** mixing zone ~~is demonstrated as appropriate in a mixing zone~~ demonstration **is** conducted ~~pursuant to~~ **and approved under** subdivision (4), **in which case the chronic criterion or value shall be met outside the applicable alternate mixing zone.**

(BB) For allocations implementing ~~a~~ **the narrative** chronic ~~effluent toxicity~~ WET criterion, **one and zero-tenths** (1.0) TU_c shall not be exceeded in the undiluted discharge unless ~~an alternative~~ **a** mixing zone ~~is demonstrated as appropriate in a mixing zone~~ demonstration **is** conducted ~~pursuant to~~ **and approved under** subdivision (4), in which case **one and zero-tenths** (1.0) TU_c shall be met outside the ~~discharge-induced~~ **applicable alternate** mixing zone.

(iii) WLAs established in a TMDL, WLAs in the absence of a TMDL, and preliminary WLAs based on the criterion for sulfates, total dissolved solids**,** fluorides, or dissolved iron under 327 IAC 2-1.5-8(j) shall ensure that the ~~criteria~~ **criterion** not be exceeded in the undiluted discharge unless ~~an alternative~~ **a** mixing zone ~~is demonstrated as appropriate in a mixing zone~~ demonstration **is** conducted ~~pursuant to~~ **and approved under** subdivision (4), **in which case the criterion shall be met outside the applicable alternate mixing zone.**

(iv) If mixing zones from two (2) or more proximate sources interact or overlap, the combined effect must be evaluated to ensure that applicable criteria and values will be met in the area where any applicable mixing zones overlap.

(v) In no case shall a mixing zone be granted that exceeds the area where discharge-induced mixing occurs.

(B) For discharges into inland lakes and other waters of the Great Lakes system with no appreciable flow relative to their volumes (other than the open waters of Lake Michigan), no mixing zone will be allowed and water quality criteria **or values** will apply to the undiluted discharge.

(C) Appropriate mixing zone assumptions to be used in calculating load allocations for nonpoint sources shall be determined on a case-by-case basis.

(D) In no case shall a mixing zone be granted that would likely jeopardize the continued existence of any endangered or threatened species listed under Section 4 of the ESA or result in the destruction or adverse modification of such species' critical ~~habitat.~~ **habitats.**

(3) The following describes conditions for deriving TMDLs, WLAs in the absence of TMDLs, and preliminary WLAs for tributaries of the Great Lakes system that exhibit appreciable flows relative to their volumes:

(A) The following stream design flows shall be used unless data exist to demonstrate that an alternative stream design flow is appropriate for stream-specific and pollutant-specific conditions:

(i) For purposes of calculating a TMDL, WLAs in the absence of a TMDL, or preliminary WLAs, using a steady-state model, the stream design flows shall be as follows:

(AA) 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 ($Q_{1,10}$).

(BB) To implement the narrative acute WET criterion, when a mixing zone demonstration is conducted and approved under subdivision (4), the one (1) day, ten (10) year stream design flow ($Q_{1,10}$).

~~(BB)~~ **(CC)** For a chronic aquatic life criterion or value, ~~or a chronic aquatic WET criterion,~~ the seven (7) day, ten (10) year stream design flow ($Q_{7,10}$).

(DD) To implement the narrative chronic WET criterion, the seven (7) day, ten (10) year stream design flow ($Q_{7,10}$).

~~(CC)~~ **(EE)** For a drinking water human health criterion or value, the harmonic mean flow at the point of ~~drinking~~ **the public** water **system** intake.

~~(DD)~~ **(FF)** For a nondrinking water human health criterion or value, the harmonic mean flow at the point of discharge.

~~(EE)~~ **(GG)** For a ~~wildlife criterion~~ **WC** or ~~value,~~ **WV,** the ninety (90) day, ten (10) year **stream design** flow ($Q_{90,10}$).

(ii) TMDLs, WLAs in the absence of TMDLs, and preliminary WLAs calculated using dynamic modelling do not need to incorporate the stream design flows specified in item (i).

(iii) TMDLs, WLAs in the absence of TMDLs, and preliminary WLAs calculated for intermittent or controlled discharges may use alternate stream design flows if these alternate design flows will ensure compliance with water quality criteria **and values.**

(B) To prevent acute toxicity, WLAs and LAs established in a TMDL, WLAs in the absence of a TMDL, and preliminary WLAs shall be determined as follows:

(i) For allocations based on **an** acute aquatic life ~~criteria~~ **criterion** or ~~values,~~ **value, the CMC or SMC 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 ~~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 **or SMC** shall be met outside the ~~discharge-induced~~ **applicable alternate** mixing zone.

(ii) For allocations implementing ~~an~~ **the narrative** acute ~~whole effluent toxicity~~ WET criterion, **one and zero-tenths** (1.0) TU_a 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 **three-tenths** (0.3) TU_a shall be met outside the ~~discharge-induced~~ **applicable alternate** mixing zone.

(C) To protect aquatic life, wildlife, and human health from chronic effects, including chronic ~~whole effluent toxicity,~~ **WET,** WLAs and LAs established in a TMDL, WLAs in the absence of a TMDL, and preliminary WLAs shall be calculated using a dilution fraction no greater than twenty-five percent (25%) of the stream design flow unless a mixing zone demonstration under subdivision (4) is conducted and approved.

(D) If mixing zones from two (2) or more proximate sources interact or overlap, the combined effect must be evaluated to ensure that applicable criteria and values will be met in the area where any applicable mixing zones overlap.

(E) In no case shall a permitting authority grant a mixing zone that would likely jeopardize the continued existence of any endangered or threatened species listed under Section 4 of the ESA or result in the destruction or adverse modification of such species' critical ~~habitat.~~ **habitats.**

(4) An alternate mixing zone that is allowed under subdivision (2) or (3) may be granted upon the request of the discharger subject to the following requirements:

(A) **Alternate mixing zones are granted on a pollutant-by-pollutant and criterion-by-criterion basis.** Any discharger seeking a mixing zone other than that specified by subdivision (2) or (3) shall submit an application for ~~a~~ **an alternate** mixing zone ~~demonstration~~ for consideration by the commissioner. The alternate mixing zone application must do the following:

(i) Document the characteristics and location of the outfall structure, including whether technologically-enhanced mixing will be utilized.

(ii) Document the amount of dilution occurring at the boundaries of the proposed mixing zone and the size, shape, and location of the area of mixing, including the manner in which diffusion and dispersion occur.

(iii) For sources discharging to the open waters of Lake Michigan, define the location at which discharge-induced mixing ceases.

(iv) For sources discharging to tributaries of the Great Lakes system that exhibit appreciable flows relative to their volumes and seeking an alternate mixing zone for an acute aquatic life criterion or value or for acute WET, define the location at which discharge-induced mixing ceases under stream design flow conditions.

~~(iv)~~ **(v)** Document the physical, including substrate character and geomorphology, chemical, and biological characteristics of the receiving waterbody, including whether the receiving waterbody supports indigenous, endemic, or naturally occurring species.

~~(v)~~ **(vi)** Document the physical, chemical, and biological characteristics of the effluent.

~~(vi)~~ **(vii)** Document the synergistic effects of overlapping mixing zones or the aggregate effects of adjacent mixing zones.

~~(vii)~~ **(viii)** Show whether organisms would be attracted to the area of mixing as a result of the effluent character.

(B) The commissioner may grant the alternate mixing zone if the discharger demonstrates the following:

(i) The mixing zone would not interfere with or block passage of fish or aquatic life.

(ii) The level of the pollutant permitted in the waterbody would not likely jeopardize the continued existence of any endangered or threatened species listed under Section 4 of the ESA or result in the destruction or adverse modification of such species' critical ~~habitat.~~ **habitats.**

(iii) The mixing zone would not extend to drinking water intakes.

(iv) The mixing zone would not impair or otherwise interfere with the designated or existing uses of the receiving water or downstream waters.

(v) The mixing zone would not promote undesirable aquatic life or result in a dominance of nuisance species.

(vi) By allowing the additional mixing:

(AA) substances will not settle to form objectionable deposits;

(BB) floating debris, oil, scum, and other matter in concentrations that form nuisances will not be produced; and

(CC) objectionable color, odor, taste, or turbidity will not be produced.

(C) In no case shall an alternate mixing zone for an acute aquatic life criterion or value or for acute WET 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.

(D) In no case shall an alternate mixing zone for an acute aquatic life criterion or value or for acute WET be granted that exceeds the area where discharge-induced mixing occurs.

~~(C)~~ **(E)** In no case shall ~~a~~ **an alternate** mixing zone for a discharge into the open waters of Lake Michigan be granted that exceeds the area where discharge-induced mixing occurs.

~~(D)~~ **(F)** Upon receipt of an application for an alternate mixing zone, ~~demonstration,~~ the commissioner shall provide

notice, request comment, and, if requested, schedule and hold a public meeting on the application in accordance with section 11.2 of this rule.

(5) Except for discharges into the open waters of Lake Michigan, notwithstanding subdivisions (2) ~~(3), and~~ **through** (4), the commissioner may deny any mixing zone for:

(A) a discharge;

(B) certain substances in a discharge; or ~~for~~

(C) a criterion **or value** for any substance in a discharge;

based upon a determination of adverse human health, aquatic life, or wildlife effects. The commissioner shall identify and document the rationale for this decision.

(6) For discharges into the open waters of Lake Michigan, if all of the conditions for approval of an alternate mixing zone are met in accordance with subdivision (4), the alternate mixing zone shall be granted unless the commissioner determines that the mixing zone should be denied based upon a consideration of harm to human health, aquatic life, or wildlife. The commissioner shall evaluate all available information, including information submitted by the public, relevant to the consideration of harm to human health, aquatic life, or wildlife. The commissioner shall identify the harm to human health, aquatic life, or wildlife, and document the rationale for this decision.

(7) The commissioner's evaluation of a mixing zone for a discharge into the open waters of Lake Michigan under subdivisions (2), (4), and (6) shall constitute the evaluation required by IC 13-18-4-7. Any decision regarding the granting or denial of a mixing zone for a discharge into Lake Michigan shall be included in the public notice of the tentative decision on the draft new, renewed, or modified permit. The basis for the tentative decision, including the commissioner's rationale for concluding whether or not the requirements of IC 13-18-4-7 are satisfied, shall be included in the briefing memo or fact sheet that accompany the tentative decision on the draft new, renewed, or modified permit.

(c) ~~Wasteload allocations~~ **WLAs** calculated in the absence of a TMDL and preliminary WLAs shall be determined using the conservation of mass equations as follows unless an alternate methodology is approved by the commissioner:

(1) For the calculations contained within this subsection, the following apply:

(A) WQC_c = The chronic water quality criterion or value. A chronic water quality criterion or value is any of the following:

(i) ~~Criterion continuous concentration~~ CCC or ~~secondary chronic value (SCV).~~ **SCC. If the CCC or SCC for a metal is expressed in the form of dissolved metal, the CCC or SCC shall be set equal to $C_{instream}$ determined for the CCC or SCC in accordance with subdivision (6).**

(ii) **The numeric interpretation of the narrative chronic** WET criterion ~~in chronic toxic units~~ **(one and zero-tenths** (1.0) TU_c).

(iii) ~~Human noncancer criterion~~ HNC or ~~human noncancer value~~ HNV.

(iv) ~~Human cancer criterion~~ HCC or ~~human cancer value~~ HCV.

(v) ~~Wildlife criterion~~ WC or ~~wildlife value~~ WV.

(vi) The ~~criteria~~ **criterion** for sulfates, total dissolved solids, fluorides, ~~and~~ **or** dissolved iron under 327 IAC 2-1.5-8(j).

(B) WQC_a = The ~~criterion maximum concentration~~ CMC or ~~secondary acute value (SAV)~~ **SMC** 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. **If the CMC or SMC for a metal is expressed in the form of dissolved metal, the CMC or SMC shall be set equal to $C_{instream}$ determined for the CMC or SMC in accordance with subdivision (6).**

(C) FAV = ~~Final acute value =~~ Two (2) times the CMC or ~~SAV.~~ **SMC. If the CMC or SMC for a metal is expressed in the form of dissolved metal, the FAV shall equal two (2) times $C_{instream}$ determined for the CMC or SMC in accordance with subdivision (6).**

(D) Q_e = The facility effluent flow as determined by subsection (a)(9).

(E) Q_w = The portion of the receiving waterbody allocated for mixing ~~pursuant to~~ **under** 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.**

(F) C_b = The representative background concentration determined by subsection (a)(8).

~~(G) MR = Mixing zone ratio =~~ $\cancel{\frac{Q_w}{Q_e}}$.

(G) DF = Dilution factor = $\frac{Q_w+Q_e}{Q_e}$.

(H) 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.**

(2) ~~Wasteload allocations~~ **WLAs** for discharges into tributaries that exhibit appreciable flows relative to their volumes based on protection from acute aquatic effects shall be

determined as follows:

(A) For a discharge without ~~a high rate diffuser (or its functional equivalent),~~ **an approved alternate mixing zone under subsection (b)(4),** the equation resulting in the lesser WLA shall be used:

(i) WLA = FAV (or 1.0 TU_a for WET); or

(ii) $$WLA = \frac{WQC_a(Q_e + Q_z) - (Q_z)(C_b)}{Q_e}$$

(B) For a discharge with ~~a high rate diffuser (or its functional equivalent),~~ **an approved alternate mixing zone under subsection (b)(4),** the following equation shall be used:

$$\cancel{WLA = \frac{WQC_a(Q_e + Q_w) - (Q_w)(C_b)}{Q_e}}$$

$$\mathbf{WLA = (WQC_a)(DF) - (C_b)(DF\text{-}1)}$$

(3) ~~Wasteload allocations~~ **WLAs** for **discharges into** tributaries that exhibit appreciable flows relative to their volumes based on protection from chronic effects shall be determined as follows:

$$WLA = \frac{WQC_c(Q_e + Q_w) - (Q_w)(C_b)}{Q_e}$$

(4) ~~Wasteload allocations~~ **WLAs** for discharges into the open waters of Lake Michigan based on protection from acute aquatic effects shall be determined as follows:

(A) For a discharge without an approved alternate mixing zone **under subsection (b)(4),** the equation resulting in the lesser WLA shall be used:

(i) WLA = FAV (or 1.0 TU_a for WET); or

(ii) $$WLA = \frac{WQC_a(Q_e + Q_z) - (Q_z)(C_b)}{Q_e}$$

(B) For a discharge with an approved alternate mixing zone **under subsection (b)(4),** the following equation shall be used:

WLA = ~~$(WQC_a)(1 + MR) - (C_b)(MR)$~~ $\mathbf{(WQC_a)(DF) - (C_b)(DF\text{-}1)}$

(5) ~~Wasteload allocations~~ **WLAs** for **discharges into** the open waters of Lake Michigan based on protection from chronic effects shall be determined as follows:

(A) For a discharge without an approved alternate mixing zone under subsection (b)(4), the following equation shall be used:

$$\mathbf{WLA = WQC_c}$$

(B) For a discharge with an approved alternate mixing zone under subsection (b)(4), the following equation shall be used:

WLA = ~~$(WQC_c)(1 + MR) - (C_b)(MR)$~~ $\mathbf{(WQC_c)(DF) - (C_b)(DF\text{-}1)}$

(6) WLAs for discharges into inland lakes and other waters of the Great Lakes system with no appreciable flow relative to their volumes (other than the open waters of Lake Michigan) based on protection from acute aquatic effects shall be determined as follows:

$$\mathbf{WLA = WQC_a}$$

(7) WLAs for discharges into inland lakes and other waters of the Great Lakes system with no appreciable flow relative to their volumes (other than the open waters of Lake Michigan) based on protection from chronic effects shall be determined as follows:

$$\mathbf{WLA = WQC_c}$$

(8) The following procedures shall be used to calculate $C_{instream}$, the total recoverable metal concentration outside the mixing zone that equates to an acute or chronic aquatic life water quality criterion or value expressed in the form of dissolved metal:

(A) For a CMC or SMC expressed in the form of dissolved metal, $C_{instream}$ shall be calculated by dividing the CMC or SMC by the acute translator found in clause (D).

(B) For a CCC or SCC expressed in the form of dissolved metal, $C_{instream}$ shall be calculated by dividing the CCC or SCC by the chronic translator found in clause (D).

(C) If all approved analytical methods for the metal inherently measure only its dissolved form, such as hexavalent chromium, $C_{instream}$ shall not be calculated and the acute and chronic aquatic life water quality criteria or values expressed in the form of dissolved metal shall be used in the calculation of WLAs.

(D) Unless a site-specific translator is determined in accordance with clause (E), the following translators shall be used:

Table 11.4-2
Metals Translators
Dissolved to Total Recoverable

Substances	Acute Translators	Chronic Translators
Arsenic (III)	1.000	1.000
Cadmium	1.136672-[(ln hardness)(0.041838)]	1.101672-[(ln hardness)(0.041838)]
Chromium (III)	0.316	0.860
Copper	0.960	0.960
Mercury	0.85	0.85
Nickel	0.998	0.997
Selenium	0.922	0.922
Zinc	0.978	0.986

(E) A discharger or proposed discharger may request the use of an alternate translator by using site-specific data. The discharger must conduct a site-specific study to identify the ratio of the dissolved fraction to the total recoverable fraction for a metal in the receiving waterbody outside the mixing zone. If the discharger provides an acceptable study, and other provisions of 327 IAC 2-1.5 and this article are satisfied (such as antibacksliding and antidegradation), the commissioner shall use the site-specific translator. A translator derived for one (1) discharge into a waterbody segment may be applied to other discharges on the same waterbody segment if the translator would adequately represent the site-specific conditions applicable to the other discharges.

(d) Notwithstanding **subsections (a) through (c) of** this section, the pollutants contained in this subsection shall be addressed as follows:

(1) The pH requirements contained in 327 IAC 2-1.5-8(c)(2) and 327 IAC 2-1.5-8(j) apply to the undiluted discharge.

(2) The bacteriological criteria contained in 327 IAC 2-1.5-8(e) apply to the undiluted discharge.

(3) Models, approved by the commissioner, that ensure compliance with the applicable water quality criteria for the following parameters shall be used:

(A) Dissolved oxygen criteria contained in 327 IAC 2-1.5-8(c)(3), 327 IAC 2-1.5-8(d)(1), and 327 IAC 2-1.5-8(j).

(B) Thermal requirements contained in 327 IAC 2-1.5-8(c)(4) and 327 IAC 2-1.5-8(d)(2).

(C) Criteria for the protection of public water supplies contained under 327 IAC 2-1.5-8(f).

(D) Criteria for the protection of industrial water supplies contained in 327 IAC 2-1.5-8(g).

(Water Pollution Control Board; 327 IAC 5-2-11.4; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1441; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3379; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2102)

SECTION 27. 327 IAC 5-2-11.5 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-2-11.5 Great Lakes system dischargers determination of reasonable potential to exceed water quality standards

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3
Affected: IC 13-11-2; IC 13-18-4

Sec. 11.5. (a) If the commissioner determines that a pollutant or pollutant parameter (either conventional, nonconventional, a toxic substance, or whole effluent toxicity **(WET))** is or may be discharged into the Great Lakes system at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any applicable narrative **criterion** or numeric water quality ~~criteria~~ **criterion** or value under 327 IAC 2-1.5, the commissioner shall incorporate **water quality-based effluent limitations** (WQBELs) in an NPDES permit that will ensure compliance with the ~~criteria~~ **criterion** or value. The commissioner shall exercise best professional judgment, taking into account the:

(1) source and nature of the discharge;

(2) existing controls on point and nonpoint sources of pollution; ~~the~~

(3) variability of the pollutant or pollutant parameter in the effluent; and

(4) where appropriate, ~~the~~ dilution of the effluent in the receiving water.

In all cases, the commissioner shall use any valid, relevant, representative information pertaining to the discharge of the pollutant.

(b) If the commissioner determines that a substance is or may be discharged into the Great Lakes system at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any numeric criterion for a toxic substance contained in 327 IAC 2-1.5-8(b)(3), Table 8-1, 327 IAC 2-1.5-8(b)(5), Table 8-3, 327 IAC 2-1.5-8(b)(6), Table 8-4, **327 IAC 2-1.5-16(g), Table 16-1,** a criterion for ammonia contained under 327 IAC 2-1.5-8(c)(5), a criterion for sulfates, total dissolved solids, fluorides, or dissolved iron under 327 IAC 2-1.5-8(j), or a Tier I criterion or Tier II value ~~determined~~ **established** under 327 IAC 2-1.5-11 through 327 IAC 2-1.5-16, the commissioner shall incorporate WQBELs in an NPDES permit for the discharge of that pollutant, and in all cases, the commissioner shall use any valid, relevant, representative information pertaining to the discharge of the substance as follows:

(1) When facility-specific effluent monitoring data for a substance are available, the commissioner may take into account the source and nature of the discharge, existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, and, where appropriate, the dilution of the effluent in the receiving water in making the determination whether to develop preliminary effluent limitations (PELs) and comparing those effluent limitations to the projected effluent quality (PEQ) of the discharge in accordance with the following procedures:

(A) The commissioner shall develop PELs for the discharge of a pollutant from a point source using the following procedures:

(i) The commissioner shall develop preliminary WLAs for the discharge of the pollutant from the point source to protect human health, wildlife, acute aquatic life, and chronic aquatic life, based upon the following:

(AA) Any existing numeric criterion for a toxic substance contained in 327 IAC 2-1.5-8(b)(3), Table 8-1, 327 IAC 2-1.5-8(b)(5), Table 8-3, 327 IAC 2-1.5-8(b)(6), Table 8-4, **327 IAC 2-1.5-16(g), Table 16-1,** or 327 IAC 2-1.5-8(c)(5) **or a site-specific modification to an existing numeric criterion established under 327 IAC 2-1.5-16.**

(BB) Where there is no existing numeric criterion, the commissioner shall calculate a Tier I criterion for such substance for the protection of human health, wildlife, and aquatic life using the methodologies under 327 IAC 2-1.5-11 (aquatic life), 327 IAC 2-1.5-14 (human health), 327 IAC 2-1.5-15 (wildlife), and 327 IAC 2-1.5-16 (site-specific modifications).

(CC) Where there is insufficient data to calculate a Tier I criterion, the commissioner shall calculate a Tier II value for such substance for the protection of human health and aquatic life using the methodologies under 327 IAC 2-1.5-12 (aquatic life), 327 IAC 2-1.5-14 (human health), and 327 IAC 2-1.5-16 (site-specific modifications).

(DD) Where there is insufficient data to calculate a Tier

II value, the commissioner shall apply the procedure in subdivision (3) to determine whether data must be generated to calculate a Tier II value.

(ii) The commissioner shall develop **a** preliminary ~~WLAs~~ **WLA** for the discharge of sulfates, total dissolved solids, fluorides, or dissolved iron, in addition to the preliminary WLAs developed for ~~these parameters~~ **the parameter** under item (i), based on the numeric ~~criteria~~ **criterion** for ~~these substances~~ **the substance** under 327 IAC 2-1.5-8(j) when applicable.

(iii) Section 11.4(c) of this rule shall be used as the basis for determining preliminary WLAs in accordance with items (i) and (ii).

(iv) The commissioner shall ~~develop PELs consistent with~~ **use** the preliminary WLAs developed under items (i) through (iii) ~~and~~ **to develop monthly and daily PELs** in accordance with the ~~procedures~~ **procedure** for converting WLAs into WQBELs under section ~~11.6~~ **11.6(c)** of this rule.

(B) The commissioner shall determine the ~~projected effluent quality~~ PEQ as follows:

(i) When monthly average data are available, **calculated using** at least ~~three (3)~~ **two (2)** data points over the period of a month, the monthly PEQ shall be determined as follows:

(AA) The commissioner shall identify the number of monthly averages of the effluent data and the coefficient of variation of the monthly averages of the effluent data.

(BB) The commissioner shall obtain the appropriate multiplying factor from ~~Table 11.5-1 in~~ subsection (h) based on the information obtained in subitem (AA).

(CC) The maximum of the monthly average values shall be multiplied by the multiplying factor determined under subitem (BB) to determine the monthly PEQ.

(ii) When monthly average data ~~is~~ **are** not available, the monthly PEQ shall be identical to the daily PEQ determined under item (iii). An alternate method of ~~determining the~~ **calculating** monthly ~~PEQ~~ **averages** may be used if the applicant demonstrates that this alternate method results in ~~a~~ monthly ~~PEQ~~ **averages** representative of actual conditions at the facility. **Monthly averages calculated under this item shall be used to determine the monthly PEQ using the procedure in item (i).**

(iii) The daily PEQ shall be determined as follows:

(AA) The commissioner shall identify the number of daily effluent samples and the coefficient of variation of the daily effluent samples.

(BB) The commissioner shall obtain the appropriate multiplying factor from ~~Table 11.5-1 in~~ subsection (h) based on the information obtained in subitem (AA).

(CC) The maximum of the daily effluent samples shall be multiplied by the multiplying factor determined under subitem (BB) to determine the daily PEQ.

(iv) The coefficient of variation shall be calculated as the ratio of the standard deviation of the daily or monthly effluent data divided by the arithmetic average of the effluent data, except that where there are fewer than ten (10) data points the coefficient of variation shall be specified as six-tenths (0.6).

(v) In lieu of the procedures under items (i) through (iv), the commissioner shall allow the use of an alternate procedure for the determination of the PEQ if the applicant demonstrates that the alternate statistical procedure meets the following: ~~criteria:~~

(AA) Is a scientifically defensible statistical method.

(BB) Specifies the daily PEQ as the ninety-fifth percentile of the distribution of the projected population of daily values of the facility-specific effluent monitoring data.

(CC) Specifies the monthly PEQ as the ninety-fifth percentile of the distribution of the projected population of monthly average values of the facility-specific effluent monitoring data.

(DD) Accounts for and captures the long term daily and monthly variability of the effluent quality.

(EE) Accounts for limitations associated with sparse data sets.

(FF) Assumes a lognormal distribution of the facility-specific effluent data unless otherwise shown by the effluent data set.

(C) The commissioner shall establish WQBELs in the NPDES permit for each substance that:

(i) the monthly PEQ developed under clause (B) exceeds the monthly PEL developed under clause (A); or

(ii) the daily PEQ developed under clause (B) exceeds the daily PEL developed under clause (A).

(D) If facility-specific effluent monitoring data for a metal are available in the form of dissolved metal and the PELs for the metal developed under clause (A) are based on an acute or chronic aquatic life water quality criterion or value expressed in the form of dissolved metal, the commissioner shall make the determination under clause (C) using PEQs and PELs in the form of dissolved metal if the following conditions are satisfied:

(i) The discharger provides an acceptable site-specific study that shows that the metal in the effluent does not become more dissolved in the receiving waterbody outside the mixing zone.

(ii) Representative data are available from the receiving waterbody to calculate the background concentration of the metal in accordance with section 11.4(a)(8) of this rule and, if applicable, the hardness of the receiving waterbody in accordance with section 11.4(a)(13) of this rule.

(iii) The facility-specific effluent monitoring data in the form of dissolved metal are representative of the magnitude and variability of the metal in the effluent.

(iv) The PEQs in the form of dissolved metal are determined under clause (B) using the effluent monitoring data in item (iii).

(v) The PELs in the form of dissolved metal are developed as follows:

(AA) Preliminary WLAs in the form of dissolved metal are developed consistent with section 11.4(c) of this rule and using the receiving waterbody data in item (ii) to protect acute and chronic aquatic life.

(BB) The preliminary WLAs in subitem (AA) are used to develop monthly and daily PELs in accordance with section 11.6(c) of this rule.

(vi) A determination under clause (C) using PEQs and PELs developed under this item in the form of total recoverable metal shows that the commissioner is not required to establish WQBELs in the NPDES permit for the metal. The PEQs and PELs shall be developed as follows:

(AA) PEQs in the form of total recoverable metal shall be determined under clause (B) using facility-specific effluent monitoring data in the form of total recoverable metal that is comparable to the data in item (iii).

(BB) Monthly and daily PELs in the form of total recoverable metal shall be developed using preliminary WLAs developed under section 11.4(c) of this rule for all the applicable criteria and values for the metal that are expressed in the form of total recoverable metal and in accordance with section 11.6(c) of this rule. The preliminary WLAs shall be calculated using the receiving waterbody data in item (ii).

(2) When facility-specific effluent monitoring data for a substance are not available, the commissioner shall exercise best professional judgment, taking into account the source and nature of the discharge, existing controls on point and nonpoint sources of pollution, and, where appropriate, the dilution of the effluent in the receiving water:

(A) for a new Great Lakes discharger, to develop an estimated monthly and daily PEQ necessary to make a determination under this subsection; or

(B) for an existing Great Lakes discharger, to determine whether it is necessary to require the applicant to collect the data required to make a determination under this subsection.

(3) The commissioner shall develop the necessary data to calculate Tier II values where such data does not currently exist as follows:

(A) Except as provided in clauses (B) and (D) or subdivision (4), for each toxic substance that a permittee reports as known or believed to be present in its effluent, or that the commissioner reasonably believes may be present in the effluent, and for which pollutant data sufficient to calculate Tier II values for noncancer human health, acute aquatic life, or chronic aquatic life do not exist, the commissioner shall take the following actions:

(i) For those effects (noncancer human health, acute aquatic life, or chronic aquatic life) for which sufficient data do not exist, the commissioner shall use all available, relevant information, including ~~quantitative structure activity relationship~~ QSAR information and other relevant toxicity information, to estimate ambient screening values for such pollutant that will protect humans from health effects other than cancer, and aquatic life from acute and chronic effects.

(ii) Using the procedures under subdivision ~~(1)(A),~~ **(1),** the commissioner shall develop PELs for the discharge of the pollutant from the point source to protect human health, acute aquatic life, and chronic aquatic life based upon the estimated ambient screening values.

(iii) The commissioner shall compare the PEQs developed according to the procedures under subdivision ~~(1)(B)~~ **(1)** to the PELs developed under item (ii). If the monthly or daily PEQ exceeds the respective monthly or daily PEL, the commissioner shall generate or require the permittee to generate the data necessary to derive Tier II values for noncancer human health, acute aquatic life, and chronic aquatic life.

(iv) The data generated under item (iii) shall be used in calculating a Tier II value as required under subdivision (1). The calculated Tier II value shall be used in calculating the PELs under subdivision ~~(1)(A).~~ **(1).** These PELs shall be used for purposes of determining whether a WQBEL must be included in the permit under subdivision ~~(1)(C).~~ **(1).**

(B) With the exception of ~~bioaccumulative chemicals of concern~~ BCCs, the commissioner is not required to apply the procedures under clause (A) or include WQBELs to protect aquatic life for any pollutant discharged by an existing point source into the Great Lakes system if the following occur:

(i) There is insufficient data to calculate a Tier I criterion or Tier II value for aquatic life for the pollutant.

(ii) The permittee has demonstrated that the whole effluent does not exhibit acute or chronic toxicity.

(iii) The permittee has demonstrated, through a biological assessment, that there are no acute or chronic effects on aquatic life in the receiving water. ~~Upon request by the permittee, the commissioner may determine that a biological assessment is not necessary to evaluate the impact of the pollutant on the receiving stream after considering:~~

~~(AA) the characteristics of the pollutant;~~

~~(BB) the concentration of the pollutant in the effluent;~~

~~(CC) the effluent flow; and~~

~~(DD) the biological and physical characteristics of the receiving waterbody.~~

(C) Nothing in clause (A) or (B) shall preclude or deny the right of the commissioner to:

(i) determine, in the absence of the data necessary to derive a Tier II value, that the discharge of the pollutant will cause, have the reasonable potential to cause, or contribute to an excursion above a narrative criterion for water quality; and

(ii) incorporate a WQBEL for the pollutant into an NPDES permit.

(D) If the commissioner develops a WQBEL consistent

with clause (C) that is at least as stringent as a WQBEL that would have been developed based upon the Tier II value or values for that pollutant, the commissioner may require the permittee to generate the data necessary to derive a Tier II value or values for that pollutant.

(4) The determinations under this subdivision shall be made on a pollutant-by-pollutant, outfall-by-outfall basis. This subdivision applies only in the absence of an EPA-approved TMDL applicable to the discharge or in the absence of an assessment and remediation plan submitted and approved in accordance with section 11.4(a)(2) of this rule. The following procedures shall be used in the consideration of intake pollutants in determining reasonable potential:

(A) As used in this subdivision and section 11.6(i) of this rule, "intake pollutant" means a pollutant that is present in waters of the state at the time it is withdrawn from such waters by the discharger or other facility, such as a public water ~~supply,~~ **system** supplying the discharger with intake water.

(B) As used in this subdivision, **subsection (g),** and section 11.6(i) of this rule, an intake pollutant is considered to be from the same body of water as the discharge if the following conditions exist:

(i) The commissioner finds that the intake pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee. This finding may be deemed established if:

(AA) the representative background concentration of the pollutant in the receiving water, as determined under section 11.4(a)(8) of this rule, (excluding any amount of the pollutant in the facility's discharge) is similar to or greater than that in the intake water;

(BB) there is a direct hydrological connection between the intake and discharge points (the water at the point of intake naturally flows toward the water at the point of discharge); and

(CC) any difference in a water quality characteristic (such as temperature, pH, and hardness) between the intake and receiving waters does not result in an adverse impact on the receiving water.

(ii) The commissioner may also consider other site-specific factors relevant to the transport and fate of the pollutant to make the finding in a particular case that a pollutant would or would not have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee.

(iii) An intake pollutant from ground water may be considered to be from the same body of water if the commissioner determines that the pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee, except that such a pollutant is not from the same body of water to the extent that the ground water contains the pollutant partially or entirely due to human activity, such as industrial, commercial, or municipal operations, disposal actions, or treatment processes.

(iv) Notwithstanding any other provision in this clause, an intake pollutant shall be considered to be from the same body of water if the permittee's intake point is located on Lake Michigan and the outfall point is located on a tributary of Lake Michigan and the following conditions are met:

(AA) The representative background concentration of the pollutant in the receiving water, as determined under section 11.4(a)(8) of this rule (excluding any amount of the pollutant in the facility's discharge) is similar to or greater than that in the intake water.

(BB) Any difference in a water quality characteristic (such as temperature, pH, and hardness) between the intake and receiving waters does not result in an adverse impact on the receiving water.

(C) The commissioner may use the procedure to determine reasonable potential described in this subdivision in lieu of the procedures contained under subdivisions (1) through (3) provided the following conditions are met:

(i) The commissioner may determine that there is no reasonable potential for the discharge of an intake pollutant or pollutant parameter to cause or contribute to an excursion above a narrative **criterion** or numeric water quality criterion ~~within an applicable water quality standard~~ **or value under 327 IAC 2-1.5** when a discharger demonstrates to the satisfaction of the commissioner (based upon information provided in the permit application or other information deemed necessary by the commissioner) that:

(AA) the facility does not contribute any additional mass of the intake pollutant to its wastewater;

(BB) the facility withdraws one hundred percent (100%) of the intake water containing the pollutant from the same body of water into which the discharge is made;

(CC) the facility does not alter the intake pollutant chemically or physically in a manner that would cause adverse water quality impacts to occur that would not occur if the pollutants were left in-stream;

(DD) the facility does not cause an increase in the intake pollutant concentration at the edge of the mixing zone, or at the point of discharge if a mixing zone is not allowed, as compared to the pollutant concentration in the intake waterbody unless the increased concentration does not cause or contribute to an excursion above an applicable **narrative criterion or numeric** water quality ~~standard,~~ **criterion or value;** and

(EE) the timing and location of the discharge would not cause adverse water quality impacts to occur that would not occur if the intake pollutant were left in the waterbody.

(ii) If a discharge of an intake pollutant or pollutant parameter is not able to qualify under item (i), the com-

missioner may decide not to impose WQBELs on the discharge, if the following conditions are met:

(AA) The discharge consists of one (1) or more internal wastestreams that do qualify (qualifying wastestreams) under item (i) and one (1) or more internal wastestreams that do not qualify (nonqualifying wastestreams) under item (i).

(BB) For nonqualifying wastestreams composed entirely of storm water, the permittee accepts permit conditions for the storm water wastestream that the commissioner determines to be necessary to protect the water quality of the receiving waterbody. The requirements imposed shall be as if the storm water wastestream discharged directly into the receiving waterbody and shall be consistent with requirements imposed on other similar storm water discharges to the waterbody.

(CC) For nonqualifying wastestreams not composed entirely of storm water, the permittee accepts WQBELs on each of the nonqualifying wastestreams that have a reasonable potential for the discharge of the intake pollutant or pollutant parameter to cause or contribute to an excursion above a narrative **criterion** or numeric water quality criterion **or value** as determined using the procedures under subdivisions (1) through (3). For purposes of determining reasonable potential and developing WQBELs for these nonqualifying wastestreams, the preliminary ~~wasteload allocations~~ **WLAs** and ~~wasteload allocations~~ **WLAs** in the absence of a TMDL shall be determined as if these nonqualifying wastestreams discharged directly into the receiving waterbody without combining with the qualifying wastestreams.

(iii) Upon a finding under item (i) or (ii) that a pollutant in the discharge does not cause, have the reasonable potential to cause, or contribute to an excursion above an applicable **narrative criterion or numeric** water quality ~~standard,~~ **criterion or value,** the commissioner is not required to include a WQBEL in the facility's permit for the intake pollutant provided:

(AA) the NPDES permit fact sheet or statement of basis includes a specific determination that there is no reasonable potential for the discharge of an intake pollutant to cause or contribute to an excursion above an applicable narrative **criterion** or numeric water quality criterion **or value** and references appropriate supporting documentation included in the administrative record;

(BB) the permit requires all influent, effluent, and ambient monitoring necessary to demonstrate that the conditions in item (i) or (ii) are maintained during the permit term; and

(CC) the permit contains a reopener clause authorizing modification or revocation and reissuance of the permit if new information indicates changes in the conditions under item (i) or (ii).

(iv) Absent a finding under item (i) or (ii) that the discharge of an intake pollutant or pollutant parameter does not cause, have the reasonable potential to cause, or contribute to an excursion above an applicable **narrative criterion or numeric** water quality criterion **or value,** the commissioner shall use the procedures contained under subdivisions (1) through (3) to determine whether the discharge of that pollutant causes, has the reasonable potential to cause, or contribute to an excursion above an applicable narrative **criterion** or numeric water quality criterion **or value.**

(5) Notwithstanding this subsection, if the commissioner determines that the geometric mean of a pollutant in fish tissue samples collected from a waterbody exceeds the tissue basis of a ~~toxic substance,~~ **water quality criterion or value,** after consideration of the variability of the pollutant's bioconcentration and bioaccumulation in fish, the following provisions apply:

(A) If such pollutant is a BCC, each facility that discharges detectable levels of the BCC to that water has the reasonable potential to cause or contribute to an excursion above a water quality criterion **or value** for that BCC and the commissioner shall establish a WQBEL for such pollutant in the NPDES permit for each such facility.

(B) If such pollutant is not a BCC, the commissioner may determine that any or all of the facilities that discharge detectable levels of the pollutant to that water have the reasonable potential to cause or contribute to an excursion above a water quality criterion **or value** for that ~~toxic substance~~ **pollutant** and the commissioner shall establish a WQBEL for such pollutant in the NPDES permit for each such facility.

(c) Except as provided in subdivision (3), where the commissioner determines that the ~~whole effluent toxicity~~ WET of an effluent is or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any numeric interpretation of a narrative WET criterion contained in 327 IAC 2-1.5-8, the commissioner shall incorporate WQBELs for WET in the NPDES permit and in all cases, the commissioner shall use any valid, relevant, or representative information pertaining to the discharge of WET as follows:

(1) When facility-specific WET ~~effluent~~ data are available, the commissioner may take into account the source and nature of the discharge, existing controls on point and nonpoint sources of pollution, the variability of the WET in the effluent, and, where appropriate, the dilution of the effluent in the receiving water in making the determination to develop effluent limitations for WET. The WET of an effluent is or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any applicable WET criterion contained under 327 IAC 2-1.5, when effluent-specific information demonstrates the following:

(A) The acute WET of an effluent is or may be discharged at a level that will cause, have the reasonable potential to

cause, or contribute to an excursion above an applicable acute WET criterion applied to the undiluted discharge, when effluent-specific information demonstrates the following:

$$(TU_a)(F) \geq 0.2$$

Where: TU_a = The geometric mean of the measured acute toxicity values expressed in acute toxic units (TU_a or TU_c). Individual toxicity values may be estimated for the missing endpoint using a default ~~acute-chronic ratio~~ ACR of ten (10), when data exist for chronic WET, but not for acute WET.

F = Fraction of the measured toxicity values greater than the preliminary ~~wasteload allocation~~ **WLA** for acute WET determined under section 11.4(c) of this rule (fraction failed).

(B) The acute WET of an effluent is or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above an applicable acute WET criterion applied outside an alternate mixing zone, when effluent-specific information demonstrates the following:

$$F \geq 0.2$$

Where: F = Fraction of the measured toxicity values greater than the preliminary ~~wasteload allocation~~ **WLA** for acute WET determined under section 11.4(c) of this rule (fraction failed). Individual toxicity values may be estimated for the missing endpoint using a default ~~acute-chronic ratio~~ ACR of ten (10), when data exist for chronic WET, but not for acute WET.

(C) The chronic WET of an effluent is or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above an applicable chronic WET criterion, when effluent-specific information demonstrates the following:

$$\frac{(TU_c)(Q_e)(F)}{(Q_w + Q_e)} \geq 0.2$$

Where: TU_c = The geometric mean of the measured chronic toxicity values expressed in chronic toxic units. Individual toxicity values may be estimated for the missing endpoint using a default ~~acute-chronic ratio~~ ACR of ten (10), when data exist for acute WET, but not for chronic WET.

Q_e = The effluent flow rate as determined under section 11.4(a)(9) of this rule.

Q_w = The portion of the receiving waterbody allocated for mixing as determined under section 11.4(b) of this rule.

F = Fraction of the measured toxicity values greater than the preliminary ~~wasteload allocation~~ **WLA** for acute or chronic WET determined under section 11.4(c) of this rule (fraction failed).

(2) When WET data are not available, the commissioner shall exercise best professional judgment, taking into account the source and nature of the discharge, existing controls on point and nonpoint ~~source~~ **sources** of pollution, and, where appropriate, the dilution of the effluent in the receiving water to determine whether it is necessary to impose WET requirements in accordance with the following:

(A) For a new Great Lakes discharger, the commissioner shall determine whether it is necessary to impose WET limitations.

(B) For an existing Great Lakes discharger, whether it is necessary to require the applicant to collect the data required to make a determination under this subsection. The commissioner may include in the NPDES permit the following conditions to generate additional data and control toxicity if found:

(i) WET testing requirements to generate the data needed to adequately characterize the toxicity of the effluent to aquatic life.

(ii) A toxicity reduction evaluation and a schedule to comply with WET limits if any toxicity testing data indicate that the WET of an effluent is or may be discharged at levels that will cause, have the reasonable potential to cause, or contribute to an excursion above any applicable WET criterion.

(iii) WET limits that become effective upon completion of the compliance schedule.

(3) Limitations on ~~whole effluent toxicity~~ **WET** are not necessary where the commissioner demonstrates in the fact sheet or briefing memo of the NPDES permit that chemical-specific limits for the effluent are sufficient to attain and maintain the applicable narrative water quality criteria for WET.

(d) Once the commissioner has determined in accordance with this section that a WQBEL must be included in an NPDES permit, the commissioner shall do the following:

(1) Rely upon the WLA established for the point source either as part of any EPA-approved TMDL prepared under section 11.4 of this rule, or as part of an assessment and remediation plan developed and approved in accordance with section ~~11.4(a)(3)~~ **11.4(a)(2)** of this rule, or, in the absence of such TMDL or plan, calculate WLAs for the protection of acute and chronic aquatic life, wildlife, and human health in accordance with the provisions for developing ~~wasteload allocations~~ **WLAs** under section 11.4 of this rule.

(2) Develop ~~water quality-based effluent limitations~~ **WQBELs** using these WLAs in accordance with section 11.6 of this rule.

(e) The commissioner may require monitoring for a pollutant or pollutant parameter even if it is determined that a WQBEL in the NPDES permit for that pollutant or pollutant parameter is not required.

(f) In addition to this section, effluent limitations shall be established to comply with all other applicable state and federal

laws and regulations, including technology-based requirements and antidegradation policies.

(g) Notwithstanding subsection (b) or (c) **and only in situations where the intake and outfall points are located on the same body of water as defined in subsection (b)(4)(B),** the commissioner shall not impose WQBELs for a discharge consisting solely of once-through noncontact cooling water, except in accordance with the following:

(1) The commissioner may require a WQBEL based on an acute aquatic **life** criterion **or value** for a substance or acute WET when information is available indicating that such a limit is necessary to protect aquatic life unless the discharger is able to demonstrate that the presence of the substance or WET is due solely to its presence in the intake water.

(2) The commissioner shall establish limitations or other requirements in the permit for the noncontact cooling water wastestream to prevent impairment of the receiving waterbody if a valid biological assessment of the receiving waterbody indicates that the noncontact cooling water discharge impairs an existing or designated use of the waterbody, exclusive of thermal impacts from a discharge for which alternative thermal effluent limitations have been established in accordance with Section 316(a) of the CWA and 327 IAC 5-7.

(3) If a substance is present at elevated levels in the noncontact cooling water wastestream due to improper operation or maintenance of the cooling system, and this substance is or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above a numeric criterion **or value** for a toxic substance as determined under subsection (b), WQBELs shall be established using the procedures in sections 11.4 and 11.6 of this rule.

(4) If the permittee uses or proposes to use additives in the noncontact cooling water wastestream, the additives shall be evaluated using the reasonable potential procedures contained under this section to determine whether WQBELs are necessary for the wastestream.

(5) If the source of the noncontact cooling water wastestream is contaminated ground water, ~~the provisions of~~ this subsection ~~do~~ **does** not apply to the discharge of the substances contaminating the ground water.

(6) If one (1) or more wastestreams consisting solely of noncontact cooling water are combined with one (1) or more wastestreams not consisting solely of noncontact cooling water, ~~the provisions of~~ this subsection may still be applied to the wastestreams consisting solely of noncontact cooling water if, for the wastestreams that do not consist solely of noncontact cooling water, the following requirements are imposed:

(A) For each of the wastestreams composed entirely of storm water, permit conditions that the commissioner determines to be necessary to protect the water quality of the receiving waterbody shall be imposed. The requirements imposed shall be as if the storm water wastestream discharged directly into the receiving waterbody and shall be consistent with requirements imposed on other similar storm water discharges to the waterbody.

(B) For each of the wastestreams not composed entirely of storm water, each wastestream shall be evaluated to determine if there is a reasonable potential for the discharge of a pollutant or pollutant parameter to cause or contribute to an excursion above a narrative **criterion** or numeric water quality criterion **or value** as determined using the procedures in this section. For purposes of determining reasonable potential and developing WQBELs for these wastestreams, the preliminary ~~wasteload allocations~~ **WLAs** and ~~wasteload allocations~~ **WLAs** in the absence of a TMDL shall be determined as if these wastestreams discharged directly into the receiving waterbody without combining with the wastestreams consisting solely of noncontact cooling water.

(7) As used in this subsection, "once-through noncontact cooling water" means water used for cooling that does not come into direct contact with any raw material, intermediate product, final product, or waste product and makes one (1) or two (2) passes for the purpose of removing waste heat.

(h) The ~~following table establishes the~~ multiplying factors to be used in subsection (b) **are established in Tables 11.5-1 and 11.5-2 and shall be obtained as follows:**

(1) Round the coefficient of variation (CV) identified in subsection (b) to the nearest CV in Table 11.5-1 or Table 11.5-2. If the CV identified in subsection (b) is greater than two (2.0), set the CV equal to two (2.0).

(2) Obtain the appropriate multiplying factor from Table 11.5-1 or Table 11.5-2 using the number of samples identified in subsection (b) and the CV determined under subdivision (1). If the number of samples identified under subsection (b) is greater than one hundred (100), obtain the multiplying factor using one hundred (100) samples.

Table 11.5-1
Reasonable Potential Multiplying Factors

Number of Samples	Coefficient of Variation																				
	0.05	0.1	0.2	0.3	0.4	0.5	0.6	0.7	0.8	0.9	1.0	1.1	1.2	1.3	1.4	1.5	1.6	1.7	1.8	1.9	2.0
1	1.2	1.4	1.9	2.6	3.6	4.7	6.2	8.0	10.1	12.6	15.5	18.7	22.3	26.4	30.8	35.6	40.7	46.2	52.1	58.4	64.9
2	1.1	1.3	1.6	2.0	2.5	3.1	3.8	4.6	5.4	6.4	7.4	8.5	9.7	10.9	12.2	13.6	15.0	16.4	17.9	19.5	21.1
3	1.1	1.2	1.5	1.8	2.1	2.5	3.0	3.5	4.0	4.6	5.2	5.8	6.5	7.2	7.9	8.6	9.3	10.0	10.8	11.5	12.3
4	1.1	1.2	1.4	1.7	1.9	2.2	2.6	2.9	3.3	3.7	4.2	4.6	5.0	5.5	6.0	6.4	6.9	7.4	7.8	8.3	8.8

5	1.1	1.2	1.4	1.6	1.8	2.1	2.3	2.6	2.9	3.2	3.6	3.9	4.2	4.5	4.9	5.2	5.6	5.9	6.2	6.6	6.9
6	1.1	1.1	1.3	1.5	1.7	1.9	2.1	2.4	2.6	2.9	3.1	3.4	3.7	3.9	4.2	4.5	4.7	5.0	5.2	5.5	5.7
7	1.1	1.1	1.3	1.4	1.6	1.8	2.0	2.2	2.4	2.6	2.8	3.1	3.3	3.5	3.7	3.9	4.1	4.3	4.5	4.7	4.9
8	1.1	1.1	1.3	1.4	1.6	1.7	1.9	2.1	2.3	2.4	2.6	2.8	3.0	3.2	3.3	3.5	3.7	3.9	4.0	4.2	4.3
9	1.1	1.1	1.2	1.4	1.5	1.7	1.8	2.0	2.1	2.3	2.4	2.6	2.8	2.9	3.1	3.2	3.4	3.5	3.6	3.8	3.9
10	1.0	1.1	1.2	1.3	1.5	1.6	1.7	1.9	2.0	2.2	2.3	2.4	2.6	2.7	2.8	3.0	3.1	3.2	3.3	3.4	3.6
11	1.0	1.1	1.2	1.3	1.4	1.6	1.7	1.8	1.9	2.1	2.2	2.3	2.4	2.5	2.7	2.8	2.9	3.0	3.1	3.2	3.3
12	1.0	1.1	1.2	1.3	1.4	1.5	1.6	1.7	1.9	2.0	2.1	2.2	2.3	2.4	2.5	2.6	2.7	2.8	2.9	3.0	3.0
13	1.0	1.1	1.2	1.3	1.4	1.5	1.6	1.7	1.8	1.9	2.0	2.1	2.2	2.3	2.4	2.5	2.5	2.6	2.7	2.8	2.9
14	1.0	1.1	1.2	1.3	1.4	1.4	1.5	1.6	1.7	1.8	1.9	2.0	2.1	2.2	2.3	2.3	2.4	2.5	2.6	2.6	2.7
15	1.0	1.1	1.2	1.2	1.3	1.4	1.5	1.6	1.7	1.8	1.8	1.9	2.0	2.1	2.2	2.2	2.3	2.4	2.4	2.5	2.5
16	1.0	1.1	1.1	1.2	1.3	1.4	1.5	1.6	1.6	1.7	1.8	1.9	1.9	2.0	2.1	2.1	2.2	2.3	2.3	2.4	2.4
17	1.0	1.1	1.1	1.2	1.3	1.4	1.4	1.5	1.6	1.7	1.7	1.8	1.9	1.9	2.0	2.0	2.1	2.2	2.2	2.3	2.3
18	1.0	1.1	1.1	1.2	1.3	1.3	1.4	1.5	1.6	1.6	1.7	1.7	1.8	1.9	1.9	2.0	2.0	2.1	2.1	2.2	2.2
19	1.0	1.1	1.1	1.2	1.3	1.3	1.4	1.5	1.5	1.6	1.6	1.7	1.8	1.8	1.9	1.9	2.0	2.0	2.0	2.1	2.1
20	1.0	1.1	1.1	1.2	1.2	1.3	1.4	1.4	1.5	1.5	1.6	1.6	1.7	1.7	1.8	1.8	1.9	1.9	2.0	2.0	2.0
21	**1.0**	**1.1**	**1.1**	**1.2**	**1.2**	**1.3**	**1.3**	**1.4**	**1.5**	**1.5**	**1.6**	**1.6**	**1.7**	**1.7**	**1.7**	**1.8**	**1.8**	**1.9**	**1.9**	**1.9**	**2.0**
22	**1.0**	**1.1**	**1.1**	**1.2**	**1.2**	**1.3**	**1.3**	**1.4**	**1.4**	**1.5**	**1.5**	**1.6**	**1.6**	**1.7**	**1.7**	**1.7**	**1.8**	**1.8**	**1.8**	**1.9**	**1.9**
23	**1.0**	**1.0**	**1.1**	**1.2**	**1.2**	**1.3**	**1.3**	**1.4**	**1.4**	**1.4**	**1.5**	**1.5**	**1.6**	**1.6**	**1.6**	**1.7**	**1.7**	**1.8**	**1.8**	**1.8**	**1.8**
24	**1.0**	**1.0**	**1.1**	**1.1**	**1.2**	**1.2**	**1.3**	**1.3**	**1.4**	**1.4**	**1.5**	**1.5**	**1.5**	**1.6**	**1.6**	**1.6**	**1.7**	**1.7**	**1.7**	**1.8**	**1.8**
25	**1.0**	**1.0**	**1.1**	**1.1**	**1.2**	**1.2**	**1.3**	**1.3**	**1.4**	**1.4**	**1.4**	**1.5**	**1.5**	**1.5**	**1.6**	**1.6**	**1.6**	**1.7**	**1.7**	**1.7**	**1.7**
26	**1.0**	**1.0**	**1.1**	**1.1**	**1.2**	**1.2**	**1.3**	**1.3**	**1.3**	**1.4**	**1.4**	**1.4**	**1.5**	**1.5**	**1.5**	**1.6**	**1.6**	**1.6**	**1.6**	**1.7**	**1.7**
27	**1.0**	**1.0**	**1.1**	**1.1**	**1.2**	**1.2**	**1.2**	**1.3**	**1.3**	**1.4**	**1.4**	**1.4**	**1.4**	**1.5**	**1.5**	**1.5**	**1.6**	**1.6**	**1.6**	**1.6**	**1.6**
28	**1.0**	**1.0**	**1.1**	**1.1**	**1.2**	**1.2**	**1.2**	**1.3**	**1.3**	**1.3**	**1.4**	**1.4**	**1.4**	**1.4**	**1.5**	**1.5**	**1.5**	**1.5**	**1.6**	**1.6**	**1.6**
29	**1.0**	**1.0**	**1.1**	**1.1**	**1.1**	**1.2**	**1.2**	**1.2**	**1.3**	**1.3**	**1.3**	**1.4**	**1.4**	**1.4**	**1.4**	**1.5**	**1.5**	**1.5**	**1.5**	**1.5**	**1.6**
30	1.0	1.0	1.1	1.1	1.1	1.2	1.2	1.2	1.3	1.3	1.3	1.3	1.4	1.4	1.4	1.4	1.5	1.5	1.5	1.5	1.5
31	**1.0**	**1.0**	**1.1**	**1.1**	**1.1**	**1.2**	**1.2**	**1.2**	**1.2**	**1.3**	**1.3**	**1.3**	**1.3**	**1.4**	**1.4**	**1.4**	**1.4**	**1.4**	**1.5**	**1.5**	**1.5**
32	**1.0**	**1.0**	**1.1**	**1.1**	**1.1**	**1.2**	**1.2**	**1.2**	**1.2**	**1.3**	**1.3**	**1.3**	**1.3**	**1.3**	**1.4**	**1.4**	**1.4**	**1.4**	**1.4**	**1.4**	**1.5**
33	**1.0**	**1.0**	**1.1**	**1.1**	**1.1**	**1.1**	**1.2**	**1.2**	**1.2**	**1.2**	**1.3**	**1.3**	**1.3**	**1.3**	**1.3**	**1.4**	**1.4**	**1.4**	**1.4**	**1.4**	**1.4**
34	**1.0**	**1.0**	**1.1**	**1.1**	**1.1**	**1.1**	**1.2**	**1.2**	**1.2**	**1.2**	**1.3**	**1.3**	**1.3**	**1.3**	**1.3**	**1.3**	**1.4**	**1.4**	**1.4**	**1.4**	**1.4**
35	**1.0**	**1.0**	**1.1**	**1.1**	**1.1**	**1.1**	**1.2**	**1.2**	**1.2**	**1.2**	**1.2**	**1.3**	**1.3**	**1.3**	**1.3**	**1.3**	**1.3**	**1.3**	**1.4**	**1.4**	**1.4**
36	**1.0**	**1.0**	**1.0**	**1.1**	**1.1**	**1.1**	**1.1**	**1.2**	**1.2**	**1.2**	**1.2**	**1.2**	**1.3**	**1.3**	**1.3**	**1.3**	**1.3**	**1.3**	**1.3**	**1.3**	**1.4**
37	**1.0**	**1.0**	**1.0**	**1.1**	**1.1**	**1.1**	**1.1**	**1.2**	**1.2**	**1.2**	**1.2**	**1.2**	**1.2**	**1.3**	**1.3**	**1.3**	**1.3**	**1.3**	**1.3**	**1.3**	**1.3**
38	**1.0**	**1.0**	**1.0**	**1.1**	**1.1**	**1.1**	**1.1**	**1.1**	**1.2**	**1.2**	**1.2**	**1.2**	**1.2**	**1.2**	**1.2**	**1.3**	**1.3**	**1.3**	**1.3**	**1.3**	**1.3**
39	**1.0**	**1.0**	**1.0**	**1.1**	**1.1**	**1.1**	**1.1**	**1.1**	**1.1**	**1.2**	**1.2**	**1.2**	**1.2**	**1.2**	**1.2**	**1.2**	**1.2**	**1.3**	**1.3**	**1.3**	**1.3**
40	1.0	1.0	1.0	1.1	1.1	1.1	1.1	1.1	1.1	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.3	1.3
~~50~~	~~1.0~~	~~1.0~~	~~1.0~~	~~1.0~~	~~1.0~~	~~1.0~~	~~1.0~~	~~1.0~~	~~1.1~~	~~1.1~~	~~1.1~~	~~1.1~~	~~1.1~~	~~1.1~~	~~1.1~~	~~1.1~~	~~1.1~~	~~1.1~~	~~1.1~~	~~1.1~~	~~1.1~~
~~60~~	~~1.0~~	~~1.0~~	~~1.0~~	~~1.0~~	~~1.0~~	~~1.0~~	~~1.0~~	~~1.0~~	~~1.0~~	~~1.0~~	~~1.0~~	~~1.0~~	~~1.0~~	~~1.0~~	~~1.0~~	~~1.0~~	~~1.0~~	~~1.0~~	~~1.0~~	~~1.0~~	~~1.0~~
~~70~~	~~1.0~~	~~1.0~~	~~1.0~~	~~1.0~~	~~1.0~~	~~1.0~~	~~0.9~~	~~0.9~~	~~0.9~~	~~0.9~~	~~0.9~~	~~0.9~~	~~0.9~~	~~0.9~~	~~0.9~~	~~0.9~~	~~0.9~~	~~0.9~~	~~0.9~~	~~0.9~~	~~0.9~~
~~80~~	~~1.0~~	~~1.0~~	~~1.0~~	~~1.0~~	~~0.9~~	~~0.9~~	~~0.9~~	~~0.9~~	~~0.9~~	~~0.9~~	~~0.9~~	~~0.9~~	~~0.9~~	~~0.9~~	~~0.9~~	~~0.8~~	~~0.8~~	~~0.8~~	~~0.8~~	~~0.8~~	~~0.8~~
~~90~~	~~1.0~~	~~1.0~~	~~1.0~~	~~0.9~~	~~0.9~~	~~0.9~~	~~0.9~~	~~0.9~~	~~0.9~~	~~0.9~~	~~0.8~~	~~0.8~~	~~0.8~~	~~0.8~~	~~0.8~~	~~0.8~~	~~0.8~~	~~0.8~~	~~0.8~~	~~0.8~~	~~0.8~~
~~100~~	~~1.0~~	~~1.0~~	~~1.0~~	~~0.9~~	~~0.9~~	~~0.9~~	~~0.9~~	~~0.9~~	~~0.8~~	~~0.8~~	~~0.8~~	~~0.8~~	~~0.8~~	~~0.8~~	~~0.8~~	~~0.8~~	~~0.8~~	~~0.8~~	~~0.7~~	~~0.7~~	~~0.7~~

Table 11.5-2
Reasonable Potential Multiplying Factors

Number of Samples	Coefficient of Variation																				
	0.05	0.1	0.2	0.3	0.4	0.5	0.6	0.7	0.8	0.9	1.0	1.1	1.2	1.3	1.4	1.5	1.6	1.7	1.8	1.9	2.0
41	1.0	1.0	1.0	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2
42	1.0	1.0	1.0	1.0	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2
43	1.0	1.0	1.0	1.0	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2
44	1.0	1.0	1.0	1.0	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.2	1.2	1.2	1.2	1.2	1.2	1.2
45	1.0	1.0	1.0	1.0	1.0	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.2	1.2	1.2	1.2	1.2
46	1.0	1.0	1.0	1.0	1.0	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.2	1.2
47	1.0	1.0	1.0	1.0	1.0	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
48	1.0	1.0	1.0	1.0	1.0	1.0	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
49	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
50	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
51	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
52	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1
53	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.1	1.1	1.1	1.1	1.1	1.1
54 to 63	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
64	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	0.9	0.9	0.9
65	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.9	0.9
66	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9
67	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9
68	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9
69	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9
70 to 73	1.0	1.0	1.0	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9
74 to 77	1.0	1.0	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9
78	1.0	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.8	0.8
79	1.0	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.8	0.8	0.8
80 to 81	1.0	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.8	0.8	0.8	0.8	0.8	0.8
82 to 83	1.0	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.8	0.8	0.8	0.8	0.8	0.8	0.8
84	1.0	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8
85	1.0	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8
86 to 87	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8
88 to 89	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8
90 to 92	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.9	0.9	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8
93 to 96	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.9	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8
97	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.9	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.7
98 to 99	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.7	0.7
100	1.0	1.0	1.0	0.9	0.9	0.9	0.9	0.9	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.7	0.7	0.7

(Water Pollution Control Board; 327 IAC 5-2-11.5; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1450; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3379; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2112)

SECTION 28. 327 IAC 5-2-11.6 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-2-11.6 Great Lakes system dischargers establishment of water quality-based effluent limitations (WQBELs)

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3
Affected: IC 13-11-2; IC 13-18-4

Sec. 11.6. (a) The NPDES permit shall include conditions necessary to achieve water quality standards established under 327 IAC 2-1.5, including narrative water quality criteria. The numeric water quality criteria set forth in 327 IAC 2-1.5-8 **and 327 IAC 2-1.5-16** and Tier I criteria and Tier II values established under 327 IAC 2-1.5-11 through 327 IAC 2-1.5-16 shall not be enforceable against any point source discharger until translated into effluent limitations that are incorporated in NPDES permits in accordance with this article.

(b) ~~Total maximum daily loads~~ TMDLs and ~~wasteload allocations~~ WLAs developed under section 11.4 of this rule shall provide the basis for numeric water quality-based effluent limitations (WQBELs) established in NPDES permits for point sources discharging to waters within the Great Lakes system. If a variance has been granted from a water quality criterion under 327 IAC 2-1.5-17 and 327 IAC 5-3-4.1, WQBELs for the pollutant that is the subject of the variance shall be calculated on the basis of the variance rather than the water quality criterion.

(c) The following procedure shall be used to calculate WQBELs using the WLAs ~~including WLAs for whole effluent toxicity (WET),~~ developed under section 11.4 of this rule:

(1) This subsection assumes that effluent data follow a log-normal distribution. If a discharger is able to demonstrate that the effluent data for a pollutant does not follow a log-normal distribution and provides an alternate distribution that more accurately describes the data, this alternate distribution may be used ~~in lieu~~ **instead** of the procedures in this subsection.

~~(2) The following procedures shall be used to translate a WLA based on a dissolved criterion into a total recoverable WLA used in the determination of WQBELs:~~

~~(A) Unless site-specific translators are determined in accordance with clause (B), the following translators shall be used to translate a dissolved WLA based on an acute or chronic dissolved aquatic water quality criterion into a total recoverable WLA to be used in the determination of total recoverable WQBELs in an NPDES permit:~~

~~Table 11.6-1~~
~~Metals Translators~~
~~Dissolved to Total Recoverable[†]~~

~~Substances~~	~~Acute Translators~~	~~Chronic Translators~~
~~Arsenic (III)~~	~~1.000~~	~~1.000~~
~~Cadmium~~	~~0.944~~	~~0.909~~
~~Chromium (III)~~	~~0.316~~	~~0.860~~
~~Copper~~	~~0.960~~	~~0.960~~
~~Mercury~~	~~0.850~~	~~0.850~~
~~Nickel~~	~~0.998~~	~~0.997~~
~~Selenium~~	~~0.922~~	~~0.922~~
~~Zinc~~	~~0.978~~	~~0.986~~

~~[†] Divide a dissolved WLA derived from an acute aquatic water quality criterion by the acute translator and divide a dissolved WLA derived from a chronic aquatic water quality criterion by the chronic translator.~~

~~(B) A discharger or proposed discharger may request the use of an alternate translator by using site-specific data. The discharger must conduct a site-specific study to identify the ratio of the dissolved fraction to the total recoverable fraction for a metal in the receiving waterbody outside the mixing zone. If the discharger provides an acceptable study, and other provisions of 327 IAC 2-1.5 and this article are satisfied (such as antibacksliding and antidegradation), the commissioner shall use the site-specific translators to convert a dissolved WLA into a total recoverable WLA. A translator derived for one (1) discharge into a waterbody segment may be applied to other discharges on the same waterbody segment if the translator would adequately represent the site-specific conditions applicable to the other discharges.~~

~~(3)~~ **(2)** For the equations contained within this subsection, the following apply:

(A) Z_{99} = 2.326 (99th percentile probability basis).

(B) CV = coefficient of variation = ratio of the standard deviation to the mean. A value of six-tenths (0.6) will be used for the CV unless the discharger demonstrates that an alternate CV is more representative of the variability of the pollutant in the effluent.

~~(4)~~ **(3)** The first step in this procedure is to calculate a long term average (LTA) for each WLA determined **for the pollutant** under section 11.4 of this rule. These LTAs are calculated as follows:

(A) The LTA_A protective of acute aquatic life effects shall be calculated as follows:

$$LTA_A = \left(e^{(0.5\sigma^2 - z_{99}\sigma)}\right) WLA_A$$

Where: $\sigma^2 = \ln(CV^2 + 1)$.

WLA_A = WLA determined under section 11.4 of this rule using **the** acute aquatic ~~criteria~~ **life criterion** or ~~values or acute toxic units and, if appropriate, translated from a dissolved WLA to a total recoverable WLA in accordance with subdivision (2).~~ **value.** This WLA is expressed as a one (1) day maximum.

(B) The LTA_C protective of chronic aquatic life effects shall be calculated as follows:

$$LTA_C = \left(e^{(0.5\sigma_4^2 - z_{99}\sigma_4)}\right) WLA_C$$

Where: $\sigma_4^2 = \ln(CV^2/4 + 1)$.

WLA_C = **For sulfates, total dissolved solids, fluorides, and dissolved iron, the more stringent** WLA determined under section 11.4 of this rule using ~~criteria~~ **the criterion** for ~~sulfates, total dissolved solids, fluorides, and dissolved iron~~ **the pollutant** under 327 IAC 2-1.5-8(j), **if applicable, or the** chronic aquatic ~~criteria~~ **life criterion** or ~~values, or chronic toxic units and, if appropriate, translated from a dissolved WLA to a total recoverable WLA in accordance with subdivision (2).~~ **value. For other pollutants, the WLA determined under section 11.4 of this rule using the chronic aquatic life criterion or value.** This WLA is expressed as a four (4) day average.

(C) The LTA_H protective of human health ~~life~~ effects shall be calculated as follows:

$$LTA_H = \left(e^{(0.5\sigma_{30}^2 - z_{99}\sigma_{30})}\right) WLA_H$$

Where: σ_{30}^2 = $\ln(CV^2/30 + 1)$.

WLA_H = **The most stringent** WLA determined under section 11.4 of this rule using **a** ~~criteria~~ **criterion** or ~~values~~ **value** for the protection of human health. This WLA is expressed as a thirty (30) day average.

(D) The LTA_W protective of wildlife effects shall be calculated as follows:

$$LTA_W = \left(e^{(0.5\sigma_{30}^2 - z_{99}\sigma_{30})}\right) WLA_W$$

Where: σ_{30}^2 = $\ln(CV^2/30 + 1)$.

WLA_W = WLA determined under section 11.4 of this rule using **the** ~~wildlife criteria~~ **WC** or ~~values.~~ **WV.** This WLA is expressed as a thirty (30) day average.

~~(5)~~ **(4)** Daily maximum and monthly average WQBELs are determined using the lowest LTA calculated in subdivision ~~(4)~~ **(3)** as follows:

(A) The daily maximum WQBEL is calculated as follows:

$$\text{Daily Maximum} = \left(e^{(Z_{99}\sigma - 0.5\sigma^2)}\right) LTA$$

Where: σ^2 = $\ln(CV^2 + 1)$.

(B) The monthly average WQBEL is calculated as follows:

$$\text{Monthly Average} = \left(e^{(Z_{95}\sigma_n - 0.5\sigma_n^2)}\right) LTA$$

Where: ~~σ^2_n~~ $\boldsymbol{\sigma_n^2}$ = $\ln(CV^2/n + 1)$.

z_{95} = 1.645 (95th percentile probability basis).

n = Number of samples per month. A value of ten (10) will be used unless the discharger demonstrates that an alternate value is more appropriate.

(C) The ~~values of 1.0 TU_a and 1.0 TU_c will be the most restrictive WQBELs established in an NPDES permit for WET.~~ **monthly average WQBEL shall not exceed the most stringent WLA developed under section 11.4 of this rule unless calculated using the following:**

(i) A CV calculated using facility-specific effluent monitoring data that is representative of the variability of the pollutant in the effluent.

(ii) A value for n based on the monitoring frequency in the NPDES permit to be issued.

(d) Notwithstanding ~~the provisions of~~ subsection (c), **WQBELs for whole effluent toxicity (WET) and** WQBELs for the criteria listed in section 11.4(d) of this rule shall be developed ~~to be consistent with the models used in that subsection.~~ **as follows:**

(1) For WET, WQBELs shall be developed using the WLAs for acute and chronic WET developed under section 11.4 of this rule as follows:

(A) The commissioner shall ensure that the WQBELs for WET established under this subdivision attain the acute and chronic WET criteria in 327 IAC 2-1.5-8 under the receiving waterbody flows and outside the mixing zones used to develop the WLAs for acute and chronic WET under section 11.4 of this rule.

(B) The commissioner shall determine, on a case-by-case basis, the following:

(i) Whether to develop a WQBEL for only acute or chronic WET or WQBELs for both acute and chronic WET.

(ii) The number of species required for WET testing.

(iii) The particular species required for WET testing.

(C) In making the determination in clause (B), the commissioner shall take into consideration available information about the discharge and receiving waterbody, including, but not limited to, the following:

(i) The ACR of the effluent.

(ii) The sensitivity of the test species to the toxicity in the effluent.

(iii) The WLAs developed for acute and chronic WET under section 11.4 of this rule.

(D) When the commissioner determines that it is necessary to develop a WQBEL for acute WET, the WQBEL shall be set equal to the WLA developed for acute WET under section 11.4 of this rule and shall be established in an NPDES permit as a daily maximum limit.

(E) When the commissioner determines that it is necessary to develop a WQBEL for chronic WET, the WQBEL shall be set equal to the WLA developed for chronic WET under section 11.4 of this rule and shall be established in an NPDES permit as a monthly average limit.

(2) For the criteria listed in section 11.4(d) of this rule, WQBELs shall be developed to be consistent with the models used in that subsection.

(e) WQBELs in an NPDES permit for ~~metals~~ **a metal** calculated from a ~~dissolved~~ water quality criterion **expressed in the form of dissolved metal that is:**

(1) contained in 327 IAC 2-1.5; **or**

(2) subsequently developed under the procedures contained in 327 IAC 2-1.5;

shall be expressed in the permit as ~~the~~ total recoverable ~~metals fraction~~ **metal** unless all approved analytical methods for the metal inherently measure only its dissolved form, such as hexavalent chromium.

(f) ~~Water quality-based effluent limitations~~ **WQBELs** for cyanide, calculated from a criterion for free cyanide contained in 327 IAC 2-1.5, shall be limited in the permit as free cyanide and monitored in the effluent using the "Cyanides Amenable to Chlorination" (CATC) method ~~(Standard Methods for the Examination of Water and Wastewater,~~ **(40 CFR 136,** Method 4500-CN G) **or another method approved by** the commissioner. ~~may approve the use of the "Weak and Dissociable Cyanide" method (Standard Methods for the Examination of Water and Wastewater, Method 4500-CN I) if the applicant demonstrates that interferences render the CATC method inaccurate.~~ The commissioner may include additional monitoring, limitations, or other requirements in a permit, on a case-by-case basis, if the additional requirements are necessary to ensure that water quality standards will be attained.

(g) Whenever a WQBEL is developed, unless otherwise provided in subdivision (3), ~~or (4),~~ the WQBEL in the NPDES permit shall be expressed as both a concentration value and a corresponding mass loading rate as follows:

(1) Both mass and concentration limits shall be based on the same permit averaging periods, such as daily, or monthly averages, or in other appropriate permit averaging periods.

(2) The mass loading rates shall be calculated using effluent flow rates that are the same as those used in establishing the concentration-based WQBELs.

(3) For pollutants or parameters that cannot appropriately be expressed in terms of mass (such as pH, temperature, radiation, bacteria, or dissolved oxygen) mass limits are not required.

(4) A discharger may request tiered mass limits for a discharge that increases as a result of wet weather flow. As used in this subdivision, "tiered mass limits" consists of two (2) sets of mass limits. One (1) set shall be based on the dry-weather effluent flow determined under section 11.4(a)(9) of this rule and the stream design flow under section 11.4(b) of this rule. The second set shall be based on an effluent flow and stream flow under wet weather conditions. **For each mass limit developed under this subdivision, the NPDES permit shall include a corresponding concentration limit.**

(h) When a WQBEL for a pollutant is calculated to be less than the ~~level of quantitation~~ LOQ, the following conditions apply:

(1) The calculated WQBEL shall be established as the limit in the NPDES permit.

(2) The analytical method, ~~level of detection~~ LOD, and LOQ shall be specified as follows:

(A) The commissioner shall specify in the permit the most sensitive, applicable, analytical method, specified in or approved under 40 CFR 136 or by the commissioner, to be used to monitor for the presence and amount in an effluent of the pollutant for which the WQBEL is established and shall specify in accordance with clause (B), the LOD and LOQ that can be achieved by use of the specified analytical method.

(B) The LOD and LOQ shall be determined as follows:

(i) The ~~method detection level~~ MDL shall be used as the LOD unless the permittee demonstrates that a higher LOD is appropriate because of effluent-specific matrix interference.

(ii) The LOQ shall be the ~~minimum level~~ ML specified in or approved under 40 CFR 136 for the method for that pollutant. If no such ML exists, or if the method is not specified or approved under 40 CFR 136 or by the commissioner, the LOQ shall be calculated by multiplying the LOD by three and eighteen-hundredths (3.18). The commissioner may specify a higher LOQ if the permittee demonstrates that a higher LOQ is appropriate because of effluent-specific matrix interference. Other methods for deriving an LOQ may be approved by the commissioner if the method is scientifically defensible.

(3) Compliance with the WQBELs for the pollutant shall be determined as follows:

(A) When a daily maximum WQBEL is less than the LOD specified in the permit, **effluent levels:**

(i) ~~effluent levels~~ of the pollutant less than the LOD are in compliance with the maximum WQBEL; and

(ii) ~~effluent levels~~ greater than the LOD but less than the LOQ are in compliance with the maximum WQBEL, except when confirmed by a sufficient number of analyses of multiple samples and use of appropriate statistical techniques.

(B) When a daily maximum WQBEL is greater than the LOD specified in the permit but less than the LOQ specified in the permit, effluent levels of the pollutant less than the LOQ are in compliance with the WQBEL.

(C) To determine compliance with a WQBEL expressed as a daily maximum mass limitation, the LOD and LOQ shall each be converted to a mass value, using appropriate conversion factors and the same effluent flow used to determine the mass-based WQBEL, before applying the provision of clauses (A) and (B).

(D) When a monthly or weekly average WQBEL is less than the LOQ specified in the permit, a monthly or weekly average effluent level less than or equal to the respective monthly or weekly average WQBEL is in compliance with the monthly or weekly average WQBEL. Daily effluent values that are less than the LOQ, used to determine the monthly or weekly average effluent levels less than the

LOQ, may be assigned a value of zero (0), unless, after considering the number of monitoring results that are greater than the LOD, and applying appropriate statistical techniques, a value other than zero (0) is warranted.

(4) When a WQBEL is less than the LOD, the commissioner may require a period of accelerated monitoring in a permit, when the measured effluent level is between the LOD and LOQ, for the purpose of collecting additional data to apply the statistical analysis referenced in subdivision ~~(3)(B)~~ **(3)(A)** and (3)(D).

(5) When a WQBEL is less than the LOQ, special conditions may be included in the permit to better quantify the levels of pollutant present in the discharge. These special conditions may include, but are not limited to, the following:

(A) Fish tissue sampling.

(B) Caged-biota studies.

(C) ~~Whole effluent toxicity~~ WET tests.

(D) Limits on internal wastestreams.

(E) Monitoring requirements on internal wastestreams.

(F) Development of a more sensitive analytical procedure.

(G) Monitoring for surrogate parameters.

(H) Waterbody bioassessment.

(6) The permit shall contain reopener clauses authorizing modification or revocation and reissuance of the permit to:

(A) include more stringent monitoring requirements or conditions if new information generated as a result of accelerated monitoring conducted in accordance with subdivision (4), or special conditions included in the permit in accordance with subdivision (5) indicates the likely presence of the pollutant in the discharge at levels above the WQBEL; and

(B) specify the use of a different analytical method if a more sensitive analytical method has been specified in or approved under 40 CFR 136 or approved by the commissioner to monitor for the presence and amount in the effluent of the pollutant for which the WQBEL is established and shall specify in accordance with subdivision (2)(B), the LOD and LOQ that can be achieved by use of the specified analytical method.

(7) The commissioner shall include a condition in the permit requiring the permittee to develop and conduct a pollutant minimization program (PMP) for each pollutant with a WQBEL below the LOQ in accordance with the following:

(A) The goal of the ~~pollutant minimization program~~ **PMP** shall be to maintain the effluent at or below the WQBEL. The ~~pollutant minimization program~~ **PMP** shall include, but is not limited to, the following:

(i) Submission of a control strategy designed to proceed toward the goal.

(ii) Implementation of appropriate cost-effective control measures consistent with the control strategy.

(iii) Monitoring necessary to monitor the progress toward the goal. **This shall include, but is not limited to, the following:**

(AA) Semiannual monitoring of potential sources of the pollutant.

(BB) Quarterly monitoring for the pollutant in the influent of the wastewater treatment system.

(iv) An annual status report that shall be sent to the commissioner, including the following:

(AA) All ~~minimization program~~ **PMP** monitoring results for the previous year.

(BB) A list of potential sources of the pollutant.

(CC) A summary of all actions taken to reduce or eliminate the identified sources of the pollutant.

(v) A ~~pollution minimization program~~ **PMP** may include the submittal of pollution prevention strategies that use changes in production process technology, materials, processes, operations, or procedures to reduce or eliminate the source of the pollutant.

(B) No ~~pollution minimization program~~ **PMP** is required if the permittee demonstrates that the discharge of a pollutant with a WQBEL below the LOQ is reasonably expected to be in compliance with the WQBEL at the point of discharge into the receiving water. This demonstration may include, but is not limited to, the following:

(i) Treatment information, including information derived from modeling the destruction or removal of the pollutant in the treatment process.

(ii) Mass balance information.

(iii) Fish tissue studies or other biological studies.

(C) In determining appropriate cost-effective control measures to be implemented in a ~~pollution minimization program,~~ **PMP,** the following factors may be considered:

(i) Significance of sources.

(ii) Economic and technical feasibility.

(iii) Treatability.

(D) The permit shall contain a reopener clause authorizing modification or revocation and reissuance of the permit to revise (such as more or less frequent monitoring) or remove the requirements of this subdivision if supported by information generated as a result of this subdivision.

(i) The determinations under this subsection regarding the consideration of intake pollutants, as defined under section 11.5(b)(4)(A) of this rule, shall be made on a pollutant-by-pollutant, outfall-by-outfall basis. This subsection applies only when the concentration of the pollutant of concern upstream of the discharge, as determined under section 11.4(a)(8) of this rule, exceeds the most stringent applicable water quality criterion **or value** for that pollutant. In addition, this subsection applies only in the absence of an EPA-approved TMDL applicable to the discharge, or in the absence of an assessment and remediation plan submitted and approved in accordance with section 11.4(a)(2) of this rule. ~~The requirements of section 11.5(b)(3)(A) of this rule shall also apply to this section.~~ The following procedures shall be used in the consideration of intake pollutants in establishing WQBELs:

(1) When an intake pollutant is from the same body of water, as defined under section 11.5(b)(4)(B) of this rule, and the

discharge and the facility meet the conditions in section 11.5(b)(4)(C)(i)(BB) through 11.5(b)(4)(C)(i)(EE), the following procedures apply:

(A) The commissioner may establish effluent limitations allowing the facility to discharge a mass and concentration of the pollutant that are no greater than the mass and concentration of the pollutant identified in the facility's intake water (no net addition limitations). The permit shall specify how compliance with mass and concentration limitations shall be assessed. No permit may authorize no net addition limitations that are effective after March 23, 2007. After that date, WQBELs shall be established in accordance with section 11.5(d) of this rule.

(B) Where proper operation and maintenance of a facility's treatment system results in removal of a pollutant, the commissioner may establish limitations that reflect the lower mass or concentration, or both, of the pollutant achieved by such treatment, taking into account the feasibility of establishing such limits.

(C) For pollutants contained in intake water provided by a water system, the concentration of the intake pollutant shall be determined at the point where the raw water supply is removed from the same body of water, except that it shall be the point where the water enters the water supplier's distribution system where the water treatment system removes any of the identified pollutants from the raw water supply. Mass shall be determined by multiplying the concentration of the pollutant by the volume of the facility's intake flow received from the water system.

(2) Where the pollutant in a facility's discharge originates from a water of the state that is not the same body of water as the receiving water, as determined in accordance with section 11.5(b)(4)(B) of this rule, WQBELs shall be established based upon the most stringent applicable water quality criterion **or value** for that pollutant.

(3) Where a facility discharges intake pollutants that originate in part from the same body of water, and in part from a different body of water, the commissioner may apply the procedures of subdivisions (1) and (2) to derive an effluent limitation reflecting the flow-weighted average of each source of the pollutant, provided that adequate monitoring to determine compliance can be established and is included in the permit.

(Water Pollution Control Board; 327 IAC 5-2-11.6; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1457; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3379; errata, 26 IR 3884; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2120)

SECTION 29. 327 IAC 5-2-13 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-2-13 Monitoring

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3
Affected: IC 13-11-2; IC 13-18-4

Sec. 13. (a) To assure compliance with permit terms and conditions, all permittees shall monitor, as required in the permit, the following:

(1) The mass, concentration, or other measurement specified in sections 11, 11.1, and 11.6 of this rule for each pollutant specified in the permit.

(2) The volume of wastewater flow at monitoring points specified in the permit, including the final effluent flow from each point source.

(3) Other parameters and conditions as specifically required in the permit.

(b) A POTW shall monitor the mass, concentration, or other units of specified pollutants in the raw influent, in the discharge from intermediate unit treatment processes as specified in the permit or the applicable report of operation form, and in the final effluent, and the volume of effluent flow. For purposes of this section and sections 14 through 15 of this rule, a POTW includes a municipality or other political subdivision, such as a regional sewer district, ~~which~~ **that** owns or operates a wastewater treatment ~~works~~ **plant** or a **water** treatment plant, ~~for public water supply,~~ **as defined in IC 13-11-2,** or a private utility of a quasi-public nature ~~which~~ **that** owns or operates a treatment plant ~~for~~ **from which a permitted discharge occurs, including** a mobile home park **or** a residential development. ~~etc., from which a permitted discharge occurs.~~

(c) For purposes of subsections (a) and (b), the commissioner shall specify the following monitoring requirements in the permit:

(1) Requirements concerning proper installation, use, and maintenance of monitoring equipment or methods (including biological monitoring methods where appropriate).

(2) Monitoring frequency, type, and intervals sufficient to yield continuing data representative of the volume of effluent flow and the quantity of pollutants discharged based on the impact of the wastestream on the receiving water, in accordance with 40 CFR 122.44.

(3) Test procedures for the analysis of pollutants meeting the requirements of subsection (d).

(d) Requirements for test procedures shall be as follows:

(1) Test procedures identified in 40 CFR 136 shall be utilized for pollutants or parameters listed in that part, unless an alternative test procedure has been approved under 40 CFR 136.5.

(2) Where no test procedure under 40 CFR 136 has been approved, analytical work shall be conducted in accordance with ~~the most recent edition of "Standard Methods for the Examination of Water and Wastewater", published by the American Public Health Association (APHA) or as otherwise specified~~ **test procedures approved** by the commissioner. ~~in the permit.~~

(3) Notwithstanding subdivision (1), the commissioner may specify in a permit the test procedure ~~used in developing the data on which an effluent limitations guideline was based, or~~ specified ~~by the standards and guidelines.~~ **in a standard or effluent limitations guideline.**

(e) The sampling frequency and other monitoring requirements specified by the commissioner under subsection (c) shall, to the extent applicable, be consistent with monitoring requirements specified in a standard or effluent limitations guideline on which the effluent limitations in the permit are based. In no case shall the sampling frequency be less than once per calendar year.

(f) Where composite samples are specified in the permit, each fraction of the composite shall be weighted in proportion to the flow corresponding to the time that sample fraction is taken unless the permittee demonstrates that such flow-weighting of sample fractions is not necessary to obtain representative monitoring results. *(Water Pollution Control Board; 327 IAC 5-2-13; filed Sep 24, 1987, 3:00 p.m.: 11 IR 628; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1753; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1465; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2125)*

SECTION 30. 327 IAC 5-2-15 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-2-15 Reporting requirements

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3
Affected: IC 13-11-2; IC 13-14-4-3; IC 13-18-4

Sec. 15. (a) Permittees shall report to the commissioner, using discharge monitoring reports (DMR) (EPA Form 3320-1) and, also, in the case of POTWs, semipublic, state, and federal facilities' reports of operation, the results of any monitoring specified by the permit, ~~pursuant to~~ **under** section 13 of this rule, as often as required by the permit, but in no case less than once per year. POTWs with pretreatment or hybrid pretreatment requirements in their NPDES permits as well as industrial dischargers shall also submit the results of effluent analysis on the Indiana Discharge Monitoring Report Form 30530.

(b) If the permittee monitors any pollutant more frequently than required by the permit, using approved analytical methods, the results of this monitoring shall be reported in the DMR. Other monitoring data not specifically required in the permit (such as internal process or internal wastestream data) ~~which~~ **that** is collected by or for the permittee need not be submitted unless requested by the commissioner. Any such additional monitoring data ~~which~~ **that** indicates a violation of a permit limitation shall be followed up by the permittee, whenever feasible, with a monitoring sample obtained and analyzed pursuant to approved analytical methods. The results of the analysis of the follow-up sample shall be reported to the commissioner in the permittee's DMR.

(c) All reports required by this section shall be prepared by or under the direction of a certified wastewater treatment plant operator or a certified water treatment plant operator licensed under the provisions of 327 IAC 8 when such reports concern a discharge originating in whole or in part from a wastewater treatment plant or a water treatment plant, respectively, as defined in IC 13-11-2.

(d) As used in this section, "approved analytical methods" means those test procedures for the analysis of pollutants ~~which conform to 40 CFR 136 or are specified in the permit.~~ **under section 13(d) of this rule.**

(e) NPDES effluent data is to be reported on the monthly DMRs as follows:

(1) Effluent concentrations less than the ~~limit of detection~~ LOD shall be reported as less than the value of the LOD. For example, if a substance is not detected at a concentration of one (1.0) milligram per liter, the value shall be reported as < 1.0 mg/l.

(2) Effluent concentrations greater than or equal to the LOD shall be reported at the measured value. Effluent concentrations greater than or equal to the LOD and less than the ~~limit of quantitation~~ LOQ that are reported on a DMR shall be annotated on the DMR to indicate that the value is not quantifiable.

(3) Except as provided in section 11.6(h)(3) of this rule, when the individual daily values are averaged for the purpose of determining the weekly average or monthly average, values less than the LOQ shall be accommodated in calculation of the averages using statistical methods that have been approved by the commissioner.

(4) Mass discharge values ~~which~~ **that** are calculated from concentrations reported as less than the value of the ~~limit of detection~~ **LOD** shall be reported as less than the corresponding mass discharge value.

(5) Mass discharge values that are calculated from effluent concentrations greater than the ~~limit of detection~~ **LOD** shall be reported at the calculated value.

(6) Except as provided in section 11.6(h)(3) of this rule, when the individual daily mass discharge values are averaged for the purpose of determining the weekly average or monthly average, values less than the LOQ shall be accommodated in calculation of the averages using statistical methods that have been approved by the commissioner.

(Water Pollution Control Board; 327 IAC 5-2-15; filed Sep 24, 1987, 3:00 p.m.: 11 IR 629; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1754; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1466; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2126)

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TITLE 329 SOLID WASTE MANAGEMENT BOARD

LSA Document #03-286(F)

DIGEST

Amends 329 IAC 12-8-4, 329 IAC 12-8-5, and 329 IAC 12-9-2, concerning certification for solid waste facility operators, to place asbestos disposal certification for solid waste facility operators, which is currently under the authority of the air pollution control board, under the rules promulgated by the solid waste management board. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: November 1, 2003, Indiana Register (27 IR 584).

Second Notice of Comment Period: April 1, 2004, Indiana Register (27 IR 2356).

Notice of First Hearing: April 1, 2004, Indiana Register (27 IR 2360).

Date of First Hearing: June 15, 2004.

Notice of Second Hearing and Proposed Rule: August 1, 2004, Indiana Register (27 IR 3696).

Final Adoption, SWMB, October 19, 2004.

329 IAC 12-8-4 **329 IAC 12-9-2**
329 IAC 12-8-5

SECTION 1. 329 IAC 12-8-4 IS AMENDED TO READ AS FOLLOWS:

329 IAC 12-8-4 Examination requirements for Category II certification

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-15-10; IC 36-9-30

Sec. 4. (a) In order to qualify for accreditation as an accredited examination provider for Category II certification for operators of municipal and nonmunicipal solid waste disposal facilities, the written examination must meet the requirements of this section.

(b) The commissioner may approve an examination under the Category IV certification for a specific type of site. For operators of municipal and nonmunicipal solid waste disposal facilities, the examination for operator certification under Category IV must address any Category II topics in subsection (c) that are applicable to the type of site for which the examination has been developed.

(c) A Category II certification shall adequately address the following topics:

(1) Purpose of training course.

(2) An overview of municipal and nonmunicipal solid waste disposal facilities in integrated municipal solid waste management to address the following:

(A) Generation of municipal solid wastes.

(B) Physical and chemical composition of solid wastes.

(C) Municipal solid waste management.

(3) Basics of site selection.

(4) Complying with design requirements to the following:

(A) Specifications.

(B) Types of plans.

(C) Plan reading.

(D) Municipal and nonmunicipal solid waste facility landfill methods.

(5) Waste acceptance and screening to include the following:

(A) Wastes prohibited by state and federal law and regulations.

(B) Commonly prohibited wastes.

(C) Wastes requiring special handling.

(D) Wastes prohibited by the facility permit.

(E) Screening methods for prohibited wastes.

(F) Record keeping and notification requirements.

(G) Public information and education.

(6) Waste decomposition to include the following:

(A) Fate of wastes.

(B) Effects of decomposition.

(C) Subsidence and differential settlement.

(D) Landfill gas generation and migration.

(E) Leachate generation, migration, and control.

(7) Control processes for landfill gas and leachate to include the following:

(A) Landfill gas and leachate characteristics.

(B) Managing landfill gas.

(C) Protection of facilities built on landfills.

(D) Landfill gas recovery and use.

(E) Managing leachate.

(8) Operational techniques shall adequately address the following:

(A) Design and operational plans.

(B) Operational practices.

(C) Cover systems.

(D) Operation of a lined facility.

(E) Operational problems.

(F) Site operation to minimize environmental and health problems.

(9) Closure and long term care shall adequately address the following:

(A) Site closure.

(B) Closure considerations.

(C) Closure plan.

(D) Long term care and environmental monitoring.

(E) Landfill site end uses.

(F) Final cover design.

(G) Vegetation.

(H) Financing closure and post-closure care.

(10) Disposal of regulated asbestos-containing material (RACM) to include the following:

(A) Special handling requirements.

(B) Disposal requirements.

(C) Record keeping and notification requirements.

(Solid Waste Management Board; 329 IAC 12-8-4; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1485; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Jul 14, 2004, 9:15 a.m.: 27 IR 3977; filed Feb 14, 2005, 10:10 a.m.: 28 IR 2127)

SECTION 2. 329 IAC 12-8-5 IS AMENDED TO READ AS FOLLOWS:

329 IAC 12-8-5 Examination requirements for Category III certification

Authority: **IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2**
Affected: **IC 13-15-10; IC 36-9-30**

Sec. 5. (a) In order to qualify for accreditation as an accredited examination provider for Category III certification for operators of restricted waste sites and construction/demolition sites, the written examination must meet the requirements of this section.

(b) The commissioner may approve an examination under the Category IV certification for a specific type of site. For operators of restricted waste sites and construction/demolition sites, the examination for operator certification under Category IV must address any Category III topics in subsection (c) that are applicable to the type of site for which the examination has been developed.

(c) A Category III certification shall adequately address the following topics:

(1) Purpose of training course.

(2) The role of restricted waste and construction/demolition sites in waste management to address the following:

(A) Types of restricted wastes.

(B) Generation of restricted wastes.

(C) Physical and chemical composition of restricted wastes.

(D) Overview of restricted waste management.

(3) Basics of site selection.

(4) Complying with design requirements to the following:

(A) Specifications.

(B) Types of plans.

(C) Plan reading.

(D) Landfill methods.

(5) Waste acceptance and screening to include the following:

(A) Wastes prohibited by state and federal law and regulations.

(B) Commonly prohibited wastes.

(C) Wastes requiring special handling.

(D) Screening methods for prohibited wastes.

(E) Record keeping and notification requirements.

(F) Public information and education.

(6) Waste decomposition to include the following:

(A) Subsidence and differential settlement.

(B) Leachate generation, migration, and control.

(7) Operational techniques shall adequately address the following:

(A) Design and operational plans.

(B) Operational practices.

(C) Cover systems.

(D) Operation of a lined facility.

(E) Operational problems.

(F) Site operation to minimize environmental and health problems.

(8) Closure and long term care shall adequately address the following:

(A) Site closure.

(B) Closure considerations.

(C) Closure plan.

(D) Long term care and environmental monitoring.

(E) Landfill site end uses.

(F) Final cover design.

(G) Vegetation.

(H) Financing closure and post-closure care.

(9) Disposal of regulated asbestos-containing material (RACM) to include the following:

(A) Special handling requirements.

(B) Disposal requirements.

(C) Record keeping and notification requirements.

(Solid Waste Management Board; 329 IAC 12-8-5; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1485; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Feb 14, 2005, 10:10 a.m.: 28 IR 2128)

SECTION 3. 329 IAC 12-9-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 12-9-2 Accredited training course requirements for recertification

Authority: **IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2**
Affected: **IC 13-15-10; IC 36-9-30**

Sec. 2. (a) Training courses shall be classified as follows:

(1) Category I recertification training course for operators of solid waste incinerators and waste to energy facilities.

(2) Category II recertification training course for operators of municipal and nonmunicipal solid waste land disposal facilities.

(3) Category III recertification training course for operators of restricted waste sites and construction/demolition sites.

(4) Category IV recertification training course for a specific facility.

(b) The accredited training course must include, at a minimum, applicable topics relating to the appropriate category of solid waste facility operation as follows:

(1) An update on applicable Indiana legislation and regulations.

(2) Discussion of applicable department policy.

(3) Information on new or improved technologies.

(4) Information on changes to processes.

(5) Information on changes in management practices.

(6) Information on asbestos disposal.

(c) The accredited training course must be at least four (4) hours in length. *(Solid Waste Management Board; 329 IAC 12-9-2; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1487; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Feb 14, 2005, 10:10 a.m.: 28 IR 2128)*

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TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #04-178(F)

DIGEST

Amends 405 IAC 1-1-5 and 405 IAC 1-1.5-2 to specify that a hospital has 60 days after the date of an overpayment notice to repay the overpayment or to file an appeal to comply with P.L.78-2004. Amends 405 IAC 5-1-5 to update language regarding coding sources. Amends 405 IAC 5-3-13 to eliminate the prior authorization requirement for certain services and to specify that orthodontic procedures for members under 21 years of age for cases of craniofacial deformity or cleft palate are subject to prior authorization. Amends 405 IAC 5-9-1 to allow Medicaid reimbursement for evaluation and management services for 50 office visits per rolling 12 month period without prior authorization. Amends 405 IAC 5-19-1(h) to allow for reimbursement for medical supplies in quantities greater than a one-month supply if the recipient is a Medicare beneficiary and if Medicare allows reimbursement for that quantity. Amends 405 IAC 5-19-10 to specify that Medicaid reimbursement is available for corrective shoe features. Amends 405 IAC 5-26-5 to correct an Indiana Administrative Code reference. Effective 30 days after filing with the secretary of state.

405 IAC 1-1-5	**405 IAC 5-9-1**
405 IAC 1-1.5-2	**405 IAC 5-19-1**
405 IAC 5-1-5	**405 IAC 5-19-10**
405 IAC 5-3-13	**405 IAC 5-26-5**

SECTION 1. 405 IAC 1-1-5 IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-1-5 Overpayments made to providers; recovery

Authority: **IC 12-15-1-10; IC 12-15-21-2; IC 12-15-21-3**
Affected: **IC 4-6-10; IC 4-21.5-3; IC 12-15-1; IC 12-15-6-5; IC 12-15-13-3; IC 12-15-23-2**

Sec. 5. (a) Under IC 12-15-21-3(5) and IC 12-15-21-3(7), the office of Medicaid policy and planning (office) may recover payment, or instruct the fiscal contractor to recover payment, from any Medicaid provider for services rendered to an individual, or claimed to be rendered to an individual, if the office, after investigation or audit, finds that:

(1) the services paid for cannot be documented by the provider as required by 405 IAC 1-5-1;
(2) the amount paid for such services has been or can be paid from other sources;
(3) the services were provided to a person other than the person in whose name the claim was made and paid;
(4) the service reimbursed was provided to a person who was not eligible for medical assistance at the time of the provision of the service;
(5) the paid claim arises out of any act or practice prohibited by law or by rules of the office;
(6) overpayment resulted from:
(A) an inaccurate description of services or an inaccurate usage of procedure codes;
~~(7) overpayment resulted from~~ **(B)** the provider's itemization of services rather than submission of one (1) billing for a related group of services provided to a recipient (global billing) as set out in the office's medical policy;
~~(8) overpayment resulted from~~ **(C)** duplicate billing; **or**
~~(9) overpayment resulted from~~ **(D)** claims for services or materials determined to have been not medically reasonable or necessary; or
~~(10)~~ **(7)** overpayment to the provider resulted from any other reason not specified in this subsection.

(b) Under IC 12-15-21-3(5), the office may determine the amount of overcharges made by a Medicaid provider by means of a random sample audit. The random sample audit shall be conducted in accordance with generally accepted statistical methods, and the selection criteria shall be based on a table of random numbers derived from any book of random sampling generally accepted by the statistical profession.

(c) The office or its designee may conduct random sample audits for the purpose of determining overcharges to the Indiana Medicaid program. The following criteria apply to random sample audits:

(1) In the event that the provider wishes to appeal the accuracy of the random sample methodology under IC 4-21.5-3, the provider may present evidence to show that the sample used by the office was invalid and therefore cannot be used to project the overpayments identified in the sample to total billings for the audit period.
(2) The provider may also conduct an audit, at the provider's expense, of either a valid random sample audit, using the same random sampling methodology as used by the office, or an audit of one hundred percent (100%) of medical records of payments received during the audit period. Any such audit must:
(A) be completed within one hundred eighty (180) days of the date of appeal; and ~~must~~

(B) demonstrate that the provider's records for the unaudited services provided during the audit period were in compliance with state and federal law.

The provider must submit supporting documentation to demonstrate this compliance.

(d) If the office determines that an overcharge has occurred, the office shall notify the provider by certified mail. The notice shall include a demand that the provider reimburse the office, within sixty (60) days of the provider's receipt of the notification, for any overcharges determined by the office. ~~Except as provided in subsection (f),~~ A provider who receives a notice and request for repayment may elect to do one (1) of the following:

(1) Repay the amount of the overpayment not later than sixty (60) days after receiving notice from the office, including interest from the date of overpayment.

(2) Request a hearing and repay the amount of the alleged overpayment not later than sixty (60) days after receiving notice from the office.

(3) Request a hearing not later than sixty (60) days after receiving notice from the office and not repay the alleged overpayment, except as provided in subsection (e).

(e) If:

(1) a provider elects to proceed under subsection (d)(3); and

(2) the office of the secretary determines after the hearing and any subsequent appeal that the provider owes the money;

the provider shall pay the amount of the overpayment, including interest from the date of the overpayment.

~~(f) A hospital licensed under IC 16-21 that receives a notice and request for repayment under subsection (d) has one hundred eighty (180) days to elect one (1) of the actions under subsection (d)(1), (d)(2), or (d)(3).~~

~~(g)~~ **(f)** Under IC 12-15-23-2, the office may enter into an agreement with the provider regarding the repayment of any overpayment made to the provider. Such agreement shall state that the amount of overpayment shall be deducted from subsequent payments to the provider. Such subsequent payment deduction shall not exceed a period of six (6) months from the date of the agreement. The repayment agreement shall include provisions for the collection of interest on the amount of the overpayment. Such interest shall not exceed the percentage as set out in ~~IC 12-15-13-3(f)(1).~~ **IC 12-15-13-3(e)(1).**

~~(h)~~ **(g)** Whenever the office determines, after an investigation or audit, that an overpayment to a provider should be recovered, the office shall assess an interest charge in addition to the amount of overpayment demanded. Such interest charge shall not exceed the percentage set out in ~~IC 12-15-13-3(f)(1).~~ **IC 12-15-13-3(e)(1).** Such interest charge shall be applied to the total amount of the overpayment, less any subsequent repayments. Under IC 12-15-21-3(6), the interest shall:

(1) accrue from the date of the overpayment to the provider; and ~~shall~~

(2) apply to the net outstanding overpayment during the periods in which such overpayment exists.

When an overpayment is determined pursuant to the results of a random sample audit, the date the overpayment occurred shall be considered to be the last day of the audit period and interest will be calculated from the last day of the audit period.

~~(i)~~ **(h)** If the office recovers an overpayment to a provider that is subsequently found not to have been owing to the office, either in whole or in part, then the office will pay to the provider interest on the amount erroneously recovered from the provider. Such interest will accrue:

(1) from the date that the overpayment was recovered by the office until the date the overpayment is restored to the provider; ~~Such interest will accrue~~ **and**

(2) at the rate of interest set out in ~~IC 12-15-13-3(f)(2).~~ **IC 12-15-13-3(e)(2).**

Also, for hospitals that receive a notice that the provider has been underpaid by the office as a result of the cost settlement process, the office will pay interest to the hospital on the amount of the underpayment, consistent with 405 IAC 1-1.5-5(c). The office will not pay interest to a provider under any other circumstances except under the condition described in this subsection.

~~(j)~~ **(i)** If, after receiving a notice and request for repayment,

~~(1)~~ the provider fails to elect one (1) of the options listed in subsection (d) within sixty (60) days, ~~or~~

~~(2) a hospital licensed under IC 16-21 fails to elect one (1) of the options listed in subsection (d) within one hundred eighty (180) days;~~

and the administrator determines that reasonable grounds exist to suspect that the provider has acted in a fraudulent manner, then the administrator shall immediately certify the facts of the case to the Indiana Medicaid fraud control unit established under IC 4-6-10.

~~(k)~~ **(j)** If, at any time after the discovery of the overpayment, the administrator determines that reasonable grounds exist to suspect that the provider has acted in a fraudulent manner, the administrator shall immediately certify the facts of the case to the Indiana Medicaid fraud control unit established under IC 4-6-10.

~~(l)~~ **(k)** Nothing in this section shall be construed to preclude the office from revising a provider's rate of reimbursement under 405 IAC 1-12, **405 IAC 1-14.5,** or ~~405 IAC 1-14.1~~ **405 IAC 1-14.6** as a result of an audit. *(Office of the Secretary of Family and Social Services; 405 IAC 1-1-5; filed Sep 23, 1982, 10:05 a.m.: 5 IR 2347; filed Mar 14, 1986, 4:35 p.m.: 9 IR 1859; filed May 22, 1987, 12:45 p.m.: 10 IR 2281, eff Jul 1, 1987; filed Jul 29, 1992, 10:00 a.m.: 15 IR 2567; filed Apr 4, 1995, 10:45 a.m.: 18 IR 2024; errata filed May 17, 1995, 8:10 a.m.: 18 IR 2415; filed Jul 18, 1996, 3:00 p.m.: 19 IR 3371; errata filed Sep 24, 1996, 3:20 p.m.: 20 IR 331; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Feb 14, 2005, 10:25*

a.m.: 28 IR 2129) NOTE: Transferred from the Division of Family and Children (470 IAC 5-1-3.6) to the Office of the Secretary of Family and Social Services (405 IAC 1-1-5) by P.L.9-1991, SECTION 131, effective January 1, 1992.

SECTION 2. 405 IAC 1-1.5-2 IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-1.5-2 Appeal requests
Authority: IC 12-15-21
Affected: IC 4-21.5-3-6; IC 4-21.5-3-7; IC 12-8-6-6; IC 12-15-13-3

Sec. 2. (a) Appeals governed by this rule will be held in accordance with IC 4-21.5-3, except as specifically set out in this rule. The ultimate authority for purposes of this section is the secretary of family and social services administration, in accordance with IC 12-8-6-6.

(b) A request for an appeal must be filed within the following time limits:
(1) A request for an appeal of a determination that an overpayment has occurred must be filed within the time limits set out in IC 12-15-13-3.
~~(2) A hospital's request for an appeal of an action described in IC 4-21.5-3-6(a)(3) and IC 4-21.5-3-6(a)(4) must be filed within one hundred eighty (180) days.~~
~~(3)~~ **(2)** All other appeal requests governed by this rule must be filed with the ultimate authority within fifteen (15) calendar days of receipt of the determination by the office of Medicaid policy and planning (office), in accordance with IC 4-21.5-3-7. However, any provider subject to administrative review or reconsideration under this article must seek administrative review or reconsideration ~~prior to~~ **before** filing an appeal request.

(c) An appeal request must state facts demonstrating that **the petitioner is:**
(1) ~~the petitioner is~~ a person to whom the order is specifically directed;
(2) ~~the petitioner is~~ aggrieved or adversely affected by the order; or
(3) ~~the petitioner is~~ entitled to review under any law.
Failure of the provider to file the appeal request within the time limits listed in subsection (b) will result in the waiver of any right to appeal from the office's determination.

(d) The provider must file with the office a statement of issues:
(1) within forty-five (45) calendar days after the provider receives notice of the determination of the office; or
(2) at the time the provider files a timely request for appeal; whichever is later.

(e) The statement of issues shall set out in detail:
(1) the specific findings, action, or determinations of the office from which the provider is appealing; **and**
(2) with respect to each finding, action, or determination:
(A) why the provider believes that the office's determination was in error; and
~~(3) with respect to each finding, action, or determination,~~
(B) all statutes or rules supporting the provider's contentions of error.

~~(f) A hospital appealing an action described in IC 4-21.5-3-6(a)(3) and IC 4-21.5-3-6(a)(4) must include its statement of issues in its petition for review.~~

~~(g)~~ **(f)** The statement of issues shall govern the scope of the issues to be adjudicated in the appeal under this rule. The provider will not be permitted to expand the appeal beyond the statement of issues with respect to **the:**
(1) ~~the~~ specific findings, action, or determination of the office; or
(2) ~~the~~ reason or rationale supporting the provider's appeal.

~~(h)~~ **(g)** The provider may supplement or modify its statement of issues for good cause shown, up to sixty (60) calendar days after the appeal request is mailed to the office. The administrative law judge assigned to hear the appeal will determine good cause.

~~(i)~~ **(h)** Within thirty (30) days after filing a petition for review, and upon a finding of good cause by the administrative law judge, a hospital appealing an action described in IC 4-21.5-3-6(a)(3) and IC 4-21.5-3-6(a)(4) may amend the statement of issues contained in a petition for review to add one (1) or more additional issues.

~~(j)~~ **(i)** Failure of the provider to timely file a statement of issues within forty-five (45) calendar days from the date the provider files the appeal request will result in automatic certification to the secretary for summary review, in accordance with section 3 of this rule.

~~(k)~~ **(j)** Notwithstanding subsections (d) through ~~(g),~~ **(f),** a hospital provider that files an appeal after a determination regarding year-end cost settlement may preserve any Medicaid issues that are affected by any Medicare appeal issues, by indicating in its statement of issues that Medicare issues timely filed before the fiscal intermediary are also preserved in its Medicaid statement of issues. *(Office of the Secretary of Family and Social Services; 405 IAC 1-1.5-2; filed Oct 31, 1994, 3:30 p.m.: 18 IR 862; errata filed Feb 28, 1995, 2:30 p.m.: 18 IR 1836; filed Jul 18, 1996, 3:00 p.m.: 19 IR 3374; errata filed Sep 24, 1996, 3:20 p.m.: 20 IR 331; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Feb 14, 2005, 10:25 a.m.: 28 IR 2131)*

SECTION 3. 405 IAC 5-1-5 IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-1-5 Global fee billing; codes
Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-1-15; IC 12-15-21-2
Affected: IC 12-13-7-3; IC 12-15

Sec. 5. (a) Providers must submit one (1) billing for a related group of procedures and services provided to a recipient.

(b) ~~Health Care Financing Administration's~~ **The Centers for Medicare and Medicaid Service's** Common Procedure Coding System (HCPCS) and International Classification of Diseases 9th Revision Clinical Modification (ICD-9-CM) codes shall be used by providers when submitting medical claims to the contractor for adjudication. American Dental Association codes **from the Current Dental Terminology Users Manual** shall be used by providers when submitting dental claims to the contractor for adjudication. **Providers must use the most up-to-date versions of these coding classifications.**

(c) Medicaid claims filed by pharmacy providers on the drug claim form/format must utilize an appropriately configured National Drug Code (NDC), Universal Package Code (UPC), Health Related Item Code (HRI), or state-assigned code. When services are billed that have been prior authorized, the procedure code from the prior authorization form shall be utilized. On UB-92 forms, use the appropriate UB-92 Revenue Codes, as well as the narrative descriptions of services, and the appropriate diagnostic and procedure code contained in ICD-9-CM.

(d) Documentation in the medical records maintained by the provider must substantiate the medical necessity for the procedure or service and the code selected or description given by the provider. This is subject to postpayment audit and review. *(Office of the Secretary of Family and Social Services; 405 IAC 5-1-5; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3300; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Feb 14, 2005, 10:25 a.m.: 28 IR 2131)*

SECTION 4. 405 IAC 5-3-13 IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-3-13 Services requiring prior authorization

Authority: IC 12-8-6-3; IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-21-3
Affected: IC 12-13-7-3; IC 12-15

Sec. 13. (a) Medicaid reimbursement is available for the following services with prior authorization:

(1) Reduction mammoplasties.
(2) Rhinoplasty or bridge repair of the nose when related to a significant obstructive breathing problem.
(3) Intersex surgery.
(4) Blepharoplasties for a significant obstructive vision problem.
(5) Sliding mandibular osteotomies for prognathism or micrognathism.
(6) Reconstructive or plastic surgery.
(7) Bone marrow or stem cell transplants.
(8) All organ transplants covered by the Medicaid program.
~~(9) Plasmapheresis.~~
~~(10) Strabismus surgery for patients over ten (10) years of age.~~
~~(11)~~ **(9)** Home health services.
~~(12)~~ **(10)** Maxillofacial surgeries related to diseases and conditions of the jaws and contiguous structures.
~~(13)~~ **(11)** Temporomandibular joint surgery.
~~(14)~~ **(12)** Submucous resection of nasal septum and septoplasty when associated with significant obstruction.
~~(15) Hysterectomy.~~
~~(16) Tonsillectomy.~~
~~(17) Tonsillectomy and adenoidectomy.~~
~~(18) Cataract extraction.~~
~~(19) Surgical procedures involving the foot.~~
~~(20)~~ **(13)** Weight reduction surgery, including gastroplasty and related gastrointestinal surgery.
~~(21)~~ **(14)** Any procedure ordinarily rendered on an outpatient basis, when rendered on an inpatient basis.
~~(22)~~ **(15)** All dental admissions.
~~(23) Stress electrocardiograms except for medical conditions.~~
~~(24)~~ **(16)** Brand medically necessary drugs.
~~(25)~~ **(17)** Other drugs as specified in accordance with 405 IAC 5-24-8.5.
~~(26)~~ **(18)** Psychiatric inpatient admissions, including admissions for substance abuse.
~~(27)~~ **(19)** Rehabilitation inpatient admissions.
~~(28)~~ **(20)** Assertive community treatment intensive case management as provided under 405 IAC 5-21-1.
(21) Orthodontic procedures for members under twenty-one (21) years of age for cases of craniofacial deformity or cleft palate.
~~(29)~~ **(22)** As otherwise specified in this article.

If any of the surgeries listed in this section are performed during a hospital stay for another condition, prior authorization is required for the surgical procedure.

(b) Requests for prior authorization for the surgical procedures in this section will be reviewed for medical necessity on a case-by-case basis in accordance with this rule. *(Office of the Secretary of Family and Social Services; 405 IAC 5-3-13; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3306; filed Sep 1, 2000, 2:16 p.m.: 24 IR 14; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Jan 7, 2002, 10:11 a.m.: 25 IR 1613; filed Feb 26, 2004, 3:45 p.m.: 27 IR 2244; filed Feb 14, 2005, 10:25 a.m.: 28 IR 2132)*

SECTION 5. 405 IAC 5-9-1 IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-9-1 Limitations

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-1-15; IC 12-15-21-2; IC 12-15-21-3
Affected: IC 12-13-7-3; IC 12-15

Sec. 1. Medicaid reimbursement is available for office visits limited to a maximum of ~~four (4) per month or twenty (20)~~ **fifty (50)** per ~~year~~ **rolling twelve (12) month period per** recipient, per provider without prior authorization and subject to the restrictions in section 2 of this rule. *(Office of the Secretary of Family and Social Services; 405 IAC 5-9-1; filed Jul 25, 1997,*

4:00 p.m.: 20 IR 3310; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Feb 14, 2005, 10:25 a.m.: 28 IR 2132)

SECTION 6. 405 IAC 5-19-1 IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-19-1 Medical supplies

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-21-3
Affected: IC 12-13-7-3; IC 12-15-13-6

Sec. 1. (a) Medical and surgical supplies (medical supplies) are:

(1) disposable items that are not reusable and must be replaced on a frequent basis; ~~Medical supplies are~~

(2) used primarily and customarily to serve a medical purpose; ~~are~~

(3) generally not useful to a person in the absence of an illness or injury; and ~~are~~

(4) covered only for the treatment of a medical condition.

Reimbursement is available for medical supplies subject to the restrictions listed in this section.

(b) Medical supplies include, but are not limited to, the following items:

(1) Antiseptics and solutions.
(2) Bandages and dressing supplies.
(3) Gauze pads.
(4) Catheters.
(5) Incontinence supplies.
(6) Irrigation supplies.
(7) Diabetic supplies.
(8) Ostomy supplies.
(9) Respiratory and tracheotomy supplies.

(c) Covered medical supplies do not include the following items:

(1) Drug products, either legend or nonlegend.
(2) Sanitary napkins.
(3) Cosmetics.
(4) Dentifrice items.
(5) Tissue.
(6) Nonostomy deodorizing products, soap, disposable wipes, shampoo, or other items generally used for personal hygiene.

(d) Providers shall bill in accordance with the instructions set forth in the Indiana health coverage programs manual or update bulletins.

(e) Incontinence supplies, including underpads, incontinent briefs and liners, diapers, and disposable diapers, are covered ~~subject to the following limitations:~~ **only:**

(1) ~~The supplies in this subsection are covered only~~ in cases of documented necessity, at a rate determined by the office; **and**

(2) ~~The supplies in this subsection are covered only~~ for recipients three (3) years of age or older.

(f) All medical supplies must be ordered in writing by a physician or dentist.

(g) Medical supplies that are included in facility reimbursement, or that are otherwise included as part of reimbursement for a medical or surgical procedure, are not separately reimbursable to any party. All covered medical supplies, whether for routine or nonroutine use, are included in the per diem for nursing facilities, even if the facility does not include the cost of medical supplies in their facility cost reports.

(h) Reimbursement is not available for medical supplies dispensed in quantities greater than a one (1) month supply for each calendar month, except when:

(1) packaged by the manufacturer only in larger quantities; **or**

(2) the recipient is a Medicare beneficiary and Medicare allows reimbursement for a larger quantity.

(i) Medical supplies shall be for a specific medical purpose, not incidental or general purpose usage.

(j) Reimbursement for medical supplies is equal to the lower of the following:

(1) The provider's submitted charges, not to exceed the provider's usual and customary charges.
(2) The Medicaid allowable fee schedule amount as determined under this section.

(k) The Medicaid allowable fee schedule amount to be effective on the effective date of this rule is the base statewide fee schedule amount equal to the lower of the Medicaid fee schedule amount in effect during **state fiscal year** (SFY) 2001 or the amount determined as follows:

(1) The average acquisition cost of the item adjusted by a multiplier of one and two-tenths (1.2), if available. If this amount is not available, then subdivision (2).
(2) The Indiana Medicare fee schedule amount adjusted by a multiplier of no less than eight-tenths (.8), if available. If this amount is not available, then subdivision (3).
(3) The weighted median of providers' usual and customary charges adjusted by a multiplier of no less than eight-tenths (.8), if available. If this amount is not available, then subdivision (4).
(4) The Medicaid fee schedule amount in effect during ~~state fiscal year~~ **SFY** 2001, if available. If this amount is not available, then subdivision (5).
(5) The average Indiana Medicaid payment amount per item during ~~state fiscal year~~ **SFY** 2001.

(l) The office may review the statewide fee schedule and adjust it as necessary using the:

(1) Medicare fee schedule; **and**

(2) the providers':

(A) usual and customary charges; and ~~the providers'~~

(B) acquisition cost information;

subject to ~~subsections~~ **subsection** (k)(1) through (k)(5). Any

adjustments shall be made effective no earlier than permitted under IC 12-15-13-6.

(m) Providers must bill for medical supplies using **the** health care common procedure coding system in accordance with the instructions set forth in the Indiana health coverage programs manual or update bulletins.

(n) Providers must include their usual and customary charge for each medical supply item when submitting claims for reimbursement. Providers shall not use the Medicaid calculated allowable fee schedule amount for their billed charge unless it is less than or equal to the amount charged by the provider to the general public. *(Office of the Secretary of Family and Social Services; 405 IAC 5-19-1; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3328; filed Sep 27, 1999, 8:55 a.m.: 23 IR 313; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Jan 10, 2003, 11:01 a.m.: 26 IR 1901; filed Feb 14, 2005, 10:25 a.m.: 28 IR 2133)*

SECTION 7. 405 IAC 5-19-10 IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-19-10 Braces and orthopedic shoes
Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-21-3
Affected: IC 12-13-7-3; IC 12-15

Sec. 10. Medicaid reimbursement is available for the following:
(1) Braces for the leg, arm, back, and neck.
(2) Orthopedic shoes **and corrective shoe features.**
(3) Corrective features built into shoes, such as heels, lifts, and wedges.
(Office of the Secretary of Family and Social Services; 405 IAC 5-19-10; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3330; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Oct 3, 2001, 9:47 a.m.: 25 IR 379; filed Feb 14, 2005, 10:25 a.m.: 28 IR 2134)

SECTION 8. 405 IAC 5-26-5 IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-26-5 Prior authorization
Authority: IC 12-8-6-3; IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-21-3
Affected: IC 12-13-7-3; IC 12-15

Sec. 5. (a) Prior authorization by the office is required for the following:
(1) Hospital stays as outlined in ~~405 IAC 5-21.~~ **405 IAC 5-17.**
(2) When a podiatrist prescribes or supplies corrective features built into shoes, such as heels, lifts, and wedges, for a recipient under twenty-one (21) years of age.
(3) When a podiatrist fits or supplies orthopedic shoes for a recipient with severe diabetic foot disease subject to the restrictions and limitations outlined 405 IAC 5-19.

(b) Medicaid reimbursement is available for the following surgical procedures without prior authorization:
(1) Surgical cleansing of the skin.
(2) Drainage of skin abscesses.
(3) Drainage or injections of a joint or bursa.
(4) Trimming of skin lesions.
Reimbursement for other surgical procedures performed within the scope of the podiatrist's license is available subject to the prior authorization requirements of 405 IAC 5-3. *(Office of the Secretary of Family and Social Services; 405 IAC 5-26-5; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3349; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Feb 14, 2005, 10:25 a.m.: 28 IR 2134)*

LSA Document #04-178(F)
Notice of Intent Published: July 1, 2004; 27 IR 3099
Proposed Rule Published: October 1, 2004; 28 IR 257
Hearing Held: October 27, 2004
Approved by Attorney General: January 27, 2005
Approved by Governor: February 11, 2005
Filed with Secretary of State: February 14, 2005, 10:25 a.m.
IC 4-22-7-5(c) notice from Secretary of State regarding documents incorporated by reference: None received by Publisher

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #04-219(F)

DIGEST

Amends 405 IAC 1-5-1 to increase the required time providers must retain medical records. Effective 30 days after filing with the secretary of state.

405 IAC 1-5-1

SECTION 1. 405 IAC 1-5-1 IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-5-1 Medical records; contents and retention
Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-1-15; IC 12-15-21-2
Affected: IC 12-13-7-3; IC 12-15

Sec. 1. (a) Medicaid records must be of sufficient quality to fully disclose and document the extent of services provided to individuals receiving assistance under the provisions of the Indiana Medicaid program.

(b) All providers participating in the Indiana Medicaid program shall maintain, for a period of ~~three (3)~~ **seven (7)** years from the date Medicaid services are provided, such medical ~~and/or~~ **or** other records, **or both,** including x-rays, as are necessary to fully disclose and document the extent of the services provided to individuals receiving assistance under the provisions of the Indiana Medicaid program. A copy of a claim form ~~which~~ **that** has been submitted by the provider for reimbursement is not sufficient documentation, in and of itself, to comply with this requirement. Providers must maintain records ~~which~~ **that** are independent of claims for reimbursement. Such

medical ~~and/or~~ **or** other records, **or both,** shall include, at the minimum, the following information and documentation:

(1) **The** identity of the individual to whom service was rendered.

(2) **The** identity of the provider rendering the service.

(3) **The** identity and position of **the** provider employee rendering the service, if applicable.

(4) **The** date on which the service was rendered.

(5) **The** diagnosis of **the** medical condition of the individual to whom service was rendered, relevant to physicians and dentists only.

(6) **A** detailed statement describing services rendered.

(7) **The** location at which services were rendered.

(8) **The** amount claimed through the Indiana Medicaid program for each specific service rendered.

(9) Written evidence of physician involvement and personal patient evaluation will be required to document the acute medical needs. A current plan of treatment and progress notes, as to the necessity and effectiveness of treatment, must be attached to the prior authorization request and available for audit purposes.

(10) When a recipient is enrolled in therapy, and when required under Medicaid program rules, physician progress notes as to the necessity and effectiveness of therapy and ongoing evaluations to assess progress and redefine goals must be a part of the therapy program.

(Office of the Secretary of Family and Social Services; Title 5, Ch 1, Reg 5-110; filed Aug 16, 1979, 3:30 p.m.: 2 IR 1383; filed Sep 23, 1982, 9:55 a.m.: 5 IR 2351; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3298; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Feb 14, 2005, 10:15 a.m.: 28 IR 2134) NOTE: Transferred from the Division of Family and Children (470 IAC 5-5-1) to the Office of the Secretary of Family and Social Services (405 IAC 1-5-1) by P.L.9-1991, SECTION 131, effective January 1, 1992.

LSA Document #04-219(F)
Notice of Intent Published: September 1, 2004; 27 IR 4046
Proposed Rule Published: November 1, 2004; 28 IR 655
Hearing Held: November 23, 2004
Approved by Attorney General: January 27, 2005
Approved by Governor: February 11, 2005
Filed with Secretary of State: February 14, 2005, 10:15 a.m.
IC 4-22-7-5(c) notice from Secretary of State regarding documents incorporated by reference: None received by Publisher

TITLE 515 PROFESSIONAL STANDARDS BOARD

LSA Document #04-141(F)

DIGEST

Adds 515 IAC 12 to provide for certain requirements for the issuance of an accomplished practitioner license by the professional standards board. Effective 30 days after filing with the secretary of state.

515 IAC 12

SECTION 1. 515 IAC 12 IS ADDED TO READ AS FOLLOWS:

ARTICLE 12. ACCOMPLISHED PRACTITIONER LICENSE

Rule 1. Accomplished Practitioner License

515 IAC 12-1-1 Accomplished practitioner instructional license

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 1. An accomplished practitioner instructional license is a renewable license that may be issued to a teacher who holds a proficient practitioner instructional license, as noted in:

(1) 515 IAC 8-1-8 through 515 IAC 8-1-15, 515 IAC 8-1-17 through 515 IAC 8-1-34, and 515 IAC 8-1-36 through 515 IAC 8-1-39, and completes either:

(A) a master's degree or higher approved or recognized by the professional standards board and has been recommended for the accomplished practitioner license by the institution granting the degree; or

(B) certification by the National Board for Professional Teaching Standards of a content area recognized by the professional standards board; or

(2) 515 IAC 8-1-16 or 515 IAC 8-1-35 and completes the requirements as outlined in this rule.

(Professional Standards Board; 515 IAC 12-1-1; filed Feb 14, 2005, 10:20 a.m.: 28 IR 2135)

515 IAC 12-1-2 Accomplished practitioner administration or school services license

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 2. An accomplished practitioner administration or school services license is a renewable license that may be issued to an administrator or school services applicant who holds a proficient practitioner administration or school services license, as noted in 515 IAC 8-1-40 through 515 IAC 8-1-48 and completes the requirements as outlined in this rule. *(Professional Standards Board; 515 IAC 12-1-2; filed Feb 14, 2005, 10:20 a.m.: 28 IR 2135)*

515 IAC 12-1-3 Accomplished practitioner license validity period

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 3. The accomplished practitioner administration or school services license is valid for ten (10) years from the

date the materials are received by the professional standards board. After the initial ten (10) years, all subsequent renewals will be valid for five (5) years. *(Professional Standards Board; 515 IAC 12-1-3; filed Feb 14, 2005, 10:20 a.m.: 28 IR 2135)*

515 IAC 12-1-4 Accomplished practitioner application procedures

Authority: IC 20-1-1.4-7
Affected: IC 20-1-1.4; IC 20-6.1

Sec. 4. The application procedures set forth in 515 IAC 9-1-5 and 515 IAC 9-1-6 shall apply to this rule. *(Professional Standards Board; 515 IAC 12-1-4; filed Feb 14, 2005, 10:20 a.m.: 28 IR 2136)*

LSA Document #04-141(F)
Notice of Intent Published: June 1, 2004; 27 IR 2763
Proposed Rule Published: August 1, 2004; 27 IR 3703
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Approved by Attorney General: January 27, 2005
Approved by Governor: February 11, 2005
Filed with Secretary of State: February 14, 2005, 10:20 a.m.
IC 4-22-7-5(c) notice from Secretary of State regarding documents incorporated by reference: None received by Publisher

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #04-43(AC)

Under IC 4-22-2-38, corrects the following typographical, clerical, or spelling errors in LSA Document #04-43(F), printed at 28 IR 2037:

(1) In 326 IAC 6-1-12(a), on page 1 of the original document (28 IR 2037), insert the following after the Central Soya row that reads as follows, "0008, 09C, Elevator Grain Dryer Conveying Legs, 1.01, .006":

	0008	10A	Elevator #1 Truck & Rail Receiving System and Basement	7.23		.006
	0008	10B	Elevator #2 Truck & Rail Receiving System	4.95		.006
Cent. St. Hospital	0009	01	Boilers 7 & 8	22.0	.350	
	0009	02	Boiler 3	17.0	.350	
Chevrolet	0010	0103	Boilers 1-3	65.8	.300	
Chrys. (El.) Shade	0011	01	All Boilers	67.8	.324	
Chrys. (Fdy.) S. Tibbs	0012	01	Cup.-Scrub	34.2		.085
	0012	02	D. Cl. Ck. 4 St.	4.9		.038
	0012	07	Hz. C. Ov. B. Ck.	4.2		.008
	0012	08	Hz. C. Ov. A. Ck.	3.1		.006
	0012	09	Hz. C. Ov. A. By	6.2		.029
	0012	10	Hz. C. Pst. Cr.	less than 1 T/yr		.001
	0012	11	Hz. C. Ov. B. Ry.	.4		.005
	0012	12	Hz. Rv. Ov. Jkt.	less than 1 T/yr		.001
	0012	13	Hz. Ry. Ov. A. CCC	less than 1 T/yr		.002
	0012	14	Bg. Ex. Rb. 1 St.	2.6		.020
	0012	16	Hyd. Fdy. Gre.	1.2		.004
	0012	18	Ck. Unload.	5.9		.021
	0012	19	Flsk. Sk.-Out	50.8		.030
	0012	22	Snd. Trnsfr.	2.6		.019
	0012	25	Cr. Grinding	.01		.001
	0012	26	Cr. Grinding	1.6		.007
	0012	28	Cl. Op. Cr. K. O.	8.2		.034
	0012	29	Cl. Room	6.8		.020
	0012	30	Cl. Room	4.2		.020
	0012	31	Chp. Op.	16.7		.020
	0012	34	Cst. Cl.	57.5		.020
Community Hospital	0014	01	Keller Boiler	.5	.014	
Design Mix	0091	01	Roty. Dry.	9.8		.092
Allison Transmission	0017	01-05	Boilers 1, 2, 3, 4, 5	39.3 combined	.15 each	
Rolls-Royce Corporation	0311	01	Boilers 0070-01 through 0070-04	130.0/yr	.337	
	0311	02	Boilers 0070-58 and 0070-59		.15	
	0311	03	Boilers 0070-62 through 0070-65		.15	
Illinois Cereal Mills, Incorporated	0020	01	Cleaver Brooks Boiler	1.0	.014	
	0020	02	Old Mill–Dust	4.3		.030
	0020	05	Old Mill–Dust	4.3		.030

	0020	06	Warehouse–Dust	5.8	.030
	0020	07	New Mill Dryers	3.0	.030

(2) In 326 IAC 6-1-12(a), on page 2 of the original document (28 IR 2039), insert the following after the IPL (Perry K) row that reads as follows, "0034, 02, Boiler 13 (natural gas, coke oven gas), *.082":

	0034	02	Boiler 14 (natural gas, coke oven gas)	484.4	*.082
	0034	03	Boiler 15 (coal)		*.106
	0034	03	Boiler 16 (coal)		*.106
	0034	03	Boiler 17 (oil)		*.015
	0034	03	Boiler 18 (oil)		*.015
IPL (Stout)	0033	09	Boiler 9	1.9	*.015
	0033	10	Boiler 10	2.2	*.015
	0033	11	Boiler 50	82.2	*.135
	0033	12	Boiler 60	82.2	*.135
	0033	13	Boiler 70	830.7	*.1
	0033	14	Gas Turbine 1	.28	*.015
	0033	15	Gas Turbine 2	.28	*.015
	0033	16	Gas Turbine 3	.28	*.015
Nat'l. R.R. (Amtrak)	0646	01	Boiler 1	23.0	.350
	0646	02	Boiler 2	23.0	.350
National Starch	0042	06	61-9	4.1	.016
	0042	11	56-2	11.3	0.010
	0042	12	71-2	2.6	.030
	0042	13	61-6	.1	.030
	0042	22	56-1	7.02	0.020
	0042	29	40-4	44.1	0.020
	0042	30	40-3	42.3	0.020
	0042	31	40-2	31.9	0.020
	0042	43A	42-1	.9	.030
	0042	46	61-14A	.6	.029
	0042	47	61-14	1.2	.028
	0042	55	42-8	4.2	.030
	0042	56A	42-7A	1.7	.032
	0042	56B	42-7B	1.7	.032
	0042	56C	42-7C	1.7	.032
	0042	57A	42-3A	1.8	.032
	0042	57B	42-3B	1.8	.032
	0042	57C	42-3C	1.8	.032
	0042	57D	42-3D	1.8	.032
	0042	57E	42-3E	1.8	.032
	0042	57F	42-3F	1.8	.032
	0042	59	42-4	2.3	.029
	0042	60	42-10	2.4	.030
	0042	63	42-6	2.5	.030
	0042	64	71-1	.9	.030
	0042	67A	71-5A	.3	.026
	0042	67B	71-5B	.3	.026

0042	67C	71-5C	.3	.026
0042	67D	71-5D	.3	.026
0042	67E	71-5E	.3	.026
0042	67F	71-5F	.3	.026
0042	67G	71-5G	.3	.026

(3) In 326 IAC 6-1-12(a), on page 3 of the original document (28 IR 2041), insert the following after the St. Vincent's Hospital row that reads as follows, "0476, 0103, Boiler 1-3, .7, .011":

Sludge Incinerator	0032	01	Incinerator #5	17.9		.030
	0032	02	Incinerator #6	17.9		.030
	0032	03	Incinerator #7	17.9		.030
	0032	04	Incinerator #8	17.9		.030
	0032	05	Incinerators #1-4	72.5		.030
Stokely Van Camp	0056	0103	Boiler	93.3	.350	
Praxair	0060	01	3 Boilers	35.5	.350	

*Compliance shall be determined using 40 CFR 60, Appendix A, Method 5**.

(b) Sources shall be considered in compliance with the tons per year emission limits established in subsection (a) if within five percent (5%) of the emission limit.

(c) Processes 40-4, 40-3, 40-2, 575-1, **and** 575-2 and Boiler 4 at National Starch, identified in subsection (a) as one hundred percent (100%) natural gas burners, shall burn only natural gas.

(d) **In addition to complying with subsections (a) and (b), Reilly Industries shall comply with the following:**

(1) Processes ~~186 N,~~ 2607 T, 702611, 722804, 2713 W, and 2714 W at Reilly Industries, identified in subsection (a) as one hundred percent (100%) natural gas burners, shall burn only natural gas.

(2) Maintain monthly fuel usage records for processes 186 N, 2722 W, and 2726 S that contain sufficient information to estimate emissions including:

(A) boiler identification;

(B) fuel usage for each type of fuel;

(C) heat content of fuel; and

(D) emission factor used to calculate emissions.

(3) Within thirty (30) days of the end of each calendar quarter, a written report shall be submitted to the department and the Indianapolis office of environmental services division of the monthly emissions for each of the previous twelve (12) months for boilers 186 N, 2722 W, and 2726 S, including the information in subdivision (2).

(4) Compliance with the annual tons per year limitation shall be based on the sum of the monthly emissions for each twelve (12) month period.

(5) The fuel usage records shall be maintained at the source for three (3) years and available for an additional two (2) years. The records shall be made available to the department or its designated representative upon request.

(e) In addition to complying with subsections (a) through (b), Navistar International Transportation Corporation shall comply with the following:

(1) The height of each of the two (2) stacks on the M-3 baghouse (Point ID 07) shall be increased by fifty (50) feet by August 31, 1990.

(2) Within thirty (30) days of the effective date of this rule, Navistar shall submit to the department the following:

(A) A certification as to the complete and permanent shutdown of the sources identified as Point ID 8, 9, and 10 of subsection (a) and No. 2 Large Mold Line, M-2 Mold Line, M-4 Mold Line, and the core-making and core-knockout operations for these mold lines.

(B) A written list of sources not identified in subsection (a) with a potential to emit ten (10) or greater tons per year.

(3) Within thirty (30) days of the end of each calendar quarter, a written report shall be submitted to the department of the monthly emissions from each emission point identified in subsection (a) ~~which~~ **that** contains information necessary to estimate emissions including:

(A) for boilers:

(i) fuel type;

(ii) usage;

(iii) ash content; and

Filed with Secretary of State: March 1, 2005, 11:00 a.m.

Under IC 4-22-2-38(g)(2), this correction takes effect 45 days from the date and time filed with the Secretary of State.

NOTE: This change was incorporated into the printed version of LSA Document #04-43(F) and may be found at 28 IR 2037, as corrected.

Notice of Recall

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #04-208

Under IC 4-22-2-40, LSA Document #04-208, printed at 28 IR 625, is recalled.

TITLE 470 DIVISION OF FAMILY AND CHILDREN

LSA Document #04-77

Under IC 4-22-2-40, LSA Document #04-77, printed at 27 IR 2837, is recalled.

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #04-230

Under IC 4-22-2-41, LSA Document #04-230, printed at 27 IR 4046, is withdrawn.

TITLE 812 INDIANA AUCTIONEER COMMISSION

LSA Document #04-226

Under IC 4-22-2-41, LSA Document #04-226, printed at 27 IR 4047, is withdrawn.

TITLE 876 INDIANA REAL ESTATE COMMISSION

LSA Document #04-224

Under IC 4-22-2-41, LSA Document #04-224, printed at 27 IR 4048, is withdrawn.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #05-28(E)

DIGEST

Adds 65 IAC 5-16 concerning the draw game 50/50 Raffle. Effective March 1, 2005.

65 IAC 5-16

SECTION 1. 65 IAC 5-16 IS ADDED TO READ AS FOLLOWS:

Rule 16. 50/50 Raffle

65 IAC 5-16-1 Name
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 1. The name of this draw game is "50/50 Raffle". *(State Lottery Commission; 65 IAC 5-16-1; emergency rule filed Feb 24, 2005, 12:00 p.m.: 28 IR 2142, eff Mar 1, 2005)*

65 IAC 5-16-2 Definitions
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 2. (a) The definitions in this section shall apply throughout this rule.

(b) "50/50 Raffle winning number" means the one (1) eight (8) digit number selected by the commission in a 50/50 Raffle selection event with digits in the exact order of selection.

(c) "50/50 Raffle selection event" means a drawing or other selection event conducted to determine the 50/50 Raffle winning number.

(d) "50/50 Raffle ticket" means a draw ticket purchased in the manner defined in section 4(a) of this rule.

(e) "Play" means the set of four (4) sequential eight (8) digit numbers that appear on a valid 50/50 Raffle ticket in the manner defined in section 4(b) of this rule.

(f) "Player" means an eligible person who participates in a 50/50 Raffle selection event by purchasing a 50/50 Raffle ticket and/or claiming the prize.

(g) "Retailer" means a person who sells lottery tickets on behalf of the commission pursuant to a retailer contract.

(h) "Prize" means the prize available to one (1) player who holds a ticket containing the 50/50 Raffle winning number in a 50/50 Raffle selection event. *(State Lottery Commission; 65 IAC 5-16-2; emergency rule filed Feb 24, 2005, 12:00 p.m.: 28 IR 2142, eff Mar 1, 2005)*

65 IAC 5-16-3 Ticket price and content
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 3. The price of a 50/50 Raffle ticket shall be two dollars ($2) per ticket. Each 50/50 Raffle ticket shall contain one (1) play consisting of four (4) sequential eight (8) digit numbers and is valid for the 50/50 Raffle selection event following its purchase. No two (2) 50/50 Raffle tickets shall contain any of the same eight (8) digit numbers. *(State Lottery Commission; 65 IAC 5-16-3; emergency rule filed Feb 24, 2005, 12:00 p.m.: 28 IR 2142, eff Mar 1, 2005)*

65 IAC 5-16-4 Procedure for playing
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 4. (a) A 50/50 Raffle ticket may be purchased by requesting a play, and the retailer shall generate the 50/50 Raffle ticket from the terminal.

(b) Each play for 50/50 Raffle shall consist of the set of four (4) sequential eight (8) digit numbers.

(c) A 50/50 Raffle ticket is the only valid proof of a play and the only valid receipt for claiming a prize in 50/50 Raffle. A play slip shall have no pecuniary or prize value and shall not constitute evidence of purchase of a 50/50 Raffle ticket or a play.

(d) One (1) 50/50 Raffle selection event shall be conducted on a date announced in advance by the director. There is no multiple draw opportunity in 50/50 Raffle.

(e) Sales of 50/50 Raffle tickets shall be suspended prior to the time of the 50/50 Raffle selection event at a time determined by the director.

(f) Neither the commission, the director, nor any employee of the commission shall be liable for the inability of any person to purchase a 50/50 Raffle ticket containing a particular play.

(g) The director may, in the director's sole discretion, authorize the generation of draw entry tickets or promotional prizes from terminals with respect to certain purchases of 50/50 Raffle tickets. *(State Lottery Commission; 65 IAC 5-16-4; emergency rule filed Feb 24, 2005, 12:00 p.m.: 28 IR 2142, eff Mar 1, 2005)*

65 IAC 5-16-5 Prize amount and determination of winner
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 5. One (1) prize equal to fifty percent (50%) of the sales pool shall be paid to the player presenting the 50/50 Raffle ticket containing the 50/50 Raffle winning number in the 50/50 Raffle selection event. *(State Lottery Commission; 65 IAC 5-16-5; emergency rule filed Feb 24, 2005, 12:00 p.m.: 28 IR 2142, eff Mar 1, 2005)*

65 IAC 5-16-6 Determination of winning number
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 6. The commission shall conduct the 50/50 Raffle selection event from among only those eight (8) digit numbers printed on 50/50 Raffle tickets purchased prior to the selection event. The selection event shall be under the supervision of security personnel and an independent auditor. *(State Lottery Commission; 65 IAC 5-16-6; emergency rule filed Feb 24, 2005, 12:00 p.m.: 28 IR 2143, eff Mar 1, 2005)*

65 IAC 5-16-7 Payment of prize
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30; IC 4-30-16-1

Sec. 7. The 50/50 Raffle prize shall be paid in a single, lump sum payment less federal and state income withholding taxes and statutory offsets. *(State Lottery Commission; 65 IAC 5-16-7; emergency rule filed Feb 24, 2005, 12:00 p.m.: 28 IR 2143, eff Mar 1, 2005)*

65 IAC 5-16-8 Odds of winning
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 8. The odds of winning the prize in 50/50 Raffle are one (1) in the number of 50/50 Raffle tickets purchased for the 50/50 Raffle selection event. *(State Lottery Commission; 65 IAC 5-16-8; emergency rule filed Feb 24, 2005, 12:00 p.m.: 28 IR 2143, eff Mar 1, 2005)*

65 IAC 5-16-9 Termination of liability
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 9. All liability of the commission and its members, officers, directors, and employees for any prize terminates upon payment of the prize or upon the expiration of one hundred eighty (180) days after the date of the 50/50 Raffle selection event associated with a 50/50 Raffle ticket. *(State Lottery Commission; 65 IAC 5-16-9; emergency rule filed Feb 24, 2005, 12:00 p.m.: 28 IR 2143, eff Mar 1, 2005)*

LSA Document #05-28(E)
Filed with Secretary of State: February 24, 2005, 12:00 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #05-29(E)

DIGEST

Temporarily adds rules concerning pull-tab game number 031. Effective February 24, 2005.

SECTION 1. **The name of this pull-tab game is "Pull-Tab Game Number 031, Diamond Deuce".**

SECTION 2. **Pull-tab tickets for pull-tab game number 031 shall sell for twenty-five cents ($0.25) per ticket.**

SECTION 3. **Pull-tab game number 031 is a match 3 game.**

SECTION 4. **A pull-tab ticket in pull-tab game number 031 shall contain nine (9) play symbols and play symbol captions arranged in a matrix of three (3) rows and three (3) columns. Each row shall be covered by a tab. The play symbols and play symbol captions in pull-tab game number 031 shall consist of the following possible play symbols:**

(1) A picture of playing cards
CARDS
(2) A picture of a two of diamonds
DEUCE
(3) A picture of an ace of diamonds
ACE
(4) A picture of a king of diamonds
KING
(5) A picture of a queen of diamonds
QUEEN
(6) A picture of a five of clubs
FIVE
(7) A picture of a seven of spades
SEVEN
(8) A picture of a ten of spades
TEN

SECTION 5. **A row on a pull-tab ticket in pull-tab game number 031 which contains three (3) specified play symbols is not a match 3 winning row unless all of the following are true:**

(1) The play symbols and play symbol captions in the row are consistent with those specified in SECTION 4 of this document.
(2) The three (3) play symbols and play symbol captions in the row are bisected by a red arrow.
(3) The prize amount appears on the left side of the row in red ink on a yellow box.

SECTION 6. **Subject to SECTION 5 of this document, the holder of a valid pull-tab ticket for pull-tab game number 031 containing a match 3 winning row is entitled to the associated prize. The matching play symbols, prize amounts, and approximate number of prizes are as follows:**

Matching Play Symbol in Match 3 Winning Row	Prize Amount	Approximate Number of Prizes
Queen-Cards-Queen	$.50	364,630
King-Cards-King	$1	72,926
Ace-Cards-Ace	$5	10,418
Deuce-Cards-Deuce	$50	5,209

SECTION 7. **A total of approximately three million five hundred thousand (3,500,000) pull-tab tickets will be**

initially available for pull-tab game number 031. The odds of winning a prize in pull-tab game 031 are approximately 1 in 7.72. If additional pull-tab tickets are made available for this pull-tab game, the approximate number of each prize shall increase proportionally.

SECTION 8. **The last day to claim prizes in pull-tab game number 031 shall be sixty (60) days after the end of the game. Game end dates are available on the commission's Web site at www.hoosierlottery.com or may be obtained through the commission's toll-free customer service number or from any pull-tab ticket retailer.**

LSA Document #05-29(E)
Filed with Secretary of State: February 24, 2005, 12:00 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #05-30(E)

DIGEST

Temporarily adds rules concerning scratch-off game number 748. Effective February 24, 2005.

SECTION 1. **The name of this scratch-off game is "Scratch-Off Game Number 748, Deuces Wild".**

SECTION 2. **Scratch-off tickets in scratch-off game number 748 shall sell for one dollar ($1) per ticket.**

SECTION 3. **(a) Each scratch-off ticket in scratch-off game number 748 shall contain fifteen (15) play symbols and play symbol captions in the game play data area all concealed under a large spot of latex material. There shall be five (5) separate and independent games labeled "GAME 1", "GAME 2", "GAME 3", "GAME 4", and "GAME 5", respectively. Each game shall contain one (1) play symbol and play symbol caption representing playing cards in the area labeled "YOUR CARD" and shall contain one (1) play symbol and play symbol caption representing a playing card in the area labeled "DEALER'S CARD". Each game shall contain a play symbol and play symbol caption representing a prize.**

(b) The play symbols and play symbol captions appearing in the scratch-off game number 748, other than those representing prize amounts, shall consist of the following possible play symbols and play symbol captions:

(1)	**2 DOUBLE**
(2)	**3 THR**
(3)	**4 FOR**
(4)	**5 FIV**
(5)	**6 SIX**
(6)	**7 SVN**
(7)	**8 EGT**
(8)	**9 NIN**
(9)	**10 TEN**
(10)	**J JCK**
(11)	**Q QUN**
(12)	**K KNG**
(13)	**A ACE**

(c) The play symbols and play symbol captions representing prize amounts in scratch-off game number 748 shall consist of the following possible play symbols and play symbol captions:

(1) $1.00
ONE
(2) $2.00
TWO
(3) $4.00
FOUR
(4) $5.00
FIVE
(5) $12.00
TWELVE
(6) $22.00
TWY TWO
(7) $40.00
FORTY
(8) $100
ONE HUN
(9) $222
TWO TWY TWO
(10) $2,500
TWY FIV HUN

SECTION 4. **The holder of a ticket in scratch-off game number 748 shall remove the latex material covering the fifteen (15) play symbols and play symbol captions. If one (1) or more of "YOUR CARD" area has a higher value than the play symbol and play symbol caption exposed in the "DEALER'S CARD" area, the holder is entitled to the corresponding prize amount for that game. If a play symbol representing a playing card with the number "2" is revealed, the holder is automatically entitled to double the paired**

prize amount. The number of matched play symbols, associated prize play symbols, total prize amounts, and approximate number of winners are as follows:

Number of Matched Play Symbols and Associated Prize Play Symbols	Prize Amount	Approximate Number of Winners
1 – $1.00	$1	600,000
1 – $2.00	$2	200,000
1 – $1.00 with 2	$2	200,000
2 – $1.00 + 1 – $1.00 with 2	$4	80,000
2 – $2.00	$4	20,000
1 – $4.00	$4	20,000
1 – $1.00 + 1 – $2.00 with 2	$5	40,000
5 – $1.00	$5	20,000
1 – $5.00	$5	20,000
1 – $12.00	$12	40,000
1 – $1.00 with 2 + 4 – $5.00	$22	10,000
1 – $22.00	$22	10,000
1 – $40.00	$40	3,750
2 – $4.00 – 1 – $4.00 with 2 + 2 – $12.00	$40	3,000
1 – $100	$100	800
1 – $222	$222	225
1 – $2,500	$2,500	12

SECTION 5. **(a) There shall be approximately six million (6,000,000) scratch-off tickets initially available in scratch-off game number 748.**

(b) The odds of winning a prize in scratch-off game number 748 are approximately 1 in 4.73.

(c) All reorders of tickets for scratch-off game number 748 shall have the same:
(1) prize structure;
(2) number of prizes per prize pool of two hundred forty thousand (240,000); and
(3) odds;
as contained in the initial order.

SECTION 6. **The last day to claim a prize in scratch-off game number 748 is February 28, 2006.**

SECTION 7. **This document expires March 31, 2006.**

LSA Document #05-30(E)
Filed with Secretary of State: February 24, 2005, 12:00 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #05-31(E)

DIGEST

Temporarily adds rules concerning scratch-off game number 749. Effective February 24, 2005.

SECTION 1. **The name of this scratch-off game is "Scratch-Off Game Number 749, SUPER CA$H".**

SECTION 2. **Scratch-off tickets in scratch-off game number 749 shall sell for two dollars ($2) per ticket.**

SECTION 3. **(a) Each scratch-off ticket in scratch-off game number 749 shall contain twenty-two (22) play symbols and play symbol captions in the game play data area all concealed under a large spot of latex material. Two (2) play symbols and play symbol captions shall appear in the area labeled "WINNING NUMBERS". Twenty (20) play symbols and play symbol captions shall appear in the area labeled "YOUR NUMBERS" and be arranged in pairs representing numbers or pictures and prize amounts.**

(b) The play symbols and play symbol captions in scratch-off game number 749, other than those representing prize amounts, shall consist of the following possible play symbols and play symbol captions:
(1) 1
ONE
(2) 2
TWO
(3) 3
THR
(4) 4
FOR
(5) 5

FIV
(6) 6
SIX
(7) 7
SVN
(8) 8
EGT
(9) 9
NIN
(10) 10
TEN
(11) 11
ELVN
(12) 12
TWLV
(13) 13
THRTN
(14) 14
FORTN
(15) 15
FIFTN
(16) 16
SIXTN
(17) 17
SVNTN
(18) 18
EGHTN
(19) 19
NINTN
(20) 20
TWTY
(21) A picture of a dollar bill
WIN
(22) The word CASH
WIN ALL

(c) The play symbols and play symbol captions representing prize amounts in scratch-off game number 749 shall consist of the following possible play symbols and play symbol captions:
(1) $1.00
ONE
(2) $2.00
TWO
(3) $3.00
THREE
(4) $4.00
FOUR
(5) $5.00
FIVE
(6) $7.00
SEVEN
(7) $10.00
TEN
(8) $15.00
FIFTEEN
(9) $20.00
TWENTY
(10) $30.00
THIRTY
(11) $50.00
FIFTY
(12) $100
ONE HUN
(13) $500
FIV HUN
(14) $1,000
ONE THOU
(15) $10,000
TEN THOU

SECTION 4. The holder of a valid scratch-off ticket in scratch-off game number 749 shall remove the latex material covering the twenty-two (22) play symbols and play symbol captions. If one (1) or more of "YOUR NUMBERS" match any "WINNING NUMBERS", the holder is entitled to the prize amount paired with the matched number. If a play symbol and play symbol caption of a "dollar bill" with the play symbol caption "WIN" is exposed, the holder is automatically entitled to the paired prize amount. If the play symbol of the word "CASH" with the play symbol caption "WIN ALL" is paired with a play symbol in the "YOUR NUMBERS" area, the holder is automatically entitled to all ten (10) prize amounts. The matched prize play symbols, prize amounts, and number of winners in scratch-off game number 749 are as follows:

Number of Matches and Matched, Play Symbols	Total Prize Amount	Approximate Number of Winners
1 – $2.00	$2	367,200
1 – $4.00	$4	306,000
1 – $2.00 + 1 – $3.00	$5	81,600
1 – $5.00	$5	40,800
10 – $1.00 with Cash	$10	20,400
5 – $2.00	$10	10,200
1 – $3.00 + 1 – $7.00	$10	10,200
1 – $10.00	$10	10,200
10 – $2.00 with Cash	$20	10,200
1 – $5.00 + 1 – $15.00	$20	5,100
1 – $20.00	$20	5,100
10 – $5.00 with Cash	$50	13,600
5 – $10.00	$50	3,400
1 – $50.00	$50	3,400
10 – $10.00 with Cash	$100	2,992
2 – $50.00	$100	1,020
1 – $10.00 + 1 – $30.00 + 3 – $20.00	$100	1,020
1 – $100	$100	1,020
4 – $100	$400	204

5 – $100 + 1 – $500	**$1,000**	**34**
10 – $100 with Cash	**$1,000**	**34**
10 – $1,000 with Cash	**$10,000**	**4**
1 – $10,000	**$10,000**	**4**

SECTION 5. **(a) There shall be approximately four million (4,000,000) scratch-off tickets initially available in scratch-off game number 749.**

(b) The odds of winning a prize in scratch-off game number 749 are approximately 1 in 4.57.

(c) All reorders of tickets for scratch-off game number 749 shall have the same:
(1) prize structure;
(2) number of prizes per prize pool of one hundred twenty thousand (120,000); and
(3) odds;
as contained in the initial order.

SECTION 6. **The last day to claim a prize in scratch-off game number 749 is February 28, 2006.**

SECTION 7. **This document expires March 31, 2006.**

LSA Document #05-31(E)
Filed with Secretary of State: February 24, 2005, 12:00 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #05-32(E)

DIGEST

Adds 65 IAC 4-355 concerning scratch-off game number 755. Effective February 25, 2005.

65 IAC 4-355

SECTION 1. 65 IAC 4-355 IS ADDED TO READ AS FOLLOWS:

Rule 355. Scratch-Off Game 755

65 IAC 4-355-1 Name
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 1. The name of this scratch-off game is "Scratch-Off Game Number 755, Beat The Dealer". *(State Lottery Commission; 65 IAC 4-355-1; emergency rule filed Feb 24, 2005, 12:00 p.m.: 28 IR 2147, eff Feb 25, 2005)*

65 IAC 4-355-2 Ticket price
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 2. Scratch-off tickets for scratch-off game number 755 shall sell for five dollars ($5) per ticket. *(State Lottery Commission; 65 IAC 4-355-2; emergency rule filed Feb 24, 2005, 12:00 p.m.: 28 IR 2147, eff Feb 25, 2005)*

65 IAC 4-355-3 Play symbols
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 3. (a) Each scratch-off ticket in scratch-off game number 755 shall contain sixteen (16) play symbols and play symbol captions in the game play data area all concealed under a large spot of latex material. Fifteen (15) play symbols and play symbol captions shall appear in a matrix of five (5) rows and three (3) columns. The rows shall be labeled "ROUND 1", "ROUND 2", "ROUND 3", "ROUND 4", and "ROUND 5", respectively. The columns shall be labeled "YOUR CARDS", "DEALER'S CARDS", and "PRIZE", respectively. One (1) play symbol and play symbol caption shall appear in the area labeled "POT".

(b) The play symbols and play symbol captions, other that *[sic., than]* **those representing prize amounts, shall consist of the following possible play symbols and play symbol captions:**
(1) A playing card with ♠ and the number 2
TWS
(2) A playing card with ♠ and the number 3
THS
(3) A playing card with ♠ and the number 4
FRS
(4) A playing card with ♠ and the number 5
FVS
(5) A playing card with ♠ and the number 6
SXS
(6) A playing card with ♠ and the number 7
SNS
(7) A playing card with ♠ and the number 8
ETS
(8) A playing card with ♠ and the number 9
NIS
(9) A playing card with ♠ with the number 10
TNS
(10) A playing card with ♠ with the letter "J"
JKS
(11) A playing card with ♠ with the letter "Q"
QNS
(12) A playing card with ♠ with the letter "K"
KGS
(13) A playing card with ♠ with the letter "A"
ACS
(14) A playing card with ♣ and the number 2
TWC
(15) A playing card with ♣ and the number 3
THC
(16) A playing card with ♣ and the number 4
FRC

(17) A playing card with ♣ and the number 5
FVC
(18) A playing card with ♣ and the number 6
SXC
(19) A playing card with ♣ and the number 7
SNC
(20) A playing card with ♣ and the number 8
ETC
(21) A playing card with ♣ and the number 9
NIC
(22) A playing card with ♣ with the number 10
TNC
(23) A playing card with ♣ with the letter "J"
JKC
(24) A playing card with ♣ with the letter "Q"
QNC
(25) A playing card with ♣ with the letter "K"
KGC
(26) A playing card with ♣ with the letter "A"
ACC
(27) A playing card with ♦ and the number 2
TWD
(28) A playing card with ♦ and the number 3
THD
(29) A playing card with ♦ and the number 4
FRD
(30) A playing card with ♦ and the number 5
FVD
(31) A playing card with ♦ and the number 6
SXD
(32) A playing card with ♦ and the number 7
SND
(33) A playing card with ♦ and the number 8
ETD
(34) A playing card with ♦ and the number 9
NID
(35) A playing card with ♦ with the number 10
TND
(36) A playing card with ♦ with the letter "J"
JKD
(37) A playing card with ♦ with the letter "Q"
QND
(38) A playing card with ♦ with the letter "K"
KGD
(39) A playing card with ♦ with the letter "A"
ACD
(40) A playing card with ♥ and the number 2
TWH
(41) A playing card with ♥ and the number 3
THH
(42) A playing card with ♥ and the number 4
FRH
(43) A playing card with ♥ and the number 5
FVH
(44) A playing card with ♥ and the number 6
SXH
(45) A playing card with ♥ and the number 7
SNH
(46) A playing card with ♥ and the number 8
ETH
(47) A playing card with ♥ and the number 9
NIH
(48) A playing card with ♥ with the number 10
TNH
(49) A playing card with ♥ with the letter "J"
JKH
(50) A playing card with ♥ with the letter "Q"
QNH
(51) A playing card with ♥ with the letter "K"
KGH
(52) A playing card with ♥ with the letter "A"
ACH

(c) The play symbols and play symbol captions representing prize amounts in scratch-off game number 755 shall consist of the following possible play symbols and play symbol captions:

(1) $1.00
ONE
(2) $2.00
TWO
(3) $3.00
THREE
(4) $4.00
FOUR
(5) $5.00
FIVE
(6) $10.00
TEN
(7) $15.00
FIFTEEN
(8) $20.00
TWENTY
(9) $25.00
TWY FIVE
(10) $40.00
FORTY
(11) $50.00
FIFTY
(12) $100
ONE HUN
(13) $500
FIV HUN
(14) $1,000
ONE THOU
(15) $5,000
FIV THOU
(16) $10,000
TEN THOU

(17) 100,000
HUN THOU

(State Lottery Commission; 65 IAC 4-355-3; emergency rule filed Feb 24, 2005, 12:00 p.m.: 28 IR 2147, eff Feb 25, 2005)

65 IAC 4-355-4 How to play
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 4. The holder of a ticket in scratch-off game number 755 shall remove the latex material covering the fifteen (15) play symbols and play symbol captions. If the play symbol and play symbol caption in the "YOUR CARDS" area is higher than the play symbol and play symbol caption in the "DEALER'S CARD" area in any row, the holder is entitled to the corresponding prize amount for that row. If all five (5) of the play symbols and play symbol captions in the "YOUR CARDS" area, together make a better poker hand than all five (5) of the play symbol *[sic., symbols]* **and play symbol captions in the "DEALER'S CARDS" area, the holder is automatically entitled to the "POT" amount. The best five-card poker hands from among the possible play symbols and play symbol captions are set forth on the back of each scratch-off ticket in scratch-off game number 747** *[sic., 755]* **and are ranked worst to best as follows:**

(1) One Pair - Two (2) play symbols with the same face value but from different suits.
(2) Two Pair - Two (2) sets of two (2) play symbols with each set consisting of two (2) play symbols with the same face value but from different suits.
(3) Three of a Kind – Three (3) play symbols with the same face value but from different suits.
(4) Straight – Five (5) play symbols with consecutively increasing values in any suit.
(5) Flush – Any five (5) play symbols of the same suit.
(6) Full House – Three (3) play symbols with the same face value but from different suits and two (2) play symbols with the same face value but from different suits (one (1) Three of a Kind and one (1) Two of a Kind).
(7) Four of a Kind – Four (4) play symbols with the same face value but from different suits.
(8) Straight Flush – Five (5) play symbols with consecutively increasing values in the same suit.
(9) Royal Flush – Five (5) play symbols with the ten (10), jack, queen, king, and ace, respectively, of the same suit.

(State Lottery Commission; 65 IAC 4-355-4; emergency rule filed Feb 24, 2005, 12:00 p.m.: 28 IR 2149, eff Feb 25, 2005)

65 IAC 4-355-5 Number of prizes
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 5. Play symbols have the value designated on the face of the play symbols except that those representing jacks, queens, kings and aces, respectively, shall be treated as having consecutively increasing values. Play symbols, prize amounts, and number of winners in scratch-off game number 755 are as follows:

Number of Winning Games and Play Symbols of Prize Amounts	Total Prize Amount	Approximate Number of Winners
5 – $1.00	$5	270,000
1 – $5.00	$5	270,000
5 – $1.00 + 1 – $5.00	$10	90,000
5 – $2.00	$10	60,000
2 – $5.00	$10	60,000
1 – $5.00 + 1 – $10.00	$15	15,000
1 – $15.00	$15	15,000
1 – $20.00	$20	7,500
4 – $3.00 + 2 – $4.00	$20	30,000
4 – $5.00	$20	7,500
2 – $10.00	$20	15,000
5 – $5.00 + 1 – $15.00	$40	15,000
4 – $10.00	$40	9,375
1 – $40.00	$40	9.375
2 – $25.00	$50	2,500
2 – $5.00 + 4 – $10.00	$50	2,500
5 – $10.00	$50	2,500
2 – $5.00 + 2 – $20.00	$50	2,500
1 – $50.00	$50	2,500
5 – $20.00	$100	1,600
2 – $10.00 + 4 – $20.00	$100	1,250
2 – $10.00 + 2 – $20.00 + 1 – $40.00	$100	1,250
5 – $10.00 + 1 – $50.00	$100	1,250
1 – $100	$100	1,250
2 – $50.00 + 4 – $100	$500	375
1 – $500	$500	375
5 – $100 + 1 – $500	$1,000	100
2 – $500	$1,000	100
1 – $1,000	$1,000	100
2 – $5,000	$10,000	8
5 – $1,000 + 1 – $5,000	$10,000	8
1 – $10,000	$10,000	8
1 – $100,000	$100,000	5

(State Lottery Commission; 65 IAC 4-355-5; emergency rule filed Feb 24, 2005, 12:00 p.m.: 28 IR 2149, eff Feb 25, 2005)

65 IAC 4-355-6 Number of tickets; odds; reorders
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 6. (a) There shall be approximately three million (3,000,000) scratch-off tickets initially available in scratch-off game number 755.

(b) The odds of winning a prize in scratch-off game number 755 are approximately 1 in 3.36.

(c) All reorders of tickets for scratch-off game number 755

shall have the same:

(1) prize structure;

(2) number of prizes per prize pool of one hundred twenty thousand (120,000); and

(3) odds;

as contained in the initial order. *(State Lottery Commission; 65 IAC 4-355-6; emergency rule filed Feb 24, 2005, 12:00 p.m.: 28 IR 2149, eff Feb 25, 2005)*

65 IAC 4-355-7 Last day to claim prizes

Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 7. Players will have up to sixty (60) days from the end of scratch-off game 755 within which to claim their prizes. Game end dates are available on the commission's Web site at www.hoosierlottery.com or may be obtained through the commission's toll-free customer service number or from any scratch-off ticket retailer. *(State Lottery Commission; 65 IAC 4-355-7; emergency rule filed Feb 24, 2005, 12:00 p.m.: 28 IR 2150, eff Feb 25, 2005)*

SECTION 2. **SECTION 1 of this document takes effect February 25, 2005.**

LSA Document #05-32(E)
Filed with Secretary of State: February 24, 2005, 12:00 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #05-33(E)

DIGEST

Temporarily adds rules concerning scratch-off game number 764. Effective February 24, 2005.

SECTION 1. **The name of this scratch-off game is "Scratch-Off Game Number 764, 7 Times Lucky".**

SECTION 2. **Scratch-off tickets in scratch-off game number 764 shall sell for two dollars ($2) per ticket.**

SECTION 3. **(a) Each scratch-off ticket in scratch-off game number 764 shall contain thirty-six (36) play symbols and play symbol captions in the game play data area all concealed under a large spot of latex material. There shall be seven (7) separate and independent games labeled "SECTION1X1", "SECTION2X2", "SECTION3X3", "SECTION4X4", "SECTION5X5", "SECTION6X6", and "SECTION7X7", respectively. One (1) play symbol and play symbol caption shall appear in the area labeled "YOUR LUCKY NUMBER". Each section shall contain one (1) play symbol and play symbol caption representing a prize.**

(b) The play symbols and play symbol captions, other that *[sic., than]* **those representing prize amounts, shall consist of the following possible play symbols and play symbol captions:**

(1) 1
ONE
(2) 2
TWO
(3) 3
THR
(4) 4
FOR
(5) 5
FIV
(6) 6
SIX
(7) 7
SVN
(8) 8
EGT
(9) 9
NIN
(10) 10
TEN
(11) 11
ELV
(12) 12
TLV
(13) 13
TRN
(14) 14
FRN
(15) 15
FTN
(16) 16
SXT
(17) 17
SVT
(18) 18
ETN
(19) 19
NTN
(20) 20
TWY
(21) 21
TWN
(22) 22
TWT
(23) 23
TWR
(24) 24
TWF
(25) 25
TWV
(26) 26
TWS

(27) 27
TSN
(28) 28
TWE
(29) 29
TNI
(30) 30
TTY
(31) 31
THO
(32) 32
THT
(33) 33
TTH
(34) 34
TTF
(35) 35
THF
(36) 36
THS
(37) 37
TTS
(38) 38
THE
(39) 39
THN
(40) 40
FRY

(c) The play symbols and play symbol captions of prize amounts shall consist of the following possible play symbols and play symbol captions:

(1) $1.00
ONE
(2) $2.00
TWO
(3) $5.00
FIVE
(4) $6.00
SIX
(5) $7.00
SEVEN
(6) $10.00
TEN
(7) $20.00
TWENTY
(8) $100
ONE HUN
(9) $500
FIVE HUN
(10) $3,000
THR THOU
(11) $21,000
TWON THOU

SECTION 4. **(a) The holder of a scratch-off ticket in scratch-off game number 764 shall remove the latex material covering the thirty-six (36) play symbols and play symbol captions. If the play symbol and play symbol caption exposed in "YOUR LUCKY NUMBER" area matches any play symbol and play symbol caption in "SECTION1X1", "SECTION2X2", "SECTION3X3", "SECTION4X4", "SECTION5X5", "SECTION6X6", and "SECTION7X7", the holder is entitled to the corresponding prize amount multiplied by the corresponding game number.**

(b) The number of winning plays and the associated prize amount play symbols, total prize amounts, and approximate number of winners in scratch-off game number 764 are as follows:

Number of Winning Games and Play Symbols	Total Prize Amount	Approximate Number of Winners
$1.00 × 2	$2	408,000
$1.00 × 5	$5	163,200
$5.00	$5	142,800
$1.00 × 7	$7	61,200
$7.00	$7	20,400
$1.00 + $1.00 × 2 + $1.00 × 3 + $1.00 × 4	$10	20,400
$1.00 × 5 + $5.00	$10	10,200
$1.00 + $1.00 × 2 + $1.00 × 7	$10	10,200
$2.00 × 5	$10	10,200
$1.00 + $1.00 × 2 + $1.00 × 3 + $1.00 × 4 + $2.00 × 5	$20	10,200
$2.00 + $2.00 × 2 + $2.00 × 7	$20	5,100
$5.00 × 4	$20	5,100
$2.00 + $1.00 × 2 + $1.00 × 3 + $1.00 × 4+ $2.00 × 5 + $2.00 × 6 + $1.00 × 7	$40	6,052
$1.00 × 2 + $1.00 × 3 + $5.00 × 7	$40	2,550
$2.00 × 5 + $5.00 × 6	$40	2,550
$5.00 + $5.00 × 2 + $5.00 × 3 + $5.00 × 4 + $6.00 × 5 + $1.00 × 6 + $2.00 × 7	$100	1,360
$20.00 × 5	$100	1,360
$5.00 × 6 + $10.00 × 7	$100	1,360
$10.00 + $10.00 × 2 + $10.00 × 3 + $10.00 × 4	$100	1,360
$100 × 4	$400	340
$20.00 + $10.00 × 2 + $10.00 × 3 + $20.00 × 4 + $10.00 × 5 + $10.00 × 6 + $20.00 × 7	$400	340
$100 × 3 + $100 × 7	$1,000	68
$500 × 2	$1,000	68
$3,000 × 7	$21,000	2
$21,000	$21,000	2

SECTION 5. **(a) There shall be approximately four million**

(4,000,000) scratch-off tickets initially available in scratch-off game number 764.

(b) The odds of winning a prize in scratch-off game number 764 are approximately 1 in 4.61.

(c) All reorders of tickets for scratch-off game number 764 shall have the same:
(1) prize structure;
(2) number of prizes per prize pool of one hundred twenty thousand (120,000); and
(3) odds;
as contained in the initial order.

SECTION 6. **The last day to claim a prize in scratch-off game number 764 is February 28, 2006.**

SECTION 7. **This document expires on March 31, 2006.**

LSA Document #05-33(E)
Filed with Secretary of State: February 24, 2005, 12:00 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #05-34(E)

DIGEST

Temporarily adds rules concerning pull-tab game number 030. Effective February 24, 2005.

SECTION 1. **The name of this pull-tab game is "Pull-Tab Game Number 030, Couch Change".**

SECTION 2. **Pull-tab tickets for pull-tab game number 030 shall sell for fifty cents ($0.50) per ticket.**

SECTION 3. **Pull-tab game number 030 is a criss-cross game.**

SECTION 4. **A pull-tab ticket in pull-tab game number 030 shall contain fifteen (15) play symbols and play symbol captions arranged in a matrix of five (5) rows and three (3) columns. Each row shall be covered by a tab. The play symbols and play symbol captions in pull-tab game number 030 shall consist of the following possible play symbols:**
(1) A picture of a money clip with cash
CASH
(2) A picture of keys
KEYS
(3) A picture of a lotto ticket
TICKET
(4) A picture of a stack of coins
COINS
(5) A picture of a remote
REMOTE
(6) A picture of a button
BUTTON
(7) A picture of a kernel of popcorn
POPCORN
(8) A picture of a dog bone
BONE

SECTION 5. **A row, column, or diagonal on a pull-tab ticket in pull-tab game number 030 which contains three (3) identical play symbols is not a criss-cross winning combination unless all of the following are true:**
(1) The play symbols and play symbol captions in the line are consistent with those specified in SECTION 4 of this document.
(2) The three (3) play symbols and play symbol captions in the line are bisected by a blue arrow.
(3) The prize amount appears on the left side of the line in red ink on a yellow box.

SECTION 6. **Subject to SECTION 5 of this document, the holder of a valid pull-tab ticket for pull-tab game number 030 containing a criss-cross winning combination is entitled to the associated prize. The matching play symbols, prize amounts, and approximate number of prizes are as follows:**

Matching Play Symbols in Criss-cross Winning Combination	Prize Amount	Approximate Number of Prizes
3 remote	$.50	267,900
3 coins	$1	80,370
3 ticket	$3	16,074
3 keys	$10	5,358
3 cash	$100	2,679

SECTION 7. **A total of approximately one million eight hundred thousand (1,800,000) pull-tab tickets will be initially available for pull-tab game number 030. The odds of winning a prize in pull-tab game 030 are approximately 1 in 4.83. If additional pull-tab tickets are made available for this pull-tab game, the approximate number of each prize shall increase proportionally.**

SECTION 8. **The last day to claim prizes in pull-tab game number 030 shall be sixty (60) days after the end of the game. Game end dates are available on the commission's Web site at www.hoosierlottery.com or may be obtained through the commission's toll-free customer service number or from any pull-tab retailer.**

LSA Document #05-34(E)
Filed with Secretary of State: February 24, 2005, 12:00 p.m.

TITLE 65 STATE LOTTERY COMMISSION

LSA Document #05-36(E)

DIGEST

Amends 65 IAC 4-2-6 to clarify scratch-off ticket dispute procedures. Amends 65 IAC 5-2-6 to clarify draw ticket dispute procedures. Amends 65 IAC 6-2-6 to clarify pull-tab ticket dispute procedures. Effective March 1, 2005.

65 IAC 4-2-6 **65 IAC 6-2-6**
65 IAC 5-2-6

SECTION 1. 65 IAC 4-2-6 IS AMENDED TO READ AS FOLLOWS:

65 IAC 4-2-6 Disputes
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30-11

Sec. 6. (a) If a person claiming a prize in ~~an instant~~ **a scratch-off** game is unable to produce the alleged winning ~~instant~~ **scratch-off** ticket, ~~or~~ **the commission shall not pay the claimed prize unless the person presents terminal-generated evidence sufficient to establish the validity of** the ~~instant ticket~~ **claim. If a person claiming a prize in a scratch-off game presents a scratch-off ticket that** is mutilated or unreadable, the **commission shall not pay the claimed prize unless there is sufficient readable data remaining on the scratch-off ticket to establish the validity of the claim. Any** person **making a claim under this subsection** may submit an affidavit to the director setting forth all facts, **witnesses, and supporting information** surrounding the person's claim. ~~If the director finds from substantial evidence contained in the affidavit and any other information available to the director, including information from other persons having knowledge about the claim or results of investigation reports from the security division or any law enforcement authority, that the prize should be paid,~~ The director, **in the director's sole discretion,** may authorize that the prize be paid to the claimant **if satisfied that** the ~~director may require the claimant to produce a copy~~ **validity** of the claim ~~form applicable to the instant ticket as a condition of payment of the prize.~~ **has been established.** If any prize claimed under this subsection exceeds one thousand dollars ($1,000), a determination by the director to pay the prize shall be reviewed and authorized by the commission.

(b) The director may, solely at the director's option, replace ~~an instant~~ **a scratch-off** ticket which is not a valid ticket or which is otherwise determined not to be a valid ticket or which is otherwise determined not to be a winning ~~instant~~ **scratch-off** ticket, despite a claim to the contrary, with an unplayed ~~instant~~ **scratch-off** ticket or ~~instant~~ **scratch-off** tickets of equivalent sale price for any current ~~instant~~ **scratch-off** game. In the event a defective ~~instant~~ **scratch-off** ticket is purchased, the only responsibility or liability of the commission shall be the replacement of the defective ~~instant~~ **scratch-off** ticket with another unplayed ~~instant~~ **scratch-off** ticket or ~~instant~~ **scratch-off** tickets of equivalent sale price from a current ~~instant~~ **scratch-off** game. *(State Lottery Commission; 65 IAC 4-2-6; emergency rule filed Oct 2, 1989, 2:10 p.m.: 13 IR 304; emergency rule filed Jan 24, 1990, 4:00 p.m.: 13 IR 1072; emergency rule filed Sep 25, 1998, 11:21 a.m.: 22 IR 474; readopted filed Nov 30, 2001, 11:02 a.m.: 25 IR 1268; emergency rule filed Feb 25, 2005, 12:00 p.m.: 28 IR 2153, eff Mar 1, 2005)*

SECTION 2. 65 IAC 5-2-6 IS AMENDED TO READ AS FOLLOWS:

65 IAC 5-2-6 Disputes
Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30-11

Sec. 6. (a) If a person claiming a prize in ~~an on-line~~ **a draw** game is unable to produce the alleged winning ~~on-line~~ ticket, ~~or~~ **the commission shall not pay the claimed prize unless the person presents terminal-generated evidence sufficient to establish the validity of** the ~~on-line ticket~~ **claim. If a person claiming a prize in a draw game presents a draw ticket that** is mutilated or unreadable, the **commission shall not pay the claimed prize unless there is sufficient readable data remaining on the draw ticket to establish the validity of the claim. Any** person **making a claim under this subsection** may submit an affidavit to the director setting forth all facts, **witnesses, and supporting information** surrounding the person's claim. ~~If the director finds from substantial evidence contained in the affidavit and any other information available to the director, including information from other persons having knowledge about the claim or results of investigation reports from the security division or any law enforcement authority, that the prize should be paid,~~ The director, **in the director's sole discretion,** may authorize that the prize be paid to the claimant **if satisfied that** the ~~director may require the claimant to produce a copy~~ **validity** of the claim ~~form applicable to the on-line ticket as a condition of payment of the prize.~~ **has been established.** The director shall not authorize payment of any prize under this subsection until the period for claiming prizes for the selection event applicable to the ~~on-line~~ **draw** ticket involved has elapsed, and the director shall consider the amount of prizes paid with respect to the selection event involved in determining whether to pay the prize. If any prize claimed under this subsection exceeds one thousand dollars ($1,000), a determination by the director to pay the prize shall be reviewed and authorized by the commission.

(b) The director may, solely at the director's option, replace ~~an on-line~~ **a draw** ticket which is not a valid ~~on-line~~ **draw** ticket or which is otherwise determined not to be a winning ~~on-line~~ **draw** ticket, despite a claim to the contrary, with a new ~~on-line~~ **draw** ticket or ~~on-line~~ **draw** tickets of equivalent sales price for the same ~~on-line~~ **draw** game or another ~~on-line~~ **draw** game. In the event a defective ~~on-line~~ **draw** ticket is purchased, the only

responsibility or liability of the commission shall be the replacement of the defective ~~on-line~~ **draw** ticket with another ~~on-line~~ **draw** ticket or ~~on-line~~ **draw** tickets of equivalent sales price from the same ~~on-line~~ **draw** game or another ~~on-line~~ **draw** game. *(State Lottery Commission; 65 IAC 5-2-6; emergency rule filed May 7, 1990, 2:10 p.m.: 13 IR 1742; readopted filed Nov 30, 2001, 11:02 a.m.: 25 IR 1268; emergency rule filed Feb 25, 2005, 12:00 p.m.: 28 IR 2153, eff Mar 1, 2005)*

SECTION 3. 65 IAC 6-2-6 IS AMENDED TO READ AS FOLLOWS:

65 IAC 6-2-6 Disputes

Authority: IC 4-30-3-7; IC 4-30-3-9
Affected: IC 4-30

Sec. 6. (a) If a person claiming a prize in a pull-tab game is unable to produce the alleged winning pull-tab ticket, ~~or~~ the **commission shall not pay the claimed prize. If a person claiming a prize in a pull-tab game presents a** pull-tab ticket **that** is mutilated or unreadable, the **commission shall not pay the claimed prize unless there is sufficient readable data remaining on the pull-tab ticket to establish the validity of the claim. Any** person **making a claim under this subsection** may submit an affidavit to the director setting forth all facts, **witnesses, and supporting information** surrounding the person's claim. ~~If the director finds from substantial evidence contained in the affidavit and any other information available to the director, including information from other persons having knowledge about the claim or results of investigation reports from the security division or any law enforcement authority, that the prize should be paid.~~ The director may, **in the director's sole discretion,** authorize that the prize be paid to the claimant **if satisfied that the validity of the claim has been established.**

(b) The director may, solely at the director's option, replace a pull-tab ticket which is not a valid ticket or which is otherwise determined not to be a winning pull-tab ticket, despite a claim to the contrary, with an unplayed pull-tab ticket or pull-tab tickets of equivalent sales price for any current pull-tab game. In the event a defective pull-tab ticket is purchased, the only responsibility or liability of the commission shall be the replacement of the defective pull-tab ticket with another unplayed pull-tab ticket or pull-tab tickets of equivalent sales price from a current pull-tab game. *(State Lottery Commission; 65 IAC 6-2-6; emergency rule filed Jan 29, 1992, 12:00 p.m.: 15 IR 1042; readopted filed Nov 30, 2001, 11:02 a.m.: 25 IR 1268; emergency rule filed Feb 25, 2005, 12:00 p.m.: 28 IR 2154, eff Mar 1, 2005)*

LSA Document #05-36(E)
Filed with Secretary of State: February 25, 2005, 12:00 p.m.

TITLE 71 INDIANA HORSE RACING COMMISSION

LSA Document #05-27(E)

DIGEST

Amends 71 IAC 7.5-6-3 concerning jockey requirements and silks. Effective February 17, 2005.

71 IAC 7.5-6-3

SECTION 1. 71 IAC 7.5-6-3 IS AMENDED TO READ AS FOLLOWS:

71 IAC 7.5-6-3 Jockey requirements
Authority: IC 4-31-3-9
Affected: IC 4-31

Sec. 3. (a) Jockeys shall report to the jockeys' quarters at the time designated by the association. Jockeys shall report their engagements and any overweight to the clerk of scales. Jockeys shall not leave the jockeys' quarters, except to ride in scheduled races, until all of their riding engagements of the day have been fulfilled, except as approved by the stewards.

(b) A jockey who has not fulfilled all riding engagements, who desires to leave the jockeys' quarters, must first receive the permission of the stewards and must be accompanied by an association security guard.

(c) While in the jockeys' quarters, jockeys shall have no contact or communication with any person outside the jockeys' quarters other than:
(1) commission personnel and officials;
(2) an owner or trainer for whom the jockey is riding;
(3) the jockey's agent; or
(4) a representative of the regular news media;
except with the permission of the stewards. Any communication permitted by the stewards may be conducted only in the presence of the clerk of scales or other person designated by the stewards.

(d) Jockeys shall be weighed out for their respective mounts by the clerk of scales not more than thirty (30) minutes before post time for each race.

(e) Only valets employed by the association shall assist jockeys in weighing out.

(f) A jockey must wear a safety vest when riding in any official race. The safety vest shall:
(1) weigh no more than two (2) pounds; and
(2) be designed to provide shock absorbing protecting to the upper body of at least a rating of five (5) as defined by the British Equestrian Trade Association (BETA).

(g) A jockey's weight shall include the jockey's clothing,

boots, saddle and its attachments, and any other equipment except the:

(1) whip;
(2) bridle;
(3) bit or reins;
(4) safety helmet;
(5) safety vest;
(6) blinkers;
(7) goggles; and
(8) number cloth.

(h) Seven (7) pounds is the limit of overweight any horse is permitted to carry.

(i) Once jockeys have fulfilled their riding engagements for the day and have left the jockeys' quarters, they shall not be readmitted to the jockeys' quarters until after the entire racing program for that day has been completed, except with permission of the stewards.

(j) Corporate advertising or logos on jockey's apparel shall not be permitted. **The Jockey Guild emblem is the only item approved to be worn on riding pants.** *(Indiana Horse Racing Commission; 71 IAC 7.5-6-3; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2871, eff Jul 1, 1995; emergency rule filed Aug 9, 1995, 10:30 a.m.: 18 IR 3409; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Aug 21, 2003, 4:45 p.m.: 27 IR 206; emergency rule filed Feb 17, 2005, 11:48 a.m.: 28 IR 2154)*

LSA Document #05-27(E)
Filed with Secretary of State: February 17, 2005, 11:48 a.m.

Change in Notice of Public Hearing

TITLE 326 AIR POLLUTION CONTROL BOARD

#04-181(APCB)

The Air Pollution Control Board gives notice that the date of the public hearing for consideration of preliminary adoption of #04-181(APCB), printed at 28 IR 1710, has been changed. The changed Notice of Public Hearing appears below:

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 ***June 1, 2005*** *at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on new rules 326 IAC 20-80 and 326 IAC 20-81.*

The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. 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 Gayl Killough, Rules Development Section, Office of Air Quality, (317) 233-8628 or (800) 451-6027, press 0, and ask for extension 3-8628 (in Indiana). If the date of this hearing is changed, it will be noticed in the Change in Notice of Public Hearing section of the Indiana Register. 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
Indianapolis, Indiana 46204

or call (317) 233-0855 or (317) 232-6565 (TDD). Speech and hearing impaired callers also may contact the agency 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 Air Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East, Indianapolis, Indiana and are open for public inspection.

Kathryn A. Watson, Chief
Air Programs Branch
Office of Air Quality

TITLE 326 AIR POLLUTION CONTROL BOARD

#04-278(APCB)

The Air Pollution Control Board gives notice that the date of the public hearing for consideration of final adoption of #04-278(APCB), printed at 28 IR 1711, has been changed. The changed Notice of Public Hearing appears below:

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 ***June 1, 2005*** *at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on amendments to 326 IAC 6.8-2-4 (formerly 326 IAC 6-1-10.1).*

The purpose of this hearing is to receive comments from the public prior to final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. 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 Susan Bem, Rules Development Section, Office of Air Quality, (317) 233-5697 or (800) 451-6027, press 0, and ask for extension 3-5697 (in Indiana). If the date of this hearing is changed, it will be noticed in the Change in Notice of Public Hearing section of the Indiana Register. 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
Indianapolis, Indiana 46204

or call (317) 233-0855 or (317) 232-6565 (TDD). Speech and hearing impaired callers also may contact the agency 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 Air Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East, Indianapolis, Indiana and are open for public inspection.

Kathryn A. Watson, Chief
Air Programs Branch
Office of Air Quality

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #05-38

Under IC 4-22-2-23, the Natural Resources Commission intends to adopt a rule concerning the following:

OVERVIEW: Amends 312 IAC 11 that governs construction activities along and within public freshwater lakes. Amendments are made to the regulation and treatment of a seawall. These include standards that distinguish a seawall placed in a manmade channel from one placed on a natural shoreline. Allows a bulkhead seawall to be permitted along the upland sides of a manmade channel; defines "natural shoreline"; and amends the definitions for "area of special concern" and "significant wetland". Also provides discretion to grant a license for a seawall or other structure, which might not otherwise satisfy the rule, where public access is enhanced or where a written assessment by a qualified professional demonstrates a particular methodology is needed to control erosion or to stabilize the shoreline and that the methodology would not violate IC 14-26-2. Questions or comments may be directed to slucas@nrc.in.gov or by telephone at 317-233-3322. Statutory authority: IC 14-10-2-4; IC 14-26-2.

TITLE 345 INDIANA STATE BOARD OF ANIMAL HEALTH

LSA Document #05-41

Under IC 4-22-2-23, the Indiana State Board of Animal Health intends to adopt a rule concerning the following:

OVERVIEW: The rule will update and amend rules relating to the control of diseases in sheep and goats including the disease scrapie. The proposal will address identification of animals and premises, testing, record keeping, monitoring and surveillance, requirements for positive, suspect, and exposed animals, epidemiology, requirements to move interstate and intrastate, restrictions on sales and other transfers, exhibition requirements, and other disease control measures. The proposal may include scrapie certification of animals and flocks. Submit questions or comments to the Indiana State Board of Animal Health, Attention: Legal Affairs, 805 Beachway Drive, Suite 50, Indianapolis, Indiana 46224 or by electronic mail to ghaynes@boah.state.in.us. Statutory authority: IC 15-2.1-3-19.

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #05-45

Under IC 4-22-2-23, the Office of the Secretary of Family and Social Services intends to adopt a rule concerning the following:

OVERVIEW: Adds provisions to 405 IAC 5 to set forth criteria and the process used to determine qualification for services in a duly certified Medicaid enrolled intermediate care facility for the mentally retarded (ICF/MR), community residential facility for the developmentally disabled (CRF/DD), and under a home and community-based services (HCBS) waiver for the developmentally disabled. Statutory authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-21-3.

TITLE 412 INDIANA HEALTH FACILITIES COUNCIL

LSA Document #05-35

Under IC 4-22-2-23, the Indiana Health Facilities Council intends to adopt a rule concerning the following:

OVERVIEW: To establish the effective and expiration dates for qualified medication aide (QMA) certificates, to amend the requirements for certification, recertification, or reinstatement of a QMA, and to amend the fees required for certification, recertification, or reinstatement. Written comments may be submitted to the Indiana Health Facilities Council, Attn: Secretary, 2 North Meridian Street, Indianapolis, Indiana 46204. Statutory authority: IC 16-28-1-11.

TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

LSA Document #05-50

Under IC 4-22-2-23, the Fire Prevention and Building Safety Commission intends to adopt a rule concerning the following:

OVERVIEW: To amend 675 IAC 21, the safety code for elevators, escalators, manlifts, and hoists, to make substantive and technical changes, including changes to reference updated standards. To adopt ASME A17.1, 2004 edition, Safety Code for Elevators and Escalators. To adopt ASME A17.3, 2002 edition, Safety for Existing Elevators and Escalators. To adopt ASME QEI-1, 2004 Edition, Standard for Qualification of Elevator Inspectors. To adopt ASCE 21, Part 1, 1996; Part 2, 1998; and Part 3, 2000, Standard for Automated People Movers. To adopt ANSI/ASME A18.1, 2003 edition, Safety Standard for Platform and Stairway Chairlifts. To adopt ANSI/ASSE A10.4, 2004 edition, Safety Requirements for Personnel Hoist and Employee Elevators – American National Standard for Construction and Demolition Operations. To adopt ASME A90.1, 2003 edition, Safety Standard for Belt Manlifts.

Public comments are invited and may be directed to the Department of Fire and Building Services, ATTENTION: Technical Services, Indiana Government Center-South, 402 West Washington Street, Room W246, Indianapolis, Indiana 46204 or by e-mail at jweesner@sema.state.in.us. Statutory authority: IC 22-12-6-6; IC 22-13-2-2; IC 22-13-2-8; IC 22-13-2-13.

TITLE 710 SECURITIES DIVISION

LSA Document #05-46

Under IC 4-22-2-23, the Securities Division intends to adopt a rule concerning the following:

OVERVIEW: Amends 710 IAC 1-14-6 regarding supervision requirements for broker-dealer branch offices. Questions or comments may be directed to Silvia Miller at smiller@sos.state.in.us or by telephone at (317) 234-2741. Statutory authority: IC 23-2-1-15.

TITLE 760 DEPARTMENT OF INSURANCE

LSA Document #05-39

Under IC 4-22-2-23, the Department of Insurance intends to adopt a rule concerning the following:

OVERVIEW: Amends 760 IAC 1-21 regarding requirements for proof of financial responsibility, surcharge payments and amounts, certificates of insurance, types of insurance coverage, health care providers, settlement of claims, and communication with the Patient's Compensation Fund. Statutory authority: IC 34-18-3-7; IC 34-18-5-2; IC 34-18-6-6.

TITLE 812 INDIANA AUCTIONEER COMMISSION

LSA Document #05-37

Under IC 4-22-2-23, the Indiana Auctioneer Commission intends to adopt a rule concerning the following:

OVERVIEW: Amends 812 IAC 1-1-2 concerning time for holding examinations. Amends 812 IAC 1-1-3 concerning receipt of application before examination and examination fee. Amends 812 IAC 1-1-5 concerning license fees. Amends 812 IAC 1-1-35 concerning fees charged by the commission. Amends 812 IAC 1-1-41 concerning records and accounts for auction house licensee and auction company licensee. Amends 812 IAC 1-1-42 concerning compliance with IC 26-1-6-107. Amends 812 IAC 1-1-43 concerning violations for professional incompetence. Amends 812 IAC 3-1-1 concerning continuing education requirements. Amends 812 IAC 3-1-11 concerning failure to meet continuing education requirements. Amends 812 IAC 3-1-13 concerning requirements for reinstating an active license. Repeals 812 IAC 1-1-6 regarding review of examination by applicant. Repeals 812 IAC 1-1-36 concerning reconsideration of license after revocation. Effective 30 days after filing with the secretary of state. Questions or comments concerning the proposed rule may be directed to: Indiana Auctioneer Commission, ATTENTION: Commission Director, Indiana Government Center-South, 402 West Washington Street, Room W072, Indianapolis, Indiana 46204 or by electronic mail at dwidemon@pla.in.gov. Statutory authority: IC 25-1-8-2; IC 25-6.1-2-5; IC 25-6.1-3-5.

TITLE 828 STATE BOARD OF DENTISTRY

LSA Document #05-40

Under IC 4-22-2-23, the State Board of Dentistry intends to adopt a rule concerning the following:

OVERVIEW: Amends 828 IAC 0.5-1 concerning definitions to facilitate the outsourcing of the administration of the examinations for dentists and dental hygienists. Amends 828 IAC 1-1 concerning the requirements for licensure of dentists by examination to facilitate the outsourcing of the administration of the examinations. Amends 828 IAC 1-2 concerning the requirements for licensure of dental hygienists by examination to facilitate the outsourcing of the administration of the examination. Questions or comments concerning the proposed rules may be directed to: State Board of Dentistry, ATTENTION: Shelly L. Mazo, 402 West Washington Street, Room W066, Indianapolis, IN 46204-2700 or by electronic e-mail at smazo@hpb.in.gov. Statutory authority: IC 25-1-8-2; IC 25-13-1-5; IC 25-14-1-13.

TITLE 856 INDIANA BOARD OF PHARMACY

LSA Document #05-42

Under IC 4-22-2-23, the Indiana Board of Pharmacy intends to adopt a rule concerning the following:

OVERVIEW: Adds 856 IAC 1-37 to establish the definitions, standards, and requirements for centralized processing services of prescriptions and drug orders. Questions or comments concerning the proposed rule may be directed to: Indiana Board of Pharmacy, ATTENTION: Board Director, Indiana Government Center-South, 402 West Washington Street, Room W066, Indianapolis, Indiana 46204 or by electronic mail at

jbolin@hpb.in.gov. Statutory authority: IC 25-26-13-4.

TITLE 857 INDIANA OPTOMETRIC LEGEND DRUG PRESCRIPTION ADVISORY COMMITTEE

LSA Document #05-43

Under IC 4-22-2-23, the Indiana Optometric Legend Drug Prescription Advisory Committee intends to adopt a rule concerning the following:

OVERVIEW: Amends 857 IAC 1-2 to revise the requirements for sponsoring organizations to obtain continuing education course approval. Amends 857 IAC 1-3 to revise the continuing education requirements to obtain an Indiana optometric legend drug certificate under IC 25-26-15-16(2) and to renew a certificate under IC 25-26-15-18. Effective 30 days after filing with the secretary of state. Questions or comments concerning the proposed rule may be directed to: Indiana Optometric Legend Drug Prescription Advisory Committee, ATTENTION: Committee Director, Indiana Government Center-South, 402 West Washington Street, Room W066, Indianapolis, Indiana 46204 or by electronic mail at jbolin@hpb.in.gov. Statutory authority: IC 25-26-15-13.

TITLE 876 INDIANA REAL ESTATE COMMISSION

LSA Document #05-47

Under IC 4-22-2-23, the Indiana Real Estate Commission intends to adopt a rule concerning the following:

OVERVIEW: Amends 876 IAC 1-1-23 to allow for the voluntary transfer of any interest earned on the broker's escrow/trust account to a fund established for the sole purpose of providing affordable housing opportunities in Indiana. Questions or comments concerning the proposed rules may be directed to: Indiana Professional Licensing Agency, ATTENTION: Commission Director, Indiana Government Center-South, 402 West Washington Street, Room W072, Indianapolis, IN 46204-2700 or via e-mail at wlowhorn@pla.in.gov. Statutory authority: IC 25-34.1-2-5; IC 25-34.1-9-21.

TITLE 876 INDIANA REAL ESTATE COMMISSION

LSA Document #05-48

Under IC 4-22-2-23, the Indiana Real Estate Commission intends to adopt a rule concerning the following:

OVERVIEW: Amends 876 IAC 1-4-2 to add septic/holding tank and septic mound and geothermal and heat pump to the Residential Real Estate Sales Disclosure form and to require signatures and property address information on both pages of the form. Questions or comments concerning the proposed rules may be directed to: Indiana Professional Licensing Agency, ATTENTION: Commission Director, Indiana Government Center-South, 402 West Washington Street, Room W072, Indianapolis, IN 46204-2700 or via e-mail at wlowhorn@pla.in.gov. Statutory authority: IC 25-34.1-2-5; IC 25-34.1-9-21.

TITLE 876 INDIANA REAL ESTATE COMMISSION

LSA Document #05-49

Under IC 4-22-2-23, the Indiana Real Estate Commission intends to adopt a rule concerning the following:

OVERVIEW: Amends 876 IAC 4-1-6 to allow an approved distance learning continuing education course to be conducted in a facility that is also used as a broker or salesperson office. Amends 876 IAC 4-2-1 to allow instruction for an approved distance learning education course to be more than eight hours of instruction in one day. Adds 876 IAC 4-3 to establish distance learning continuing education requirements and procedures for real estate salespersons and brokers and to establish the requirements and procedures for distance learning continuing education course sponsors. Questions or comments concerning the proposed rules may be directed to: Indiana Professional Licensing Agency, ATTENTION: Commission Director, Indiana Government Center-South, 402 West Washington Street, Room W072, Indianapolis, IN 46204-2700 or via e-mail at wlowhorn@pla.in.gov. Statutory authority: IC 25-34.1-2-5; IC 25-34.1-9-21.

TITLE 40 STATE ETHICS COMMISSION

Proposed Rule
LSA Document #04-198

DIGEST

Adds 40 IAC 2-1-5.5 concerning ethics education. Amends 40 IAC 2-1-6 concerning acceptable gifts, favors, services, entertainment, food, drink, and honoraria. Amends 40 IAC 2-1-7 concerning appearances, activities, and expenses. *NOTE: LSA Document #04-198, printed at 28 IR 987, was resubmitted for publication.* Effective 30 days after filing with the secretary of state.

40 IAC 2-1-5.5
40 IAC 2-1-6
40 IAC 2-1-7

SECTION 1. 40 IAC 2-1-5.5 IS ADDED TO READ AS FOLLOWS:

40 IAC 2-1-5.5 Ethics education
Authority: IC 4-2-6-3
Affected: IC 4-2-6

Sec. 5.5. Each agency's appointing authority shall do the following:
(1) Require all new employees to participate in ethics training within six (6) weeks of the employee's starting employment date with the agency.
(2) Require all employees to participate in ethics training at least every two (2) years during an employee's tenure with the agency.
(3) Maintain documentation to demonstrate employee compliance with subdivisions (1) and (2).
(State Ethics Commission; 40 IAC 2-1-5.5)

SECTION 2. 40 IAC 2-1-6 IS AMENDED TO READ AS FOLLOWS:

40 IAC 2-1-6 Acceptable gifts, favors, services, entertainment, food, drink, and honoraria
Authority: IC 4-2-6-3
Affected: IC 3-9-2; IC 4-2-6

Sec. 6. (a) A state employee or **special state appointee, or** the spouse or unemancipated child of a state employee **or special state appointee,** shall not **knowingly** solicit, accept, or receive ~~nor shall a donor offer, directly or indirectly,~~ any gift, favor, service, entertainment, food, or drink ~~under circumstances in which it can reasonably be inferred that the thing of value would~~ **from a person who has a business relationship with the employee's agency or is seeking to** influence ~~the employee to give special consideration to~~ an action by ~~such~~ **the** employee in his **or her** official capacity. ~~This section does not prohibit normal gift-giving from relatives of gifts with an aggregate value of less than two hundred fifty dollars ($250) or political contributions subject to IC 3-9-2 which are reported in accordance with applicable law. In addition, this section does not prohibit contributions which are accepted by an agency in accordance with applicable law. This section may be waived by the state ethics commission for a legitimate public purpose.~~

~~(b) Without the written approval of the employee's appointing authority or the state officer, an employee shall not accept for personal use any gifts, favors, services, entertainment, food, or drink valued at a total of more than twenty-five dollars ($25) in a calendar year from a person or business that has a business relationship with the employee's agency. An appointing authority or state officer may designate no more than one (1) person to exercise approval on behalf of the appointing authority or state officer. Such designation shall be in writing and filed with the commission.~~ The following shall not be subject to this section:

(1) Gifts, ~~from charitable, benevolent, or religious organizations and~~ **favors, services, entertainment, food, or drink** from public agencies or **public** institutions.

(2) Food or drink consumed at a public meeting to which **at least** twenty-five (25) ~~or more~~ individuals are invited. A meeting will be considered public if:

(A) the event is a reception or other gathering for public officials **that is not arranged to solicit government procurement of goods or services;**

(B) the employee is giving a speech or participating in a presentation in the employee's official capacity; or

(C) the meeting has a formal **educational** program that the employee is attending to assist him or her in performing official duties.

(3) Mementos or souvenirs of nominal value. ~~received at public ceremonies or commemorating official business.~~

~~(4) Invitations or tickets to charitable or political fundraising events if the invitations or tickets are given by the charitable or political entity sponsoring the event. This exception does not apply to a gift of tickets from a person with a business relationship with the employee's agency.~~

~~(5)~~ **(4)** Food or drink consumed by an employee ~~or other reasonable courtesies extended to an employee~~ during negotiations or other activities related to an **Indiana economic development corporation** economic development project.

~~(6) Personal social relationships whereby nominal entertainment expenses are incurred or nominal personal mementos are exchanged on a reciprocal basis,~~ **(5) Gifts, favors, services, entertainment, food, or drinks from relatives,** so long as: ~~such expenses or mementos~~

(A) the gifts or other items of value are not deducted as a business expense; ~~If a state officer or an appointing authority approves in writing the receipt of a gift subject to this rule, the written approval shall be filed with the commission within thirty (30) days of receipt of the gift, and shall identify the employee, the nature~~ and ~~value of the gift, and the donor of the gift. The commission may review~~

~~such written approvals and require of the state officer or appointing authority an explanation of the reason for the approval.~~

(B) the gift giver is not seeking to influence an action by an employee in his or her official capacity.

In cases involving ongoing social relationships, employees should seek a waiver under subsection (b) before accepting a gift.

(6) Political contributions subject to IC 3-9-2 that are reported in accordance with applicable law.

(7) Nominal refreshments offered to a state employee conducting official state business while he or she is at a workplace of a person who has a business relationship or seeks to influence official action with the employee's agency.

(8) Discount and other promotional programs approved and made available to state employees through the state personnel department or the Indiana department of administration.

(b) An employee's state officer or appointing authority may waive application of subsection (a) in individual cases when consistent with the public interest. The waiver shall be in writing and shall identify the following:

(1) The employee.

(2) The nature and value of the gift.

(3) The donor of the gift.

(4) Why acceptance of the gift is in the public interest.

Written waivers must be filed with the commission within thirty (30) days of receipt of the gift. The commission may review the written waivers. An appointing authority or state officer may designate authority to the agency's ethics officer to waive application of this rule on behalf of the appointing authority or state officer. The designation shall be in writing and filed with the commission.

(c) A person who has a business relationship with an employee's agency shall not provide any:

(1) gifts;

(2) favors;

(3) services;

(4) entertainment;

(5) food; or

(6) drink;

to such employee if the employee would not be permitted to accept the gift, favor, service, entertainment, food, or drink under subsection (a).

~~(c)~~ ~~If~~ **(d)** An employee shall not **personally** accept an honorarium for **himself or herself for** anything ~~which~~ **that** may be considered part of the **state** employee's official duties. **However, a state employee may accept an honorarium in this situation on behalf of the state. The state employee accepting the honorarium shall remit to the treasurer of state any amount received. The treasurer of state shall quietus such funds into the general fund.** A state employee may **personally** accept an honorarium or fee for activities not done in connection with the employee's official duties ~~which~~ **and that** are prepared on the employee's own time and without the use of state resources. ~~so long as the employee is not participating by reason of~~ **However, in no case can a** state ~~employment, provided the~~ employee ~~shall not~~ accept an honorarium from ~~any~~ **a** person ~~over whom the employee has decision making authority. A state employee may accept reimbursements for travel expenses incurred when the employee is not being paid or reimbursed by the state and when an honorarium is not permitted.~~ **who has a business relationship or seeks to influence an official action with the employee's agency.**

(e) Nothing in this section prohibits contributions to agencies that are made in accordance with applicable law.

(State Ethics Commission; 40 IAC 2-1-6; filed Mar 10, 1988, 2:00 p.m.: 11 IR 2327; filed Oct 22, 1991, 11:10 a.m.: 15 IR 201; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227)

SECTION 3. 40 IAC 2-1-7 IS AMENDED TO READ AS FOLLOWS:

40 IAC 2-1-7 Appearances; activities; expenses

Authority: IC 4-2-6-3
Affected: IC 4-2-6

Sec. 7. (a) A state officer or employee shall not solicit, ~~or~~ accept, **or receive** payment ~~from any person~~ for **travel** expenses, including, but not limited to, any lodging, ~~travel expenses,~~ **transportation, or** registration fees, ~~food, or drink~~ for ~~appearance at any meeting, convention, conference, seminar, or similar activity for himself or herself or the individual's spouse or unemancipated child under circumstances in which it can reasonably be inferred that the thing of value would influence the~~ **attending events concerning** state ~~officer~~ **business from a person who has a business relationship with the employee's agency** or **is seeking to influence an action by an** employee in his or her official capacity. ~~This section does not prohibit contributions which are accepted by an agency in accordance with applicable law.~~

(b) ~~Without the written approval of the~~ **An** employee's appointing authority or ~~the~~ state officer ~~an employee shall not accept payment of expenses, including but not limited to lodging, travel expense, registration fees, food, or drink for attending events concerning state business from a person who has a business relationship with the employee's agency. An appointing authority or state officer may designate no more than one (1) person to exercise approval on behalf of the appointing authority or state officer. Such designation~~ **may waive application of subsection (a) in individual cases when consistent with the public interest. The waiver** shall be in writing and ~~filed with the commission.~~

~~(c) If a state officer or an appointing authority approves in writing the payment of expenses subject to this rule, the written approval~~ **shall identify the following:**

(1) The employee.

(2) The setting of the event.

(3) The amount and payer of the expenses.

(4) Why payment of the expenses is in the public interest. The written waiver shall be filed with the commission **the earlier of** within thirty (30) days of the event or receipt of the expenses. ~~whichever comes first, and shall identify the employee, the amount of the expenses, and the setting of the event.~~ The commission may review ~~such~~ **the** written ~~approvals and require of the~~ **waivers. A** state officer or appointing authority ~~an explanation of the reason for the approval.~~ **may designate authority to the agency's ethics officer to waive application of this rule on behalf of the appointing authority or state officer. The designation shall be in writing and filed with the commission.**

(c) A person who has a business relationship with an employee's agency shall not pay the employee's travel expenses, including, but not limited to, any lodging, transportation, or registration fees, if the employee would not be permitted to accept the payment under subsection (a) or (b).

(d) Nothing in this section prohibits contributions to agencies that are made in accordance with applicable law.

~~(d)~~ **(e)** If a person wishes to reimburse the state for any part or all of the expenses incurred by the state for appearances of a state officer or employee or their official representatives on behalf of the state, ~~such~~ **the** person is requested to remit to the treasurer of ~~the~~ state any such amounts. The treasurer of ~~the~~ state shall quietus ~~such~~ **the** funds into the general fund. *(State Ethics Commission; 40 IAC 2-1-7; filed Mar 10, 1988, 2:00 p.m.: 11 IR 2328; filed Oct 22, 1991, 11:10 a.m.: 15 IR 202; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on April 26, 2005 at 10:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 6, Indianapolis, Indiana the State Ethics Commission will hold a public hearing on a proposed new rule and amendments concerning the Indiana code of ethics for the conduct of state business. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, W189 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

David O. Thomas
Acting Director
State Ethics Commission

TITLE 327 WATER POLLUTION CONTROL BOARD

Proposed Rule
LSA Document #04-106

DIGEST

Amends 327 IAC 8-1, 327 IAC 8-3, 327 IAC 8-3.1, 327 IAC 8-3.2, 327 IAC 8-3.3, 327 IAC 8-3.4, 327 IAC 8-3.5, 327 IAC 8-4, and 327 IAC 8-6 and adds 327 IAC 8-3-2.1, 327 IAC 8-3.4-9.1, and 327 IAC 8-4-2 concerning simplification of the construction permitting requirements for small systems, which are designed to reduce the regulatory burden on those same small systems. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: May 1, 2004, Indiana Register (27 IR 2591).

Second Notice of Comment Period: January 1, 2005, Indiana Register (28 IR 1343).

Notice of First Hearing: January 1, 2005, Indiana Register (28 IR 1343).

Date of First Hearing: March 9, 2005.

Preliminary Adoption Date: March 9, 2005.

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

Portions of this proposed rule are substantively different from the draft rule published on January 1, 2005, at 28 IR 1343. The Indiana Department of Environmental Management (IDEM) is requesting comment on the following portions of the proposed (preliminarily adopted) rule that are substantively different from the language contained in the draft rule.

The sections listed below, which are being opened for public comment, were amended based on internal discussion with IDEM technical staff concerning application of the proposed rule.

327 IAC 8-3.2-20(c) is being revised to match the existing alternative technical standard language found in 327 IAC 8-3.4-27(c).

The remaining sections being opened are being revised to add a definition of small nontransient noncommunity public water system. These sections also include systems of this category in the regulatory burden reduction detailed in the draft rule published at 28 IR 1343. The inclusion of this category of systems in the regulatory burden reductions extends the reduction to approximately one hundred fifty (150) public water systems that have similar design and capacity as the systems previously included (small transient noncommunity public water systems).

The following sections of the proposed rule are substantively different from the draft rule:

327 IAC 8-3-1	327 IAC 8-3.4-3
327 IAC 8-3-2.1	327 IAC 8-3.4-4
327 IAC 8-3-3	327 IAC 8-3.4-9
327 IAC 8-3.2-20	327 IAC 8-4-1
327 IAC 8-3.4-1	327 IAC 8-4-2

This notice requests the submission of comments on the sections of the rule listed above, including suggestions for specific amendments to those sections. 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. Comments on additional sections of the proposed rule that the commentor believes are substantively different from the draft rule may also be submitted for the consideration of the board. Mailed comments should be addressed to:

#04-106 Changes to Drinking Water Construction Permit Requirements for Small Systems
Lawrence Wu
Rules Section Chief
Office of Water Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204

Hand delivered comments will be accepted by the receptionist on duty at the twelfth floor reception desk, Office of Water Quality, 100 North Senate Avenue, Indianapolis, Indiana.

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

COMMENT PERIOD DEADLINE

Comments in any form must be postmarked, hand delivered, or faxed by April 21, 2005.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

IDEM requested public comment from January 1, 2005, through January 30, 2005, on IDEM's draft rule language. No comments were received during the second comment period.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On March 9, 2005, the Water Pollution Control Board (board) conducted the first public hearing/board meeting concerning the development of amendments to 327 IAC 8-1, 327 IAC 8-3, 327 IAC 8-3.1, 327 IAC 8-3.2, 327 IAC 8-3.3, 327 IAC 8-3.4, 327 IAC 8-3.5, 327 IAC 8-4, and 327 IAC 8-6 and new rules 327 IAC 8-3-2.1, 327 IAC 8-3.4-9.1, and 327 IAC 8-4-2. No comments were made at the first hearing.

327 IAC 8-1-1
327 IAC 8-1-2
327 IAC 8-1-3
327 IAC 8-1-4
327 IAC 8-3-1
327 IAC 8-3-1.1
327 IAC 8-3-2
327 IAC 8-3-2.1
327 IAC 8-3-3
327 IAC 8-3-8
327 IAC 8-3.1-1
327 IAC 8-3.1-2
327 IAC 8-3.2-1
327 IAC 8-3.2-2
327 IAC 8-3.2-4
327 IAC 8-3.2-8
327 IAC 8-3.2-11
327 IAC 8-3.2-17
327 IAC 8-3.2-18
327 IAC 8-3.2-20
327 IAC 8-3.3-4
327 IAC 8-3.3-5
327 IAC 8-3.3-6
327 IAC 8-3.4-1
327 IAC 8-3.4-2
327 IAC 8-3.4-3
327 IAC 8-3.4-4
327 IAC 8-3.4-8
327 IAC 8-3.4-9
327 IAC 8-3.4-9.1
327 IAC 8-3.4-12
327 IAC 8-3.4-13
327 IAC 8-3.4-14
327 IAC 8-3.4-16
327 IAC 8-3.4-17
327 IAC 8-3.4-23
327 IAC 8-3.4-24
327 IAC 8-3.4-25
327 IAC 8-3.4-27
327 IAC 8-3.5-1
327 IAC 8-3.5-2
327 IAC 8-3.5-5
327 IAC 8-4-1
327 IAC 8-4-2
327 IAC 8-6-1

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

327 IAC 8-1-1 Community water system; fluoridation; phosphate additives

Authority: **IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1**
Affected: **IC 13-13-5-1; IC 13-18-2**

Sec. 1. Each community water system that adds a fluoride or phosphate compound shall comply with the following:

(1) Fluoride compounds may be added to such water supplies after receiving a construction permit from the commissioner providing the total content of fluoride ion (F^-) after such addition does not exceed two (2.0) milligrams per liter (mg/l) unless the public water system is a participant in an Indiana state department of health approved school fluoride adjustment program for which the concentration of fluoride in a school water supply shall not exceed five and one-half (5.5) mg/l.

(2) Phosphate additives may be added to the water for treatment of iron, manganese, scale, and corrosion problems after receiving a construction permit from the commissioner. Such direct additives shall be in conformance with section 2 of this rule. Total phosphate concentration shall not exceed ten (10) mg/l measured as PO_4. Product may be provided in liquid or dry form. Containers in which the agents are packaged shall be labeled indicating product information and general instructions for use. At a minimum, the label must display the name and application of product, percentage phosphate concentration as PO_4, and certification of American National Standards Institute (ANSI)/National Sanitation Foundation (NSF) International Standard 60, NSF Listings, Drinking Water ~~Additives~~ **Treatment Chemicals**-Health Effects. In addition, if it is provided in liquid form, the label shall specify pH and specific gravity. The containers must also be marked identifying manufacturing batch number. All liquid products must be treated for bacteria control at the time of manufacture with a potably approved bacteria control agent.

(Water Pollution Control Board; 327 IAC 8-1-1; filed Sep 24, 1987, 3:00 p.m.: 11 IR 705; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1003; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2491; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 2. 327 IAC 8-1-2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-1-2 Drinking water direct additives and indirect additives; certification requirements

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 2. (a) All public water systems shall comply with this section before the conclusion of ninety (90) days from the effective date of this rule.

(b) All direct additives in public water systems shall be certified for conformance to American National Standards Institute (ANSI)/National Sanitation Foundation (NSF) International Standard 60, NSF Listings, Drinking Water ~~Additives~~ **Treatment Chemicals**-Health Effects. All public water systems must compile and maintain on file for inspection by the commissioner a list of all direct additives used that come into contact with the drinking water. This list must contain the name, the description, **and** the manufacturer of the product and whether the direct additive is certified under this section. The list must be maintained as long as the direct additives are used by the public water ~~supply.~~ **system.**

(c) The following new or modified indirect additives in public water systems shall be certified for conformance to American National Standards Institute (ANSI)/National Sanitation Foundation (NSF) International Standard 61, ~~Classified or Recognized~~ Drinking Water System ~~Components, Component Materials and Treatment Additives Directory,~~ **Components-Health Effects,** except Section 9, Mechanical Plumbing Product:

(1) All indirect additives found in finished water storage facilities, including lubricants, tank coatings, paints, and epoxies.

(2) All indirect additives between all entry points ~~of~~ **to** the distribution system and ~~all customer service connection meters.~~ **the premises of the consumer.**

(3) All filter and membrane media.

(4) All indirect additives ~~which~~ **that** are classified in a category of indirect additives for which American National Standards Institute (ANSI)/National Sanitation Foundation (NSF) International Standard 61 is available.

(d) All public water systems must demonstrate certification of direct additives and indirect additives required by subsections (b) and (c) when inspected by the commissioner.

(e) Certification that a direct additive or an indirect additive meets the standards adopted in or ~~pursuant to~~ **under** this rule shall be recognized as being listed with such certification in one (1) of the following publications:

(1) "NSF Listings, Drinking Water ~~Additives~~ **Treatment Chemicals**-Health Effects".

(2) ~~"Classified or Recognized~~ "Drinking Water System ~~Components, Component Materials, and Treatment Additives Directory".~~ **Components-Health Effects".**

(f) The commissioner may approve the use of a direct or indirect additive in a public water system only after the applicant has demonstrated that the direct or indirect additive is in compliance with **one (1) or more of** the following conditions:

(1) The direct or indirect additive has been approved and is listed by one (1) of the publications specified by subsection (e).

(2) The direct or indirect additive has been approved by an organization having a third party certification program for direct or indirect additives that has been approved by the American National Standards Institute.

(g) The commissioner shall maintain a copy of the following:

(1) "NSF Listings, Drinking Water ~~Additives~~ **Treatment Chemicals**-Health Effects".

(2) ~~"Classified or Recognized~~ "Drinking Water System ~~Components, Component Materials, and Treatment Additives Directory".~~ **Components-Health Effects".**

(h) A public water system shall not willfully introduce, permit, or suffer the introduction of a direct additive or indirect additive into the drinking water that does not meet the requirements of this rule. *(Water Pollution Control Board; 327 IAC 8-1-2; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2492; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 3. 327 IAC 8-1-3 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-1-3 Definitions

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 3. In addition to the definitions ~~contained~~ in IC 13-11-2, the following definitions apply throughout this rule:

(1) "Direct additives" means additives that are used in public water systems for the treatment of raw water. Direct additives are also used to protect drinking water during storage and distribution. Examples of direct additives include the following:

(A) Agents used for coagulation and flocculation.
(B) Corrosion and scale control.
(C) Softening.
(D) Sequestering.
(E) Precipitation.
(F) pH adjustment.
(G) Disinfection and oxidation.
(H) Miscellaneous treatment applications.
(I) Miscellaneous water supply products.

(2) "Entry point ~~of~~ **to** the distribution system" means one (1) of the following points:

(A) In public water systems ~~which~~ **that** utilize water treatment facilities, the point at which the drinking water has left the treatment facilities and has entered the **water** distribution system.

(B) In public water systems ~~which~~ **that** do not utilize water treatment facilities, the point at which the drinking water has left the supply facilities and has entered the **water** distribution system.

(3) "Indirect additives" means additives that are materials or equipment that come in contact with drinking water or come in contact with drinking water direct additives. Examples of indirect additives include the following:

(A) Pipes.

(B) Valves and related products.

(C) Barrier materials.

(D) Joining and sealing materials.

(E) Protective materials and related products.

(F) Mechanical devices used in treatment, transmission, and distribution systems.

(4) "Operator" means the person in direct or responsible charge and supervising the operation of a: ~~wastewater or~~

(A) water treatment plant;

(B) wastewater treatment plant; or ~~a~~

(C) water distribution system.

(5) "Public water system" means a ~~public water supply~~ **system** for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals. ~~daily at least sixty (60) days out of the year.~~ The term includes any collection, treatment, storage, and distribution facilities under control of the operator of ~~such~~ **the** system and used primarily in connection with ~~such~~ **the** system and any collection or pretreatment storage facilities not under such control that are used primarily in connection with ~~such~~ **the** system.

(Water Pollution Control Board; 327 IAC 8-1-3; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2492; filed Mar 6, 2000, 7:56 a.m.: 23 IR 1622; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 4. 327 IAC 8-1-4 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-1-4 Incorporation by reference

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-14-8

Sec. 4. The following materials, including titles and the names and addresses of where they may be located for inspection and copying, are incorporated by reference into this rule:

(1) ~~"NSF Listings,~~ "Drinking Water ~~Additives~~ **Treatment Chemicals**-Health Effects", November ~~13, 1997,~~ **15, 2004,** National Sanitation Foundation (NSF) International, 3475 Plymouth Road, Ann Arbor, Michigan, 48113-0140 or from the Indiana Department of Environmental Management, Office of Water ~~Management,~~ **Quality,** Indiana Government Center-North, 100 North Senate Avenue, Room ~~1255,~~ **N1255,** Indianapolis, Indiana ~~46206.~~ **46204.**

(2) ~~"Classified or Recognized~~ "Drinking Water Systems ~~Components, Component Materials and Treatment Additives Directory", August, 1997, Underwriters Laboratory, Inc., Engineering Services, 416C, 333 Pfingsten Road, Northbrook, Illinois,~~ **Components-Health Effects", November 15, 2004, National Sanitation Foundation (NSF) International, 3475 Plymouth Road, Ann Arbor, Michigan 48113-0140** or from the Indiana Department of Environmental Management, Office of Water ~~Management,~~ **Quality,** Indiana Government Center-North, 100 North Senate Avenue, Room ~~1255,~~ **N1255,** Indianapolis, Indiana ~~46206.~~ **46204.**

(Water Pollution Control Board; 327 IAC 8-1-4; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2493; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 5. 327 IAC 8-3-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3-1 Definitions

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-12; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2; IC 25-17.6; IC 25-31; IC 25-39-3

Sec. 1. In addition to the definitions ~~contained~~ in IC 13-11-2 and ~~327 IAC 1,~~ **327 IAC 8-1,** the following definitions apply throughout this rule:

(1) "Connection ban" means an order imposed by the commissioner in accordance with section 4.2 of this rule.

~~(2) "Distribution system" means the piping, storage structures, pumps, and controls used to deliver water to the public.~~

~~(3)~~ **(2)** "Early warning order" means an order imposed by the commissioner in accordance with section 4.2 of this rule.

~~(4)~~ **(3)** "Experimental permit" means a construction permit issued for an installation, treatment process, or technique for which extensive experience and records of use have not been accumulated to meet the Safe Drinking Water Act requirements.

(4) "Licensed professional geologist" means a person who is licensed as a professional geologist under IC 25-17.6.

(5) "Licensed well driller" means a person who is licensed as a well driller under IC 25-39-3.

~~(5)~~ **(6)** "Normal operating pressure" means the water main pressure maintained regardless of public service load in the absence of extenuating circumstances.

~~(6) "Operator" means the person in direct or responsible charge and supervising the operation of a wastewater or water treatment plant or a water distribution system.~~

(7) "Peak operating flow rate" means the flow rate equal to **the** maximum achievable capacity of the public water system.

(8) "Professional engineer" means a person who is registered as a professional engineer by the Indiana state board of registration for professional engineers under IC 25-31.

~~(9) "Public water system" means a public water supply for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals daily at least sixty (60) days out of the year. The term includes any collec-~~

~~tion, treatment, storage, and distribution facilities under control of the operator of such system, t and used primarily in connection with such system and any collection or pretreatment storage facilities not under such control that are used primarily in connection with such system.~~

~~(10)~~ **(9)** "Satisfactory quality" means the physical, chemical, and bacteriological quality of drinking water meeting the requirements set forth in this article.

(10) "Small nontransient noncommunity public water system" means a public water system that:

(A) meets the definition of a nontransient noncommunity public water system under 327 IAC 8-2-1;

(B) serves one hundred (100) or fewer individuals; and

(C) does not utilize surface water or ground water under the influence of surface water as its water source.

(11) "Small transient noncommunity public water system" means a public water system that:

(A) meets the definition of a transient noncommunity public water system under 327 IAC 8-2-1;

(B) serves two hundred fifty (250) or fewer individuals per day; and

(C) does not utilize surface water or ground water under the influence of surface water as its water source.

~~(11)~~ **(12)** "Two (2) year average peak" means the arithmetic mean of the highest five (5) daily pumpages as reported over the previous two (2) year period on the public water system's monthly report of operations on record with the department. If the public water system is less than two (2) years old, the term means the arithmetic mean of the highest five (5) daily pumpages as reported on the public water system's monthly report of operations on record with the department.

~~(12)~~ **(13)** "Water main" means any pipe located between all entry points to the **water** distribution system and ~~all customer service connection meters.~~ **the premises of the consumer.**

(Water Pollution Control Board; 327 IAC 8-3-1; filed Sep 24, 1987, 3:00 p.m.: 11 IR 709; filed Oct 22, 1991, 5:00 p.m.: 15 IR 223; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2493; filed Mar 6, 2000, 7:56 a.m.: 23 IR 1626; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 6. 327 IAC 8-3-1.1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3-1.1 Proof of capacity

Authority: IC 13-13-5; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-21-3
Affected: IC 13-18-16

Sec. 1.1. (a) A new community public water ~~supply~~ system and a new nontransient noncommunity public water ~~supply~~ system that will commence operation after October 1, 1999, must fulfill the requirements of 327 IAC 8-3.6 ~~prior to~~ **before** making a submission to the commissioner for a permit to construct as described in sections 2 and 3 of this rule.

(b) The commissioner shall deny and return to the applicant a construction permit application, plans, or specifications that are submitted for review without the proof of public water ~~supply~~ system technical, financial, and managerial capacity as required by 327 IAC 8-3.6. *(Water Pollution Control Board; 327 IAC 8-3-1.1; filed Aug 10, 1999, 8:54 a.m.: 22 IR 3678; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 7. 327 IAC 8-3-2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3-2 Permits for construction of public water systems; exemptions; experimental construction permits; emergency construction permits; after-the-fact construction permits

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 2. (a) No person shall cause or allow the construction, installation, or modification of any facility, equipment, or device for any public water system without having a valid construction permit issued by the commissioner, except for replacement of equipment of similar design and capacity, none of which will change adversely:

(1) the plant operation;

(2) its hydraulic design or waste products; or

(3) the **water** distribution system design, operation, or capacity;

or where specifically allowed in section 2.1 of this rule.

(b) After the commissioner has granted a construction permit, no changes in the application, plans, or specifications shall be made other than changes involving the replacement of equipment of similar design and capacity, none of which will change adversely:

(1) the plant operation;

(2) its hydraulic design or waste products; or

(3) the **water** distribution system design, operation, or capacity;

without first submitting in writing to the commissioner a detailed statement of ~~such~~ **the** proposed changes and receiving an amended construction permit from the commissioner. Construction permits shall become void if the construction is not started within one (1) year from the date of issuance of the permit unless the duration of the permit has been extended by the commissioner after receiving a written request from the permittee, ~~prior to~~ **before** the expiration of the permit, requesting ~~such~~ **the** extension with no other changes to the permit, application, plans, or specifications as approved by the commissioner.

(c) The commissioner shall have the authority to specify in the permit any limits and conditions necessary to meet the issuance requirements of section 4 of this rule.

(d) The commissioner may revoke any construction permit for noncompliance with the limits and conditions specified in the permit, or if significant and unapproved changes are made in

construction that differ from the application, plans, and specifications on which the issuance of the permit was based.

(e) The commissioner may issue construction permits for public water system facilities, equipment, or devices that are to be installed or constructed in stages. These construction permits may allow site preparation or foundation construction to begin where the following conditions have been met:

(1) Plans and specifications for additional facilities, equipment, or devices that will be used in the treatment, pumping, withdrawal, or conveyance of water for public consumption must be approved by the commissioner ~~prior to~~ **before** the construction of ~~said~~ **the** facilities, equipment, or devices in accordance with this section.

(2) Public water system facilities, equipment, or devices that are not used for the treatment, pumping, withdrawal, or conveyance of water for public consumption must conform to the requirements of the "Recommended Standards for Water Works" established by the Great Lakes—Upper Mississippi River Board of State Public Health and Environmental Managers, and the American Water Works Association (AWWA) standards **or other standards set out in this rule, 327 IAC 8-3.1, 327 IAC 8-3.2, 327 IAC 8-3.3, 327 IAC 8-3.4, 327 IAC 8-3.5, 327 IAC 8-4, and 327 IAC 8-6.**

(f) In order to encourage the development of new or more efficient treatment processes, the following type of construction permits may be issued:

(1) Experimental construction permits may be issued by the commissioner for installations, treatment processes, or techniques that have not developed extensive experience or records of use in the state of Indiana, provided that the applicant submits evidence that the installation, process, or technique will produce drinking water of satisfactory quality and normal operating pressure at the peak operating flow rate in accordance with this article.

(2) Regular construction permits may be issued for installations, treatment processes, or techniques that have been used for sufficient time to show that the installation, treatment process, or technique will produce drinking water of satisfactory quality and normal operating pressure at the peak operating flow rate in accordance with this article.

(g) For an emergency condition, as a result of a drought, storm, flood, or other natural or manmade disaster, the commissioner may issue an emergency construction permit.

(h) An after-the-fact construction permit must be obtained from the commissioner upon notification to the public water system by the commissioner of completed or progressing construction, installation, or modification of any facility, equipment, or device for any public water system lacking a valid construction permit issued from the department, except where replacement of equipment of similar design and capacity will not change adversely the plant operation, its hydraulic design or waste products, or the **water** distribution system design, operation, or capacity. The following additional conditions apply to after-the-fact construction permits:

(1) The commissioner may order that no additional construction may commence or continue progress until the after-the-fact construction permit has been obtained.

(2) As-built plans and specifications certified by a professional engineer registered in Indiana, covering all work performed without a valid construction permit issued by the commissioner must be submitted to the commissioner within one hundred twenty (120) days of notification to the public water system by the commissioner.

(3) Modifications as required by the commissioner after review of the as-built plans and specifications shall be made within the time limits specified by the commissioner.

(4) The commissioner may require interim measures taken during review of an after-the-fact construction permit, including boil orders to ensure safe drinking water of satisfactory quality and normal operating pressure at the peak operating flow rate in accordance with this article.

(5) An after-the-fact construction permit does not relieve a public water system or any other person of any liability for construction without a valid permit from the commissioner.

(Water Pollution Control Board; 327 IAC 8-3-2; filed Sep 24, 1987, 3:00 p.m.: 11 IR 709; filed Oct 22, 1991, 5:00 p.m.: 15 IR 224; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2494; errata filed Aug 30, 1999, 12:06 p.m.: 23 IR 25; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 8. 327 IAC 8-3-2.1 IS ADDED TO READ AS FOLLOWS:

327 IAC 8-3-2.1 Permits for construction of small transient and small nontransient noncommunity public water systems

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2; IC 25-31-1-19

Sec. 2.1. (a) Small transient and small nontransient noncommunity public water systems may construct facilities specified in 327 IAC 8-4-2 without obtaining a construction permit, provided that they have met all the conditions set forth in that section.

(b) For construction at small transient and small nontransient noncommunity public water systems that are not subject to subsection (c), the design as shown on an application, plans, and specifications may be certified by any of the following:

(1) A professional engineer.
(2) A licensed well driller.
(3) A licensed professional geologist.

(c) As required under IC 25-31-1-19(a), design on construction and maintenance projects for:

(1) a county;
(2) a city;

(3) a town;
(4) a township;
(5) a school corporation; or
(6) any other political subdivision;
must have a professional engineer certify that the design as shown on the application, plans, and specifications are in compliance with the rule.

(d) Where a permit is required, an application form shall be submitted in accordance with section 3 of this rule. If specifications for small transient and small nontransient noncommunity public water systems are not included in this section, the requirements of section 2 of this rule must be met. *(Water Pollution Control Board; 327 IAC 8-3-2.1)*

SECTION 9. 327 IAC 8-3-3 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3-3 Application for permits
Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 4-21.5-3-5; IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 3. (a) A properly executed application form shall accompany the plans and specifications submitted to the commissioner for the purposes of obtaining a permit. Application forms may be obtained from the commissioner upon request or computer-generated if the computer-generated form is similar in appearance and identical in content to the form generated by the commissioner. A properly executed application form shall include the following:
(1) **The** name, address, identification number, and telephone number of the public water system.
(2) **The** name, address, and telephone number of the engineering firm **or other entity specified in section 2.1 of this rule** and the developing firm.
(3) **The** name, address, and title of the person who is to receive the permit (generally the person representing the funding entity of the construction project).
(4) **The** location, **a** brief description, and **the** source of funding for the construction project.
(5) A list and corresponding mailing labels of all potentially affected parties as defined by IC 4-21.5-3-5(b).
(6) A dated signature certifying that, to the best of the public water system's knowledge, all potentially affected parties, as defined by IC 4-21.5-3-5(b), have been listed.

(b) The applications, plans, and specifications along with any reports and other information shall be submitted using a format and meeting content requirements approved by the commissioner.

(c) All plans, specifications, and applications must be prepared by or under the direct supervision of a professional engineer registered in Indiana and shall bear the seal and certification of the professional engineer certifying that construction of the proposed project following the application, plans, and specifications will produce drinking water of satisfactory quality and normal operating pressure at the peak operating flow rate in accordance with this article. **Plans, specifications, and applications for small transient and small nontransient noncommunity public water systems must be prepared in accordance with section 2.1 of this rule.**

(d) A proposed construction project that is the subject of an application for a construction permit must be entirely independently based on existing public water system facilities or proposed construction projects with effective construction permits, issued by the commissioner, that are not the subject of the application.

(e) The commissioner may require additional information, within the context of a permit application, to determine whether the proposed facility will meet the issuance requirements of section 4 of this rule.

(f) Whenever the commissioner requires information, within the context of a permit application, regarding:
(1) existing water supply facilities or water treatment works; or ~~regarding~~
(2) the operation and maintenance thereof;
this information shall be submitted to the commissioner within thirty (30) days of such request.

(g) A public water system proposing to install or construct facilities, equipment, or devices under a staged permitting process must submit **proposed schedules for** the following along with the initial permit application as allowed under section 2(e) of this rule:
(1) ~~A proposed schedule for~~ The construction of the entire project.
(2) ~~A proposed schedule for~~ The application or applications for the remainder of the staged parts of the total construction project.
(Water Pollution Control Board; 327 IAC 8-3-3; filed Sep 24, 1987, 3:00 p.m.: 11 IR 710; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2496; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 10. 327 IAC 8-3-8 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3-8 Incorporation by reference
Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 8. Recommended Standards for Waterworks, ~~1997~~ **2003** Edition, Great Lakes—Upper Mississippi River Board of State Public Health and Environmental Managers, is incorporated by reference into this rule and may be obtained from Health Education Services, P.O. Box 7126, Albany, New York 12224 or from the Indiana Department of Environmental Management, Office of Water ~~Management,~~ **Quality,** Indiana Government Center-North, 100 North Senate Avenue, Room ~~1255,~~ **N1255,**

Indianapolis, Indiana ~~46206.~~ **46204.** *(Water Pollution Control Board; 327 IAC 8-3-8; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2499; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 11. 327 IAC 8-3.1-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.1-1 Definitions

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-12; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2; IC 25-31; IC 36-1-2-23

Sec. 1. ~~In addition to~~ **(a)** The applicable definitions ~~contained~~ in IC 13-11-2 and 327 IAC 8-3.2-1 ~~the following definitions~~ apply throughout this rule.

~~(1) "Professional engineer" means a person registered as a professional engineer by the Indiana state board of registration for professional engineers under IC 25-31.~~

~~(2) "Water main" means any pipe located between all entry points to the distribution system and all customer service connection meters.~~

~~(3)~~ **(b) For purposes of this rule,** "unit" means county, municipality, or township as set forth in IC 36-1-2-23. *(Water Pollution Control Board; 327 IAC 8-3.1-1; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2499; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 12. 327 IAC 8-3.1-2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.1-2 Permitting authority and responsibilities

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-12; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 2. (a) The plans for a water main extension are not required to be submitted to any state agency for a permit, permission, or review, unless required by the federal law, if the following are met:

(1) A person submits plans to a unit concerning the design or construction of a public water main.
(2) A professional engineer prepared the plans.
(3) The unit provided a review of the plans by a qualified engineer and subsequently approved the plans.
(4) All other requirements specified in this rule and all other rules adopted by the water pollution control board are met.

(b) The proposed construction of a water main must be in accordance with the following:

(1) The Safe Drinking Water Act, 42 U.S.C. 300f-300j-26, as amended*.
(2) The Clean Water Act, 33 U.S.C. 1251-1387, as amended**.

(c) The other requirements specified in rules that have been adopted by the water pollution control board and must be adhered to in the permitting of a public water main include the following:

(1) 327 IAC 8-1: Public Water Supply Direct Additive and Indirect Additive Standards.
(2) 327 IAC 8-2: Drinking Water Standards.
(3) 327 IAC 8-3.2: Technical Standards for Water Mains.
(4) 327 IAC 8-3.3: Public Water System Quantity Requirement Standards.
(5) ~~327 IAC 8-7:~~ **327 IAC 8-3.3-4: Additional public** water ~~Supply and Distribution Systems; Schools and Related~~ **system quantity requirement standards for school** buildings **and related facilities.**
(6) ~~327 IAC 8-8:~~ **327 IAC 8-3.3-5: Additional public** water ~~Supply and Distribution Systems;~~ **system quantity requirement standards for** mobile home parks.
(7) ~~327 IAC 8-9:~~ **327 IAC 8-3.3-6: Additional public** water ~~Supply and Distribution Systems;~~ **system quantity requirement standards for** agricultural **labor** camps.
(8) 327 IAC 8-10: Cross Connections; Control; Operation.

(d) Units shall notify the commissioner of all public water main construction permits that the unit has issued by submitting to the department, on the effective date of the permit, a copy of each issued permit. Each submission shall contain the following information for each issued permit:

(1) **The** identification number that has been issued by the local unit.
(2) **The** effective date of the permit.
(3) The county where the construction project is to be located.
(4) The location of the construction project in terms of the following:
  (A) **The** nearest public intersection.
  (B) Quarter section, section, township, and range of the approximate center of the construction project.
  (C) If the information requested by clause (B) is not available, the latitude and longitude of the approximate center of the construction project to the nearest fifteen (15) seconds.
(5) The maximum number of proposed service connections to the water main.
(6) A description and numerical count of the type or types of facilities to be located at each proposed service connection whether:
  (A) residential;
  (B) commercial; or
  (C) industrial.
(7) A project layout map on an eight and one-half (8.5) inch by eleven (11) inch sheet of paper.

(e) The commissioner may approve alternatives to the notification procedure described in subsection (d) if requested. The alternative notification procedure must provide equivalent information to that required under subsection (d) to be considered for approval.

*The Safe Drinking Water Act as amended on August 6,

1996, is incorporated by reference and may be found at 42 U.S.C. 300f to 42 U.S.C. 300j-26 and is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water ~~Management,~~ **Quality,** Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana ~~46206.~~ **46204.**

The Clean Water Act in effect on January 1, 1989, and amended on December 16, 1996, is incorporated by reference and may be found at 33 U.S.C. 1251 to 33 U.S.C. 1387 and is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water ~~Management,~~ **Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana ~~46206.~~ **46204.**
(Water Pollution Control Board; 327 IAC 8-3.1-2; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2499; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 13. 327 IAC 8-3.2-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.2-1 Definitions

Authority: IC 13-13-5-1; IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-2; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 25-31

Sec. 1. In addition to the definitions ~~contained~~ in IC 13-11-2 and 327 IAC 8-3-1, the following definitions apply throughout this rule:

(1) "100-year flood" means a flood with an occurrence probability of one percent (1%) each year as determined by the Indiana department of natural resources.

(2) "Accessories" means the constituent elements of a water main, such as **the following:**

(A) Pipes.
(B) Fittings.
(C) Valves.
(D) Pumps. ~~and~~
(E) Hydrants.

(3) "ASTM standards" means the recommended standards certified by the American Society for Testing and Materials.

(4) "AWWA/ANS standards" means the American National Standard approved by the American Water Works Association.

(5) "Dead-end main" means a portion of a water main that has:

(A) flow in only one (1) direction; and ~~has~~
(B) no planned future extension.

(6) "Fire flow" means the rate of water flow intended for providing fire protection.

(7) "Nonpermeable" means to be constructed of ductile iron with solvent-resistant gasket materials or welded steel pipes.

~~(8) "Normal operating pressure" means the water main pressure maintained regardless of public service load in the absence of extenuating circumstances.~~

~~(9) "Professional engineer" means a person who is registered as a professional engineer by the Indiana state board of registration for professional engineers under IC 25-31.~~

~~(10)~~ **(8)** "Transmission main" means any pipe that:

(A) transports water from a:

(i) surface water intake to a surface water treatment plant; **or**

~~(B) transports water from a ground water intake~~ **(ii)** well to a water treatment plant; ~~(if present);~~

~~(C)~~ **(B)** transports:

(i) finished water from the treatment plant ~~(if present)~~ to the entry point ~~of~~ **to** the **water** distribution system; or

(ii) water from a well to the entry point to the water distribution system if there is no water treatment plant; or

~~(D)~~ **(C)** is installed for the purpose of interconnecting separate public water systems.

~~(11) "Two (2) year average peak" means the arithmetic mean of the highest five (5) daily pumpages as reported over the previous two (2) year period on the public water system's monthly report of operations on record with the department. If the public water system is less than two (2) years old, the term means the arithmetic mean of the highest five (5) daily pumpages as reported on the public water system's monthly report of operations on record with the department.~~

~~(12) "Water main" means any pipe located between all entry points to the distribution system and all customer service connection meters.~~

(Water Pollution Control Board; 327 IAC 8-3.2-1; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2500; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 14. 327 IAC 8-3.2-2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.2-2 Incorporation by reference

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 2. ~~(a)~~ The following materials, including titles and the names and addresses of where they may be located for inspection and copying, are incorporated by reference into this rule:

(1) The American Society for Testing and Materials standards listed throughout this rule are available in the ~~1996~~ **2004** Annual Book of ASTM Standards, Part 34, Plastic Pipe and Building Products, ~~1996~~ **2004** Edition, American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103 or from the Indiana Department of Environmental Management, Office of Water ~~Management,~~ **Quality,** Indiana Government Center-North, 100 North Senate Avenue, Room ~~1255,~~ **N1255,** Indianapolis, Indiana ~~46206.~~ **46204.**

(2) The American Water Works Association (AWWA) standards listed throughout this rule are available from the

American Water Works Association, 6666 West Quincy Avenue, Denver, Colorado 80235 or from the Indiana Department of Environmental Management, Office of Water ~~Management,~~ **Quality,** Indiana Government Center-North, 100 North Senate Avenue, Room ~~1255,~~ **N1255,** Indianapolis, Indiana ~~46206.~~ **46204.** Notwithstanding language to the contrary in the primarily incorporated documents, the version of all secondarily incorporated documents, which are documents referred to in the primarily incorporated documents, shall be the version in effect on the date of final adoption of this rule.

~~(b) The technical standards presented in subsection (a) are continuously revised on a twenty-four (24) month cycle. The commissioner shall commence rulemaking efforts to update the documents incorporated by reference in this section.~~ *(Water Pollution Control Board; 327 IAC 8-3.2-2; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2500; errata filed Aug 30, 1999, 12:06 p.m.: 23 IR 25; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 15. 327 IAC 8-3.2-4 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.2-4 Certification

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 4. A professional engineer must certify that the water main designs as shown on the application, plans, and specifications are in compliance with this rule **except as allowed by 327 IAC 8-3-2.1.** *(Water Pollution Control Board; 327 IAC 8-3.2-4; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2501; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 16. 327 IAC 8-3.2-8 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.2-8 Water main materials

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 8. (a) All piping, accessories, and other materials in a water main shall conform to 327 IAC 8-1, contain less than eight percent (8%) by mass lead, and conform to the following applicable standards:

(1) For ductile-iron and fittings, the following standards apply:

(A) ~~C104/A21.4-95~~ **C104/A21.4-2003** American National Standard for Cement-Mortar Lining for Ductile-Iron Pipe and Fittings for Water.

(B) ~~C105/A21.5-93~~ **C105/A21.5-1999** American National Standard for Polyethylene Encasement for Ductile-Iron Pipe Systems.

(C) ~~C110/A21.10-93~~ **C110/A21.10-2003** American National Standard for Ductile-Iron and Gray-Iron Fittings, 3 In. through 48 In. (75 mm through 1,200 mm), for Water and Other Liquids.

(D) ~~C111/A21.50-90~~ **C111/A21.11-2000** American National Standard for Rubber-Gasket Joints for Ductile-Iron Pressure Pipe and Fittings.

(E) ~~C115/A21.15-94~~ **C115/A21.15-1999** American National Standard for Flanged Ductile-Iron Pipe or Gray-Iron Threaded Flanges.

(F) ~~C150/A21.50-91~~ **C150/A21.50-2002** American National Standard for the Thickness Design of Ductile-Iron Pipe.

(G) ~~C151/A21.51-91~~ **C151/A21.51-2002** American National Standard for Ductile-Iron Pipe, Centrifugally Cast, for Water. ~~or Other Liquids.~~

(H) ~~C153/A-21.53-94~~ **C153/A21.53-2000** American National Standard for Ductile-Iron Compact Fittings ~~3 In. through 24 In. (76 mm through 610 mm) and 54 In. through 64 In. (1,400 mm through 1,600 mm),~~ for Water Service.

(2) For steel pipe, the following standards apply:

(A) ~~C200-91~~ **C200-97** AWWA Standard for Steel Water Pipe, 6 In. (150 mm) and Larger.

(B) ~~C203-91~~ **C203-02** AWWA Standard for Coal-Tar Protective Coatings and Linings for Steel Water Pipelines-Enamel and Tape-Hot-Applied **(includes revisions C203a-99).**

(C) ~~C205-89~~ **C205-00** AWWA Standard for Cement-Mortar Protective Lining and Coating for Steel Water Pipe-4 In. and Larger-Shop Applied.

(D) ~~C206-91~~ **C206-97** AWWA Standard for Field Welding of Steel Water Pipe.

(E) ~~C207-94~~ **C207-01** AWWA Standard for Steel Pipe Flanges for Waterworks Service-Sizes 4 In. through 144 In. (100 mm through 3,600 mm).

(F) ~~C208-83(R89)~~ **C208-01** AWWA Standard for Dimensions for Fabricated Steel Water Pipe Fittings.

(G) ~~C209-90~~ **C209-00** AWWA Standard for Cold-Applied Tape Coatings for the Exterior of Special Sections, Connections, and Fittings for Steel Water Pipelines.

(H) ~~C210-92~~ **C210-03** AWWA Standard for Liquid-Epoxy Coating Systems for the Interior and Exterior of Steel Water Pipelines.

(I) ~~C213-91~~ **C213-01** AWWA Standard for Fusion-Bonded Epoxy Coating for the Interior and Exterior of Steel Water Pipelines.

(J) ~~C214-89~~ **C214-00** AWWA Standard for Tape Coating Systems for the Exterior of Steel Water Pipelines. ~~(includes addendum C214a-91).~~

(K) ~~C215-94~~ **C215-04** AWWA Standard for Extruded Polyolefin Coatings for the Exterior of Steel Water Pipelines.

(L) ~~C216-94~~ **C216-00** AWWA Standard for Heat-Shrinkable Cross-Linked Polyolefin Coatings for the Exterior of Special Sections, Connections, and Fittings. ~~for Steel Water Pipelines.~~

(M) ~~C217-90~~ **C217-04** AWWA Standard for Cold-Applied

Petrolatum Tape and Petroleum Wax Tape Coatings for the Exterior of Special Sections, Connections, and Fittings for Buried Steel Water Pipelines.

(N) ~~C218-91~~ **C218-02** AWWA Standard for Coating the Exterior of Aboveground Steel Water Pipelines and Fittings.

(O) ~~C219-91~~ **C219-01** AWWA Standard for Bolted, Sleeve-Type Couplings for Plain-End Pipe.

(P) ~~C220-92~~ **C220-98** AWWA Standard for Stainless-Steel Pipe, 4 In. (100 mm) and Larger.

(3) For concrete pipe, the following standards apply:

(A) ~~C300-89~~ **C300-04** AWWA Standard for Reinforced Concrete Pressure Pipe, Steel-Cylinder Type. ~~for Water and Other Liquids (includes addendum C300a-93).~~

(B) ~~C301-92~~ **C301-99** AWWA Standard for Prestressed Concrete Pressure Pipe, Steel-Cylinder Type. ~~for Water and Other Liquids.~~

(C) ~~C302-95~~ **C302-04** AWWA Standard for Reinforced Concrete Pressure Pipe, Noncylinder Type.

(D) ~~C303-95~~ **C303-02** AWWA Standard for Concrete Pressure Pipe, Bar-Wrapped, Steel-Cylinder Type.

(E) ~~C304-92~~ **C304-99** AWWA Standard for Design of Prestressed Concrete Cylinder Pipe.

(4) For asbestos-cement pipe, the following standards apply:

(A) ~~C400-93~~ **C400-03** AWWA Standard for Asbestos-Cement Pressure Pipe, 4 In. through 16 In. (100 mm through 400 mm), for Water Distribution ~~Systems.~~ **and Transmission.**

(B) ~~C401-93~~ **C401-03** AWWA Standard for the Selection of Asbestos-Cement Pressure Pipe, 4 In. through 16 In. (100 mm through 400 mm), for Water Distribution Systems.

(C) ~~C402-89~~ **C402-00** AWWA Standard for Asbestos-Cement Transmission Pipe, 18 In. through 42 In. (450 mm through 1,050 mm), for ~~Potable~~ Water ~~and Other Liquids.~~ **Supply Services.**

(D) ~~C403-89~~ **C403-00** AWWA Standard for the Selection of Asbestos-Cement Transmission and Feeder Main Pipe, Sizes 18 In. through 42 In. (450 mm through 1,050 mm).

(5) For valves and hydrants, the following standards apply:

(A) ~~C500-93~~ **C500-02** AWWA Standard for Metal-Seated Gate Valves for Water Supply Service (includes addendum C500a-95).

~~(B) C501-92 AWWA Standard for Cast-Iron Sluice Gates.~~

~~(C)~~ **(B)** C502-94 AWWA Standard for Dry-Barrel Fire Hydrants (includes addendum C502a-95).

~~(D) C503-88~~ **(C) C503-07** AWWA Standard for Wet-Barrel Fire Hydrants.

~~(E) C504-94~~ **(D) C504-00** AWWA Standard for Rubber-Seated Butterfly Valves.

~~(F) C507-91~~ **(E) C507-99** AWWA Standard for Ball Valves 6 In. through 48 In. (150 mm through 1,200 mm).

~~(G) C508-93~~ **(F) C508-01** AWWA Standard for Swing-Check Valves for Waterworks Service, 2 In. (50 mm) through 24 In. (600 mm) NPS. ~~(includes addendum C508a-93).~~

~~(H) C509-94~~ **(G) C509-01** AWWA Standard for Resilient-Seated Gate Valves for Water Supply Service. ~~(includes addendum C509a-95).~~

~~(I) C510-92~~ **(H) C510-97** AWWA Standard for Double Check Valve Backflow-Prevention Assembly.

~~(J) C511-92~~ **(I) C511-97** AWWA Standard for Reduced-Pressure Principle Backflow-Prevention Assembly.

~~(K) C512-92~~ **(J) C512-04** AWWA Standard for Air-Release, Air/Vacuum, and Combination Air Valves for Waterworks Service.

~~(L) C540-93~~ **(K) C540-02** AWWA Standard for Power-Actuating Devices for Valves and Sluice Gates.

~~(M) C550-90~~ **(L) C550-01** AWWA Standard for Protective Epoxy Interior Coatings for Valves and Hydrants.

(M) C560-00 AWWA Standard for Cast-Iron Slide Gate.

(6) For plastic pipe, the following standards apply:

(A) ~~C900-89~~ **C900-97** AWWA Standard for Polyvinyl Chloride (PVC) Pressure Pipe, 4 In. through 12 In., for Water Distribution. ~~(includes addendum C900a-92).~~

(B) ~~C901-88~~ **C901-02** AWWA Standard for Polyethylene (PE) Pressure Pipe and Tubing, ½ In. through 3 In., for Water Service.

(C) ~~C905-88~~ **C905-97** AWWA Standard for Polyvinyl Chloride (PVC) Water Transmission Pipe, Nominal Diameters 14 In. through 36 In.

(D) ~~C906-90~~ **C906-99** AWWA Standard for Polyethylene (PE) Pressure Pipe and Fittings, 4 In. through 63 In., for Water Distribution **and Transmission.**

(E) C907-91 AWWA Standard for Polyvinyl Chloride (PVC) Pressure Fittings for Water, 4 In. through 8 In. (100 mm through 200 mm).

(F) American Society for Testing and Materials (ASTM) ~~D2239-96A~~ **D2239-03 Standard** Specifications for PE Plastic Pipe (SDR-PR) **Based on Controlled Inside Diameter.**

(G) ASTM ~~D2241-96A~~ **D2241-04A Standard** Specifications for **Polyvinyl Chloride (**PVC**)** ~~Plastic~~ **Pressure-Rated** Pipe ~~(SDR-PR).~~ **(SDR Series).**

(H) ASTM ~~D3350-96~~ **D3350-02A Standard** Specifications for ~~PE~~ **Polyethylene** Plastic Pipe and ~~Fitting~~ **Fittings** Materials.

(b) All water mains installed in areas of ground water contamination, consisting of solvent, petroleum, or other volatile or semivolatile organic compounds, shall be constructed with nonpermeable piping and accessories.

(c) Piping and accessories previously used exclusively for water mains may be reused if **the piping or accessories:**

(1) ~~the piping or accessories~~ comply with the requirements of subsection (a); and

(2) ~~the piping or accessories~~ have been restored to their original condition.

(d) All connections between pipes shall have mechanical

joints or slip-on joints with rubber gaskets with the exception of:
(1) steel pipe that may be welded;
(2) polyethylene (PE) pipes that may be thermojointed by a person who is a manufacturer's certified thermojointer; or
(3) piping described in section 10(d) of this rule.

(e) Water mains constructed with PVC and installed under existing or proposed roadways and railroads shall be cased in conformance with AWWA Standard ~~C900-89, Appendix A~~ **C900-97** or AWWA Standard ~~C905-88, Appendix A.~~ **C905-97.**

(f) Water mains that are cased shall conform to AWWA Standard ~~C600-93, Section 6.~~ **C600-99.**

(g) Water mains constructed with nonmetallic materials must be equipped with tracing wire or other metallic identification equipment. *(Water Pollution Control Board; 327 IAC 8-3.2-8; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2502; errata filed Aug 30, 1999, 12:06 p.m.: 23 IR 25; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 17. 327 IAC 8-3.2-11 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.2-11 Flow rate and pressure in the water main

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 11. (a) The flow rate and the pressure requirements of subsection (b) shall be provided at all service connections in a water main extension applicable to this rule.

(b) At a flow rate equal to the peak daily customer demand as determined in 327 IAC 8-3.3-2, the normal operating pressure in the water main shall not be less than twenty (20) **pounds per square inch** (psi) under all conditions of flow at the ground level at all points in the water main when demonstrated in conformance with subsection (c).

(c) The flow rate and the pressure requirements of subsection (b) shall be demonstrated to the commissioner with either:
(1) a computer-based model; or
(2) other hydraulic calculations.

(d) In addition to the requirements in subsections (a) through (c), the water supply and water distribution system at noncommunity public water systems shall be sized and constructed to deliver water at twenty (20) psi minimum pressure to all fixtures and appurtenances during periods of peak water demand. *(Water Pollution Control Board; 327 IAC 8-3.2-11; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2505; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 18. 327 IAC 8-3.2-17 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.2-17 Installation

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 17. (a) All water mains and their accessories shall be installed and pressure and leak tested in accordance with the applicable provisions of **one (1) of the following:**
(1) C600-99 AWWA Standard ~~C600-93, C602-89, C603-90,~~ **for Installation of Ductile-Iron Water Mains and Their Appurtenances.**
(2) C602-00 AWWA Standard for Cement-Mortar Lining of Water Pipelines in Place, 4 in (100 mm) and Larger.
(3) C603-96(R00) AWWA Standard for Installation of Asbestos Cement Pressure Pipe.
(4) C605-94 ~~or C606-87.~~ **AWWA Standard for Underground Installation of Polyvinyl Chloride (PVC) Pressure Pipe and Fittings for Water.**
(5) C606-04 AWWA Standard for Grooved and Shouldered Joints.
If an AWWA Standard is not available for the particular installation, the manufacturer's recommended installation procedure shall be followed.

(b) Continuous and uniform bedding shall be provided in the trench for all buried pipe. Backfill material shall be tamped in layers around the pipe and to a sufficient height above the pipe to adequately support and protect the pipe. All stones unable to pass through a U.S. Standard Sieve opening of two (2) inches that are found in the trench within six (6) inches of the outside edge of the pipe shall be removed.

(c) All necessary reaction blocking, tie rods, or joints designed to prevent movement for pipes and fittings (regardless of material type) at tees, bends, plugs, and hydrants shall be installed to prevent movement in conformance with AWWA Standard ~~C600-93, Section 3.8.~~ **C600-99.**

(d) Water mains shall be covered with earthen cover in accordance with the following:

Depth of Cover Requirements for Water Mains

County	Cover[1] (in)
Adams	60
Allen	60
Bartholomew	48
Benton	60
Blackford	60
Boone	54
Brown	48
Carroll	60
Cass	60
Clark	36
Clay	54
Clinton	54
Crawford	36

Daviess	48
Dearborn	48
Decatur	48
Dekalb	60
Delaware	60
Dubois	42
Elkhart	60
Fayette	54
Floyd	36
Fountain	60
Franklin	48
Fulton	60
Gibson	42
Grant	60
Greene	54
Hamilton	54
Hancock	54
Harrison	36
Hendricks	54
Henry	54
Howard	60
Huntington	60
Jackson	48
Jasper	60
Jay	60
Jefferson	42
Jennings	48
Johnson	54
Knox	48
Kosciusko	60
LaGrange	60
Lake	60
LaPorte	60
Lawrence	48
Madison	60
Marion	54
Marshall	60
Martin	48
Miami	60
Monroe	48
Montgomery	60
Morgan	48
Newton	60
Noble	60
Ohio	42
Orange	42
Owen	54
Parke	60
Perry	36
Pike	42
Porter	60
Posey	42
Pulaski	60
Putnam	54
Randolph	54
Ripley	48
Rush	54
St. Joseph	60
Scott	36
Shelby	54
Spencer	36
Starke	60
Steuben	60
Sullivan	54
Switzerland	42
Tippecanoe	60
Tipton	60
Union	48
Vanderburgh	36
Vermillion	60
Vigo	60
Wabash	60
Warren	60
Warrick	36
Washington	36
Wayne	54
Wells	60
White	60
Whitley	60

[1] The cover dimension is measured from the top of pipe to the proposed finish grade.

(Water Pollution Control Board; 327 IAC 8-3.2-17; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2506; errata filed Aug 30, 1999, 12:06 p.m.: 23 IR 25; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 19. 327 IAC 8-3.2-18 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.2-18 Disinfection

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 18. (a) All new, cleaned, or repaired water mains shall be disinfected in accordance with **C651-99** AWWA Standard ~~C651-92.~~ **for Disinfecting Water Mains.**

(b) All chlorinated water shall be disposed of by either **disposal to a:**

(1) ~~disposal to a~~ sanitary sewer with the approval of the local sewer authority; or

(2) ~~disposal to a~~ location other than a sanitary sewer after obtaining a discharge permit from the commissioner.

(c) All laboratory reports documenting the conformance with AWWA Standard ~~C651-92,~~ **C651-99,** Section 7, shall be submitted to the commissioner before the water main is brought into service. The laboratory used shall be approved by the commissioner. The laboratory report presenting the sample results shall be sent to the commissioner within ten (10) working days of receipt from the laboratory. The laboratory results shall have the commissioner's assigned permit number marked on the upper right hand corner of the top page. *(Water Pollution Control Board; 327 IAC 8-3.2-18; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2508; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 20. 327 IAC 8-3.2-20 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.2-20 Technical standard alternative demonstration

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 20. (a) An alternative to technical standards required by this rule may be approved by the commissioner for either a single application or for public water system-wide applications of the technical standard if the applicant demonstrates in a written submission that the alternative will achieve the following:

(1) Meet the issuance requirements of 327 IAC 8-3-4.

(2) Provide drinking water of at least the same satisfactory quality and normal operating pressure at the peak operating flow rate as the technical standards of this rule would provide.

(b) An alternative to technical standards required by this rule may be approved by the commissioner for all systems or a specific subset of systems if the alternative will achieve the following:

(1) Meet the issuance requirements of 327 IAC 8-3-4.

(2) Provide drinking water of at least the same satisfactory quality and normal operating pressure at the peak operating flow rate as the technical standards of this rule would provide.

~~(b) An~~ **(c) Continued operation of the** approved alternative ~~to a~~ technical standard shall ~~be in effect for one (1) year from the commissioner's approval of that~~ **require no renewal if the** alternative **technical** standard **is operated in the manner approved by the commissioner.**

~~(c)~~ **(d)** An alternative to a technical standard **approved under subsection (a)** shall only apply to the application or the public water system for which the alternative is requested. *(Water Pollution Control Board; 327 IAC 8-3.2-20; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2508; errata filed Aug 30, 1999, 12:06 p.m.: 23 IR 25; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 21. 327 IAC 8-3.3-4 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.3-4 Additional public water system quantity requirement standards for school buildings and related facilities

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 4. (a) All school buildings and related facilities shall be supplied with safe, potable water from an approved source and an approved **water** distribution system.

(b) The drinking water for school buildings and related facilities shall be supplied at the flow rate and pressure required by 327 IAC 8-3.2-11, ~~and~~ at the quality required by 327 IAC 8-2, and in accordance with the following:

(1) The water supply and **water** distribution system shall be sized and constructed to deliver water at twenty (20) pounds per square inch minimum pressure to all fixtures and appurtenances during periods of peak water demand.

(2) Notwithstanding subdivision (1), school buildings may be served by hand-operated well pumps where religious custom precludes using electrically or gasoline driven well pumps providing the well and well pump are located and constructed in compliance with this rule and applicable sections of 410 IAC 6-5.1.

(c) A connection to a public water ~~supply~~ **system** shall be made with its potable water used exclusively wherever ~~such supply~~ **the system** is available or becomes available within a reasonable distance from the school facility, with the exception that nonpotable sources of water are available and may be utilized for the following nonpotable activities:

(1) Lawn sprinkling.

(2) Bus washing.

(3) Firefighting.

(4) Other nonpotable uses provided by a nonpotable distribution system having no connection to the potable system.

(d) Where a community public water ~~supply~~ **system** is not available, a properly located and constructed private water supply shall be provided. Beginning on the effective date of this rule, all new and modified public water systems exclusively serving schools and related facilities shall be equipped with a backup system capable of providing drinking water in accordance with subsection (b).

(e) Well pumps, pressure tanks, storage tanks, treatment facilities, and piping shall be sized to meet peak daily consumer demands. The minimum usable capacity of the pressure tank, in gallons, shall be three (3) times the installed well pump capacity in gallons per minute. For example, a pump of thirty (30) gallons per minute capacity would require a pressure tank of

ninety (90) gallons usable capacity. If the well or pump cannot meet peak demands, sufficient additional usable storage capacity shall be provided to meet peak demands.

(f) Each school building or addition to a school building may have a potable water supply where necessary to provide adequate service. However, where two (2) or more school potable water supply systems are located on the same site, the water supply systems shall be sufficiently interconnected to allow for the maximum possible utilization of each should a system fail.

(g) Unless lower water system demands can be documented to the satisfaction of the commissioner, all school buildings and additions to school buildings constructed after February 17, 1985, shall have a water supply system capable of furnishing a minimum of:

(1) fifteen (15) gallons per day per student up through the elementary grades;

(2) twenty-five (25) gallons per day per student in grades greater than elementary; and

(3) one hundred (100) gallons per day per dormitory bed based on maximum building occupancy.

(Water Pollution Control Board; 327 IAC 8-3.3-4; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2511; errata filed Aug 30, 1999, 12:06 p.m.: 23 IR 25; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 22. 327 IAC 8-3.3-5 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.3-5 Additional public water system quantity requirement standards for mobile home parks

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 5. (a) An accessible, adequate, safe, and potable supply of water shall be provided in all mobile home parks and additions.

(b) Where a public water ~~supply~~ **system** is available, a connection shall be made thereto and its water used exclusively.

(c) A watertight casing pipe extending at least twelve (12) inches above the ground shall surround any part of a suction pipe, drop pipe, or delivery pipe not normally under constant pressure and located within twenty-five (25) feet of the ground surface.

(d) Each mobile home lot shall be provided with a cold water tap extending at least four (4) inches above the ground surface. The outlet shall be protected from freezing by the use of a heater tape, insulation, or draining when not in use. In no case shall a stop-and-waste valve or other device that would allow aspiration, ~~or~~ backflow, or contaminated water into the potable water system be used.

(e) The individual water and sewer connections on each mobile home lot shall be separated not less than five (5) feet horizontally.

(f) The water supply system shall be capable of furnishing a minimum of two hundred (200) gallons per day per mobile home lot in all mobile home parks constructed after June 14, 1974, as well as in all additions to mobile home parks constructed after the date. *(Water Pollution Control Board; 327 IAC 8-3.3-5; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2511; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 23. 327 IAC 8-3.3-6 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.3-6 Additional public water system quantity requirement standards for agricultural labor camps

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1; IC 16-41-26-8
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 6. (a) An adequate and convenient supply of water that meets the water quality standards of the department ~~pursuant to~~ **under** 327 IAC 2 shall be available at all times in each agricultural labor camp for culinary, drinking, bathing, and laundry purposes. Where a public water ~~supply~~ **system** is available, it shall be used to provide water for the agricultural labor camp.

(b) A cold water tap shall be available within one hundred (100) feet of each individual living unit when water is not provided in the unit. Adequate drainage facilities shall be provided for overflow and spillage. *(Water Pollution Control Board; 327 IAC 8-3.3-6; filed Mar 31, 1999, 1:50 p.m.: 22 IR 2512; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 24. 327 IAC 8-3.4-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.4-1 Definitions

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-2; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 16-41-26-1; IC 25-17.6; IC 25-31; IC 25-39-3

Sec. 1. In addition to the definitions ~~contained~~ in IC 13-11-2, the following definitions apply throughout this rule:

(1) "Agricultural labor camp" means an area as described in IC 16-41-26-1.

(2) "Annulus" means the space between the:

(A) exterior of a well casing; and ~~the~~

(B) inside diameter of the borehole.

(3) "Bentonite" ~~means clay material composed predominantly of sodium montmorillonite which meets American Petroleum Institute specifications standard 13-A, Drilling Fluid Materials (1985)*.~~ **has the meaning set forth in 312 IAC 13-1-4.**

(4) "Bentonite slurry" means a mixture, made according to

manufacturer specifications, of water and commercial grouting or plugging bentonite ~~which~~ **that** contains high concentrations of solids. The term does not include sodium bentonite products ~~which~~ **that:**

(A) contain low solid concentration; or ~~which~~

(B) are designed for drilling fluid purposes.

~~(5) "Certified professional geologist" means a person who is certified as a professional geologist by the board of certification for professional geologists under IC 25-17.6.~~

~~(6)~~ **(5)** "Community public water supply system", ~~or~~ "CPWSS", ~~or~~ "community", **or "community public water system"** means a public water system that:

(A) serves at least fifteen (15) service connections used by year-round residents; or

(B) regularly serves at least twenty-five (25) year-round residents.

~~(7)~~ **(6)** "Course grade crushed bentonite" means natural bentonite crushed to an average size range of three-eighths (⅜) to three-fourths (¾) inches.

~~(8)~~ **(7)** "Direct additives" means chemical additives that are used in public water systems for the treatment of raw water. Direct additives are also used to protect drinking water during storage and distribution. Examples of direct additives include agents used for the following:

(A) Coagulation and flocculation.
(B) Corrosion and scale control.
(C) Softening.
(D) Sequestering.
(E) Precipitation.
(F) pH adjustment.
(G) Disinfection.
(H) Oxidation.

~~(9) "Distribution system" means one (1) of the following:~~

~~(A) In a community public water supply system, the term means the network of water piping, pumping stations, storage equipment, valves, fire hydrants, pressure regulators, and equipment required to transport water to the customer's service connection from one (1) of the following points:~~

~~(i) A treatment plant.~~

~~(ii) A source of raw water supply if no treatment is provided.~~

~~(B) In a noncommunity public water supply system, the term means the network of water piping, pumping stations, valves, fire hydrants, pressure regulators, and equipment required to transport water to the point of use from one (1) of the following:~~

~~(i) A point that is one (1) foot beyond the water storage tank.~~

~~(ii) The well, if no water storage tank is utilized.~~

~~(10)~~ **(8)** "Drawdown" means the vertical difference measured between the static and the pumping water levels. ~~This~~ **The** term is commonly expressed in units of length.

(9) "Entry point to the water distribution system" means one (1) of the following points:

(A) For public water systems that utilize water treatment facilities, the point at which the drinking water has:

(i) left the treatment facilities; and

(ii) entered the water distribution system.

(B) For public water systems that do not utilize water treatment facilities, the point at which the water has:

(i) left the supply facilities; and

(ii) entered the water distribution system.

~~(11)~~ **(10)** "Flowing well" means a well completed in a confined aquifer where the water rises naturally to an elevation above land surface.

~~(12)~~ **(11)** "Indirect additives" means additives that are materials or equipment that come in contact with drinking water or ~~come in contact with~~ direct additives. Examples of indirect additives include the following:

(A) Pipes, valves, and related products.
(B) Barrier or baffle materials.
(C) Joining and sealing materials.
(D) Protective materials and related products.
(E) Mechanical devices or structures used in:

(i) treatment;
(ii) storage;
(iii) transmission; and
(iv) distribution;

systems.

~~(13)~~ **(12)** "Isolation area" means the separation distance of a public water ~~supply~~ system production well from a potential or existing source of contamination or damage as described in section 9 of this rule.

(13) "Licensed professional geologist" means a person who is licensed as a professional geologist by the Indiana board of licensure for professional geologists under IC 25-17.6.

(14) "Licensed well driller" means a person who is licensed as a well driller under IC 25-39-3.

~~(14)~~ **(15)** "Medium grade crushed bentonite" means natural bentonite crushed to an average size range of one-fourth (¼) to three-eighths (⅜) inch.

~~(15)~~ **(16)** "Noncommunity public water supply system" or "NCPWSS" means a public water system that serves at least fifteen (15) service connections used by nonresidents or regularly serves twenty-five (25) or more nonresident individuals daily for at least sixty (60) days per year.

~~(16)~~ **(17)** "Nontransient noncommunity public water supply system" means a ~~noncommunity~~ public water ~~supply~~ system that

~~(A) serves at least fifteen (15) service connections used by nonresidents; or~~

~~(B)~~ **is not a community water system that** regularly serves the same twenty-five (25) or more ~~nonresident individuals daily for~~ **persons** at least six (6) months per year.

~~(17)~~ **(18)** "Normal operating pressure" means the water pressure maintained in a system regardless of public service load in the absence of extenuating circumstances.

~~(18)~~ **(19)** "Peak daily consumer demand" means the flow rate as determined in 327 IAC 8-3.3.

(20) "Pitless adapter"means a device or assembly of parts that:

(A) will permit water to pass through the wall of the well casing or extension thereof; and

(B) provides access to the well and parts of the water system within the well in a manner to prevent the entrance of contaminants into the well and the water produced.

~~(19)~~ **(21)** "Primary pump" means a pump used to deliver drinking water to a **water** distribution system.

~~(20)~~ **(22)** "Production well" or "well" means a well that provides water for human consumption within the applicability of section 2 of this rule.

~~(21)~~ **(23)** "Professional engineer" means a person who is registered as a professional engineer by the state board of registration for professional engineers under IC 25-31.

~~(22)~~ **(24)** "Pumping test" means a test that is conducted to determine well performance or aquifer characteristics.

~~(23)~~ **(25)** "Rated capacity" means the flow rate that a pump is capable of producing at a total dynamic head as determined by the manufacturer of that pump. ~~This~~ **The** term is usually expressed as a unit of volume produced from a well within a unit of time.

~~(24)~~ **(26)** "Regulatory flood" has the meaning ~~as~~ set forth in ~~310 IAC 6-1-3.~~ **312 IAC 10-2-35.**

(27) "Sanitary setback" means an isolation area.

~~(25)~~ **(28)** "Schedule 40" refers to the unit of size of standard steel pipe. Standard pipe sizes are designated by the nominal size and schedule number. The schedule numbers are related to the:

(A) permissible operating pressure; ~~of the pipe~~ and ~~to the~~

(B) allowable stress of the steel;

of the pipe. The range of schedule numbers is from ten (10) to one hundred sixty (160) with the higher numbers indicating a heavier wall thickness. Since all schedules of pipe of a given nominal size have the same outside diameter, the higher schedules have a smaller inside diameter.

(29) "Small nontransient noncommunity public water system" means a public water system that:

(A) meets the definition of a nontransient noncommunity public water system under 327 IAC 8-2-1;

(B) serves one hundred (100) or fewer individuals; and

(C) does not utilize surface water or ground water under the influence of surface water as its water source.

(30) "Small transient noncommunity public water system" means a public water system that:

(A) meets the definition of a transient noncommunity public water system under 327 IAC 8-2-1;

(B) serves two hundred fifty (250) or fewer individuals per day; and

(C) does not utilize surface water or ground water under the influence of surface water as its water source.

~~(26)~~ **(31)** "Specific capacity" means the rate of discharge of a production well per unit of drawdown. ~~This~~ **The** term is commonly expressed as a unit of volume produced from a well within a unit of time per length or depth of drawdown.

~~(27)~~ **(32)** "Static water level" means the level of water (including seasonal fluctuations) in the production well that is not influenced by pumping.

~~(28)~~ **(33)** "Test well" means a well that is installed to:

(A) obtain hydrogeological information; or ~~to~~

(B) monitor the quality or quantity of ground water.

~~(29)~~ **(34)** "Unconsolidated formations" means geologic materials overlying bedrock, such as sand, gravel, and clay.

~~(30)~~ **(35)** "Usable capacity" means the volume of water available in a hydropneumatic **or other** tank as measured from the pump shut-off pressure to the pump starting pressure.

(36) "Water distribution system" means that part of the public water system in which water is conveyed from the water treatment plant to the premises of the consumer.

~~*This document is incorporated by reference. Notwithstanding language to the contrary in the primarily incorporated documents, the versions of all secondarily incorporated documents, which are those documents referred to in the primarily incorporated documents, shall be the versions in effect on the date of final adoption of this rule. Copies of this publication may be obtained from American Petroleum Institute, 1220 L Street NW, Washington, D.C. 20005 or from the Indiana Department of Environmental Management, Office of Water Management, Indiana Government Center-North, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206.~~ *(Water Pollution Control Board; 327 IAC 8-3.4-1; filed Jun 17, 1999, 1:50 p.m.: 22 IR 3366; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 25. 327 IAC 8-3.4-2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.4-2 Applicability

Authority: IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 2. The technical standards established in this rule are applicable to the design and construction of new or modified public water ~~supply~~ system production wells constructed in Indiana as specified in 327 IAC 8-3 and to the applications, plans, and specifications of those water wells that are reviewed by the commissioner. *(Water Pollution Control Board; 327 IAC 8-3.4-2; filed Jun 17, 1999, 1:50 p.m.: 22 IR 3368; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 26. 327 IAC 8-3.4-3 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.4-3 Certification

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2; IC 25-31-1-19

Sec. 3. **(a)** A professional engineer must certify that the well design as shown on an application, plans, and specifications for a public water ~~supply~~ system well is in compliance with this rule **except as provided in subsection (b).**

(b) For a well design at small transient or small nontransient noncommunity water systems that are not subject to subsection (c), the well design as shown on an application, plans, and specifications for a public water system well may be certified by any of the following:
(1) A professional engineer.
(2) A licensed well driller.
(3) A licensed professional geologist.

(c) As required under IC 25-31-1-19(a), a well design on projects for:
(1) a county;
(2) a city;
(3) a town;
(4) a township;
(5) a school corporation; or
(6) any other political subdivision;
must have a professional engineer certify that the well design as shown on an application, plans, and specifications for a public water system well is in compliance with the rule.
(Water Pollution Control Board; 327 IAC 8-3.4-3; filed Jun 17, 1999, 1:50 p.m.: 22 IR 3368; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 27. 327 IAC 8-3.4-4 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.4-4 Required information regarding the location of a proposed production well

Authority: **IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1**
Affected: **IC 13-11-2; IC 13-13-5-1; IC 13-18-2; IC 25-31-1-19**

Sec. 4. (a) Two (2) copies of the following information shall be provided with each application for a proposed production well or for the conversion of an existing well to a production well:
(1) A description of the purpose of the proposed well, including the following:
(A) The anticipated well yield.
(B) The anticipated system demand.
(2) The following, as applicable, to demonstrate ownership or control of the ~~isolation area~~ **sanitary setback** of the proposed well:
(A) A copy of a recorded deed or easement.
(B) A certified statement attesting to the ownership or control of the ~~isolation area~~ **sanitary setback** of the proposed well.
(3) The rated capacity of the existing well or wells if the proposed well is in an existing well field.
(4) The number of wells proposed for construction in the application.
(5) The highest flood elevation on record with the Indiana department of natural resources in the proposed ~~isolation area,~~ **sanitary setback,** as determined in section 9 of this rule, if any part of the ~~isolation area~~ **sanitary setback** is in an area identified by the Federal Emergency Management Agency (FEMA) as a flood hazard.

(b) The following two (2) types of public water ~~supply~~ systems shall submit an application, for a new production well, that provides the information as specified:
(1) A CPWSS subject to this rule shall submit two (2) copies of the following:
(A) The information required by 327 IAC 8-4.1-13.
(B) Driving directions to the well site.
(2) A NCPWSS subject to this rule shall submit two (2) copies of the following:
(A) A detailed map, drawn to a scale, showing the following:
(i) The proposed well site with ownership or easement boundaries.
(ii) The location of the proposed well.
(iii) The standard ~~isolation area~~ **sanitary setback** in accordance with section 9 of this rule.
(iv) The results of a visual survey showing all sources of contamination within a radius of one thousand (1,000) feet.
(B) The United States Geological Survey (USGS) quadrangle name for the proposed production well site.
(C) A summary of geologic and ground water quality information, where available, for the aquifer system utilized by a proposed well.
(D) Driving directions to the production well site.

(c) The plans required to be submitted with an application for a construction permit specified in 327 IAC 8-3-3 shall be submitted in duplicate and include plans of the proposed well site in accordance with the following:
(1) Each sheet of the plans must bear a dated signature and seal of a professional engineer **or, in the case of a small transient or small nontransient noncommunity public water system:**
(A) a dated signature and seal of a professional engineer; or
(B) a dated signature and license number of a licensed:
(i) well driller; or
(ii) professional geologist.
Where a professional engineer is required under IC 25-31-1-19(a), each sheet of the plans at a small transient or small nontransient noncommunity public water system must bear a dated signature and seal of a professional engineer.
(2) Include the entire ~~isolation area,~~ **sanitary setback,** as described in section 9 of this rule, or the area within a one hundred (100) foot radius from the proposed well casing, whichever is greater, along with a description specifying the following:

(A) The finished grade that will prevent surface water ponding near the well location.

(B) The highest flood elevation on record with the Indiana department of natural resources in the proposed ~~isolation area~~ **sanitary setback** if any part of the ~~isolation area~~ **sanitary setback** is in an area identified by the FEMA as a flood hazard.

(C) The location of the following existing or proposed facilities:

(i) Wells.

(ii) Roads and buildings.

(iii) Discharge piping.

(iv) Raw water transmission main.

(v) Sanitary sewers, storm sewers, manholes, and culverts.

(vi) Septic or sewage treatment equipment, including absorption field trenches.

(vii) Aboveground storage tanks, underground storage tanks, and the distribution device serving a tank of either type.

(viii) Surface waterbodies.

(ix) A potential source of contamination not described in this clause.

(3) If an existing or proposed facility listed in subdivision (2)(C) is not present in the ~~isolation area,~~ **sanitary setback,** the application for a construction permit shall specify that fact.

(Water Pollution Control Board; 327 IAC 8-3.4-4; filed Jun 17, 1999, 1:50 p.m.: 22 IR 3368; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 28. 327 IAC 8-3.4-8 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.4-8 Production well materials

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 8. (a) A direct **or indirect** additive used with **or in** a production well must be in accordance with 327 IAC 8-1.

~~(b) An indirect additive in a production well shall be certified for conformance to American National Standards Institute (ANSI)/National Sanitation Foundation (NSF) International Standard 61, Drinking Water System Components-Health Effects, with the exception of Section 9, Mechanical Plumbing Product (November 13, 1997)*.~~

~~(c) The certification requirement of subsection (b), that an indirect additive is in accordance with this rule, shall be satisfied if the indirect additive is listed with certification in one (1) of the following publications:~~

~~(1) "NSF Listings, Drinking Water Additives-Health Effects" (November 13, 1997)*.~~

~~(2) "Classified or Recognized Drinking Water System Components, Component Materials and Treatment Additives Directory" (December 1997)**.~~

~~(d) The commissioner may approve the use of an indirect additive in a production well only after the applicant has demonstrated that the indirect additive is in compliance with the following:~~

~~(1) The indirect additive has been approved and is listed by one (1) of the publications specified by subsection (c).~~

~~(2) The indirect additive has been approved by an organization having a third party certification program for indirect additives that has been approved by the American National Standards Institute.~~

~~(e)~~ **(b)** A lead packer shall not be used in a production well.

~~(f)~~ **(c)** A public water ~~supply~~ system shall not introduce, permit, or allow the introduction of a material into the drinking water that does not meet the requirements of this rule or 327 IAC 8-1.

~~*These documents are incorporated by reference. Notwithstanding language to the contrary in the primarily incorporated documents, the versions of all secondarily incorporated documents, which are those documents referred to in the primarily incorporated documents, shall be the versions in effect on the date of final adoption of this rule. Copies of this publication may be obtained from NSF International, 3475 Plymouth Road, Ann Arbor, Michigan 48113-0140 or from the Indiana Department of Environmental Management, Office of Water Management, Indiana Government Center-North, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206.~~

~~**This document is incorporated by reference. Notwithstanding language to the contrary in the primarily incorporated documents, the versions of all secondarily incorporated documents, which are those documents referred to in the primarily incorporated documents, shall be the versions in effect on the date of final adoption of this rule. Copies of this publication may be obtained from Underwriters Laboratory, Inc., Engineering Services, 416C, 333 Pfingsten Road, Northbrook, Illinois 60062-2096 or from the Indiana Department of Environmental Management, Office of Water Management, Indiana Government Center-North, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206.~~ *(Water Pollution Control Board; 327 IAC 8-3.4-8; filed Jun 17, 1999, 1:50 p.m.: 22 IR 3370; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 29. 327 IAC 8-3.4-9 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.4-9 Separation of a production well from a potential or existing source of microbiological or chemical contamination or damage

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2; IC 15-3-3.5; IC 15-3-3.6

Sec. 9. A public water ~~supply~~ system shall comply with the

following provisions for the separation of a production well from a potential or existing source of contamination or damage, **except replacement wells as allowed under section 9.1 of this rule:**

(1) The ~~isolation area~~ **sanitary setback** from a potential or existing source of contamination for the construction of a public water system production well is the circular area within a radius as stated in the following table:

Table 9-1

~~Isolation~~ **Sanitary Setback** Radius Provisions (Linear Feet Measured from the Outside Edge of the Well Casing)

Public Water System Type	~~Standard Isolation~~ **Sanitary Setback** Radius	Well Subjected to Automatic Disinfection*	Favorable Hydrogeologic Conditions are Present**
Community	200	100	100
Noncommunity greater than or equal to 70 gpm***	200	100	100
Noncommunity, Susceptible Populations****	200	100	100
Noncommunity, Nonsusceptible, less than 70 gpm***	100	100	100

*Automatic disinfection as described in subdivision (2).

**Favorable hydrogeologic conditions as described in subdivision (3).

***70 gallons per minute (gpm) as measured per pump (rated capacity).

****Schools, correctional facilities, health care facilities, and agricultural labor camps.

(2) The radius creating the ~~isolation area~~ **sanitary setback** shall be one hundred (100) feet for a well that will be subject to automatic disinfection treatment ~~meeting the provisions of 327 IAC 8-2-8.6 prior to~~ **before** entering the **water** distribution system. **To meet this provision at systems using chlorine or chlorine dioxide, the:**

(A) free chlorine residual disinfectant concentration in the water entering the water distribution system cannot be less than two-tenths (0.2) milligrams per liter (mg/l) for more than four (4) hours; and

(B) residual disinfectant level in the water distribution system cannot be undetectable in more than five percent (5%) of the samples collected each month in accordance with 327 IAC 8-2.5-6(c).

Systems using disinfectants other than chlorine or chlorine dioxide must maintain an equivalent level of disinfection as determined by the commissioner.

(3) A determination of favorable hydrogeological conditions may be approved by the commissioner after the submission of a report that is signed, dated, and sealed by a ~~certified~~ **licensed** professional geologist or other person legally authorized to perform geological services or a professional engineer who applies geology to the practice of engineering. The report must include the following information:

(A) The thickness, vertical permeability, and spatial continuity of a protective layer or layers overlying the production aquifer.

(B) The local and regional geologic conditions of the well site area.

(C) The relative susceptibility to contamination of the proposed production aquifer.

(4) A well discharging into the inlet side of a surface water treatment process plant that meets the requirements of 327 IAC 8-2-8.5, ~~and~~ 327 IAC 8-2-8.6, **and 327 IAC 8-2.6** shall not be held to ~~an isolation area~~ **a sanitary setback** requirement.

(5) The ~~isolation area~~ **sanitary setback** shall be subject to the following additional requirements:

(A) The separation distance between two (2) or more wells of a public water ~~supply~~ system shall be maintained in accordance with the following:

(i) A production well with a pumping capacity of less than seventy (70) gallons per minute (gpm) shall not be located closer than fifty (50) feet from another production well.

(ii) A production well with a pumping capacity of greater than or equal to seventy (70) gpm shall not be located closer than one hundred (100) feet from another production well.

(iii) A public water ~~supply~~ system drinking water well that is a part of a transient noncommunity public water ~~supply~~ system ~~that is not a nontransient noncommunity public water supply system~~ shall not be closer than fifty (50) feet, regardless of the capacity of pumping equipment, from another well in the system.

(B) A storm or sanitary sewer shall not be located within the ~~isolation area~~ **sanitary setback** of a production well unless the storm or sanitary sewer is:

(i) more than fifty (50) feet, as measured from all directions, from a public water ~~supply~~ system production well; and

(ii) constructed in accordance with 327 IAC 8-3.2-8, 327 IAC 8-3.2-17(a), and 327 IAC 8-3.2-17(b).

(C) The ~~standard isolation area~~ **sanitary setback** for a public water ~~supply~~ system production well shall conform to the following requirements concerning transportation routes:

(i) Roadways, paved surfaces, and parking areas for service vehicles that:

(AA) service the proposed well, pump, and appurtenances;

(BB) are owned or controlled by the public water ~~supply~~ system; and

(CC) are restricted from access by the public;

shall not be held to ~~an isolation area~~ **a sanitary setback** requirement.

(ii) Roadways, paved surfaces, and parking areas that are part of the following shall not be located within fifty (50) feet of a well:

(AA) Residential subdivisions.

(BB) Apartment communities.

(CC) Mobile home parks.

(DD) Recreational parks.

(iii) A transportation route, such as a railway, roadway,

paved area, or parking area, including paved or unpaved roadway or surface areas, that is:

(AA) accessible in full or in part for commercial or industrial transportation activities; or

(BB) listed as a hazardous material route;

shall not be located within the ~~standard isolation area~~ **sanitary setback** as measured from the outside edge of the well casing to the traveled portion of the transportation route.

(D) The distance between the location of a public water ~~supply~~ system production well casing and a surface water body, such as:

(i) a stream;
(ii) a pond;
(iii) a lake;
(iv) a river;
(v) an impoundment; or
(vi) a drainage ditch;

shall be a minimum of twenty-five (25) feet.

(6) The commissioner may modify the requirements of ~~an isolation area~~ **a sanitary setback, control area,** or a separation distance to an alternative area or distance so long as the alternative area or distance shall be able to provide the same factor of safety for filtering pathogenic contaminants as the ~~standard isolation area~~ **sanitary setback** or separation distance. The commissioner's decision to allow an alternative ~~isolation area~~ **sanitary setback** or separation distance shall be based on the following conditions:

(A) The applicant's submission of a report describing **the following:**

(i) Treatment processes.
(ii) Geologic features.
(iii) Additional ~~raw~~ water monitoring provisions. ~~or~~
(iv) Other means of providing pathogenic contaminant filtration.
(v) Other means of mitigating contaminant sources relative to the location of the well.

(B) The report required by clause (A) must:

(i) be signed and sealed by a professional engineer, **licensed well driller,** or ~~certified~~ **licensed** professional geologist; or
(ii) cite the applicable provisions of 327 IAC 8-4.1.

(7) A supplier of water to a public water system shall own or control the ~~isolation area~~ **sanitary setback** by recorded deed, easement, or long term lease. **A small nontransient noncommunity public water system or small transient noncommunity public water system shall own or control a fifty (50) foot sanitary setback by recorded deed, easement, or long term lease.**

(8) The use, application, storage, mixing, loading, and transportation of pesticides in accordance with IC 15-3-3.5, IC 15-3-3.6, and the rules and guidance thereunder, developed by the **Indiana** pesticide review board and the office of the Indiana state chemist, may occur within the ~~standard isolation area~~ **sanitary setback** if the following requirements are met by the public water system:

(A) The production well casing is constructed of steel in accordance with section 16 of this rule.

(B) The product is stored within a containment system:

(i) designed;
(ii) constructed;
(iii) operated; and
(iv) maintained;

to contain spills or leaks.

(9) Water treatment chemicals and fuels for water production equipment containing contaminants that are not registered pesticides regulated under the federal Safe Drinking Water Act, 42 U.S.C. 300f et seq., as amended August 6, 1996* may be used, stored, mixed, loaded, and transported within the standard ~~isolation area~~ **sanitary setback** if the following conditions are met:

(A) The production well casing is constructed of steel in accordance with section 16 of this rule.

(B) The product is stored:

(i) within a containment system designed, constructed, operated, and maintained to contain spills or leaks; **and**
~~(C) The product is stored~~ **(ii)** in an underground or aboveground storage tank that is in conformance with applicable federal, state, and local laws and regulations.

*The federal Safe Drinking Water Act is incorporated by reference. Copies of this law may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water ~~Management,~~ **Quality,** Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana ~~46206.~~ **46204.** *(Water Pollution Control Board; 327 IAC 8-3.4-9; filed Jun 17, 1999, 1:50 p.m.: 22 IR 3371; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 30. 327 IAC 8-3.4-9.1 IS ADDED TO READ AS FOLLOWS:

327 IAC 8-3.4-9.1 Sanitary setback requirements for replacement wells at noncommunity public water systems

Authority: **IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1**
Affected: **IC 13-11-2; IC 13-13-5-1; IC 13-18-2**

Sec. 9.1. All replacement wells at noncommunity public water systems shall be located as far as practicable from all potential contaminant sources on property that the public water system already owns or controls if the provisions of section 9(1) through 9(5) of this rule cannot be met. *(Water Pollution Control Board; 327 IAC 8-3.4-9.1)*

SECTION 31. 327 IAC 8-3.4-12 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.4-12 Flow rate and pressure requirements
Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 12. (a) The normal operating pressure in the **water** distribution system of a noncommunity public water ~~supply~~ system shall meet the following conditions:

(1) Be a minimum of thirty-five (35) pounds per square inch (psi) at ground level for a flow rate equal to the average daily consumer demand as determined in 327 IAC 8-3.3-2.

(2) Be at least twenty (20) psi under all conditions of flow in the **water** distribution system and at ground level for a flow rate equal to the peak daily consumer demand as determined in 327 IAC 8-3.3-2.

(b) Flow rate and pressure requirements for a community public water ~~supply~~ system shall be in accordance with the requirements of 327 IAC 8-3.2-11. *(Water Pollution Control Board; 327 IAC 8-3.4-12; filed Jun 17, 1999, 1:50 p.m.: 22 IR 3373; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 32. 327 IAC 8-3.4-13 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.4-13 Backup provisions for production wells
Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 13. (a) The following backup provisions shall apply to both a community public water ~~supply~~ system and a noncommunity public water ~~supply~~ system having a pumping capacity greater than or equal to seventy (70) gallons per minute:

(1) The backup provisions shall be designed to provide system conformance with section 12 of this rule when the largest pump is out of service.

(2) A system shall have one (1) or more backup wells designed to provide system conformance with section 12 of this rule.

(b) Schools, correctional facilities, health care facilities, and agricultural labor camps, regardless of pumping capacity, must comply with the requirements of subsection (a). *(Water Pollution Control Board; 327 IAC 8-3.4-13; filed Jun 17, 1999, 1:50 p.m.: 22 IR 3373; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 33. 327 IAC 8-3.4-14 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.4-14 Hydropneumatic storage tanks
Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2; IC 22-12

Sec. 14. (a) A hydropneumatic storage tank shall ~~abide by~~ **conform with** the following:

(1) The requirements of IC 22-12 and 680 IAC.

(2) Shall not be buried except when in accordance with subdivisions (3) and (4).

(3) A tank shall be protected from freezing and flooding.

(4) Provide housing as follows:

(A) A hydropneumatic storage tank with an air-water diaphragm separator shall be within **the** housing.

(B) Hydropneumatic storage tanks without an air-water separator shall have all nontank mechanical parts, including valves, piping, and components, within **the** housing.

(5) Be equipped to provide the following:

(A) The ability to isolate the tank from the rest of the public water system.

(B) A drain.

(C) Control equipment consisting of the following:

(i) A pressure gauge.

(ii) Pressure relief valve.

(iii) Air addition as follows:

(AA) Manual air addition may suffice for a hydropneumatic storage tank with an air-water diaphragm separator.

(BB) Equipment for automatic air addition shall be required for all other hydropneumatic storage tanks.

(iv) Start and stop controls for the pumps.

(b) The usable capacity of a hydropneumatic storage tank must **meet one (1) of the following:**

(1) Be a minimum of three (3) times the installed rated capacity, in gallons per minute, of the primary pump, or pumps if more than one (1) pump is used to meet peak system demand, at an operating pressure of at least thirty-five (35) pounds per square inch.

(2) Be based on the manufacturer's pump specifications.

(3) Meet an alternative criteria approved by the commissioner.

(c) Unless required by IC 22-12 or 680 IAC to be certified by ASME, a hydropneumatic storage tank shall be certified by ANSI, ASME, NSF, or UL. The applicant must submit information showing that the tank used is properly certified.

~~(c)~~ **(d)** Hydropneumatic tank storage of water shall not be designated for fire protection purposes.

~~(d)~~ **(e)** A hydropneumatic tank shall not be used in a community public water ~~supply~~ system when more than four hundred (400) persons are served.

(f) If more than one (1) hydropneumatic tank is used in series, each tank must:

(1) be able to be hydraulically isolated from the others using valves or similar devices;

(2) have sampling taps for performing water quality sampling; and

(3) be operated and maintained to ensure adequate water turnover.

(Water Pollution Control Board; 327 IAC 8-3.4-14; filed Jun 17, 1999, 1:50 p.m.: 22 IR 3373; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 34. 327 IAC 8-3.4-16 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.4-16 Casing and screen requirements

Authority: **IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1**
Affected: **IC 13-11-2; IC 13-13-5-1; IC 13-18-2**

Sec. 16. (a) A drinking water production well casing shall meet the following requirements:

(1) A steel or stainless steel casing is required for the following:

(A) A community public water ~~supply~~ system.

(B) A public water ~~supply~~ system production well casing with an inside diameter greater than six (6) inches.

(2) Steel or stainless steel shall meet the following:

(A) Schedule 40 if the casing is less than or equal to ten (10) inches in diameter.

(B) Be at least three hundred seventy-five thousandths (0.375) of an inch in thickness if the casing is greater than ten (10) inches in diameter.

(3) Steel or stainless steel pipe used in a well casing shall be joined by:

(A) threading and the use of screwed couplings; or

(B) welding with full circumference welds.

(4) A production well not regulated under subdivision (1) may be equipped with a polyvinyl chloride (PVC) well casing when all of the following are met:

(A) The production well is not located within two hundred (200) feet of:

(i) stored or staged petroleum products; or

(ii) any known sources of volatile or semivolatile organic contaminants.

(B) The PVC casing is joined by solvent welding or mechanical joints that use PVC locking strips and synthetic watertight sealing gaskets.

(C) The PVC well casing and joints meet the requirements of ANSI/ASTM ~~F480-94~~ **F480-02 "Standard Specifications** for Thermoplastic ~~Water~~ Well Casing Pipe and Couplings made in Standard Dimension Ratios (SDR) ~~(Annual Book of ASTM Standards, March 1994)*.~~ **SCH 40 and SCH 80"*.**

(D) The minimum wall thickness of PVC casing is at least the equivalent of SDR 21 according to ANSI/ASTM ~~F480-94~~ **F480-02 for "Standard Specifications** for Thermoplastic ~~Water~~ Well Casing Pipe and Couplings made in Standard Dimension Ratios (SDR) ~~(Annual Book of ASTM Standards, March 1994)*.~~ **SCH 40 and SCH 80"*.**

(E) PVC casing shall be protected from damage from collision in accordance with the following:

(i) Three (3) posts shall be placed in an equilateral formation no more than twenty-four (24) inches in radius from the outside edge of the casing.

(ii) The posts specified in item (i) shall:

(AA) be concrete-filled steel posts at least four (4) inches in diameter or hollow steel at least twenty-five hundredths (0.25) of an inch in thickness; **and**

~~(iii) The posts specified in item (i) shall~~ **(BB)** extend at least three (3) feet above grade and four (4) feet below grade.

(5) A permanent well casing shall terminate as follows:

(A) At the higher level of one (1) of the following:

(i) At least eighteen (18) inches above finished grade.

(ii) At least thirty-six (36) inches above the regulatory flood elevation if located in a designated flood hazard area identified by the Federal Emergency Management Agency (FEMA).

(B) At least twelve (12) inches above the pump house floor or concrete apron.

(b) The casing shall be vented to the atmosphere with a vent that terminates in a downturned position at or above the top of the casing or the pitless adapter unit. The vent shall have a minimum one and one-half (1½) inch diameter opening covered with a twenty-four (24) mesh, noncorrodible screen.

(c) A production well shall meet the following construction requirements:

(1) Have a maximum deviation from plumb not in excess of two-thirds (⅔) of the inside diameter of the well casing per one hundred (100) feet of well depth.

(2) Be aligned to permit proper operation of the type of permanent pump intended for the well. Alignment shall be tested as follows:

(A) By lowering into the well, through its entire depth, a section of pipe forty (40) feet long or a dummy of the same length.

(B) The pipe or dummy used as specified by clause (A) shall be in accordance with the following:

(i) One-half (½) inch less in diameter than the inside diameter of the part of the casing or hole being tested when the casing or hole diameter is ten (10) inches or less.

(ii) One (1) inch smaller than the inside diameter when that part of the casing or hole being tested is greater than ten (10) inches.

(C) An alignment test shall not be required inside well screens.

(d) A production well completed in an unconsolidated formation shall have screens installed and constructed of one (1) of the following materials:

(1) Stainless steel.

(2) PVC only if the casing material is also PVC.

(e) A production well casing shall be fitted to permit measurements of static and pumping water levels.

(f) A production well in an unconsolidated formation shall be

packed with silica gravel if it has artificial gravel wall filters.

(g) The well house floor shall be at least six (6) inches above grade.

*This document is incorporated by reference. Notwithstanding language to the contrary in the primarily incorporated documents, the versions of all secondarily incorporated documents, which are those documents referred to in the primarily incorporated documents, shall be the versions in effect on the date of final adoption of this rule. Copies of this ~~publication~~ **standard** may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103 or from the Indiana Department of Environmental Management, Office of Water ~~Management,~~ **Quality,** Indiana Government Center-North, 100 North Senate Avenue, Room ~~1255,~~ **N1255,** Indianapolis, Indiana ~~46206.~~ **46204.** *(Water Pollution Control Board; 327 IAC 8-3.4-16; filed Jun 17, 1999, 1:50 p.m.: 22 IR 3374; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 35. 327 IAC 8-3.4-17 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.4-17 Pitless adapter unit requirements

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 17. A production water well equipped with a pitless unit shall meet the following requirements:

(1) A pitless unit shall be:

(A) constructed of steel, ~~or~~ stainless steel, **or other material compatible with the casing as approved by the commissioner,** unless the well casing is constructed of PVC in accordance with section 16 of this rule; **and**

~~(2) A pitless unit shall be~~ **(B)** installed on the well casing using one (1) of the following types of joints:

~~(A)~~ **(i)** Welded, **with either mechanical or chemical weld.**

~~(B)~~ **(ii)** Flanged.

~~(C)~~ **(iii)** Threaded.

~~(3)~~ **(2)** The discharge connection of a pitless unit shall be pressurized at all times.

~~(4)~~ **(3)** A pitless unit shall:

(A) be designed so that the pump can be removed for servicing and maintenance without disturbing the underground discharge piping; **and**

~~(5) A pitless unit shall~~ **(B)** have an inside diameter greater than or equal to the casing diameter if the casing diameter is less than twelve (12) inches.

~~(6)~~ **(4)** At least one (1) check valve shall be installed inside the well casing if a submersible pump is used.

~~(7)~~ **(5)** A compression joint shall not be used for the installation of a pitless unit.

~~(8)~~ **(6)** A buried suction line is not permitted.

~~(9)~~ **(7)** A saddle-type pitless adapter is not permitted **except at systems with a well casing and a diameter of six (6) inches or less. At these systems, a saddle-type pitless adapter may be used if:**

(A) it maintains positive pressure;

(B) the pitless adapter is designed to support the weight of the column and pump; and

(C) the pump is accessible.

(Water Pollution Control Board; 327 IAC 8-3.4-17; filed Jun 17, 1999, 1:50 p.m.: 22 IR 3375; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 36. 327 IAC 8-3.4-23 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.4-23 Grouting requirements

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 23. This section governs grouting materials and the installation of grouting materials **as follows:**

(1) Grouting materials shall consist of the following:

(A) Neat cement grout shall consist of cement conforming to ASTM ~~C150 (1996 Annual Book of ASTM Standards)~~ **C150-04 Standard Specification for Portland Cement*** and contain at least two percent (2%) but ~~no~~ **not** more than five percent (5%) by weight of bentonite additive.

(B) Bentonite slurry that can include polymers designed to retard swelling.

(C) Pelletized, granular, medium-grade, or coarse-grade crushed bentonite.

(D) Concrete grout shall consist of equal amounts of:

(i) cement, conforming to AWWA ~~A100-90, Section 7 (effective February 1, 1991)**;~~ **A100-97 AWWA Standard for Water Wells**;** and

(ii) sand mixed with the addition of water to make a mixture not exceeding six (6) gallons of water per one (1) cubic foot of cement;

and contain at least two percent (2%) but ~~no~~ **not** more than five percent (5%) by weight of bentonite additive.

(2) The installation of grouting materials shall be in accordance with the following:

(A) Except as provided in section 21(2) of this rule, neat cement and bentonite slurry shall be pressure pumped into place with a grout pipe from the bottom of the annular space upward in a continuous operation.

(B) Pelletized, granular, medium-grade, or coarse-grade crushed bentonite shall be introduced in a manner to prevent bridging of the borehole annulus.

(C) Concrete grout shall be installed according to one (1) of the following:

(i) Pressure pumped.

(ii) Placed by gravity through a grout pipe from the bottom of the annular space upward in a continuous operation.

(iii) Introduced in a manner to prevent bridging of the borehole annulus.

(3) The annulus of a well shall be grouted with one (1) of the types of grout as specified in subdivision (1) and in accordance with the applicable grout installation methods specified in subdivision (2), with the exception of a prohibition against using the method named in subdivision (2)(C)(iii) if:
(A) the diameter of the borehole is eight (8) inches or larger than the outside diameter of the well casing; and
(B) the well is equal to or less than one hundred (100) feet in depth.
(4) The annulus of a well shall be pressure grouted with neat cement, concrete grout, or a bentonite slurry if:
(A) the diameter of the borehole is less than eight (8) inches larger than the outside diameter of the well casing; or
(B) the well is greater than one hundred (100) feet in depth.
(5) The annulus of a well may be grouted, with concrete grout containing gravel not larger than one-half (½) inch in size, by using gravity without the use of a grout pipe if:
(A) the diameter of the borehole is greater than twelve (12) inches larger than the outside diameter of the well casing; and
(B) the depth to be grouted is equal to or less than ten (10) feet.
(6) Grouting of the borehole annulus shall be accomplished upon the earlier of the following events:
(A) Within twenty-four (24) hours following the installation of the well casing.
(B) The removal of drilling equipment from the proposed well location.
(7) All work on the well shall cease during the grout setup time as specified by the grout material supplier.

*This document is incorporated by reference. Notwithstanding language to the contrary in the primarily incorporated documents, the versions of all secondarily incorporated documents, which are those documents referred to in the primarily incorporated documents, shall be the versions in effect on the date of final adoption of this rule. Copies of this ~~publication~~ **standard** may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103 or from the Indiana Department of Environmental Management, Office of Water ~~Management,~~ **Quality,** Indiana Government Center-North, 100 North Senate Avenue, Room ~~1255,~~ **N1255,** Indianapolis, Indiana ~~46206.~~ **46204.**

This document is incorporated by reference. Notwithstanding language to the contrary in the primarily incorporated documents, the versions of all secondarily incorporated documents, which are those documents referred to in the primarily incorporated documents, shall be the versions in effect on the date of final adoption of the primarily incorporated document. Copies of this ~~publication~~ **standard may be obtained from the American Water Works Association, 6666 West Quincy Avenue, Denver, Colorado 80235 or from the Indiana Department of Environmental Management, Office of Water ~~Management,~~ **Quality,** Indiana Government Center-North, 100 North Senate Avenue, Room ~~1255,~~ **N1255,** Indianapolis, Indiana ~~46206.~~ **46204.** *(Water Pollution Control Board; 327 IAC 8-3.4-23; filed Jun 17, 1999, 1:50 p.m.: 22 IR 3376; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 37. 327 IAC 8-3.4-24 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.4-24 Disinfection procedure requirements
Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 24. (a) The disinfection procedures described in this section shall be performed with one (1) of the following approved forms of chlorine:
(1) Calcium hypochlorite.
(2) Sodium hypochlorite.

(b) Gravel installed in a new production well must be chlorinated by use of the following method:
(1) Silica gravel for gravel pack shall be disinfected with calcium hypochlorite or sodium hypochlorite ~~prior to~~ **before** installation in a well at a rate that will produce a liquid concentration of at least fifty (50) milligrams per liter (mg/l) as the gravel is installed.
(2) The gravel, disinfected according to subdivision (1), shall be fed into a gravel chute or tremie to completely fill the annular void outside the well casing to the top gravel pack level.
(3) Chlorine shall be added to the well, following the activity described in subdivision (2), and circulated until a chlorine concentration of not less than fifty (50) mg/l in the entire volume of fluid is achieved.

(c) Immediately before placement in the void caused by settled gravel in a well, replacement gravel shall be soaked in a chlorine solution of at least fifty (50) mg/l for a duration not less than thirty (30) minutes during initial construction or subsequent repairs.

(d) Permanent equipment and material used in a production well shall be chlorinated ~~prior to~~ **before** installation by spraying exposed areas with a solution containing a chlorine residual of ~~no~~ **not** less than two hundred (200) ~~milligrams per liter~~ mg/l.

(e) A new or modified well proposed to be a production well shall be chlorinated in accordance with one (1) of the following:
(1) The water in the well casing shall be treated for disinfection as follows:
(A) To create a chlorine residual of one hundred (100) ~~milligrams per liter~~ **mg/l** to the entire volume of water in the casing, well screen, and rock hole, if present.
(B) The well must be:
(i) chlorinated using the compound requirements in Table 24-1; **and**
~~(C) The well must be~~ **(ii)** surged at least three (3) times following chlorination.

~~(D)~~ **(C)** The chlorinated water must remain in the well casing at least twelve (12) hours following the surging activity of clause ~~(C).~~ **(B)(ii).**

(2) The water in the well casing shall be treated for disinfection as follows:

(A) To create a chlorine residual of fifty (50) mg/l to the entire volume of water in the casing, well screen, and rock hole, if present.

(B) The well must be:

(i) chlorinated using the compound requirements in Table 24-1; **and**

~~(C) The well must be~~ **(ii)** surged at least three (3) times following chlorination.

~~(D)~~ **(C)** The chlorinated water must then remain in the well casing at least twenty-four (24) hours following the surging activity of clause ~~(C).~~ **(B)(ii).**

Table 24-1

Amount of Chemical Compound

Well-Hole or Well-Casing Diameter (in.)	Volume per 100 Feet of Water Depth (gal)	Calcium Hypochlorite* (65 percent available Cl_2)	Sodium Hypochlorite† (12 trade percent‡)
5	106.09	1.1 oz	5.65 fl oz
6	146.9	1.5 oz	7.8 fl oz
8	261.1	2.7 oz	13.9 fl oz
10	408.0	4.2 oz	1.4 pt
12	587.5	6.0 oz	2.0 pt
16	1,044.0	10.7 oz	3.5 pt
20	1,632.0	1 lb 1 oz	0.7 gal
24	2,350.0	1 lb 8 oz	1.0 gal
30	3,672.0	2 lb 6 oz	1.5 gal
36	5,287.0	3 lb 6 oz	2.2 gal
48	9,400.0	6 lb 1 oz	3.9 gal
60	11,690.0	9 lb 7 oz	6.1 gal

Notes:

*Quantities of Ca $(OCl)_2$ based on 65 percent available chlorine by dry weight (16 oz = 1 lb).

†Quantities of NaOCl based on 12 trade percent available chlorine by US liquid measure (1 gal = 4 qt = 8 pt = 128 fl oz).

‡Trade percent is a term used by chlorine manufacturers; trade percent × 10 = grams of available chlorine in 1 liter of solution.

(f) After disinfection accomplished in accordance with subsection (e), a new or modified public water ~~supply~~ system production well and a flowing well shall be sampled for the presence of coliform at least twice, with sampling done ~~no~~ **not** less than twenty-four (24) hours apart, by a laboratory certified by the Indiana state department of health **or the United States Environmental Protection Agency using methods specified in 327 IAC 8-2-8.7.** If the presence of coliform is indicated by the sample results, the disinfection of the well shall be repeated.

(g) Disposal of chlorinated water from well disinfection shall be to one (1) of the following sources:

(1) A sanitary sewer with the approval of the local sewer authority.

(2) A location other than a sanitary sewer in accordance with local, state, and federal regulations.

(Water Pollution Control Board; 327 IAC 8-3.4-24; filed Jun 17, 1999, 1:50 p.m.: 22 IR 3377; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 38. 327 IAC 8-3.4-25 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.4-25 Postconstruction testing and reporting requirements

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

Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2; IC 13-18-16-2

Sec. 25. (a) The following information must be submitted to the commissioner before a new or modified production well is placed into production:

(1) Results of a production well performance test (PWPT) that was performed for a period of at least twenty-four (24) hours for a community public water ~~supply~~ system and ~~at least eight (8) hours for~~ a **nontransient** noncommunity public water ~~supply~~ system **serving more than two hundred fifty (250) individuals.** The PWPT information submitted to the commissioner shall include the following:

(A) Pumping rate of test (at least one (1) times the maximum daily pumping rate).

(B) Static water level (stable before pumping).

(C) Water level at:

(i) start up and at interim readings; **and**

~~(D) Water level at~~ **(ii)** the end of the PWPT.

~~(E)~~ **(D)** Specific capacity at the end of the PWPT.

(2) Every well shall be tested for specific capacity of the well. The well shall be test pumped at a capacity at least equal to the pumping rate desired from the well during normal usage.

~~(2)~~ **(3)** A copy of the Indiana department of natural resources' record of water well completed in accordance with the requirements of ~~310 IAC 16-2-6.~~ **312 IAC 13-2-6.**

~~(3)~~ **(4)** The results of:

(A) water quality samples obtained during test pumping; **and**

~~(4) The results of~~ **(B)** disinfection confirmation samples obtained during disinfection.

(5) Completed copies of the chemical analytical reports of sampling done and analyzed by a laboratory certified by the Indiana department of health **or the United States Environmental Protection Agency using methods set forth in 327 IAC 8-2-4.2** for the following constituents:

(A) Nitrate (NO_3).

(B) Fluoride.

(b) The commissioner may modify or revoke a construction permit based on the information submitted under subsection (a) in accordance with IC 13-18-16-2. *(Water Pollution Control Board; 327 IAC 8-3.4-25; filed Jun 17, 1999, 1:50 p.m.: 22 IR 3378; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 39. 327 IAC 8-3.4-27 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.4-27 Alternative to technical standards

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 27. (a) An alternative to a technical standard required by this rule may be approved by the commissioner for either a single application or for a public water ~~supply~~ **system** system-wide application if the applicant demonstrates, in a written submission, that the alternative will meet the following:

(1) The requirements of 327 IAC 8-3-4.

(2) Provide drinking water of at least the same quality and normal operating pressure at the peak flow rate as the technical standards in this rule would provide.

(b) An alternative to a technical standard required by this rule may be approved by the commissioner for all public water systems or a subset of public water systems if the alternative will meet the following:

(1) The requirements of 327 IAC 8-3-4.

(2) Provide drinking water of at least the same quality and normal operating pressure at the peak flow rate as the technical standards in this rule would provide.

~~(b)~~ **(c)** Continuing operation of the approved alternative technical standard shall require no renewal if the alternative technical standard is operated in the manner approved by the commissioner.

~~(c)~~ **(d)** An alternative to a technical standard **approved under subsection (a)** shall only apply to the application or the public water ~~supply~~ system for which the alternative is requested. *(Water Pollution Control Board; 327 IAC 8-3.4-27; filed Jun 17, 1999, 1:50 p.m.: 22 IR 3379; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 40. 327 IAC 8-3.5-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.5-1 Definitions

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-2; IC 13-18-1; IC 13-18-3; IC 13-18-4; IC 13-18-16-8
Affected: IC 13-11-2; IC 13-15-2; IC 13-18

Sec. 1. In addition to the definitions ~~contained~~ in 327 IAC 8-3-1, the following definitions apply throughout this rule:

(1) "Alternative technical standard" means alternative technical standards as described in 327 IAC 8-3.2-20.

(2) "Average daily customer demand" means the average daily customer demand as determined in accordance with 327 IAC 8-3.3-2.

~~(3) "Entry point of the distribution system" means one (1) of the following points:~~

~~(A) For public water systems that utilize water treatment facilities, the point at which the drinking water has left the treatment facilities and has entered the distribution system.~~

~~(B) For public water systems that do not utilize water treatment facilities, the point at which the drinking water has left the supply facilities and has entered the distribution system.~~

~~(4)~~ **(3)** "General construction permit ban" means a decision issued in conformance with section 8 of this rule.

~~(5)~~ **(4)** "Notice of intent letter" or "NOI" means a written notification indicating a responsible person has elected to comply with the terms of this general construction permit rule ~~in lieu~~ **instead** of applying for an individual construction permit.

~~(6)~~ **(5)** "Peaking factor" means the peak daily customer demand factor as determined in accordance with 327 IAC 8-3.3-2.

~~(7) "Public water system" means a public water supply for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals daily at least sixty (60) days out of the year. The term includes any collection, treatment, storage, and distribution facilities under control of the operator of such system, t and used primarily in connection with such system and any collection or pretreatment storage facilities not under such control that are used primarily in connection with such system.~~

~~(8)~~ **(6)** "Public water system's daily capacity" means the public water system's daily capacity as determined in accordance with 327 IAC 8-3.3-3.

~~(9)~~ **(7)** "Responsible person" means a person as described by section 6 of this rule.

~~(10) "Two (2) year average peak" means the arithmetic mean of the highest five (5) daily pumpages as reported over the previous two (2) year period on the public water system's monthly report of operations on record with the department. If the public water system is less than two (2) years old, the term means the arithmetic mean of the highest five (5) daily pumpages as reported on the public water system's monthly report of operations on record with the department.~~

~~(11) "Water main" means any pipe located between all entry points to the distribution system and all customer service connection meters.~~

~~(12)~~ **(8)** "Transmission main" means ~~a~~ **any** pipe ~~described by any of the following:~~ **that:**

(A) ~~That~~ transports water from a:

(i) surface water intake to a surface water treatment plant; **or**

~~(B) That transports water from a groundwater intake~~ **(ii)** well to a water treatment plant; ~~(if present);~~

~~(C) That~~ **(B)** transports:

(i) finished water from the treatment plant ~~(if present)~~ to the entry point ~~of~~ **to** the **water** distribution system; **or**

(ii) water from a well to the entry point to the water distribution systems if there is no water treatment plant; or

~~(D) That~~ **(C)** is installed for the purpose of interconnecting separate public water systems.

(Water Pollution Control Board; 327 IAC 8-3.5-1; filed Mar 31, 1999, 10:20 a.m.: 22 IR 2522; errata filed Aug 17, 1999, 3:15 p.m.: 23 IR 25; filed Mar 6, 2000, 7:56 a.m.: 23 IR 1627; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 41. 327 IAC 8-3.5-2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.5-2 Incorporation by reference

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-2; IC 13-18-1; IC 13-18-3; IC 13-18-4; IC 13-18-16-8
Affected: IC 13-11-2; IC 13-18

Sec. 2. (a) The following materials are incorporated by reference into this rule, to the extent provided in other sections of this rule:

(1) ~~The American Water Works Association~~ **C700-02** AWWA Standard ~~C700-90.~~ **for Cold-Water Meters - Displacement Type, Bronze Main Case.**

(2) ~~The American Water Works Association~~ **C701-02** AWWA Standard ~~C701-88.~~ **for Cold-Water Meters - Turbine Type for Customer Service.**

(3) ~~The American Water Works Association~~ **C702-01** AWWA Standard ~~C702-92.~~ **for Cold-Water Meters - Compound Type.**

(4) ~~The American Water Works Association~~ **C703-96(R04)** AWWA Standard ~~C703-96.~~ **for Cold-Water Meters - Fire Service Type.**

(b) The matters incorporated by reference in subsection (a) may be obtained from either of the following:

(1) American Water Works Association, 6666 West Quincy Avenue, Denver, Colorado 80235.

(2) Indiana Department of Environmental Management, Office of Water ~~Management,~~ **Quality,** Indiana Government Center-North, 100 North Senate Avenue, Room ~~1255,~~ **N1255,** Indianapolis, Indiana ~~46206.~~ **46204.**

(Water Pollution Control Board; 327 IAC 8-3.5-2; filed Mar 31, 1999, 10:20 a.m.: 22 IR 2522; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 42. 327 IAC 8-3.5-5 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-3.5-5 General construction permit conditions

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-2; IC 13-18-1; IC 13-18-3; IC 13-18-4; IC 13-18-16-8
Affected: IC 13-11-2; IC 13-18; IC 13-30

Sec. 5. (a) The proposed water main extension must meet the issuance requirements of 327 IAC 8-3-4.

(b) A copy of the NOI, all documentation supporting the project, plans, and specifications must be submitted to the public water system before the commencement of the water main construction.

(c) All documentation supporting the project must be readily accessible for review and ~~copy~~ **copying** for the duration of water main construction activities. In addition, a copy of the plans conforming to 327 IAC 8-3.2-5(c) and specifications must be available in accordance with the following:

(1) These items shall be on-site and readily accessible for review and ~~copy~~ **copying** throughout the duration of water main construction activities at the site if an office is present at the site.

(2) If there is no office present at the site, these items shall be producible for review and ~~copy~~ **copying** throughout the duration of water main construction activities at the site within sixty (60) minutes upon notification by the commissioner.

(d) Persons in violation of this rule shall take all reasonable steps to correct any adverse impact on the public health resulting from their noncompliance.

(e) Nothing in this rule shall be construed to relieve anyone from any responsibility, liability, or penalty to which they are or may be subject to under the local, state, or federal laws and regulations.

(f) Responsible persons identified by and regulated by this rule shall ensure that the construction to the public water system achieves compliance with the terms and conditions of this rule.

(g) During construction, where the:

(1) public water system;

(2) responsible person; ~~the~~ **or**

(3) responsible person's:

(A) professional engineer; ~~or the responsible person's~~

(B) developer;

(C) resident project representative; or

(D) person who by other means is representing the construction aspects of the proposed project;

becomes aware of a failure to submit any relevant facts or the submittal of incorrect information in ~~a~~ **an** NOI, the responsible person shall promptly submit ~~such~~ **the** facts or corrected information to the commissioner in writing utilizing certified mail and the address on the NOI form.

(h) The design and construction of the water main must meet all technical standards in 327 IAC 8-3.2, or, if any alternate technical standards are proposed for the project, the alternate technical standard must be approved by the commissioner in accordance with 327 IAC 8-3.2-20, and a copy of this approval must be submitted with the NOI.

(i) All nonresidential service connections must be equipped with a meter, and the size of the meter must be specified on the plans and specification of the water main. The metering devices must not be capable of exceeding the corresponding "Safe Maximum Operating Capacity" as specified on Table 1 of AWWA ~~C700-90~~ **C700-02,** AWWA ~~C701-88~~ **C701-02,** AWWA ~~C702-92,~~ **C702-01,** or AWWA ~~C703-96.~~ **C703-96(04).**

(j) At a peak flow rate equal to the peak daily customer demand as determined in subsection (k), the normal operating pressure in the water main shall not be less than twenty (20) pounds per square inch at the ground level at all points in the water main under all conditions of flow when demonstrated in conformance with subsection (l).

(k) For use in this section, the peak flow rate is equal to the sum of subdivisions (1) and (2) defined as follows:

(1) The fire flow value that is one (1) of the following:

(A) The fire protection flow rate that is provided by the public water system for the entire water main extension.

(B) Zero (0) if the public water system is not providing fire protection.

(2) The peak daily demand for each of the individual service connections defined as follows:

(A) For residential service connections, the peak daily customer demand is determined in accordance with 327 IAC 8-3.3-2(a)(1), or the peak daily customer demand as approved by the commissioner in accordance with 327 IAC 8-3.3-2(a)(4).

(B) For nonresidential service connections with meter sizes less than one (1) inch in diameter, the peak daily customer demand is equal to fifty (50) gallons per minute.

(C) For nonresidential service connections, the peak daily customer demand is equal to the "Safe Maximum Operating Capacity" ~~flowrate~~ as specified on Table 1 of AWWA ~~C700-90,~~ **C700-02,** AWWA ~~C701-88,~~ **C701-02,** AWWA ~~C702-92,~~ **C702-01,** or AWWA ~~C703-96.~~ **C703-96(R04).**

(D) For nonresidential service connections, the peak daily customer demand as approved by the commissioner in accordance with 327 IAC 8-3.3-2(a)(4).

(l) The conformance with subsection (j) must be demonstrated with the use of a computer model or with hydraulic calculations, which must be included with the documentation supporting the project, that are to be readily accessible in accordance with subsection (c) and at the public water system in accordance with subsection (b).

(m) Persons in violation of this rule are subject to enforcement and legal action under IC 13-30. *(Water Pollution Control Board; 327 IAC 8-3.5-5; filed Mar 31, 1999, 10:20 a.m.: 22 IR 2524; errata filed Aug 17, 1999, 3:15 p.m.: 23 IR 26; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 43. 327 IAC 8-4-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-4-1 Public water system plans; approval by board

Authority: **IC 13-14-8; IC 13-14-9; IC 13-15-2; IC 13-18-1; IC 13-18-3; IC 13-18-4; IC 13-18-16-8**
Affected: **IC 13-11-2; IC 13-18**

Sec. 1. (a) No:

(1) city;
(2) town;
(3) county;
(4) public institution;
(5) firm;
(6) corporation; ~~or~~
(7) officer or employee thereof; or
(8) other person;

shall install or contract for the construction of any public water ~~supply~~ **system** facilities, including water purification or treatment works, or make any material change in any such existing facilities or works, until plans and specifications, together with an engineer report supporting in detail the design set forth in ~~such~~ **the** plans, shall have been submitted to and approved by the commissioner, so far as relates to their sanitary features **except for at small transient or small nontransient noncommunity public water systems that are set forth in section 2 of this rule.**

(b) After ~~such~~ **the** plans and specifications have been approved by the commissioner, no material changes in the:

(1) location;
(2) plans;
(3) construction; or
(4) operation;

of ~~any~~ ~~such~~ **the** system or works may be made without first submitting to the commissioner a detailed statement of ~~such~~ **the** proposed changes and receiving its approval.

(c) ~~Said~~ **The:**

(1) plans;
(2) specifications;
(3) reports; and
(4) other information;

shall be submitted ~~of such~~ **in the** form and contents as may from time to time be specified by the commissioner.

(d) Whenever information regarding:

(1) already existing water ~~supply~~ **system** facilities or water treatment works; or ~~regarding~~
(2) the operation and maintenance thereof;

may be required by the commissioner, the public officials or person, firm, or corporation having the works in charge shall promptly furnish such information.

(e) All such plans hereafter to be submitted to the commissioner for approval shall:

(1) have been prepared by or under the supervision of a professional engineer legally registered in the state of Indiana;

(2) be certified by ~~him~~ **the professional engineer;** and
(3) bear ~~his~~ **the professional engineer's** official seal;
except as allowed for small transient or small nontransient noncommunity public water systems under section 2 of this rule.

(f) Provided that nothing contained in this rule ~~(327 IAC 8-4)~~ shall apply to water supplies installed or to be installed in connection with a private dwelling or residence. *(Water Pollution Control Board; 327 IAC 8-4-1; filed Sep 24, 1987, 3:00 p.m.: 11 IR 711; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 44. 327 IAC 8-4-2 IS ADDED TO READ AS FOLLOWS:

327 IAC 8-4-2 Construction requirements at noncommunity public water systems serving 250 or fewer individuals

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 2. (a) Construction at a noncommunity public water system serving two hundred fifty (250) or fewer individuals must be in accordance with section 1 of this rule and 327 IAC 8-3-2.1 except as allowed in subsections (b) and (c).

(b) Construction for the following items, if not installed to meet the requirements of 327 IAC 8-2, 327 IAC 8-2.5, or 327 IAC 8-2.6, are not required to obtain a permit:
(1) Ion exchange softeners.
(2) Ultraviolet treatment.
(3) Cartridge filters.
(4) Reverse osmosis.
(5) Other items determined by the commissioner to not require a permit.

(c) A noncommunity water system serving two hundred fifty (250) or fewer individuals may proceed with construction of items listed in subsection (b) without meeting the requirements of section 1 of this rule, provided the following criteria are met:
(1) The installed construction or device must meet the requirements of 327 IAC 8-1.
(2) The noncommunity water system serving two hundred fifty (250) or fewer individuals must notify the commissioner within thirty (30) days of completion of construction of the installation. The notification must be in writing and must include the following:
(A) The type of construction or device installed.
(B) The date of installation.
(C) Contact information for the contractor (if used).
Any construction must be designed and operated to meet the requirements of 327 IAC 8-6. *(Water Pollution Control Board; 327 IAC 8-4-2)*

SECTION 45. 327 IAC 8-6-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-6-1 Improvements required in public water system or treatment works

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-2

Sec. 1. (a) Whenever investigation by the commissioner shall show:
(1) any public water ~~supply~~ system, ~~or~~ water treatment works, or any part thereof to be inadequate or to be improperly located, constructed, or operated and by reason thereof to be causative of disease; or
(2) that the water obtained therefrom fails to meet the drinking water standards of 327 IAC 8-2;
the person, firm, corporation or ~~municipally~~ **municipality** owning ~~and/or~~ **or** operating, ~~said~~ **or both, the** public water ~~supply~~ system or water treatment works, upon receipt of an official order from the commission, shall proceed within such time as is therein provided to carry out ~~such~~ **the** changes, extensions, or improvements or to institute ~~such~~ **the** changes in the methods of operation of ~~said~~ **the** public water ~~supply~~ system or water treatment works as may be necessary to abate ~~such~~ **the** conditions.

(b) Any order of the commissioner shall:
(1) be a written order; and ~~shall~~
(2) establish a time within which the steps contemplated in ~~said~~ **the** order shall be carried out.

(c) Provided that ~~such~~ **the** official order shall not be issued by the commissioner until an opportunity for a hearing has been given to the person, firm, corporation, or municipality owning ~~and/or~~ **or** operating, ~~said~~ **or both, the** public water ~~supply~~ system or water treatment works, at which hearing the facts as shown by the investigation made by ~~said~~ **the** commissioner shall be presented to ~~said~~ **the** person, firm, corporation, or municipality. Notice of ~~such~~ **the** hearing shall be given not less than ten (10) days ~~prior to~~ **before** the date set for ~~said~~ **the** hearing. *(Water Pollution Control Board; 327 IAC 8-6-1; filed Sep 24, 1987, 3:00 p.m.: 11 IR 712; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

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 June 8, 2005 at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Water Pollution Control Board will hold a public hearing on proposed amendments to 327 IAC 8-1, 327 IAC 8-3, 327 IAC 8-3.1, 327 IAC 8-3.2, 327 IAC 8-3.3, 327 IAC 8-3.4, 327 IAC 8-3.5, 327 IAC 8-4, and 327 IAC 8-6 and adds 327 IAC 8-3-2.1, 327 IAC 8-3.4-9.1, and 327 IAC 8-4-2 concerning simplification of the

construction permitting requirements for small systems.

The purpose of this hearing is to receive comments from the public prior to final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments and new rules. 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 Kiran Verma, Rules Section, Office of Water Quality, (317) 234-0986 or (800) 451-6027 (in Indiana). Technical information regarding this action may be obtained from Stacy Jones, Drinking Water Branch, Office of Water Quality, (317) 308-3292 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
Indianapolis, Indiana 46204

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, 100 North Senate Avenue, Twelfth Floor and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Martha Clark Mettler, Chief
Watershed-Planning Branch
Office of Water Quality
Indiana Department of Environmental Management

TITLE 327 WATER POLLUTION CONTROL BOARD

Proposed Rule
LSA Document #04-320

DIGEST

Adds 327 IAC 3-2-1.5, 327 IAC 3-2-3.5, and 327 IAC 3-2-5.5 concerning state permits for the construction of water pollution treatment/control facilities and sanitary sewers. Effective 30 days after filing with the secretary of state.

HISTORY

Second Notice of Comment Period and Notice of First Hearing: #04-320(WPCB) January 1, 2005, Indiana Register (28 IR 1368).

Date of First Hearing: March 9, 2005.

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. Because this proposed rule is not substantively different from the draft rule published on January 1, 2005, at 28 IR 1368, the Indiana Department of Environmental Management (IDEM) is not requesting additional comment on this proposed rule.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

IDEM requested public comment from January 1, 2005, through January 31, 2005, on IDEM's draft rule language. No comments were receive during the second comment period.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On March 9, 2005, the water pollution control board conducted the first public hearing/board meeting concerning the new rule concerning state permits for the construction of water pollution treatment/control facilities and sanitary sewers. No comments were made at the first hearing

327 IAC 3-2-1.5 **327 IAC 3-2-5.5**
327 IAC 3-2-3.5

SECTION 1. 327 IAC 3-2-1.5 IS ADDED TO READ AS FOLLOWS:

327 IAC 3-2-1.5 Valid permit requirement
Authority: IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-18-2

Sec. 1.5. No person shall cause or allow the construction, installation, or modification of any water pollution treatment/control facility or sanitary sewer without a valid construction permit issued by the commissioner. *(Water Pollution Control Board; 327 IAC 3-2-1.5)*

SECTION 2. 327 IAC 3-2-3.5 IS ADDED TO READ AS FOLLOWS:

327 IAC 3-2-3.5 Conditions of approval
Authority: IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-18-2

Sec. 3.5. (a) The permit may specify expiration dates by which the construction must be started and completed, which dates shall be compatible with any federal or state, or both, grants or grant funds impacted. The commissioner may grant an extension of time for start and completion of construction if the commissioner believes the extension is necessary and justified.

(b) The commissioner shall have the authority to specify

the limits and conditions necessary to ensure proper design and ease of operation of water pollution treatment/control facilities.

(c) Sanitary sewers that have been issued construction permits shall be tested for infiltration/exfiltration in a method approved by the commissioner. All force mains shall be tested for leakage in an approved method. Results of the infiltration/exfiltration test for sanitary sewers and leakage test for force mains shall be submitted for approval within ninety (90) days of completion of construction. Failure to submit test results within the allotted time period or failure to meet guidelines for infiltration/inflow and leakage would be subject to enforcement proceedings as provided by 327 IAC 3-5-3.

(d) Sanitary sewers that are flexible in type and that are issued construction permits shall be tested for vertical deflection. The tests shall be conducted after the final backfill has been in place at least thirty (30) days. No flexible sewer shall exceed a vertical deflection of five percent (5%). *(Water Pollution Control Board; 327 IAC 3-2-3.5)*

SECTION 3. 327 IAC 3-2-5.5 IS ADDED TO READ AS FOLLOWS:

327 IAC 3-2-5.5 Nonsite-specific permit
Authority: IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-4-1
Affected: IC 13-18-2

Sec. 5.5. The commissioner may grant a nonsite-specific construction permit for the following category of discharger: Short term drainage/sediment control lagoons.

(1) Said lagoons are those constructed according to approved general plans and specifications; however, the specific site location changes with time.

(2) Any request for issuance of such a nonsite-specific, ongoing construction permit shall be made by the applicant in conjunction with the application information presented in section 2 of this rule.

(3) It shall be the responsibility of the recipient of such a permit to notify the commissioner each time of a change in location of the permitted facility.

(Water Pollution Control Board; 327 IAC 3-2-5.5)

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 April 13, 2005 at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Water Pollution Control Board will hold a public hearing on proposed new rules concerning state permits for the construction of water pollution treatment/control facilities and sanitary sewers.

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
Indianapolis, Indiana 46204

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 N1255 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Thomas W. Easterly
Commissioner
Indiana Department of Environmental Management

TITLE 329 SOLID WASTE MANAGEMENT BOARD

Proposed Rule
LSA Document #04-318

DIGEST

Amends 329 IAC 3.1-6-6 to increase the amount of treated electric arc furnace dust generated by Heritage Environmental Services, LLC and Nucor Corporation at the Nucor Steel, Division of Nucor Corporation, facility located in Crawfordsville, Indiana that can be excluded from regulation as hazardous waste from 30,000 cubic yards to 60,000 cubic yards per year. Effective 30 days after filing with the secretary of state.

HISTORY

Findings and Determination of the Commissioner Pursuant to IC 13-14-9-7, Tentative Recommendation for Rulemaking, and Second Notice of Comment Period: January 1, 2005, Indiana Register (28 IR 1370).

Notice of First Hearing: January 1, 2005, Indiana Register (28 IR 1373).

Date of First Hearing: February 15, 2005.

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. Because this proposed rule is not substantively different from the draft rule published on January 1, 2005, at 28 IR 1370, the Indiana Department of Environmental Management (IDEM) is not requesting additional comment on this proposed rule.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from January 1, 2005, through February 1, 2005, on IDEM's draft rule language. No comments were received during the comment period.

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST PUBLIC HEARING

On February 15, 2005, the solid waste management board (board) conducted the first public hearing/board meeting concerning the development of amendments to 329 IAC 3.1-6-6. No comments were made at the first hearing.

FISCAL ANALYSIS PREPARED BY THE LEGISLATIVE SERVICES AGENCY

Under IC 4-22-2-28, IDEM has estimated that the economic impact of the proposed amendments to 329 IAC 3.1-6-6 will be less than five hundred thousand dollars ($500,000) on the regulated entities. The economic impact analysis for this rule was not submitted to the Legislative Services Agency.

329 IAC 3.1-6-6

SECTION 1. 329 IAC 3.1-6-6 IS AMENDED TO READ AS FOLLOWS:

329 IAC 3.1-6-6 Waste excluded from regulation; Heritage Environmental Services, LLC and Nucor Steel Corporation, Crawfordsville, Indiana

Authority: IC 13-14-8; IC 13-22-2
Affected: IC 13-22

Sec. 6. Electric arc furnace dust (EAFD), hazardous waste code K061, that is generated by Heritage Environmental Services, LLC (Heritage) and Nucor Steel, Division of Nucor, Corporation (Nucor) at Nucor's Crawfordsville, Indiana plant, and treated to be nonhazardous is excluded from regulation under this article so long as management of the waste complies with all of the following conditions:

(1) Delisting levels for the waste excluded by this section are as follows:

(A) The constituent concentrations measured in any of the extracts required by subdivision (2) must not exceed any of the levels listed in Table 1:

Table 1. Maximum Constituent Concentrations in TCLP Extracts

Antimony	0.206 mg/L
Arsenic	0.0936 mg/L
Barium	55.7 mg/L
Beryllium	0.416 mg/L
Cadmium	0.15 mg/L
Chromium (total)	1.55 mg/L
Lead	5.0 mg/L
Mercury	0.149 mg/L
Nickel	28.3 mg/L
Selenium	0.58 mg/L
Silver	3.84 mg/L
Thallium	0.088 mg/L
Vanadium	21.1 mg/L
Zinc	280 mg/L

(B) Total mercury in the treated EAFD must not exceed one (1.0) milligram per kilogram.

(2) Heritage shall demonstrate on a monthly basis that the constituents in the treated EAFD do not exceed the delisting levels in subdivision (1) as follows:

(A) Heritage shall collect two (2) representative samples of the treated EAFD each month. Each sample must be analyzed using all of the following tests:

(i) Method 1311, Toxicity Characteristic Leaching Procedure (TCLP), described in U.S. Environmental Protection Agency Publication SW-846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", 3rd Edition (November 1986), as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996) (SW-846).

(ii) Method 1311, described in item (i), substituting an extraction fluid with a pH of 12.0 ±0.05 standard units for the normal extraction fluid. Heritage may remove dissolved oxygen to less than five-tenths (0.5) parts per million by the addition of a stoichiometric amount of sodium hydrosulfite.

(iii) Method 7471A, Mercury in Solid or Semi-Solid Waste (Manual Cold-Vapor Technique), described in SW-846.

(B) Detection levels must be less than the delisting levels in subdivision (1).

(C) Heritage must comply with Chapter 1, "Quality Control", of SW-846.

U.S. Environmental Protection Agency Publication SW-846 is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(3) Changes in the manufacturing process or the treatment process must be managed as follows:

(A) Heritage must notify the department in writing if any of the following occur:

(i) If Nucor changes the manufacturing process or chemicals used in the manufacturing process from those de-

scribed in the petition for delisting.

(ii) If Heritage changes the treatment process or the chemicals used in the treatment process from those described in the petition for delisting.

(B) Heritage must handle all wastes generated after any process change as hazardous waste until all of the following occur:

(i) Heritage has demonstrated that:

(AA) the wastes continue to meet all delisting levels in subdivision (1); and

(BB) no new hazardous constituents listed in 40 CFR Part 261, Appendix VIII have been introduced.

(ii) Heritage has received written approval from the department to continue to manage the treated EAFD under this exclusion.

(4) Heritage must submit an annual report that summarizes the data obtained through monthly verification testing to IDEM by February 1 of each year. The report must include the results of each month's analysis required by subdivision (2) for the previous calendar year.

(5) Heritage must compile, summarize, and maintain records of operating conditions and analytical data. The records must be maintained for a minimum of five (5) years. The records must be made available for inspection by the department during normal working hours.

(6) All data required by subdivisions (4) and (5) must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12).

(7) The treated EAFD must be disposed of in accordance with:

(A) 329 IAC 10; or

(B) this article.

(8) Solid waste landfill units permitted under 329 IAC 10 that accept the treated EAFD must comply with the ground water monitoring requirements of 329 IAC 10-21.

(9) The treated EAFD must be covered in accordance with 329 IAC 10-20-13 through 329 IAC 10-20-14.

(10) Only the following materials may be used as alternative daily cover over the treated EAFD:

(A) Category B slag debris.

(B) Foundry sand.

(C) Petroleum contaminated soils.

(D) Fly ash.

(E) Conditioned fly ash.

(F) Coal ash.

(G) Uncontaminated rocks, bricks, concrete, road demolition waste materials, or dirt.

(H) Other materials approved in accordance with 329 IAC 10-20-14.1 for use over the treated EAFD after the effective date of this rule.

(11) No waste that is capable of providing oxygen or acting as a source of oxygen may be disposed of in the same cell or unit as the treated EAFD.

(12) If, at any time after disposal of the delisted waste, Heritage possesses or is otherwise made aware of any data relevant to the delisted waste indicating that any constituent identified in subdivision (1) is at a level in a test extract or in the leachate that is higher than the delisting level listed in subdivision (1), then Heritage must report such data in writing to the commissioner within ten (10) days of first possessing or being made aware of that data.

(13) If, at any time after disposal of the treated EAFD, Heritage possesses or is otherwise made aware of any data relevant to the delisted waste indicating that any of the following constituents is at a level in the ground water higher than the levels listed in Table 2:

Table 2. Maximum Allowable Concentrations in Ground Water

Antimony	0.006 mg/L
Arsenic	0.005 mg/L
Barium	2.0 mg/L
Beryllium	0.004 mg/L
Cadmium	0.005 mg/L
Chromium	0.1 mg/L
Lead	0.015 mg/L
Mercury	0.002 mg/L
Nickel	0.753 mg/L
Selenium	0.05 mg/L
Silver	0.187 mg/L
Thallium	0.002 mg/L
Vanadium	0.263 mg/L
Zinc	11.25 mg/L
Sulfides	1.0 mg/L

then Heritage must report such data in writing to the commissioner with ten (10) days after first possessing or being made aware of that data.

(14) No more than ~~thirty~~ **sixty** thousand ~~(30,000)~~ **(60,000)** cubic yards of treated EAFD may be treated or disposed of annually under this exclusion.

(Solid Waste Management Board; 329 IAC 3.1-6-6; filed Oct 3, 2001, 9:43 a.m.: 25 IR 372)

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 April 19, 2005 at 1:30 p.m., at the Gibson County Courthouse Annex North, 225 North Hart Street, Princeton, Indiana the Solid Waste Management Board will hold a public hearing on proposed amendments to rules at 329 IAC 3.1-6-6.

The purpose of this hearing is to receive comments from the public prior to final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments to rules. 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 Steve Mojonnier, Rules, Planning and Outreach Section, Office of Land Quality, (317) 233-1655 or call (800) 451-6027 (in Indiana) and ask for extension 3-1655.

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 Land Quality, 100 North Senate Avenue and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Bruce H. Palin
Deputy Assistant Commissioner
Office of Land Quality

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

Proposed Rule
LSA Document #04-321

DIGEST

Adds 405 IAC 1-1-3.1 to specify the responsibilities of Medicaid providers when providing services to members enrolled under the Medicaid spend-down provision. Amends 405 IAC 2-3-10 to set out the policies and procedures that apply to Medicaid spend-down eligibility. Effective 30 days after filing with the secretary of state.

405 IAC 1-1-3.1
405 IAC 2-3-10

SECTION 1. 405 IAC 1-1-3.1 IS ADDED TO READ AS FOLLOWS:

405 IAC 1-1-3.1 Providing services to members enrolled under the Medicaid spend-down provision
Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2
Affected: IC 12-15

Sec. 1. (a) This section applies to a Medicaid-participating provider furnishing services to an individual enrolled in Medicaid under the spend-down provision set out at 405 IAC 2-3-10.

(b) A provider must submit a claim to Medicaid for any service for which Medicaid reimbursement may be available under 405 IAC 5. Such services include services provided in excess of Medicaid benefit limitations. The provider must comply with any prior authorization requirements applicable to the service.

(c) Except for applicable copayments, a provider may not bill a Medicaid member for any part of the provider's charge for a service billed to Medicaid until:
(1) Medicaid has adjudicated the provider's claim for the service; and
(2) the provider has been notified of the portion of the claim that was credited to the Medicaid member's monthly spend-down obligation.
The provider may bill the member for the amount that was credited toward the member's spend-down as well as any unpaid copayment amount due.

(d) A provider may not refuse service to a Medicaid member pending verification that the member's monthly spend-down obligation has been satisfied. *(Office of the Secretary of Family and Social Services; 405 IAC 1-1-3.1)*

SECTION 2. 405 IAC 2-3-10, AS AMENDED AT 28 IR 178, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

405 IAC 2-3-10 Spend-down eligibility
Authority: IC 12-13-5-3; IC 12-13-7-3; IC 12-15-1-10
Affected: IC 12-15-4; IC 12-15-5

Sec. 10. (a) ~~As used in~~ **The following definitions apply throughout** this section: ~~"countable income"~~
(1) "County office" means the county office of the division of family resources of the family and **social services administration.**
(2) "Incurred medical expenses" ~~have~~ **has** the ~~meanings~~ **meaning** set forth in 42 CFR 435.121(f) and ~~section 3 of this rule. For purposes of this section, "third party"~~ **subsection (e). The term includes expenses incurred by the applicant's or recipient's spouse or parent whose income is counted in determining the applicant's or recipient's eligibility for Medicaid. The term** does not include **expenses that are subject to payment or have been paid by a third party, except expenses paid by** the following:
~~(1)~~ **(A)** A state program.
~~(2)~~ **(B)** A local program.
~~(3)~~ **(C)** Discounts or assistance received under the Medicare drug discount card and transitional assistance program authorized under 42 U.S.C. 1395w-141.
(3) "Spend-down obligation" means the amount of any excess monthly income remaining in the eligibility determination in section 20(a)(14) of this rule.

(b) ~~Any~~ **In order to be enrolled in Medicaid under the spend-down provision, an** otherwise eligible applicant ~~or~~

~~recipient whose countable monthly income exceeds the applicable income limit specified in section 18 of this rule is eligible for medical assistance for that part of any month after his or her~~ **must provide documentation to the county office of incurred medical expenses in excess of the spend-down obligation. If the applicant's ongoing** incurred medical expenses ~~equal~~ **do not exceed** his or her excess income, **his or her application will be denied. The Medicaid program will reimburse covered services in accordance with 405 IAC 5 for incurred medical expenses in excess of the spend-down obligation.**

(c) ~~In order to be determined eligible for medical assistance under this section, the applicant or recipient must provide to the county department, for each month in which he or she requests medical assistance, documentary verification of his or her~~ Incurred medical expenses ~~for which he or she remains currently liable. The county department will promptly determine the date on which the applicant became eligible for medical assistance and issue the appropriate eligibility documents for the remainder of that month.~~ **will credit the spend-down obligation in the following order and manner:**

(1) Incurred medical expenses submitted to the county office as described in subsections (e) and (f).

(2) Medicaid copayments beginning with the month the service requiring the copayment was incurred and continuing in subsequent months until the full copayment has credited the spend-down obligation.

(3) Medicaid claims filed by Medicaid providers in accordance with 405 IAC 1-1-3.1.

~~(d) If a medical expense that is subject to payment by a third party is submitted to the county department in a month later than the month in which the service is provided, no portion of the expense will be allowed in the spend-down eligibility determination until the third party has adjudicated and paid its obligated amount. The portion of the expense that is paid by the third party shall not be allowed in the spend-down eligibility determination. The portion of the expense for which the recipient remains liable after the third party has paid its obligated amount shall be allowed toward spend-down eligibility.~~

~~(e) An expense that is subject to payment by a third party shall be allowed in the spend-down eligibility determination if it is submitted to the county department in the month in which the service is provided, with the following limitations:~~

~~(1) Expenses for Medicare covered services are not allowed for recipients who are eligible as qualified Medicare beneficiaries under 42 U.S.C.1396a(a)(10)(E)(i).~~

~~(2) The allowed amount of an incurred expense for which the provider of service accepts Medicare assignment shall not exceed the Medicare approved amount. However, if the Medicare approved amount is not verifiable, the provider's usual and customary charge for the service will be allowed.~~

~~(3) If a liable third party has paid a portion of the expense at the time the expense is submitted, the portion of the expense that has been paid by the third party shall not be allowed in the spend-down eligibility determination.~~

~~(f) If the applicant's anticipated medical expenses do not exceed his or her excess income, his or her application will be denied. Such an applicant may reapply at any time.~~

(d) Claims submitted by Medicaid participating providers for services rendered to enrolled Medicaid recipients will credit the recipient's spend-down obligation in the month of the service and in the order of submission. A service that is not payable by the Medicaid program under 405 IAC 5 will not credit the spend-down obligation, except for a service that exceeds a benefit limit that cannot be overridden with prior authorization. Any amount paid or payable by a third party will not credit the spend-down obligation. The amount owed by the recipient after the third party has adjudicated the claim will credit the spend-down.

(e) Incurred medical expenses for services for which claims cannot be submitted directly by Medicaid providers must be submitted to the county office for the purpose of crediting the spend-down obligation. The following are examples of expenses that must be submitted to the county office:

(1) Expenses incurred before the individual was eligible for Medicaid.

(2) Expenses incurred by the recipient's spouse or other person whose income is considered in determining the recipient's eligibility.

(3) Expenses incurred for services provided by a non-Medicaid provider.

(f) For expenses submitted to the county office under subsection (e), the spend-down obligation will be credited for the month following the month of submission to the county office or, at the request of the recipient, in the month of submission. If the recipient was not enrolled under the spend-down provision for either of those months, expenses shall credit spend-down in the month of service. The incurred medical expense shall credit spend-down in subsequent months until the entire balance of the expense has been applied. The following incurred medical expenses will be credited toward spend-down under this subsection:

(1) Medical care provided by physicians, psychiatrists, and other licensed medical practitioners.

(2) Laboratory testing, x-rays, and other diagnostic procedures.

(3) Dental services provided by a licensed dentist, including dentures.

(4) Hospitalization and outpatient treatment.

(5) Nursing facility services and rehabilitative services.

(6) Respiratory, occupational, speech, physical, and audiology therapy services.

(7) Prescription drugs and over-the-counter medication, including insulin, when prescribed by a licensed medical practitioner who is authorized to prescribe legend drugs under Indiana law.
(8) The cost of postage incurred by the individual for mail order prescriptions.
(9) Medical supplies, if ordered in writing by a licensed physician or dentist for treatment of a medical condition, except those items identified as noncovered medical supplies under 405 IAC 5.
(10) Durable medical equipment if ordered in writing by a licensed physician except those items listed as noncovered equipment under 405 IAC 5-19-18.
(11) Home health care provided by a licensed home health agency.
(12) Nursing services provided by a registered nurse or licensed practical nurse.
(13) Audiology services and hearing aids if ordered in writing by a physician.
(14) Prosthetic devices other than those dispensed for purely cosmetic purposes, if ordered in writing by a physician, optometrist, or dentist.
(15) Vision care services including eyeglasses, examinations, and diagnostic procedures.
(16) Cost of transportation to obtain medical services that are allowable medical expenses. If transportation is provided by a business transportation carrier, the verified carrier's charge will be allowed. If the individual or a friend or family member drives the individual to medical services, mileage cost is allowed at the rate per mile established by the Indiana legislature for state employees.
(17) The premium of the recipient's spouse who receives Medicaid for Employees with Disabilities (MED Works).
(18) Medicaid copayments and any copayments required by other health coverage programs or health insurance carriers.
(19) Premiums for health and hospitalization insurance policies that limit benefits to the reimbursement of medical expenses.
(20) Medicare premiums.

(g) If a recipient does not ~~submit medical expenses to the county department to~~ meet his or her spend-down **obligation** for four (4) consecutive months, medical assistance shall be discontinued. *(Office of the Secretary of Family and Social Services; 405 IAC 2-3-10; filed Mar 1, 1984, 2:31 p.m.: 7 IR 1021, eff Apr 1, 1984; filed Feb 16, 1993, 5:00 p.m.: 16 IR 1785; filed Jul 25, 1995, 5:00 p.m.: 18 IR 3382; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; filed Sep 7, 2004, 5:00 p.m.: 28 IR 178) NOTE: Transferred from the Division of Family and Children (470 IAC 9.1-3-12) to the Office of the Secretary of Family and Social Services (405 IAC 2-3-10) by P.L.9-1991, SECTION 131, effective January 1, 1992.*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on April 26, 2005 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Office of the Secretary of Family and Social Services will hold a public hearing on proposed rule amendments concerning Medicaid spend-down eligibility determination. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W451 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

E. Mitchell Roob Jr.
Secretary
Office of the Secretary of Family and Social Services

TITLE 511 INDIANA STATE BOARD OF EDUCATION

Proposed Rule
LSA Document #04-317

DIGEST

Amends 511 IAC 6.1-5.1 to add, delete, and rename approved high school courses in the multidisciplinary, business technology education and technology education, and vocational-technical program areas. Effective 30 days after filing with the secretary of state.

511 IAC 6.1-5.1-1 **511 IAC 6.1-5.1-10.1**
511 IAC 6.1-5.1-9 **511 IAC 6.1-5.1-11**

SECTION 1. 511 IAC 6.1-5.1-1 IS AMENDED TO READ AS FOLLOWS:

511 IAC 6.1-5.1-1 Multidisciplinary courses
Authority: IC 20-1-1-6; IC 20-1-1.2-18
Affected: IC 20-10.1

Sec. 1. (a) The following multidisciplinary courses may be offered:
(1) Basic skills development.
(2) Cadet teaching experience.
~~(3) Introduction to computer applications.~~
~~(4)~~ **(3)** Environmental studies (L).
~~(5)~~ **(4)** Humanities.
~~(6)~~ **(5)** Junior reserve officer training corps.
~~(7)~~ **(6)** Musical theatre (L).
~~(8)~~ **(7)** Peer tutoring.
~~(9)~~ **(8)** Career information and exploration.
(9) Career exploration internship.

(10) Driver education (L).
(11) Motorcycle safety education (L).

(b) ~~After July 1, 2001,~~ Schools involved in Project Lead the Way, a pre-engineering program, may offer the following:
(1) Engineering design and development (L).
(2) Digital electronics (L).

(c) For establishing majors and minors, multidisciplinary courses shall be applied to an area of study to which a significant portion of the course content is closely related.

(d) In order to use the courses listed in this section toward the thirty-eight (38) credit requirements, any course that is suffixed with a capital "L" in parentheses is to be presented as a laboratory course, as defined at ~~511 IAC 6.1-1-2(l).~~ **511 IAC 6.1-1-2(m).**

(e) Cadet teaching experience for high school pupils is limited to kindergarten through grade 9. Credit is granted on the same basis as any other course. *(Indiana State Board of Education; 511 IAC 6.1-5.1-1; filed Nov 8, 1990, 3:05 p.m.: 14 IR 654; filed Nov 4, 1999, 10:08 a.m.: 23 IR 566, eff Jul 1, 2000; filed Dec 2, 2001, 12:22 p.m.: 25 IR 1141)*

SECTION 2. 511 IAC 6.1-5.1-9, AS AMENDED AT 28 IR 964, SECTION 8, IS AMENDED TO READ AS FOLLOWS:

511 IAC 6.1-5.1-9 Business, marketing, and information technology; technology education

Authority: IC 20-1-1-6; IC 20-1-1.2-18
Affected: IC 20-10.1

Sec. 9. The following courses may be offered in the business, **marketing, and information** technology ~~education~~ and technology education areas of study:
(1) The following business, **marketing, and information** technology ~~education~~ courses:
~~(A) The following business technology education and economics courses:~~
~~(i)~~ **(A)** Accounting I.
~~(ii)~~ **(B)** Accounting II.
(C) Advanced business, college credit.
(D) Business, college prep.
(E) Business and personal law.
~~(iii)~~ **(F)** Business foundations.
~~(iv) Computer applications.~~
~~(v) Computer applications, advanced.~~
~~(vi) Computer keyboarding/document formatting.~~
~~(vii) Computer programming.~~
~~(viii) Digital communication tools.~~
~~(ix) Marketing.~~
~~(x)~~ **(G)** Business mathematics. ~~personal finance.~~
~~(xi) Shorthand/notehand.~~
~~(B) The following advanced business technology education and economics courses:~~
~~(i) Business, college level.~~
~~(ii) Business and personal law.~~
~~(iii)~~ **(H)** Business management.
(I) Computer applications.
~~(iv)~~ **(J)** Computer science A, advanced placement.
~~(v)~~ **(K)** Computer science AB, advanced placement.
(L) Computer applications, advanced.
(M) Computer programming.
~~(vi)~~ **(N)** Desktop publishing.
(O) Digital communication tools.
~~(vii)~~ **(P)** Entrepreneurship.
~~(viii) Financial services and planning.~~
~~(ix)~~ **(Q)** Global economics.
~~(x)~~ **(R)** International business.
(S) Marketing.
(T) Personal finance.
~~(xi)~~ **(U)** Technical/business communication.
(V) Web design.
(2) The following technology education courses:
~~(A) The following technology education courses:~~
~~(i)~~ **(A)** Communication systems (one (1) semester).
~~(ii)~~ **(B)** Construction systems (one (1) semester).
~~(iii)~~ **(C)** Manufacturing systems (one (1) semester).
~~(iv)~~ **(D)** Transportation systems (one (1) semester).
~~(v)~~ **(E)** Communication processes (one (1) or two (2) semesters).
~~(vi)~~ **(F)** Construction processes (one (1) or two (2) semesters).
~~(vii)~~ **(G)** Manufacturing processes (one (1) or two (2) semesters).
~~(viii)~~ **(H)** Transportation processes (one (1) or two (2) semesters).
~~(ix)~~ **(I)** Design processes (one (1) or two (2) semesters).
~~(x)~~ **(J)** Technology enterprises (one (1) semester).
~~(xi)~~ **(K)** Technology and society (one (1) semester).
~~(xii)~~ **(L)** Technology systems (one (1) or two (2) semesters).
~~(xiii)~~ **(M)** Fundamentals of engineering (one (1) semester).
~~(xiv)~~ **(N)** Computers in design and production systems (one (1) or two (2) semesters).
~~(B) After July 1, 2001,~~ **(3)** Schools involved in Project Lead the Way may substitute the following pre-engineering courses **for certain courses in subdivision (2):**
~~(i)~~ **(A)** Introduction to engineering design (two (2) semesters) ~~in lieu~~ **instead** of design processes.
~~(ii)~~ **(B)** Principles of engineering (two (2) semesters) ~~in lieu~~ **instead** of fundamentals of engineering.
~~(iii)~~ **(C)** Computer integrated manufacturing (two (2) semesters) ~~in lieu~~ **instead** of computers in design and production systems.
~~(C)~~ **(4)** Schools involved in Project Lead the Way may also offer the following pre-engineering courses:
~~(i)~~ **(A)** Aerospace technology.
~~(ii)~~ **(B)** Biotechnology.

~~(iii)~~ **(C)** Civil engineering and architecture.

(Indiana State Board of Education; 511 IAC 6.1-5.1-9; filed Nov 8, 1990, 3:05 p.m.: 14 IR 658; filed Jul 12, 1993, 10:00 a.m.: 16 IR 2853, eff Jul 1, 1993 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #92-143 was filed Jul 12, 1993.]; filed May 24, 1995, 10:00 a.m.: 18 IR 2409; filed May 28, 1998, 4:57 p.m.: 21 IR 3826; errata filed Aug 17, 1998, 10:21 a.m.: 22 IR 127; filed Dec 2, 2001, 12:22 p.m.: 25 IR 1141; filed Jun 30, 2004, 1:45 p.m.: 27 IR 3500; filed Nov 4, 2004, 9:06 a.m.: 28 IR 964)

SECTION 3. 511 IAC 6.1-5.1-10.1, AS AMENDED AT 28 IR 957, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

511 IAC 6.1-5.1-10.1 Career-technical courses
Authority: IC 20-1-1-6; IC 20-1-1.2-18
Affected: IC 20-10.1

Sec. 10.1. (a) The following courses may be offered in the ~~vocational-technical~~ **career-technical education (CTE)** area of study:

(1) The following agricultural science and business courses:
(A) Fundamentals of agricultural science and business.
(B) The following agricultural business courses:
(i) Agribusiness management.
(ii) Agricultural mechanization.
(iii) Farm management.
(iv) Landscape management.
(v) Natural resource management.
(vi) Supervised agricultural experience.
(C) The following agricultural science courses:
(i) Animal science.
(ii) Food science.
(iii) Horticultural science.
(iv) Plant and soil science.
(v) Advanced life science: animals (L).
(vi) Advanced life science: plants and soils (L).
(vii) Advanced life science: foods (L).

(2) The following **CTE** business ~~services~~ and **information** technology ~~education~~ courses:
(A) Career planning and success skills.
(B) ~~The following~~ Business ~~services and technology education laboratory courses:~~ **cooperative experiences.**
~~(i)~~ **(C)** Business technology lab I.
~~(ii)~~ **(D)** Business technology lab II.
~~(iii)~~ **(E)** Business management and finance.
~~(iv) Computer operations and/or programming.~~
(F) Career planning internship.
~~(v) Computerized accounting services.~~
(G) Finance academy.
~~(vi)~~ **(H)** Information technology network systems.
~~(vii)~~ **(I)** Information technology information support and services.
~~(viii)~~ **(J)** Information technology programming and software development.
~~(ix)~~ **(K)** Information technology interactive media.
~~(C) Business cooperative experiences (cooperative/related).~~

(3) The following health **sciences** careers ~~education~~ courses:
(A) The following health **sciences** careers ~~education~~ core courses:
(i) Introduction to health care systems.
(ii) Integrated health sciences I.
(iii) Integrated health sciences II.
(iv) Introduction to dental health careers.
(B) The following health **sciences** careers ~~education~~ skill courses:
(i) Health careers I.
(ii) Health careers II.
(iii) Health careers III.
(iv) Introduction to medical assisting.
(v) Introduction to health care specialties.
(vi) Introduction to community health services.
(vii) Introduction to pharmacy.
(viii) Introduction to physical therapy.
(ix) Introduction to health care technology.
(x) Introduction to emergency medical services.
(xi) Dental assisting I, II, III, and IV.
~~(C) The following health occupations, other courses:~~
~~(i)~~ **(xii)** Medical terminology.
~~(ii)~~ **(xiii)** Anatomy and physiology.
~~(D)~~ **(C)** Health career practicum (extended lab/related).

(4) The following ~~one (1) semester~~ family and consumer sciences courses:
(A) Orientation to life and careers.
(B) Nutrition and wellness.
(C) Child development and parenting.
(D) Interpersonal relationships.
(E) Adult roles and responsibilities.
(F) Consumer economics.
(G) Chemistry of foods.
(H) Advanced foods and nutrition.
(I) Advanced child development.
(J) Human development and family wellness.
(K) Housing and ~~interiors.~~ **interior design foundations.**
(L) ~~Textiles and~~ Fashion ~~technologies.~~ **and textiles foundations.**
(M) Family and consumer sciences issues and applications.
(N) Advanced life sciences: foods.
(O) Personal resource management and family finance.
(P) Culinary arts foundations.

(5) The following ~~one (1) year~~ occupational family and consumer sciences courses:
(A) The following **education and** early childhood ~~education and services~~ **careers** courses:
(i) **Education and** early childhood ~~education and services I.~~ **careers I.**
(ii) **Education and** early childhood ~~education and~~

~~services II.~~ **careers II.**

(B) The following ~~apparel and~~ textile ~~occupations~~ **and fashion careers** courses:

(i) ~~Apparel~~ **Fashion** and ~~textile occupations I.~~ **textiles careers I.**

(ii) ~~Apparel~~ **Fashion** and ~~textile occupations II.~~ **textiles careers II.**

(iii) Textile and fashion careers III.

(C) The following ~~food industry occupations~~ **culinary arts** courses:

~~(i) Food industry occupations I.~~

~~(ii) Food industry occupations II.~~

(i) Culinary arts careers I.

(ii) Culinary arts careers II.

(iii) Culinary arts careers III.

(D) The following housing ~~occupations~~ **and interior design careers** courses:

(i) Housing ~~occupations I.~~ **and interior design careers I.**

(ii) Housing ~~occupations II.~~ **and interior design careers II.**

(E) The following residential and ~~institutional~~ **commercial** facilities ~~and equipment~~ **management** courses:

(i) Residential and ~~institutional~~ **commercial** facilities ~~and equipment~~ **management** I.

(ii) Residential and ~~institutional~~ **commercial** facilities ~~and equipment~~ **management** II.

(F) The following human **and family** services ~~occupations~~ **careers** courses:

(i) Human **and family** services **careers** I.

(ii) Human **and family** services **careers** II.

(G) ~~The following cooperative occupational~~ Family and consumer sciences ~~courses:~~ **careers (FACS) field experience (co-op).**

~~(i) Cooperative occupational family and consumer sciences I.~~

~~(ii) Cooperative occupational family and consumer sciences II.~~

(H) The following adult and elder care careers courses:

(i) Adult and elder care careers I.

(ii) Adult and elder care careers II.

(I) The following consumer and financial services careers courses:

(i) Consumer and financial services careers I.

(ii) Consumer and financial services careers II.

(J) The following food and nutrition science careers courses:

(i) Food and nutrition science careers I.

(ii) Food and nutrition science careers II.

(K) The following hotel academy courses:

(i) Hotel academy I.

(ii) Hotel academy II.

(6) The following trade and industrial education courses:

(A) Aerospace engineering technology.

(B) Aircraft operations.

(C) Appliance technology.

(D) Automotive collision repair technology.

(E) Automotive services technology.

(F) Aviation maintenance technology.

(G) Aviation support operations.

(H) Biotechnical engineering.

(I) Building facilities and management.

(J) Building trades technology.

(K) Cabinet and furniture manufacturing.

(L) Civil-architectural engineering.

(M) Commercial art and graphic design.

(N) Commercial photography.

(O) 3D computer animation and visualization.

(P) Computer integrated manufacturing.

(Q) Computer network technology.

(R) Computer repair and maintenance technology.

(S) Cosmetology.

(T) Diesel service technology.

(U) Digital electronics technology.

(V) Drafting and computer aided design (CAD).

(W) Electronics technology.

(X) Engineering.

(Y) Fire science.

(Z) Graphic imaging technology.

(AA) Heating, ventilation, air conditioning, and refrigeration (HVACR).

(BB) Industrial repair and maintenance.

(CC) Law enforcement.

(DD) Plastics technology.

(EE) Precision machine technology.

(FF) Recreational and portable power equipment.

(GG) Tractor/trailer operation.

(HH) Welding technology.

(II) ~~The following~~ **Trade and** industrial cooperative ~~training courses:~~ **education.**

~~(i) Related instruction.~~

~~(ii) On-the-job training.~~

(7) ~~The following~~ Interdisciplinary cooperative education. ~~courses:~~

~~(A) Related instruction.~~

~~(B) On-the-job training.~~

(8) The following **CTE** marketing ~~education~~ **management and entrepreneurship** courses:

~~(A) The following marketing courses:~~

~~(i) Marketing foundations.~~

~~(ii) Marketing, advanced (related).~~

~~(B) The following specialized marketing education courses:~~

~~(i)~~ **(A)** Entrepreneurship.

~~(ii)~~ **(B)** Fashion merchandising.

~~(iii) Financial services marketing.~~

~~(iv)~~ **(C)** Hospitality, travel, and tourism.

(D) Marketing advanced.

(E) Marketing field experience (co-op).

(F) Marketing foundations.

~~(v)~~ **(G)** Marketing **management** seminar.

~~(vi)~~ **(H)** Sports, recreation, and entertainment marketing.

~~(vii)~~ **(I)** Radio-TV broadcasting/telecommunications.
~~(C) Marketing field experiences (cooperative).~~

(b) All of the courses listed in subsection (a) must also meet the requirements of 511 IAC 8.

(c) Schools may qualify their family and consumer sciences programs for ~~vocational~~ **career-technical** status by meeting the following additional requirements:

(1) A minimum offering for ~~vocational~~ **career-technical** family and consumer sciences consists of teaching orientation to life and careers or interpersonal relationships every year and teaching at least four (4) additional courses from the following:
(A) Nutrition and wellness.
(B) Interpersonal relationships.
(C) Child development and parenting or human development and family wellness.
(D) Adult roles and responsibilities.
(E) Consumer economics.
(F) Orientation to life and careers.
This minimum offering must be taught within any consecutive two (2) year time period.

(2) A major in ~~vocational~~ **career-technical** family and consumer sciences education consists of at least six (6) credits, including three (3) of the following:
(A) Orientation to life and careers.
(B) Adult roles and responsibilities.
(C) Nutrition and wellness.
(D) Child development and parenting or human development and family wellness.
(E) Interpersonal relationships.

(3) A minor in ~~vocational~~ **career-technical** family and consumer sciences consists of at least four (4) credits from the following:
(A) Child development and parenting or human development and family wellness.
(B) Nutrition and wellness.
(C) Orientation to life and careers.
(D) Adult roles and responsibilities.
(E) Consumer economics.
(F) Interpersonal relationships.

(Indiana State Board of Education; 511 IAC 6.1-5.1-10.1; filed Jul 12, 1993, 10:00 a.m.: 16 IR 2854, eff Jul 1, 1993 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #92-143 was filed Jul 12, 1993.]; filed May 28, 1998, 4:57 p.m.: 21 IR 3827; errata filed Aug 17, 1998, 10:21 a.m.: 22 IR 127; filed Dec 2, 2001, 12:22 p.m.: 25 IR 1143; filed Jun 30, 2004, 1:45 p.m.: 27 IR 3501; filed Nov 4, 2004, 9:00 a.m.: 28 IR 957)

SECTION 4. 511 IAC 6.1-5.1-11 IS AMENDED TO READ AS FOLLOWS:

511 IAC 6.1-5.1-11 Other acceptable courses
Authority: IC 20-1-1-6; IC 20-1-1.2-18
Affected: IC 20-1-1-6; IC 20-10.1

Sec. 11. In addition to the courses in ~~sections 1 through 10 of~~ this rule, students may also use the following courses to meet the ~~thirty-eight (38)~~ **number of** credits required for graduation:

(1) Any other ~~vocational-technical~~ **career-technical** program/course developed, according to the provisions of 511 IAC 8-1, to meet the employment demands of new and emerging occupations and the career needs of students.

(2) Any advanced placement course for which the College Entrance Examination Board has developed a course description and examination.

(3) Any postsecondary career-technical education course, with content that goes beyond currently approved high school curriculum, taken for college credit through the provisions of the postsecondary enrollment rule, 511 IAC 6-10.

(Indiana State Board of Education; 511 IAC 6.1-5.1-11; filed Nov 8, 1990, 3:05 p.m.: 14 IR 663; readopted filed Oct 12, 2001, 12:55 p.m.: 25 IR 937)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on May 5, 2005 at 9:00 a.m., at the Department of Education, 151 West Ohio Street, James Whitcomb Riley Conference Room, Indianapolis, Indiana the Indiana State Board of Education will hold a public hearing on proposed amendments to add, delete, and rename approved high school courses in the multidisciplinary, business technology education and technology education, and vocational-technical program areas. Copies of these rules are now on file at 229 State House and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Suellen Reed
Superintendent of Public Instruction
Indiana State Board of Education

Proposed Readopted Rules

TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule
LSA Document #05-1

DIGEST

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the secretary of state.

312 IAC 11	**312 IAC 13**
312 IAC 12	**312 IAC 23**

SECTION 1. UNDER IC 4-22-2.5-4, THE FOLLOWING ARE READOPTED:

312 IAC 11 LAKE CONSTRUCTION ACTIVITIES
312 IAC 12 WATER WELL DRILLING AND GROUND WATER
312 IAC 13 WATER WELL DRILLERS
312 IAC 23 STATE HISTORIC REHABILITATION TAX CREDIT

Notice of Public Hearing

Under IC 4-22-2-24 and IC 4-22-2.5-4, notice is hereby given that on May 16, 2005 at 9:30 a.m., at the Indiana Government Center-South, 402 West Washington Street, Room W272, Indianapolis,, Indiana the Natural Resources Commission will hold a public hearing to readopt rules.

Requests for any part of this readoption to be separate from this action must be made in writing within 30 days of this publication. Send written comments to:

Natural Resources Commission
Indiana Government Center-South
402 West Washington Street, Room W272
Indianapolis, Indiana 46204-2739.

Copies of these rules are now on file at the Natural Resources Commission, Division of Hearings, Indiana Government Center-South, 402 West Washington Street, Room W272 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Michael J. Kiley
Chairman
Natural Resources Commission

EXTENSION OF TIME REQUEST

October 13, 2004

The Honorable Todd Rokita
Secretary of State
Indianapolis, IN 46204

RE: LSA Document #03-245(F)

Dear Secretary Rokita:

Under Indiana Code 4-22-2-34(b), in order to further consult with affected groups, I exercise my right to extend the time to approve or disapprove this rule by 15 days, to and including November 3, 2004. I received this rule from the Attorney General on October 4, 2004.

Sincerely,

Joseph E. Kernan

EXTENSION OF TIME REQUEST

January 26, 2005

The Honorable Todd Rokita
Secretary of State of Indiana
Room 201, Statehouse
Indianapolis, IN 46204

Dear Todd:

Pursuant to Indiana Code 4-22-2-34(b), this statement is being filed with your office to inform you that I intend to take an additional fifteen (15) days to approve or disapprove the following rules, which were submitted to me on January 12, 2005:

Air Pollution Control Board:
LSA #03-264(F) Reinforced Plastic Composites MACT
LSA #03-282(F) Dearborn SO2
LSA #04-43(F) PM Rules--Reilly Industries
LSA #03-283(F) Asbestos Licensing

Indiana Solid Waste Management Board:
LSA #03-286(F) Amendments to Rules Concerning Asbestos Certification for Solid Waste Facility Operators

We would be grateful if you would file and date stamp the attached copy of this letter and return it to my office via our courier. Please call Steve Schultz, General Counsel, at 233-5764 with any questions concerning this matter.

Sincerely,

Mitchell E. Daniels, Jr.
Governor

cc: Gordon White, Deputy Attorney General

EXTENSION OF TIME REQUEST

February 3, 2005

The Honorable Todd Rokita
Secretary of State of Indiana
Room 201, Statehouse
Indianapolis, IN 46204

Dear Todd:

Pursuant to Indiana Code 4-22-2-34(b), this statement is being filed with your office to inform you that I intend to take an additional fifteen (15) days to approve or disapprove the following rules, which were submitted to me on January 19, 2005, and January 21, 2005, respectively:

Air Pollution Control Board:
LSA #04-180(F) Credible Evidence (received by Governor on January 19, 2005)
LSA #04-107(F) Group 5 NESHAPs (received by Governor on January 21, 2005)

Indiana Water Pollution Control Board:
LSA #03-129(F) Amendments to Water Quality Standards under Title 327 (received by Governor on January 21, 2005)

We would be grateful if you would file and date stamp the attached copy of this letter and return it to my office via our courier. Please call Steve Schultz, General Counsel, at 233-5764 with any questions concerning this matter.

Sincerely,

Mitchell E. Daniels, Jr.
Governor

cc: Gordon White, Deputy Attorney General

EXTENSION OF TIME REQUEST

February 8, 2005

The Honorable Todd Rokita
Secretary of State of Indiana
Room 201, Statehouse
Indianapolis, IN 46204

Dear Todd:

Pursuant to Indiana Code 4-22-2-34(b), this statement is being filed with your office to inform you that I intend to take an additional fifteen (15) days to approve or disapprove the following rules, which were submitted to me on January 25, 2005:

Indiana Division of Family and Children:
LSA #04-77(F) Child Day Care Rules (received by Governor on January 25, 2005)

We would be grateful if you would file and date stamp the attached copy of this letter and return it to my office via our courier. Please call Steve Schultz, General Counsel, at 233-5764 with any questions concerning this matter.

Sincerely,

Mitchell E. Daniels, Jr.
Governor

cc: Gordon White, Deputy Attorney General

TITLE 327 WATER POLLUTION CONTROL BOARD

FIRST NOTICE OF COMMENT PERIOD
#05-51(WPCB)

DEVELOPMENT OF A NEW RULE CONCERNING OPERATION AND MAINTENANCE OF SMALL WASTEWATER TREATMENT FACILITIES

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on the development of a new rule to require an increase in the time that a certified operator is involved at each small wastewater treatment facility and to consider financial assurance of these facilities, such as is reflected in upkeep and repair.

CITATIONS AFFECTED: 327 IAC 3-7.

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 13-18-4-3.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

This rulemaking is the outcome of a petition by the Save Our Knobs (SOK) and Greenville Concerned Citizens (GCC) organizations who proposed amendment of 327 IAC 5-10 to require ten to one (10:1) dilution for streams receiving discharges from wastewater treatment plants. Public hearings held on this petition resulted in a recommendation by the Water Pollution Control Board (WPCB) hearing officer that, although inadequate justification exists to implement the 10:1 dilution requirement of the petition, IDEM should initiate a rulemaking concerning operation, maintenance, and management for small wastewater treatment plants.

Alternatives To Be Considered Within the Rulemaking

To require the 10:1 dilution proposed by the petitioners would make illegal the discharges from many existing wastewater treatment plants, both large and small. The problem of small wastewater treatment plants in Floyd County and elsewhere in Indiana discharging inadequately treated sewage into streams needs correction for protection of water quality and human health. The possible alternatives could include more enforcement actions and a requirement that a certified operator must be present at each treatment plant for more hours every day than has been the practice to date with small treatment facilities.

Specific recommendations made to the WPCB by the hearing officer include the following:

1. Incorporation of technical standards into 327 IAC 3 for wastewater treatment facility design and construction that are comparable to the standards for sanitary sewer design already in the incorporated by reference or detailed within the rules.

   Potential Fiscal Impact of Alternative 1. This alternative will have a fiscal impact on new and existing small wastewater treatment plants as compliance with new technical standards will necessitate additional budgetary outlays by the facility. This cost may be offset by improved plant operation.

2. Incorporation of a financial assurance tool into the construction permit review process and National Pollutant Discharge Elimination System (NPDES) permit renewal process so that adequate funding can be assured for the long term viability of semipublic facilities.

   Potential Fiscal Impact of Alternative 2. This alternative will have a fiscal impact on new and existing small wastewater treatment plants as compliance with new fiscal assurance standards will necessitate additional budgetary outlays by the facility. This cost may be offset by factors such as lower cost of borrowing for the plant.

3. Incorporation of a certification by the design engineer and facility owner within six (6) months to one (1) year after construction is completed that the facility was constructed as designed and is being operated as intended.

   Potential Fiscal Impact of Alternative 3. This alternative may have a fiscal impact on new and existing small wastewater treatment plants as compliance with the new certification requirement may necessitate additional budgetary outlays by the facility. This cost could be offset by improved plant operation.

4. Incorporation of a certification by the design engineer and facility owner every five (5) years at NPDES permit renewal application that states the facility is still being operated as intended.

   Potential Fiscal Impact of Alternative 4. This alternative may have a fiscal impact on new and existing small wastewater treatment plants as compliance with the new certification requirement may necessitate additional budgetary outlays by the facility. This cost could be offset by improved plant operation.

5. Incorporation of an "annual compliance maintenance report" that details maintenance that was completed in the previous year and maintenance that is planned in the coming year.

   Potential Fiscal Impact of Alternative 5. This alternative will have a fiscal impact on new and existing small wastewater treatment plants as compliance with the new annual reporting requirement will necessitate additional budgetary outlays by the facility. This cost may be offset by improved plant operation.

6. Clarifying the setback requirements for a wastewater treatment facility so that the ability of an applicant to modify the requirements is limited.

   Potential Fiscal Impact of Alternative 6. This alternative may have a fiscal impact on new and existing small wastewater treatment plants as compliance with new setback requirements may limit siting of new plants or expansion of existing plants.

7. Limitations on the number of facilities where a certified operator can be designated as "in responsible charge".

   Potential Fiscal Impact of Alternative 7. This alternative will have a fiscal impact on new and existing small wastewater treatment plants as compliance with limitations on operator time requirements will necessitate additional budgetary outlays by the facility. This cost may be offset by improved plant operation.

8. Requirement that documentation verifies that the small wastewater treatment plants are observed daily for a minimum amount of time (for example, two hours) by a qualified individual.

   Potential Fiscal Impact of Alternative 8. This alternative will have a fiscal impact on new and existing small wastewater treatment plants as compliance with new documentation standards will necessitate additional budgetary outlays by the facility. This cost may be offset by improved plant operation.

9. A requirement that requires the "operator in responsible charge" to be included in enforcement actions where it is clear that the operator is responsible for noncompliance.

   Potential Fiscal Impact of Alternative 9. Estimates of the fiscal impact of new or amended rules generally are based solely on the impact of compliance with the rule. Costs associated with noncompliance, such as enforcement costs, are not usually considered by IDEM in making fiscal impact estimates.

10. A requirement for additional continuing education credits for certified operators beyond those required for certification renewal as an element in enforcement actions.

   Potential Fiscal Impact of Alternative 10. Estimates of the fiscal

impact of new or amended rules generally are based solely on the impact of compliance with the rule. Costs associated with noncompliance, such as enforcement costs, are not usually considered by IDEM in making fiscal impact estimates.

Applicable Federal Law

There is no federal law establishing lengths of time certified operators must spend at a treatment facility. Through the National Pollutant Discharge Elimination System (NPDES) permit required for each point source discharge, every wastewater treatment facility is required to maintain compliance with the permit limits contained in its NPDES permit. Many small wastewater treatment facilities with insufficient certified operator coverage have poor operation and maintenance that results in noncompliance with permit limits.

Potential Fiscal Impact

Most small wastewater treatment facilities are located in small communities or owned by semipublic entities that have limited budgets. Traditionally, the pay for the operator has been low thereby necessitating holding position as operator at several facilities in order to receive sufficient income. By increasing the time requirement for an operator at a wastewater treatment facility, it is likely the employer community, town, or semipublic will not have the budgetary means to pay for more hours on the job by the operator, and, by working for fewer employers, the operator may not be able to make a sufficient salary. But without remedying the problem of inadequately treated sewage being discharged into waters of the state, the public has to shoulder the costs associated with additional treatment of drinking water sources or the potential loss of potable water or recreational use of waters.

Public Participation and Workgroup Information

An external workgroup will be established for this rulemaking. The workgroup will be made up of a cross section of stakeholders, interested parties, and IDEM staff. When the workgroup is created, information on workgroup meetings and scheduling and agendas of future meetings will be available on the IDEM website at: http://www.IN.gov/idem/water/planbr/rules/index.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 a rule concerning operation and maintenance of small wastewater treatment plants.

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

(3) Specific cost and effectiveness analyses for operation and maintenance of small wastewater treatment plants.

Mailed comments should be addressed to:
#05-51(WPCB) [O and M]
MaryAnn Stevens, Senior Rulewriter
Rules Section
Office of Water Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204.

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 N1255, 100 North Senate Avenue, 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 that we are not able to take electronic (e-mail) submission of formal comments at this time.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by April 30, 2005.

Additional information regarding this rulemaking action may be obtained from MaryAnn Stevens, Rules Section, Office of Water Quality, (317) 232-8635 or (800) 451-6027 (in Indiana) or technical information concerning small wastewater treatment plants may be obtained from Debbie Dubenetzky, Compliance Branch, Office of Water Quality, (317) 233-5963 or (800) 451-6027 (in Indiana).

Thomas W. Easterly
Commissioner
Indiana Department of Environmental Management

TITLE 327 WATER POLLUTION CONTROL BOARD

SECOND NOTICE OF COMMENT PERIOD
#03-44(WPCB)

DEVELOPMENT OF NEW RULES AND AMENDMENTS TO RULES CONCERNING ANTIDEGRADATION STANDARDS AND IMPLEMENTATION PROCEDURES

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for new rules and amendments to rules 327 IAC 2-1, 327 IAC 2-1.5, and 327 IAC 5-2 concerning antidegradation standards and implementation procedures. By this notice, IDEM is soliciting public comment on the draft rule language. IDEM seeks comment on the affected citations listed and any other

provisions of Title 327 that may be affected by this rulemaking.

HISTORY

First Notice of Comment Period: March 1, 2003, Indiana Register (26 IR 2136).

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

AUTHORITY: IC 13-18-2-1; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-11; IC 13-18-4.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

This rulemaking will review and consider additions and modifications to Title 327 concerning antidegradation standards and implementation procedures. Federal rules require states to develop, adopt, and retain a statewide antidegradation policy regarding water quality standards and establish procedures for its implementation. The antidegradation policy and implementation procedures serve as the mechanism states use to assure that water quality improvements obtained through the implementation of permits and best management practices are maintained and protected. The subject matter of this rulemaking has been under consideration since the initiation of rulemaking document #97-1(WPCB) in February 1997. However, that 1997 rulemaking was withdrawn on May 1, 2001, 24 IR 2471, and its subject matters divided into a number of individual new rulemakings, including this rulemaking. This rulemaking was First Noticed on March 1, 2003, 26 IR 2136. These rulemakings are required to satisfy the federal requirement to conduct triennial review of the state's water quality standards. The purpose of this rulemaking is to meet, in part, that requirement found at Section 303(c) of the Clean Water Act (33 U.S.C. 1313(c)), which specifies that a review of state water quality standards must be done at least every three (3) years.

Applicable Federal Law

The federal rules require states to have, at a minimum, three tiers of antidegradation. Tier 1 (40 CFR 131.12(a)(1)) protects existing uses by providing the absolute floor of water quality in all waters of the United States. Tier 2 (40 CFR 131.12(a)(2)) applies to waters whose quality exceeds that necessary to protect the Section 101(a)(2) goals of the Clean Water Act (criteria, 33 U.S.C. 1251(a)(2)). In this case, water quality may not be lowered to less than the level necessary to fully protect the "fishable/swimmable" uses and other existing uses. Water quality in Tier 2 waters may only be lowered after a determination is made that allowing lowered water quality is necessary and will accommodate important economic or social development in the area in which the waters are located. Any such lowering must still assure water quality adequate to protect existing uses fully. Tier 3 (40 CFR 131.12(a)(3)) applies to Outstanding National Resource Waters (ONRWs) where the ordinary use classifications and supporting criteria may not be sufficient or appropriate. States may allow some limited activities that result in temporary and short term changes in water quality in the ONRW, but such changes in water quality should not impact existing uses or alter the essential character or special use that makes the water an ONRW.

IC 13-14-9-4 Identification of Restrictions and Requirements Not Imposed Under Federal Law

The following elements of the draft rule impose either a restriction or a requirement on persons to whom the draft rule applies that are not imposed under federal law. (NIFL elements):

A. 327 IAC 2-1.3-3(c); 327 IAC 2-1.3-8. The draft rule adds a fourth tier of antidegradation protection to the three tiers required by federal law. Tier 2.9 has been included to provide an additional level of protection to Outstanding State Resource Waters (OSRWs). IC 13-18-3-2 authorizes the WPCB to designate an OSRW by rule. This provides the needed protection of certain waters that have unique ecological, aesthetic, or recreational significance beyond that established for high quality Tier 2 waters.

There currently are six waterbodies designated as OSRWs in the state. They are listed under 327 IAC 2-1-2(3) and 327 IAC 2-1.5-19(b). Those waterbodies will remain designated OSRWs under IC 13-18-3-2. Section 8 of the draft rule provides the criteria and process for the designation of additional OSRWs by the Board.

The preservation of this additional tier of protection is expected to continue to make possible the enhanced protection of certain waterbodies in the state and allow the citizens of Indiana to continue to enjoy and benefit from their recreational, aesthetic, and ecological characteristics.

There is no direct fiscal impact of this NIFL element as this draft rule merely establishes the antidegradation standard and designation process for OSRWs. This draft rule does not, in itself, impose any additional requirements upon persons to whom it applies in terms of designation of OSRWs. The designation process outlined by section 8 of the draft rule requires that any designation of an OSRW occur via rulemaking. That rulemaking must consider, among other issues, the economic impacts of that particular designation.

The inclusion of this NIFL element A in the draft rule is primarily a result of the requirements of IC 13-18-3-2. IDEM also included this NIFL element in the draft rule because of the current existence of waters designated as OSRWs in 327 IAC 2.

B. 327 IAC 2-1.3-3(c); 327 IAC 2-1.3-7(h). The draft rule also provides certain anitdegradation requirements for OSRWs that are not imposed under federal law. These requirements were established by IC 13-18-3-2. These provisions require that a person who has proposed a new or increased discharge to an OSRW and completed an anitdegradation demonstration shall:

(1) implement a water quality project in the watershed of the OSRW that will result in overall improvement of the water quality of the OSRW; or

(2) pay a fee, not to exceed $500,000, to fund a water quality project that will result in overall improvement of the water quality of the OSRW.

Due to the very site-specific nature of any potential water quality project required under 327 IAC 2-1.3-7(h), any estimate of the fiscal impact of that project is highly speculative. Variables that affect the fiscal impact of a project include the type and quantity of pollutants in the proposed discharge and the characteristics of the receiving water. It is anticipated that there will not be a large number of proposed new or increased discharges on current OSRWs. It is also anticipated that there will not be a large number of newly designated OSRWs.

The inclusion of this NIFL element B in the draft rule is solely a result of the requirements of IC 13-18-3-2. There were no other materials relied on by IDEM in the development of this NIFL element.

Potential Fiscal Impact

IDEM anticipates that there is an effective cap of $500,000 per project under the draft rule. If a discharger subject to 327 IAC 2-1.3-7(h) finds that the implementation of a water quality project will result in costs to the discharger in excess of $500,000, it seems likely the discharger will instead merely take advantage of the option to pay a fee.

Public Participation and Workgroup Information

An external workgroup has been established to discuss issues involved in this rulemaking. The workgroup is made up of IDEM staff and a wide cross section of stakeholders. The first meeting was held on

November 6, 2002, and there have been meetings held approximately once every four (4) weeks until September 2004. The minutes from these meetings and other information regarding this workgroup can be viewed at IDEM's Triennial Review Web site at http://www.in.gov/idem/water/planbr/wqs/review/trirev.html.

If you wish to provide comments to the workgroup on the rulemaking or attend meetings please contact Megan Wallace, Rules Section, Office of Water Quality at (317) 233-8669 or (800) 451-6027 (in Indiana). The public is also encouraged to submit comments and questions to members of the workgroup who represent their particular interests in the rulemaking.

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from March 1, 2003, through April 29, 2003, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received comments from the following parties by the comment period deadline:

City of Carmel (COC)
Indiana Manufacturers Association (IMA)
Indiana Water Quality Coalition (IWQC)
The Izaak Walton League of America (IWLA)
Save the Dunes Council (SDC)
Town of Brownsburg (TOB)

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

APPLICABILITY

Comment: The mechanism for an entity to request a lowering of its stream water quality, the antidegradation review/demonstration, should not be required for municipal wastewater treatment plant expansions. The intent of the mechanism is to demonstrate a social or economic need. Municipalities managing population growth within their own jurisdictional areas have already demonstrated these needs through projections of required increases in wastewater flow to accommodate this growth. It would appear repetitive for a municipality to be required to reestablish a need for expansion of its own wastewater treatment plant. (COC, TOB)

Response: In the proposed 1999 rules, IDEM proposed that new (or expanding) municipal wastewater treatment plants that utilized certain treatment technologies (meet 10 mg/L suspended solids, 10 mg/L BOD, ultraviolet disinfection, etc.) would not be considered as resulting in a significant lowering of water quality and thus would not be required to do an antidegradation demonstration. This concept will be considered by IDEM and the antidegradation workgroup as they formulate recommendations for the rule.

Comment: If municipalities cannot be exempted from performing antidegradation reviews/demonstrations for wastewater treatment plant expansions, is it possible for IDEM to create a fast-track antidegradation process for municipal dischargers? (COC, TOB)

Response: In the proposed 1999 rules, IDEM proposed that new (or expanding) municipal wastewater treatment plants that utilized certain treatment technologies (meet 10 mg/L suspended solids, 10 mg/L BOD, ultraviolet disinfection, etc.) would not be considered as resulting in a significant lowering of water quality and thus would not be required to do an antidegradation demonstration. This concept will be considered by IDEM and the antidegradation workgroup as they formulate recommendations for the rule.

Comment: In the antidegradation context, we are dealing with waters that already possess water quality better than applicable standards. For these waters, antidegradation imposes additional requirements because the water constitutes an important resource that, for policy reasons, is deemed worthy of special protection. It is important to recognize that this is a policy judgement, not an environmental protection judgement, because water quality is already protected sufficiently by existing standards. (IMA, IWQC)

Response: The commentor appears to be equating all antidegradation with Tier III antidegradation. While designating a water body as an Outstanding National Resource Water (or an Outstanding State Resource Water) is a policy decision to provide a high level of protection on a certain water body, application of Tier I and Tier II antidegradation is required by federal regulations and is not applied to provide special protection of a unique water resource. Tier I antidegradation applies to all water bodies and requires the protection of water quality necessary to support existing uses. The purpose of Tier II antidegradation requirements is to maintain high quality where it exists unless there are compelling reasons to allow the water quality to be lowered. Tier II antidegradation has been applied in Indiana on a pollutant-by-pollutant basis and is not related to whether the water body is deemed worthy of special protection.

Comment: This rulemaking process should be strictly limited to antidegradation standards and implementation procedures. Sediment and biological criteria should not be considered at all at this time. (IMA, IWQC)

Response: IDEM is not considering sediment or biological criteria as a part of the antidegradation rulemaking.

Comment: EPA approved rules for Indiana's Great Lakes Basin waters must serve as a template for extending federally required antidegradation standards and implementation procedures for Indiana's waters outside the Great Lakes Basin. (SDC)

Response: The use of the EPA approved rules for Indiana's Great Lakes Basin outside the Great Lakes Basin was considered by the workgroup. Portions of Indiana's Great Lakes Basin rules has been incorporated into this draft.

Comment: The first notice's reference to "tiers of degradation" should more correctly be described as "tiers of protection". (SDC)

Response: The language used in the first notice does not necessarily reflect eventual rule language. This concern has been brought to the attention of the workgroup as rule language is being developed.

Comment: This rulemaking must extend antidegradation standards and implementation procedures, as well as a Tier 3 category to all Indiana waters. (SDC, IWLA)

Response: IDEM agrees and the draft rule extends antidegradation standards and implementation procedures, as well as a Tier 3 category, to all Indiana waters.

Comment: The new rules must provide that when an application is made for a new or increased discharge of a pollutant into Indiana waters, the applicant or the agency must make available to the public all existing biological and habitat information available for the area of the discharge. Where little or no data on biological or habitat quality exists, the applicant who requests a new or increased discharge of a pollutant must monitor for biological and habitat impacts to the water body involved, if the request is granted. (SDC)

Response: The draft rule currently requires biological and habitat information. Such information is available to the public upon a public records request.

Comment: The federal rules for antidegradation procedures require that when a request for a significant lowering is allowed, the commissioner must assure that water quality is adequate to fully protect existing and designated uses, assure the highest statutory and regulatory requirements for all new and existing point sources, and assure that reasonable best management practices for nonpoint sources are achieved. This rulemaking must spell out specifically how and in what time frame these assurances will be implemented. (SDC)

Response: IDEM will comply with all federal requirements for

antidegradation procedures.

Comment: Antidegradation procedures for high quality waters, Tier 2, outlined in the existing rules for Indiana's Great Lakes Basin waters for both BCCs and non BCCs discharges should be adapted for Indiana's nonBasin waters. (SDC)

Response: The draft rule incorporates portions of the existing rules for the Indiana's Great Lakes Basin for all waters of the state.

Comment: A combined list of BCCs should be developed from both existing rules supplemented by any new or proposed additions to the BCC list since the Great Lakes Water Quality Guidance was approved. (SDC)

Response: IDEM and the antidegradation workgroup will be evaluating the existing lists of BCC's in both the Great Lakes System rules and the outside the Great Lakes System rules as to individual substances which meet the definition of BCC's and will make recommendations as to a list of BCC's for the current proposed rulemaking.

Comment: Limited Use Waters should also be addressed in this rulemaking as part of the Triennial Review required by the Clean Water Act. The new rules should provide procedures and firm time lines for evaluating these waters. (SDC)

Response: Limited Use Waters will be addressed, but not as part of the antidegradation rulemaking.

Comment: This rulemaking must protect, maintain, and restore existing uses. (IWLA)

Response: Tier I antidegradation requires the protection of existing uses and the level of water quality to protect those uses. Restoration of waters that are not meeting existing or designated uses is handled through other requirements such as the development of Total Maximum Daily Loads.

Comment: This rulemaking must be applicable to all waters, including wetlands. (IWLA)

Response: This draft rule applies to all surface waters of the state.

Comment: This rulemaking must be uniformly applied and understandable. (IWLA)

Response: The workgroup intends for any of several possible levels of antidegradation protection to be applied consistently within each level. IC 4-22-2-19.5 requires that rules adopted by the WPCB be written for ease of comprehension.

Comment: This rulemaking must protect, maintain, and restore species and habitats that are rare, threatened and endangered (IWLA).

Response: The purposes of Tier 1 and Tier II antidegradation requirements are: 1) assure that waters are maintained at some minimum level to assure maintenance of designated (and existing) uses and 2) to protect and maintain existing high quality waters unless there are compelling reasons to allow some lowering of water quality, respectively. If water quality criteria are not adequate to protect rare, threatened or endangered species in waters where they exist, the criteria should be changed to be protective of these organisms. Additionally, special protection of any aquatic federally listed threatened and endangered species or any aquatic state listed endangered species has been added under 327 IAC 2-1.3-5(a)(1).

Comment: This rulemaking must provide a process for waterbodies to be added to High Quality Water Designations. (IWLA)

Response: The final Antidegradation/OSRW rule is required to provide a process for waterbodies to be designated an Outstanding State Resource Water.

Comment: This rulemaking must place the burden of the antidegradation demonstration on the applicant. (IWLA)

Response: IDEM agrees that the burden of making the antidegradation demonstration should be on the applicant.

Comment: This rulemaking must provide uniform requirements and procedures for the antidegradation demonstration, decision making, and public participation. (IWLA)

Response: The workgroup intends for any of several possible levels of antidegradation protection to be applied consistently within each level, including the factors mentioned by the commentor.

Comment: The following four part sequence must be the backbone of this rulemaking: standards, implementation, demonstration and decision. (IWLA)

Response: The issues identified: standards, implementation, demonstration and decision, are all considered part of the antidegradation process.

Comment: The Great Lakes Initiative Guidance and sequence should be used as requirements for this rulemaking. (IWLA)

Response: The Great Lakes Initiative Guidance as well as Indiana's existing rules on antidegradation and the 1999 proposed rules as they pertain to antidegradation were considered in the development of this draft rule.

IMPACT

Comment: An antidegradation review/demonstration for a municipal treatment plant expansion may be a costly process without any clear, definable benefits to the environment. This activity diverts limited municipal funds from improvements of water pollution equipment or facilities operation. (COC, TOB)

Response: IDEM agrees that an antidegradation review/demonstration may be a costly process. IDEM is currently working with representatives from the various stakeholder groups to develop antidegradation rules that both protect the quality of the state's water resources and minimizes expense to dischargers. IDEM is open to comments and suggestions on how to proceed with these issues.

Comment: If the antidegradation review/demonstration process does not allow a municipality to expand its wastewater treatment facility, does this mean that the municipality would be essentially on an "invisible sewer ban" that would restrict all new growth? (COC, TOB)

Response: An expansion of a wastewater treatment facility will not necessarily result in a significant lowering of water quality and, therefore, would not necessarily require an antidegradation demonstration. The specifics of the situation leads to too many possibilities to discuss in this format. This concern has been brought to the attention of the workgroup as rule language is being developed.

Comment: Has an antidegradation review/demonstration fiscal impact analysis been performed and is it available in writing? (COC, TOB)

Response: A fiscal impact analysis has not yet been performed, nor does IDEM currently have any information on the cost of an antidegradation review.

Comment: The antidegradation process, if resulting in denial, infringes on growth and is a local land use issue. (COC, TOB)

Response: The outcome of an antidegradation determination does not necessarily involve land use issues, nor does it necessarily infringe on growth.

Comment: Any new antidegradation rule must clearly define the following: degradation, antidegradation, overall improvement in water quality, significant lowering, total loading capacity, unused loading capacity and de minimis. Clearly defining "overall improvement in water quality" is especially important since existing rules to determine antidegradation use a parameter by parameter approach. (SDC)

Response: The draft rule contains definitions for many of these terms.

SEA 431 & OSRW/ONRW

Comment: Senate Enrolled Act 431, P.L. 140-2000 ("SEA 431"),

enacted several requirements concerning the antidegradation policies and implementation procedures and designation criteria and processes for outstanding national resource waters ("ONRWs"), outstanding state resource waters ("OSRWs"), and exceptional use waters. IDEM published a first notice to initiate this rulemaking after this statutory deadline in the Indiana Register, volume 24, page 2471 on May 1, 2001. That first notice was not followed by additional action, and it would appear that the present first notice is replacing that May 2001 proposal. (IMA, IWQC)

Response: Yes, the current rulemaking replaces the former rulemaking.

Comment: It is critical to carefully consider not only the substantive requirements of SEA 431, but also the timing and sequence for rulemaking and implementation. Two sections of that legislation required rulemaking actions completed by specific dates. This rulemaking process also did not occur within the time specified in the statute, and can not be completed until the Board adopts antidegradation implementation procedures for OSRWs. These deadlines must be taken seriously in the future. (IMA, IWQC)

Response: IDEM takes all statutory deadlines seriously, and has consistently affirmed its intention to complete the rulemakings required under SEA 431 (and HEA 1221 from the 2003 session).

Comment: If this rulemaking will establish the criteria and procedures for making special designations, it must consider the new special designation requirements of SEA 431, which establish a high bar for designation of waterbodies as ONRWs and OSRWs. (IMA, IWQC)

Response: The draft rule contains designation criteria and procedures for ONRWs and OSRWs.

Comment: The ONRW designation is meant to describe the benchmark of water quality that shall be maintained and protected, and is only intended for certain types of important waters. IC 13-18-3-2(d). Only the Indiana General Assembly can designate a water body as an ONRW, following recommendations made by the Board and the Environmental Quality Service Council after IDEM conducts a series of proscribed public participation steps. *See* IC 13-18-3-2(o) and 13-18-3-2(p). (IMA, IWQC)

Response: The draft rule contains designation criteria and procedures for ONRWs and OSRWs.

Comment: The designation requirements for OSRWs are even more detailed. The Board may not adopt a rule designating a water body as an OSRW until it has considered a number of factors. See IC 13-18-3-2(h) and 13-18-3-2(g). All of these considerations and findings must be summarized, made available to the public and presented to the Environmental Quality Service Council. *See* IC 13-18-3-2(j). Further, for any newly designated OSRWs, the Board must have already adopted antidegradation implementation procedures consistent with other provisions of SEA 431. *See* IC 13-18-3-2(n). (IMA, IWQC)

Response: The draft rule contains designation criteria and procedures for ONRWs and OSRWs.

Comment: The first notice recognizes that SEA 431 requires the Board to consider redesignating exceptional use waters as OSRWs. IDEM should expedite this reevaluation process by adopting antidegradation implementation procedures for OSRWs in this rulemaking process, which is a prerequisite to designating any new OSRWs. (IMA, IWQC)

Response: The draft rule contains designation criteria and procedures for ONRWs and OSRWs.

Comment: This rulemaking should not consider addition of a tier 2.9 category of waters. (IMA, IWQC)

Response: A Tier 2.9 has been included in this draft rule.

Comment: A fourth tier, between Tier 2 and Tier 3 must be formalized in this rulemaking. We recommend that all waters designated as OSRWs and EUWs currently and those to be designated in the future be protected as Tier 2.9 waters. Implementation standards approved by the Water Pollution Control Board (WPCB) in a separate rulemaking can serve as a model for antidegradation implementation procedures for all Tier 2.9 waters throughout Indiana as soon as this rule, 327 IAC 5-2-11.7, receives EPA approval. (SDC)

Response: A Tier 2.9 has been included in this draft rule.

Comment: SEA 431 sets criteria that the WPCB is to consider before designating a new OSRW. It also directs the Board to adopt rules for implementation procedures for waters named OSRWs after June 30, 2000. It appears that the existing antidegradation implementation procedures for OSRWs in the Great Lakes Basin now covered by 327 IAC 5-2-11.7 are not affected, but may affect existing OSRWs outside the Basin even though they were in existence as of June 30, 2000. We recommend extending 327 IAC 5-2-11.7 protections to these waters. (SDC)

Response: The draft rule contains designation criteria and procedures for ONRWs and OSRWs.

Comment: This rulemaking must include a process by which the commissioner evaluates a discharger's proposal for a short term or temporary degradation to an ONRW, and provides the public in advance of any determination, an opportunity to comment. (SDC)

Response: Section 6 of the draft rule requires authorization from the Commissioner and public notice of the request prior to any short term or temporary new or increased discharge to an ONRW.

Comment: New OSRWs designated by the WPCB must be sent to the Environmental Quality Service Council (EQSC) within one hundred twenty (120) days after rule adoption. The purpose of this requirement is unstated and unclear. New OSRW and ONRW designations should appear in the Indiana Register as soon as possible after designation. The Triennial Review following the designations must revise the rules to add the new OSRWs and ONRWs. (SDC)

Response: IC 13-18-3-2 already requires the WPCB to designate OSRWs by rule. All rules adopted by the environmental boards are required to undergo review and approval by the Indiana Attorney General and the Governor before filing and publication in the Indiana Register. It will be unnecessary for subsequent Triennial Reviews to amend 327 IAC to add new OSRWs as the OSRW designation rulemaking itself will do that. Since ONRW designations are done by the general assembly it will not be necessary to amend 327 IAC to include them. IDEM presumes the general assembly will designate ONRWs by statute.

Comment: Provisions enabling the public to propose water bodies for ONRW status must be added to this rulemaking. (SDC)

Response: IC 13-18-3-2, as amended by SEA 431, sets forth the process by which a water may be considered for designation as an ONRW by the General Assembly. Subsection (o) of 13-18-3-2 grants to the Water Pollution Control Board and the Environmental Quality Service Council the authority to formally recommend water bodies for consideration. The rule cannot provide formal authority to the public without contradicting the clear language of the statute. However, the public is free to contact any member of the WPCB, EQSC or general assembly to present their concerns regarding any particular water body.

Comment: SEA 431 provides for the WPCB to evaluate EUWs for designation as OSRWs. Since "exceptional use" is a use, any downgrading of an EUW to Tier 2 may require the Board to do a Use Attainability Analysis. We suggest that EUWs be designated by rule as OSRWs and subject to the implementation procedures that apply to OSRWs in the Basin. (SDC)

Response: SEA 431 and HEA 1221 require the WPCB to consider the designation of Exceptional Use Waters as OSRWs.

Comment: This rulemaking must provide a specific process for

citizens to nominate OSRWs and ONRWs such as the procedures and process contained in the February 1, 1999 draft rule at 327 IAC 2-1.4-1. (SDC)

Response: SEA 431, enacted by the general assembly after the 1999 draft rule, preempted many provisions of the 1999 draft rule concerning OSRWs and ONRWs.

Comment: This rulemaking must preserve and conform with historically designated highest quality waters of Indiana's OSRWs designation and EUW designated waters, including parks, memorials, nature preserves, etc. (IWLA)

Response: IDEM agrees that the level of protection afforded Indiana's highest quality waters should be appropriate to those waters.

DE MINIMIS

Comment: SEA 431 unambiguously requires a de minimis level for outstanding state resource waters. This de minimis level is triggered when a discharger needs a new or increased permit limit. If the new or increased discharge is below the de minimis level, the antidegradation implementation procedures do not apply to the discharge. Although the provisions of SEA 431 do not expressly apply to high quality waters that are not designated as OSRWs, it only makes sense to extend the de minimis concept in SEA 431 to all high quality waters (except ONRWs). Otherwise, the antidegradation implementation procedures for regular high quality waters would be more stringent that the requirements for OSRWs. (IMA, IWQC)

Response: The draft rule defines de minimis at 327 IAC 2-1.3-5(a)(1).

Comment: The rulemaking should clearly establish that antidegradation review is only triggered when a discharge needs a new or increased permit limit. (IMA, IWQC)

Response: The draft rule clearly establishes an antidegradation trigger.

Comment: This trigger concept already is articulated in 327 IAC 5-2-11.7, the antidegradation implementation procedures for OSRWs in the Great Lakes system. This language should be incorporated in the implementation procedures for high quality waters and OSRWs throughout the State. (IMA, IWQC)

Response: The draft rule clearly establishes an antidegradation trigger.

Comment: The "new or increased discharge" trigger only should apply to incremental or "net" increases. (IMA, IWQC)

Response: IDEM is willing to discuss where the "new or increased discharge trigger" would be applied.

Comment: In situations where there is a "net" increase that is subject to review, only the "net" amount should be subject to antidegradation restrictions. (IMA, IWQC)

Response: The draft rule contains an antidegradation review trigger for new or increased discharges that exceed the de minimis level.

Comment: The "net" approach should apply to entirely new or expanded projects where the project proponent succeeds in procuring, from other point or nonpoint sources within the watershed, reduced loadings of the pollutants to be discharged from the new project. (IMA, IWQC)

Response: The draft rule contains an antidegradation review trigger for new or increased discharges that exceed the de minimis level.

Comment: The opportunity to "trade" will facilitate economic growth and energy availability, while at the same time protecting water quality. This approach is consistent with EPA's new water quality trading policy. (IMA, IWQC)

Response: The draft rule contains an antidegradation review trigger for new or increased discharges that exceed the de minimis level.

Comment: Intake pollutants should be "netted" out of antidegradation review. (IMA, IWQC)

Response: The draft rule specifies how intake pollutants are addressed in an antidegradation review.

Comment: The rules should contain a de minimis of ten percent of unused loading capacity, as long as at least 10 percent of total loading capacity remains unused, for high quality waters and OSRWs. This de minimis level is consistent with the current antidegradation implementation procedures for high quality waters in the Great Lakes system according to 327 IAC 5-2-11.3(b)(1)(B)(ii). (IMA, IWQC)

Response: The draft rule defines de minimis at 327 IAC 2-1.3-5(a)(1).

Comment: Activities that will only result in insignificant or temporary lowering of water quality do not warrant the time and expense of dischargers demonstrating and the State reviewing whether an activity should be allowed. Full antidegradation review should only be required for projects that will likely result in a significant lowering of water quality. Including a set of exceptions in the antidegradation rules provides certainty and ease of administration because interested parties understand that certain activities will not require full antidegradation review. (IMA, IWQC)

Response: The draft rule contains a *de minimis* level below which no antidegradation demonstration would be required. Activities which will not be considered to cause a significant lowering of water quality are addressed in 327 IAC 2-1.3-6.

EXCEPTIONS & EXEMPTIONS

Comment: This rulemaking must be without exemptions, exceptions, or alternatives unless specific to the federal guidelines as limited in The Great Lakes Initiative portion, App. E. (IWLA)

Response: The draft rule contains a limited list of activities that do not constitute a significant lowering of water quality at 327 IAC 2-1.3-6.

Comment: The rules should retain the set of exceptions in the antidegradation implementation procedures for the Great Lakes system for high quality waters and OSRWs according to 327 IAC 5-2-11.3 and 327 IAC 5-2-11.7. (IMA, IWQC)

Response: The draft rule contains a limited list of activities that do not constitute a significant lowering of water quality at 327 IAC 2-1.3-6.

Comment: The short-term, temporary provision in the antidegradation procedures for the Great Lakes system for high quality waters and OSRWs should also be incorporated into the provisions for ONRWs. (IMA, IWQC)

Response: The draft rule contains short-term, temporary lowering for ONRWs at 327 IAC 2-1.3-6.

Comment: All activities covered by general permits should be excepted from antidegradation review because these activities do not result in a significant lowering of water quality. (IMA, IWQC)

Response: General Permits are not included in this draft rule. For most general permit categories, a justification can be provided to U.S. EPA to demonstrate that existing requirements are satisfactory to address antidegradation. IDEM will keep working with U.S. EPA and the public to establish the best approach relative to general permit categories as U.S. EPA and other states gain some experience in responding to the court decision.

Comment: General permits are only authorized for activities with an insignificant water quality impact. If the concern with excepting certain general permits from antidegradation review regards specific situations where water quality standards may be jeopardized, it is appropriate for IDEM to require individual permits for these situations. Requiring antidegradation review for general permits would negate the fundamental efficiencies of the general permit program, by requiring case-by-case review of in excess of 3, 000 activities subject to general permits in Indiana. (IMA, IWQC)

Response: The degree to which an activity impacts water quality does not determine the activity's eligibility for a general NPDES permit. General permits are authorized for an activity based on its status as part of a class of activities deemed by the permitting authority to be amenable to the general permit process.

Comment: Discharges that have been granted variances should be excepted from antidegradation review because the application and review process for obtaining a variance is substantially the same as the antidegradation demonstration and review process. All variance applications must review both the types of technology capable of treating the pollutant of concern and the social and economic costs of installing and operating each type of technology. This review is very similar to the technology review and demonstration of social or economic importance that is required for antidegradation review. Thus, if IDEM has granted a variance to a discharger, it makes sense that the discharger should not also need to complete an antidegradation demonstration. (IMA, IWQC)

Response: IDEM will be discussing with EPA how to best address situations which involve both antidegradation and variances.

Comment: It makes no sense to apply antidegradation review for high quality waters to situations where a discharger is requesting a variance, because a variance grants conditional permission to exceed a water quality criteria or standard. In these cases, the more appropriate review focuses on ensuring that reasonable progress can be made to meet the water quality criterion or standard in the future. (IMA, IWQC)

Response: IDEM will be discussing with EPA how to best address situations which involve both antidegradation and variances.

Comment: Discharges of wastewater and water treatment additives ("WTAs") subject to certain conditions should be excepted from antidegradation review. It is important that IDEM continue to support the exception for WTAs that was adopted by the Water Pollution Control Board in its recent amendments to 327 IAC 5-2-11.7, Great Lakes system dischargers interim antidegradation implementation procedures for outstanding state resource waters. (IMA, IWQC)

Response: The draft rule contains a limited list of activities that do not constitute a significant lowering of water quality at 327 IAC 2-1.3-6.

Comment: Certain new or increased discharges from Publically Owned Treatment Works (POTWs) should be allowed if they achieve best technology or result in an overall improvement in water quality. These activities should include new or increased discharges of treated sanitary wastewater that are designed to meet the following permit conditions: ten (10) milligrams per liter 5-day carbonaceous biochemical oxygen demand ($CBOD_5$) as a monthly average; ten (10) milligrams per liter total suspended solids (TSS) as a monthly average; one (1) milligram per liter ammonia as nitrogen as a monthly average; and, disinfection by ultraviolet light. POTWs can be encouraged to design for this high level of treatment technology if they are excepted from further antidegradation review. (IMA, IWQC)

Response: The draft rule contains a limited list of activities that do not constitute a significant lowering of water quality at 327 IAC 2-1.3-6.

Comment: IDEM should modify the exemption for cleanup actions so that it will not prevent or discourage environmentally beneficial activities. The current exemptions in 327 IAC 5-2-11.3 and 327 IAC 5-2-11.7 require that the action be undertaken to alleviate an environmental release that "may pose an imminent and substantial endangerment to public health or welfare." That "endangerment" test comes from Federal statutes, and has historically been interpreted broadly, so that it is not very difficult to trigger. However, that is not the way that IDEM has interpreted the test in applying its interim antidegradation rules. (IMA, IWQC)

Response: The draft rule contains a limited list of activities that do not constitute a significant lowering of water quality at 327 IAC 2-1.3-6.

Comment: The "response action" exemption should be modified to remove the requirement that the response action must meet the "endangerment" test. As long as the activity is conducted under CERCLA, RCRA, or similar Federal or State authorities, there is adequate assurance that the cleanup is necessary and will improve the environment. In that case, there is no reason that antidegradation review is needed. In fact, having to go through that review would only discourage parties from taking responsible cleanup actions, which would result in more impact to the environment, rather than less. (IMA, IWQC)

Response: The draft rule contains a limited list of activities that do not constitute a significant lowering of water quality at 327 IAC 2-1.3-6.

Comment: Antidegradation review should not be required for pH, whole effluent toxicity (WET) and heat/temperature. It is simply not feasible to apply a trigger level for antidegradation review to these parameters. The standards adopted by the Board are the only valid reference point to use in assessing water impacts with respect to these parameters. IDEM already has to enforce those standards through permit limits, so there is nothing to be gained by using those standards in the antidegradation process. The rules should also clarify that thermal discharges subject to Section 316(a) thermal variances are not subject to antidegradation review, but rather must be consistent with Section 316 of the Clean Water Act. (IMA, IWQC)

Response: The draft rule contains a limited list of activities that do not constitute a significant lowering of water quality at 327 IAC 2-1.3-6.

Comment: As IDEM has provided in other portions of its rules, an exemption should be provided for research and development projects. These projects are generally short-term and temporary in nature, and produce socially important results. (IMA, IWQC)

Response: The draft rule contains a limited list of activities that do not constitute a significant lowering of water quality at 327 IAC 2-1.3-6.

Comment: An exemption should be provided for "brownfields" and other redevelopment projects. An important policy of this State is to encourage redevelopment of former industrial sites in urban areas. If a company seeks to build a new facility in one of those areas, bringing new jobs into areas where those jobs are badly needed, State policies should encourage those activities. If a developer has to go through the lengthy and resource-intensive antidegradation review process before beginning a redevelopment project, it might very well go elsewhere, especially since it might find out at the end of the process that its project did not meet the vague "important social and economic development" test, so that the project would not "pass" antidegradation review and could not happen at all. (IMA, IWQC)

Response: The draft rule contains a limited list of activities that do not constitute a significant lowering of water quality at 327 IAC 2-1.3-6.

DEMONSTRATION

Comment: Who will define the meaning of "important economic or social development" pertaining to the antidegradation review/demonstration? Could this mean that an economically depressed community would be allowed to degrade water quality if they demonstrated a need, and a more prosperous community could be denied growth if they could not demonstrate a need based on minimal economic survival? (COC, TOB)

Response: The draft rule provides that the commissioner will make the decision on whether a proposed new or increased discharge supports important economic or social development. The commissioner's decision will be based upon factors contained in section 7 of this draft rule.

Comment: The technical necessity component of antidegradation review should focus on whether cost-effective, reasonably available technologies can reduce or eliminate a proposed significant lowering

of water quality (See, EPA's Great Lakes Water Quality Guidance). EPA's regulations and guidance on the technical necessity demonstration clearly take cost into consideration. In fact, cost considerations must play a role in the technical necessity demonstration; otherwise, most dischargers would ever get beyond this part of the demonstration, and antidegradation review would act as a complete bar to new or increased discharges. (See also, 40 CFR Part 132, Appendix E, III and Supplementary Information Document (SID), Section VIII.A.2.c.) (IMA, IWQC)

Response: The technical necessity component of an antidegradation review is described in section 7 of this draft rule.

Comment: If a discharger is meeting federal technology-based standards, it should not have to make another demonstration regarding technical necessity in antidegradation review. Technology review could become extremely cumbersome and time-consuming, slowing down the process for making changes in facility operations. Also, if not done properly, the technology review could contradict control decisions that have already been made by EPA. For many industries, EPA has issued effluent limitations guidelines, which specify technology standards for the industry. (IMA, IWQC)

Response: The technical necessity component of an antidegradation review is described in section 7 of this draft rule.

Comment: If a discharger has installed federally-required technology controls, it should be presumed that those controls meet the antidegradation technical necessity test and nothing more should be required. (IMA, IWQC)

Response: The technical necessity component of an antidegradation review is described in section 7 of this draft rule.

Comment: Where federal technology-based standards have not been developed, the assessment of technical necessity should focus on national capabilities of a particular industry. When EPA has not established technology requirements for a particular industry or operation, IDEM should adhere strictly to the spirit of the EPA process in undertaking a technical necessity review. Factors that should be considered are: the age of the equipment and facilities involved, the processes employed, the engineering aspects of the application of various types and control techniques, process changes, the cost of achieving such effluent reduction, and non-water quality environmental impact. An Indiana facility would be justified in reducing a proposed discharge if, and only if, it would have been required for the entire industry in accordance with EPA protocols. (IMA, IWQC)

Response: The technical necessity component of an antidegradation review is described in section 7 of this draft rule.

Comment: Agents of the State other than IDEM, whether other State agencies or local government, already have the authority and duty to make judgments about the economic or social worth of a project or activity. The economic or social importance demonstration process should rely on these State agents to act within their existing authority to review economic or social importance. This approach will assure that the decision maker is appropriate to carry out the task. It will also avoid the redundancy of having multiple governmental entities making similar or identical decisions, and eliminate the possibility of inconsistent findings. (IMA, IWQC)

Response: The draft rule provides that the commissioner will make the decision on whether a proposed new or increased discharge supports important economic or social development. The commissioner's decision will be based upon factors contained in section 7 of this draft rule.

Comment: Under this approach, IDEM would still be making the other determination under antidegradation review: that the new or increased discharge is necessary from a technical standpoint. (IMA, IWQC)

Response: The draft rule provides that the commissioner will make the decision on whether a proposed new or increased discharge supports important economic or social development. The commissioner's decision will be based upon factors contained in section 7 of this draft rule.

Comment: New business and development activities typically require review and approval by one or more agents of the State. If an agent of the State approves a new business or development, this decision is presumed to meet the economic or social importance test for antidegradation purposes, and separate review by IDEM is not necessary. (IMA, IWQC)

Response: There is not necessarily a correlation between an authority's approval of a new or modified activity and the activity's economic or social importance.

Comment: If the general approach allowing appropriate agents of the State to make economic or social importance determinations is adopted, existing authorities would need to be identified and evaluated for their appropriateness. (IMA, IWQC)

Response: The draft rule provides that the commissioner will make the decision on whether a proposed new or increased discharge supports important economic or social development. The commissioner's decision will be based upon factors contained in section 7 of this draft rule.

Comment: It may be the case that some new businesses or developments will not be required to undergo a preexisting state or local approval process. New businesses or developments could request that the local government adopt a resolution or issue a letter of support for the activity or project. If the local government does so, this action would create a presumption of the economic or social importance of an activity or project. If the local government does not act, the new business or development would submit information to IDEM or another agent of the State to allow it to make an economic or social importance decision. Likewise, at its option, the new business or development could go straight to IDEM or another agent of the State to seek a determination that an activity or project is economically or socially important. (IMA, IWQC)

Response: The draft rule provides that the commissioner will make the decision on whether a proposed new or increased discharge supports important economic or social development. The commissioner's decision will be based upon factors contained in section 7 of this draft rule. One factor the commissioner considers is the action or recommendation made by a local unit of government affected by the new or increased discharge.

Comment: An economic or social importance review should not be necessary for an existing business or development whom wish to boost production. If the business or development was originally judged to be economically or socially important, doing more of the same does not require additional review. (IMA, IWQC)

Response: The necessity for an antidegradation review is based on the proposal for a new or increased discharge, not on the economic or social importance of the original activity.

Comment: An existing business or development may want to add a new product or process that changes the nature of the business or development, and consequently, the nature of the discharge from the facility. As a general rule, these types of changes may not require any review by a state agency or a local zoning determination. The existing business or development could seek a local resolution or letter of support or request review by IDEM or another agent of the State if local government does not act or in lieu of local government action. (IMA, IWQC)

Response: The draft rule provides that the commissioner will make the decision on whether a proposed new or increased discharge

supports important economic or social development. The commissioner's decision will be based upon factors contained in section 7 of this draft rule. One factor the commissioner considers is the action or recommendation made by a local unit of government affected by the new or increased discharge.

Comment: In connection with the social and economic development analysis, IDEM should be required to consider the environmental benefits of the affected discharge. (IMA, IWQC)

Response: The draft rule considers environmental benefits of the proposed new or increased discharge.

FEES

Comment: SEA 431's provisions make the definition and the subsequent rules for degradation difficult because the antidegradation process is not straightforward. The range of choices offered an applicant who seeks to significantly lower water quality in an OSRW or EUW include payment of a fee up to five hundred thousand dollars ($500,000) to be deposited in a Water Quality Improvement Fund. Does such a payment or a water quality improvement project relieve the applicant of some or all of the procedures of a rigorous antidegradation demonstration? (SDC)

Response: As outlined by IC 13-18-3-2(b), the funding of a properly conducted water quality improvement project in conjunction with a new or increased discharge to an OSRW or EUW will result in the discharge's being deemed not a significant lowering of water quality. A discharge that does not result in a significant lowering of water quality for a given pollutant or pollutant parameter does not require an antidegradation determination.

Comment: Does the payment of a fee conflict with the Clean Water Act? (SDC)

Response: No

Comment: The fee is not a fine. Is it a free-will donation and what does the applicant expect to benefit from paying the fee? (SDC)

Response: The applicant will need to determine what benefit it expects to realize from funding a water quality improvement project, and whether that benefit is the applicant's preferred option.

Comment: The rules to be enacted for these antidegradation procedures would inherently conflict between minimizing proposed degradation and allowing increased pollutants from proposed new or existing discharges in OSRWs and EUWs as laid out in subsections (l) and (m), especially when payment of a five hundred thousand dollar ($500,000) fee is one option. Is EPA expected to approve this option as part of Indiana's revised antidegradation procedures? (SDC)

Response: IDEM anticipates that it will.

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Mailed comments should be addressed to:

#03-44(WPCB) Antidegradation Standards and Implementation Procedures
Megan Wallace
Rules Section
Office of Water Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana, 46204-2251.

Hand delivered comments will be accepted by the receptionist on duty at the twelfth floor reception desk, Office of Water Quality, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 232-8406, Monday through Friday, between 8:15 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.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by May 30, 2005.

Additional information regarding this action may be obtained from Megan Wallace, Rules Section, Office of Water Quality, (317) 233-8669 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 327 IAC 2-1-6, AS AMENDED AT 28 IR 2047, SECTION 5, IS AMENDED TO READ AS FOLLOWS:

327 IAC 2-1-6 Minimum surface water quality standards

Authority: IC 13-14-8; IC 13-14-9; IC 13-18-3
Affected: IC 13-18-4; IC 13-30-2-1; IC 14-22-9

Sec. 6. (a) The following are minimum surface water quality conditions:

(1) All surface waters at all times and at all places, including waters within the mixing zone, shall meet the minimum conditions of being free from substances, materials, floating debris, oil, or scum attributable to municipal, industrial, agricultural, and other land use practices, or other discharges that do any of the following:

(A) Will settle to form putrescent or otherwise objectionable deposits.

(B) Are in amounts sufficient to be unsightly or deleterious.

(C) Produce:

(i) color;
(ii) visible oil sheen;
(iii) odor; or
(iv) other conditions;

in such degree as to create a nuisance.

(D) Are in concentrations or combinations that will cause or contribute to the growth of aquatic plants or algae to such degree as to:

(i) create a nuisance;
(ii) be unsightly; or
(iii) otherwise impair the designated uses.

(E) Are in amounts sufficient to be acutely toxic to, or to otherwise severely injure or kill aquatic life, other animals, plants, or humans. To assure protection of aquatic life, concentrations of toxic substances shall not exceed the ~~final acute value~~ **FAV** (FAV = 2 (AAC)) in the undiluted discharge or the ~~acute aquatic criterion~~ AAC outside the zone of initial dilution or, if applicable, the zone of discharge-induced mixing:

(i) for certain substances, an AAC is established and set forth in subdivision (3), Table 6-1, and subdivision (3), Table 6-2 (which table incorporates subdivision (4), Table 6-3);

(ii) for substances for which an AAC is not specified in subdivision (3), Table 6-1, or subdivision (3), Table 6-2, an AAC can be calculated by the commissioner using the procedures in section 8.2 of this rule; and

(iii) the AAC determined under item (i) or (ii) may be modified on a site-specific basis to reflect local conditions in accordance with section 8.9 of this rule.

This clause shall not apply to the chemical control of plants and animals when that control is performed in compliance with approval conditions specified by the Indiana department of natural resources as provided by IC 14-22-9.

(2) At all times, all surface waters outside of mixing zones shall be

free of substances in concentrations that on the basis of available scientific data are believed to be sufficient to injure, be chronically toxic to, or be carcinogenic, mutagenic, or teratogenic to humans, animals, aquatic life, or plants. To assure protection against the adverse effects identified in this subdivision, the following requirements are established:

(A) A toxic substance or pollutant shall not be present in such waters in concentrations that exceed the most stringent of the following continuous criterion concentrations (CCCs):

(i) A ~~chronic aquatic criterion~~ CAC to protect aquatic life from chronic toxic effects.

(ii) A ~~terrestrial life cycle safe concentration~~ TLSC to protect terrestrial organisms from toxic effects that may result from the consumption of aquatic organisms or water from the waterbody.

(iii) ~~A human life cycle safe concentration~~ **An** HLSC to protect human health from toxic effects that may result from the consumption of aquatic organisms or drinking water from the waterbody.

(iv) For carcinogenic substances, a criterion to protect human health from unacceptable cancer risk of greater than one (1) additional occurrence of cancer per one hundred thousand (100,000) population.

(B) For certain substances, one (1) or more of the CCCs identified in clause (A) are established and set forth in subdivision (3), Table 6-1, and subdivision (3), Table 6-2 (which table incorporates subdivision (4), Table 6-3).

(C) For substances for which one (1) or more of the CCCs identified in clause (A) are not specified in subdivision (3), Table 6-1, or subdivision (3), Table 6-2, such criterion or criteria may be calculated by the commissioner using the corresponding procedures prescribed by sections 8.3 through 8.6 of this rule.

(D) A CCC determined under clause (B) or (C) may be modified on a site-specific basis to reflect local conditions in accordance with section 8.9 of this rule.

(E) The CAC and TLSC for a substance apply in all surface waters outside a mixing zone for a discharge of that substance. Similarly, in waters where a public water system intake is not present or is unaffected by the discharge of a substance, the HLSC and the carcinogenic criterion for that substance based on consumption of organisms from the waterbody and only incidental ingestion of water shall apply to all surface waters outside the mixing zone for a discharge of that substance. In surface waters where a public water system intake is present, the HLSC and the carcinogenic criterion for a substance based on consumption of organisms and potable water from the waterbody shall apply at the point of the public water system intake.

(3) The following establishes surface water quality criteria for specific substances:

Table 6-1
Surface Water Quality Criteria for Specific Substances

AAC (Maximum)	CCC		
	Outside of Mixing Zone		Point of Water Intake
Substances	Aquatic Life (CAC) (4-Day Average)	Human Health (30-Day Average)	Human Health (30-Day Average)
Metals (µg/l)			
(Total recoverable)			
Antimony		45,000 (T)	146 (T)
Arsenic (III)	#	#	0.175 (C)	0.022 (C)
Barium			1,000 (D)
Beryllium		1.17 (C)	0.068 (C)
Cadmium	#	#	10 (D)
Chromium (III)	#	#	3,433,000 (T)	170,000 (T)
Chromium (VI)	#	#	50 (D)
Copper	#	#	
Lead	#	#	50 (D)
Mercury$	2.4	0.012	0.15 (T)	0.14 (T)
Nickel	#	#	100 (T)	13.4 (T)
Selenium	130*	35	10 (D)
Silver	#		50 (D)
Thallium		48 (T)	13 (T)
Zinc	#	#	
Organics (µg/l)			
Acrolein		780 (T)	320 (T)
Acrylonitrile		6.5 (C)	0.58 (C)
Aldrin$	1.5*	0.00079 (C)	0.00074 (C)
Benzene		400 (C)	6.6 (C)
Benzidine		0.0053 (C)	0.0012 (C)
Carbon Tetrachloride		69.4 (C)	4.0 (C)
Chlordane$	1.2*	0.0043	0.0048 (C)	0.0046 (C)
Chlorinated Benzenes			
Monochlorobenzene			488 (T)
1,2,4,5-Tetrachlorobenzene$		48 (T)	38 (T)
Pentachlorobenzene$		85 (T)	74 (T)

Hexachlorbenzene$			0.0074 (C)	0.0072 (C)
Chlorinated Ethanes				
1,2-dichloroethane			2,430 (C)	9.4 (C)
1,1,1-trichloroethane			1,030,000 (T)	18,400 (T)
1,1,2-trichloroethane			418 (C)	6.0 (C)
1,1,2,2-tetrachloroethane			107 (C)	1.7 (C)
Hexachloroethane			87.4 (C)	19 (C)
Chlorinated Phenols				
2,4,5-trichlorophenol				2,600 (T)
2,4,6-trichlorophenol			36 (C)	12 (C)
Chloroalkyl Ethers				
bis(2-chloroisopropyl) ether			4,360 (T)	34.7 (T)
bis(chloromethyl) ether			0.018 (C)	0.000038 (C)
bis(2-chloroethyl) ether			13.6 (C)	0.3 (C)
Chloroform			157 (C)	1.9 (C)
Chlorpyrifos	0.083	0.041		
DDT$	0.55*	0.0010	0.00024 (C)	0.00024 (C)
Dichlorobenzenes			2,600 (T)	400 (T)
Dichlorobenzidine			0.2 (C)	0.1 (C)
1,1-dichloroethylene			18.5 (C)	0.33 (C)
2,4-dichlorophenol				3,090 (T)
Dichloropropenes			14,100 (T)	87 (T)
Dieldrin$	1.3*	0.0019	0.00076 (C)	0.00071 (C)
2,4-dinitrotoluene			91 (C)	1.1 (C)
Dioxin (2,3,7,8-TCDD)$			0.0000001 (C)	0.0000001 (C)
1,2-diphenylhydrazine			5.6 (C)	0.422 (C)
Endosulfan	0.11*	0.056	159 (T)	74 (T)
Endrin$	0.09*	0.0023		1.0 (D)
Ethylbenzene			3,280 (T)	1,400 (T)
Fluoranthene$			54 (T)	42 (T)
Halomethanes			157 (C)	1.9 (C)
Heptachlor$	0.26*	0.0038	0.0028 (C)	0.0028 (C)
Hexachlorobutadiene$			500 (C)	4.47 (C)
Hexachlorocyclohexane (HCH)				
alpha HCH$			0.31 (C)	0.09 (C)
beta HCH$			0.55 (C)	0.16 (C)
gamma HCH (Lindane)$	1.0*	0.080	0.63 (C)	0.19 (C)
Technical HCH$			0.41 (C)	0.12 (C)
Hexachlorocyclopentadiene				206 (T)
Isophorone			520,000 (T)	5,200 (T)
Nitrobenzene				19,800 (T)
Nitrophenols				
4,6-dinitro-o-cresol			765 (T)	13.4 (T)
Dinitrophenol			14,300 (T)	70 (T)
Nitrosamines				
N-nitrosodiethylamine			12.4 (C)	0.008 (C)
N-nitrosodimethylamine			160 (C)	0.014 (C)
N-nitrosodibutylamine			5.9 (C)	0.064 (C)
N-nitrosodiphenylamine			161 (C)	49 (C)
N-nitrosopyrrolidine			919 (C)	0.16 (C)
Parathion	0.065	0.013		
Pentachlorophenol	$e^{(1.005\ [pH]-4.830)}$	$e^{(1.005\ [pH]-5.290)}$		1,000 (T)
Phenol				3,500 (T)
Phthalate Esters				
Dimethyl phthalate			2,900,000 (T)	313,000 (T)
Diethyl phthalate			1,800,000 (T)	350,000 (T)
Dibutyl phthalate			154,000 (T)	34,000 (T)
Di-2-ethylhexyl phthalate			50,000 (T)	15,000 (T)
Polychlorinated Biphenyls (PCBs)$		0.014	0.00079 (C)	0.00079 (C)

Carcinogenic Polynuclear Aromatic Hydrocarbons (PAHs)			0.31 (C)	0.028 (C)
Tetrachloroethylene			88.5 (C)	8 (C)
Toluene			424,000 (T)	14,300 (T)
Toxaphene$	0.73	0.0002	0.0073 (C)	0.0071 (C)
Trichloroethylene			807 (C)	27 (C)
Vinyl Chloride			5,246 (C)	20 (C)
Other Substances				
Asbestos (fibers/liter)				300,000 (C)
Chlorides (mg/l)	860	230		
Chlorine (Total Residual) (µg/l)	19	11		
Chlorine[a] (mg/l) (intermittent, total residual)		0.2		
Cyanide (Free) (µg/l)	22	5.2		
Cyanide (Total) (µg/l)				200 (D)
Nitrate-N + Nitrite-N (mg/l)				10 (D)
Nitrite-N (mg/l)				1.0 (D)

Fluoride shall not exceed two (2.0) mg/l in all surface waters outside of the mixing zone except the Ohio River and Interstate Wabash River where it shall not exceed one (1.0) mg/l outside of the mixing zone.

Sulfates shall not exceed one thousand (1,000) mg/l in all surface waters outside of the mixing zone.

#The AAC and CAC for this substance are established in Table 6-2.

*One-half (½) of the ~~final acute value~~ FAV as calculated by procedures developed by U.S. EPA in 1980. This value would correspond to acute aquatic values calculated using IDEM procedures or U.S. EPA procedures developed in 1985 in which the calculated FAV is divided by two (2) to reduce acute toxicity.

T derived from threshold toxicity.

C derived from nonthreshold cancer risk.

D derived from drinking water standards, equal to or less than threshold toxicity.

$This substance is a ~~bioaccumulative chemical of concern.~~ **BCC.**

[a]To be considered an intermittent discharge, total residual chlorine shall not be detected in the discharge for a period of more than forty (40) minutes in duration, and such periods shall be separated by at least five (5) hours.

Table 6-2
Surface Water Quality Criteria for Specific Substances

Substances	AAC (Maximum) (µg/l)	AAC Conversion Factors	CAC (4-Day Average) (µg/l)	CAC Conversion Factors
Metals (dissolved)[1]				
Arsenic (III)	WER[2](360)	1.000	WER[2](190)	1.000
Cadmium	WER[2]($e^{(1.128\,[\ln(hardness)]-3.828)}$)	1.136672-[(ln hardness)(0.041838)]	WER[2]($e^{(0.7852\,[\ln(hardness)]-3.490)}$)	1.101672-[(ln hardness)(0.041838)]
Chromium (III)	WER[2]($e^{(0.819\,[\ln(hardness)]+3.688)}$)	0.316	WER[2]($e^{(0.8190\,[\ln(hardness)]+1.561)}$)	0.860
Chromium (VI)	WER[2](16)	0.982	WER[2](11)	0.962
Copper	WER[2]($e^{(0.9422\,[\ln(hardness)]-1.464)}$)	0.960	WER[2]($e^{(0.8545\,[\ln(hardness)]-1.465)}$)	0.960
Lead	WER[2]($e^{(1.273\,[\ln(hardness)]-1.460)}$)	1.46203-[(ln hardness)(0.145712)]	WER[2]($e^{(1.273\,[\ln(hardness)]-4.705)}$)	1.46203-[(ln hardness)(0.145712)]
Nickel	WER[2]($e^{(0.8460\,[\ln(hardness)]+3.3612)}$)	0.998	WER[2]($e^{(0.8460\,[\ln(hardness)]+1.1645)}$)	0.997
Silver	WER[2]($e^{(1.72\,[\ln(hardness)]-6.52)}$/2[3])	0.85		
Zinc	WER[2]($e^{(0.8473\,[\ln(hardness)]+0.8604)}$)	0.978	WER[2]($e^{(0.8473\,[\ln(hardness)]+0.7614)}$)	0.986

[1] The AAC and CAC columns of this table contain total recoverable metals criteria (numeric and hardness-based). The criterion for the dissolved metal is calculated by multiplying the appropriate conversion factor by the AAC or CAC. This dissolved AAC or CAC shall be rounded to two (2) significant digits, except when the criteria are used as intermediate values in a calculation, such as in the calculation of water quality-based effluent limitations (WQBELs).

[2] A value of one (1) shall be used for the ~~water-effect ratio~~ WER unless an alternate value is established under section 8.9 of this rule.

[3] One-half (½) of the ~~final acute value~~ FAV as calculated by procedures developed by U.S. EPA in 1980. This value would correspond to acute aquatic values calculated using IDEM procedures or U.S. EPA procedures developed in 1985 in which the calculated FAV is divided by two (2) to reduce acute toxicity.

(4) The following establishes dissolved ~~acute aquatic criteria~~ AAC and ~~chronic aquatic criteria~~ CAC for certain metals at selected hardness values calculated from the equations and conversion factors in subdivision (3), Table 6-2, and using a value of one (1) for the WER:

Table 6-3

Metals Concentrations in Micrograms Per Liter; Hardness in Milligrams Per Liter $CaCO_3$[1]

	Arsenic (III)		Cadmium		Chromium (III)		Chromium (VI)		Copper		Lead		Nickel		Silver		Zinc	
Hardness	AAC	CAC	AAC	CAC	AAC	CAC	AAC	CAC	AAC	CAC	AAC	CAC	AAC	CAC	AAC	CAC	AAC	CAC
50	360	190	1.7	0.62	310	100	16	11	8.9	6.3	30	1.2	790	87	0.52	–	64	58
100	360	190	3.7	1.0	550	180	16	11	17	11	65	2.5	1400	160	1.7	–	110	100
150	360	190	5.7	1.4	760	250	16	11	25	16	100	3.9	2000	220	3.5	–	160	150
200	360	190	7.8	1.7	970	310	16	11	33	21	140	5.3	2500	280	5.7	–	210	190
250	360	190	10	2.0	1200	380	16	11	40	25	170	6.7	3100	340	8.3	–	250	230
300	360	190	12	2.3	1300	440	16	11	48	29	210	8.1	3600	400	11	–	290	270
350	360	190	14	2.6	1500	500	16	11	55	33	240	9.5	4100	450	15	–	330	300
400	360	190	17	2.9	1700	550	16	11	63	37	280	11	4600	510	19	–	370	340
450	360	190	19	3.1	1900	610	16	11	70	41	320	12	5100	560	23	–	410	370
500	360	190	21	3.4	2100	670	16	11	78	45	350	14	5500	610	27	–	450	410

[1] The dissolved metals criteria in this table have been rounded to two (2) significant digits in accordance with subdivision (3), Table 6-2. The equations and conversion factors in subdivision (3), Table 6-2 shall be used instead of the criteria in this table when dissolved metals criteria are used as intermediate values in a calculation, such as in the calculation of ~~water quality-based effluent limitations~~ WQBELs.

(b) This subsection establishes minimum surface water quality for aquatic life. In addition to subsection (a), subdivisions (1) through (5) are established to ensure conditions necessary for the maintenance of a well-balanced aquatic community. The following are applicable at any point in the waters outside of the mixing zone:

(1) There shall be no substances that:

(A) impart unpalatable flavor to food fish; or

(B) result in offensive odors in the vicinity of the water.

(2) No pH values below ~~six~~ 6.0 or above ~~nine~~ 9.0, except daily fluctuations that exceed pH ~~nine~~ 9.0 and are correlated with photosynthetic activity, shall be permitted.

(3) Concentrations of dissolved oxygen shall:

(A) average at least five (5.0) milligrams per liter per calendar day; and ~~shall~~

(B) not be less than four (4.0) milligrams per liter at any time.

(4) The following are conditions for temperature:

(A) There shall be no abnormal temperature changes that may adversely affect aquatic life unless caused by natural conditions.

(B) The normal daily and seasonal temperature fluctuations that existed before the addition of heat due to other than natural causes shall be maintained.

(C) The maximum temperature rise at any time or place above natural temperatures shall not exceed **the following:**

(i) Five (5) degrees Fahrenheit (two and eight-tenths (2.8) degrees Celsius) in streams. ~~and~~

(ii) Three (3) degrees Fahrenheit (one and seven-tenths (1.7) degrees Celsius) in lakes and reservoirs.

(D) Water temperatures shall not exceed the maximum limits in the following table during more than one percent (1%) of the hours in the twelve (12) month period ending with any month. At no time shall the water temperature at such locations exceed the maximum limits in the following table by more than three (3) degrees Fahrenheit (one and seven-tenths (1.7) degrees Celsius):

Table 6-4

	Ohio River Main Stem °F(°C)	Other Indiana Streams °F(°C)
January	50 (10.0)	50 (10.0)
February	50 (10.0)	50 (10.0)
March	60 (15.6)	60 (15.6)
April	70 (21.1)	70 (21.1)
May	80 (26.7)	80 (26.7)
June	87 (30.6)	90 (32.2)
July	89 (31.7)	90 (32.2)
August	89 (31.7)	90 (32.2)
September	87 (30.7)	90 (32.2)
October	78 (25.6)	78 (25.5)
November	70 (21.1)	70 (21.1)
December	57 (14.0)	57 (14.0)

(5) The following criteria will be used to regulate ammonia:

(A) Except for waters covered in clause (B), at all times, all surface waters outside of mixing zones shall be free of substances in concentrations that, on the basis of available scientific data, are believed to be:

(i) sufficient to injure; ~~be~~

(ii) chronically toxic to; or ~~be~~

(iii) carcinogenic, mutagenic, or teratogenic to;

humans, animals, aquatic life, or plants.

(B) For those waters listed in subsection (c), the following ammonia criteria will apply outside the mixing zone:

Maximum Ammonia Concentrations
(Unionized Ammonia as N)***
(mg/l)
Temperature (°C)

pH	0	5	10	15	20	25	30
6.5	0.0075	0.0106	0.0150	0.0211	0.0299	0.0299	0.0299
6.6	0.0092	0.0130	0.0183	0.0259	0.0365	0.0365	0.0365
6.7	0.0112	0.0158	0.0223	0.0315	0.0444	0.0444	0.0444
6.8	0.0135	0.0190	0.0269	0.0380	0.0536	0.0536	0.0536
6.9	0.0161	0.0228	0.0322	0.0454	0.0642	0.0642	0.0642
7.0	0.0191	0.0270	0.0381	0.0539	0.0761	0.0761	0.0761
7.1	0.0244	0.0316	0.0447	0.0631	0.0892	0.0892	0.0892
7.2	0.0260	0.0367	0.0518	0.0732	0.1034	0.1034	0.1034
7.3	0.0297	0.0420	0.0593	0.0837	0.1183	0.1183	0.1183
7.4	0.0336	0.0474	0.0669	0.0946	0.1336	0.1336	0.1336
7.5	0.0374	0.0528	0.0746	0.1054	0.1489	0.1489	0.1489
7.6	0.0411	0.0581	0.0821	0.1160	0.1638	0.1638	0.1638
7.7	0.0447	0.0631	0.0892	0.1260	0.1780	0.1780	0.1780
7.8	0.0480	0.0678	0.0958	0.1353	0.1911	0.1911	0.1911
7.9	0.0510	0.0720	0.1017	0.1437	0.2030	0.2030	0.2030
8.0	0.0536	0.0758	0.1070	0.1512	0.2135	0.2135	0.2135
8.1	0.0537	0.0758	0.1071	0.1513	0.2137	0.2137	0.2137
8.2	0.0537	0.0758	0.1071	0.1513	0.2137	0.2137	0.2137
8.3	0.0537	0.0758	0.1071	0.1513	0.2137	0.2137	0.2137
8.4	0.0537	0.0758	0.1071	0.1513	0.2137	0.2137	0.2137
8.5	0.0537	0.0758	0.1071	0.1513	0.2137	0.2137	0.2137
8.6	0.0537	0.0758	0.1071	0.1513	0.2137	0.2137	0.2137
8.7	0.0537	0.0758	0.1071	0.1513	0.2137	0.2137	0.2137
8.8	0.0537	0.0758	0.1071	0.1513	0.2137	0.2137	0.2137
8.9	0.0537	0.0758	0.1071	0.1513	0.2137	0.2137	0.2137
9.0	0.0537	0.0758	0.1071	0.1513	0.2137	0.2137	0.2137

***To calculate total ammonia, divide the number in the table by the value determined by:

$$1/(10^{pK_a - pH} + 1).$$

Where: pK_a = 0.09018 + (2729.92/(T + 273.2))
pH = pH of water
T = °C

24-Hour Average Ammonia Concentrations
(Unionized Ammonia as N)***
(mg/l)
Temperature (°C)

pH	0	5	10	15	20	25	30
6.5	0.0005	0.0008	0.0011	0.0015	0.0015	0.0015	0.0015
6.6	0.0007	0.0010	0.0014	0.0019	0.0019	0.0019	0.0019
6.7	0.0009	0.0012	0.0017	0.0024	0.0024	0.0024	0.0024
6.8	0.0011	0.0015	0.0022	0.0031	0.0031	0.0031	0.0031
6.9	0.0014	0.0019	0.0027	0.0038	0.0038	0.0038	0.0038
7.0	0.0017	0.0024	0.0034	0.0048	0.0048	0.0048	0.0048
7.1	0.0022	0.0031	0.0043	0.0061	0.0061	0.0061	0.0061
7.2	0.0027	0.0038	0.0054	0.0077	0.0077	0.0077	0.0077
7.3	0.0034	0.0048	0.0068	0.0097	0.0097	0.0097	0.0097
7.4	0.0043	0.0061	0.0086	0.0122	0.0122	0.0122	0.0122
7.5	0.0054	0.0077	0.0108	0.0153	0.0153	0.0153	0.0153
7.6	0.0068	0.0097	0.0136	0.0193	0.0193	0.0193	0.0193
7.7	0.0086	0.0122	0.0172	0.0242	0.0242	0.0242	0.0242

7.8	0.0092	0.0130	0.0184	0.0260	0.0260	0.0260	0.0260
7.9	0.0098	0.0138	0.0196	0.0276	0.0276	0.0276	0.0276
8.0	0.0103	0.0146	0.0206	0.0294	0.0294	0.0294	0.0294
8.1	0.0103	0.0146	0.0206	0.0294	0.0294	0.0294	0.0294
8.2	0.0103	0.0146	0.0206	0.0294	0.0294	0.0294	0.0294
8.3	0.0103	0.0146	0.0206	0.0294	0.0294	0.0294	0.0294
8.4	0.0103	0.0146	0.0206	0.0294	0.0294	0.0294	0.0294
8.5	0.0103	0.0146	0.0206	0.0294	0.0294	0.0294	0.0294
8.6	0.0103	0.0146	0.0206	0.0294	0.0294	0.0294	0.0294
8.7	0.0103	0.0146	0.0206	0.0294	0.0294	0.0294	0.0294
8.8	0.0103	0.0146	0.0206	0.0294	0.0294	0.0294	0.0294
8.9	0.0103	0.0146	0.0206	0.0294	0.0294	0.0294	0.0294
9.0	0.0103	0.0146	0.0206	0.0294	0.0294	0.0294	0.0294

***To calculate total ammonia, divide the number in the table by the value determined by:

$$1/(10^{pK_a - pH} + 1).$$

Where: pK_a = 0.09018 + (2729.92/(T + 273.2))
pH = pH of water
T = °C

(c) This subsection establishes surface water quality for coldwater fish. In addition to subsections (a) ~~through~~ **and** (b), the following criteria are established to ensure conditions necessary for the maintenance of a well-balanced, coldwater fish community and are applicable at any point in the waters outside of the mixing zone:

(1) Waters designated as salmonid waters and that shall be protected for coldwater fish are those waters designated by the Indiana department of natural resources for put-and-take trout fishing.

(2) In the waters listed in subdivision (1), dissolved oxygen concentrations shall not be less than **the following:**

(A) Six (6.0) milligrams per liter at any time. ~~and shall not be less than~~

(B) Seven (7.0) milligrams per liter in areas:

(i) where spawning occurs during the spawning season; and ~~in areas~~

(ii) used for imprinting during the time salmonids are being imprinted.

(3) In those waters listed in subdivision (1), the maximum temperature rise above natural shall not exceed two (2) degrees Fahrenheit (one and one-tenth (1.1) degrees Celsius) at any time or place and, unless due to natural causes, the temperature shall not exceed the following:

(A) Seventy (70) degrees Fahrenheit (twenty-one and one-tenth (21.1) degrees Celsius) at any time.

(B) Sixty-five (65) degrees Fahrenheit (eighteen and three-tenths (18.3) degrees Celsius) during spawning and imprinting periods.

(d) This subsection establishes bacteriological quality for recreational uses. In addition to subsection (a), the criteria in this subsection are to be used to evaluate waters for full body contact recreational uses, to establish wastewater treatment requirements, and to establish effluent limits during the recreational season, which is defined as the months of April through October, inclusive. E. coli bacteria, using membrane filter (MF) count, shall not exceed **the following:**

(1) One hundred twenty-five (125) per one hundred (100) milliliters as a geometric mean based on not less than five (5) samples equally spaced over a thirty (30) day period. ~~and~~

(2) Two hundred thirty-five (235) per one hundred (100) milliliters in any one (1) sample in a thirty (30) day period.

If a geometric mean cannot be calculated because five (5) equally spaced samples are not available, then the criteria stated in subdivision (2) must be met.

(e) This subsection establishes surface water quality for public water supply. In addition to subsections (a) and (d), the following criteria are established to protect the surface water quality at the point at which water is withdrawn for treatment for public supply:

(1) The coliform bacteria group shall not exceed the following:

(A) Five thousand (5,000) per one hundred (100) milliliters as a monthly average value (either MPN or MF count).

(B) Five thousand (5,000) per one hundred (100) milliliters in more than twenty percent (20%) of the samples examined during any month.

(C) Twenty thousand (20,000) per one hundred (100) milliliters in more than five percent (5%) of the samples examined during any month.

(2) Taste and odor producing substances, other than naturally occurring, shall not interfere with the production of a finished water by conventional treatment consisting of **the following:**

(A) Coagulation.

(B) Sedimentation.

(C) Filtration. ~~and~~

(D) Disinfection.

(3) The concentrations of either chlorides or sulfates shall not exceed two hundred fifty (250) milligrams per liter unless due to naturally occurring sources.

(4) The concentration of dissolved solids shall not exceed seven hundred fifty (750) milligrams per liter unless due to naturally occurring sources. A specific conductance of one thousand two hundred (1,200) micromhos per centimeter (at twenty-five (25) degrees Celsius) may be considered equivalent to a dissolved solids concentration of seven hundred fifty (750) milligrams per liter.

(5) Surface waters shall be considered acceptable for public water supply if radium-226 and strontium-90 are present in amounts not exceeding three (3) and ten (10) picocuries per liter, respectively. In the known absence of strontium-90 and alpha emitters, the water supply is acceptable when the gross beta concentrations do not exceed one thousand (1,000) picocuries per liter.

(6) Chemical constituents in the waters shall not be present in such levels as to prevent, after conventional treatment, meeting the drinking water standards contained in 327 IAC 8-2, due to other than natural causes.

(f) This subsection establishes surface water quality for industrial water supply. In addition to subsection (a), the criterion to ensure protection of water quality at the point at which water is withdrawn for use (either with or without treatment) for industrial cooling and processing is that, other than from naturally occurring sources, the dissolved solids shall not exceed seven hundred fifty (750) milligrams per liter at any time. A specific conductance of one thousand two hundred (1,200) micromhos per centimeter (at twenty-five (25) degrees Celsius) may be considered equivalent to a dissolved solids concentration of seven hundred fifty (750) milligrams per liter.

(g) This subsection establishes surface water quality for agricultural uses. The criteria to ensure water quality conditions necessary for agricultural use are the same as those in subsection (a).

(h) This subsection establishes surface water quality for limited uses. The quality of waters classified for limited uses under section 3(a)(5) of this rule shall, at a minimum, meet the following criteria:
(1) The criteria contained in subsection (a).
(2) The criteria contained in subsection (d).
(3) The criteria contained in subsection (f), where applicable.
(4) The waters must be aerobic at all times.
(5) Notwithstanding subdivisions (1) through (4), the quality of a limited use stream at the point where it becomes physically or chemically capable of supporting a higher use or at its interface with a higher use water segment shall meet the criteria that are applicable to the higher use water.

(i) This subsection establishes surface water quality for exceptional uses. Waters classified for exceptional uses warrant extraordinary protection. Unless criteria are otherwise specified on a case-by-case basis, the quality of all waters designated for exceptional use shall be maintained without degradation **in the same manner set forth for outstanding state resource waters (OSRWs) under 327 IAC 2-1.3.** *(Water Pollution Control Board; 327 IAC 2-1-6; filed Sep 24, 1987, 3:00 p.m.: 11 IR 581; filed Feb 1, 1990, 4:30 p.m.: 13 IR 1020; errata, 13 IR 1861; errata filed Jul 6, 1990, 5:00 p.m.: 13 IR 2003; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1725; errata filed May 7, 1993, 4:00 p.m.: 16 IR 2189; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1348; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3376; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2047)*

SECTION 2. 327 IAC 2-1.3 IS ADDED TO READ AS FOLLOWS:

Rule 1.3. Antidegradation Standards and Implementation Procedures

327 IAC 2-1.3-1 Applicability of water quality standards
Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18- 4-1; IC 13-18-4-3
Affected: IC 13-18-3; IC 13-18-4

Sec. 1. Notwithstanding the requirements of 327 IAC 2-1.5-1, the water quality standards established by this rule apply to all surface waters of the state. *(Water Pollution Control Board; 327 IAC 2-1.3-1)*

327 IAC 2-1.3-2 Definitions
Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-1; IC 13-18-4-3
Affected: IC 13-13-1-1; IC 13-18-1; IC 13-18-4; IC 14-8-2-310; IC 14-22-34; IC 36-2-3.5; IC 36-3-1

Sec. 2. The following definitions apply throughout this rule and 327 IAC 2-1 through 327 IAC 2-1.5:
(1) "Application" means an application for either of the following:
(A) A permit.
(B) A determination related to a permit.
(2) "Best management practices" or "BMPs" means the following measures to prevent or reduce the pollution of surface waters of the state:
(A) Schedules of activities.
(B) Prohibitions of practice.
(C) Treatment requirements.
(D) Operation and maintenance procedures.
(E) Use of containment facilities.
(F) Other management practices.
BMPs may be employed, for example, to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage resulting from manufacturing, commercial, mining, or silvicultural activities.
(3) "Bioaccumulation" means the net accumulation of a substance by an organism as a result of uptake from all environmental sources.
(4) "Bioaccumulation factor" or "BAF" means the ratio (in liters per kilogram) of a substance's concentration in tissue of an aquatic organism to its concentration in the ambient water in situations where:
(A) both the organism and its food are exposed; and
(B) the ratio does not change substantially over time.
(5) "Bioaccumulative chemical of concern" or "BCC" has the meaning set forth in 327 IAC 2-1.5-6.
(6) "Board" means the water pollution control board established under IC 13-18-1.
(7) "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 through 42 U.S.C. 9675, as amended on October 11, 1996.
(8) "Clean Water Act" or "CWA" means the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., as amended on December 16, 1996.
(9) "Combined sewer" means a sewer designed and employed to receive both of the following:
(A) Water-carried or liquid wastes.
(B) Storm or surface water.
(10) "Commissioner" means the commissioner of the department of environmental management.
(11) "Community" means a general collective term to describe the varieties of aquatic species and associated organisms living together in a waterbody.
(12) "Control document" means an NPDES permit or a Section 401 water quality certification.
(13) "Criterion" means a definite numerical value or narrative statement promulgated by the board to maintain or enhance water quality to provide for and fully protect designated uses of the surface waters of the state.
(14) "Degradation" means, with respect to an NPDES permit, the following:
(A) With respect to an ONRW, any new or increased discharge of a pollutant or a pollutant parameter, except for a short term, temporary increase.
(B) With respect to an outstanding state resource water or an

exceptional use water, any new or increased discharge of a pollutant or pollutant parameter that results in a significant lowering of water quality for that pollutant or pollutant parameter, unless:

(i) the activity causing the increased discharge:

(AA) results in an overall improvement in water quality in the outstanding state resource water or exceptional use water; and

(BB) meets the applicable requirements of 327 IAC 2-1-2(1), 327 IAC 2-1-2(2), 327 IAC 2-1.5-4(a), and 327 IAC 2-1.5-4(b); or

(ii) the person proposing the increased discharge undertakes or funds a water quality improvement project in accordance with IC 13-18-3-2(l) in the watershed of the outstanding state resource water or exceptional use water that:

(AA) results in an overall improvement in water quality in the outstanding state resource water or exceptional use water; and

(BB) meets the applicable requirements of 327 IAC 2-1-2(1), 327 IAC 2-1-2(2), 327 IAC 2-1.5-4(a), and 327 IAC 2-1.5-4(b).

(15) "Department" means the department of environmental management established under IC 13-13-1-1.

(16) "Designated uses" means those uses specified in these water quality standards for each waterbody whether or not they are being attained. Waste:

(A) transport;

(B) treatment; and

(C) assimilation;

shall not be designated uses.

(17) "Discharge" or "direct discharge", when used without qualification, means a discharge of a pollutant.

(18) "Draft permit" means a document prepared under 327 IAC 5-3-6 before the public comment period by the commissioner indicating the commissioner's tentative decision to:

(A) issue or deny;

(B) modify;

(C) revoke and reissue;

(D) terminate; or

(E) reissue;

a permit. A notice of intent to terminate a permit and a notice of intent to deny a permit are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination is not a draft permit. A proposed permit is not a draft permit.

(19) "Effluent" means a wastewater discharge from a point source to the surface waters of the state.

(20) "Effluent limitation" means any restriction established by the commissioner on:

(A) quantities;

(B) discharge rates; and

(C) concentrations;

of pollutants that are discharged, or will be discharged, from point sources into surface waters of the state.

(21) "Exceptional use water" means any water designated as an exceptional use water by the board, regardless of when the designation occurred.

(22) "Existing uses" means those uses actually attained in the waterbody on or after November 28, 1975, whether or not they are included under 327 IAC 2-1-3.

(23) "Great Lakes" means Lake Erie and Lake Michigan.

(24) "Great Lakes states" means the following:

(A) Illinois.

(B) Indiana.

(C) Michigan.

(D) Minnesota.

(E) New York.

(F) Ohio.

(G) Pennsylvania.

(H) Wisconsin.

(25) "Great Lakes system" means all the:

(A) streams;

(B) rivers;

(C) lakes; and

(D) other surface waters;

of the state within the drainage basin of the Great Lakes within Indiana.

(26) "High quality waters" or "HQWs" means waterbodies in which, on a parameter by parameter basis, the quality of the surface water exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water. The term includes any waterbody for which the pollutant has not been detected in the following:

(A) The water column.

(B) Nontransient aquatic organisms at levels that would indicate that a water quality criterion or value is not being met.

(27) "Indirect discharger" means a nondomestic discharger introducing pollutants into a POTW.

(28) "Legislative body" means any of the following:

(A) For a county not subject to IC 36-2-3.5 or IC 36-3-1, a board of county commissioners.

(B) For a county subject to IC 36-2-3.5, a county council.

(C) For a consolidated city or county having a consolidated city, a city council.

(D) For a city other than a consolidated city, a common council.

(E) For a town, a town council.

(F) For a township, a township board.

(29) "Mixing zone" means an area contiguous to a discharge where:

(A) the discharged wastewater mixes with the receiving water; and

(B) numeric water quality criteria or values may be exceeded.

The mixing zone should not be considered a place where effluents are treated.

(30) "National Pollutant Discharge Elimination System" or "NPDES" means the national program for:

(A) issuing;

(B) modifying;

(C) revoking and reissuing;

(D) terminating;

(E) denying;

(F) monitoring; and

(G) enforcing;

permits for the discharge of pollutants from point sources and imposing and enforcing pretreatment requirements by the U.S. EPA or an authorized state under Sections 307, 318, 402, and 405 of the Clean Water Act. The term includes a state program approved by the U.S. EPA under 40 CFR 123.

(31) "New Great Lakes discharger" means any:

(A) building;

(B) structure;

(C) facility; or

(D) installation;
from which there is or may be a discharge of a pollutant to the Great Lakes system, the construction of which commenced after March 23, 1997.
(32) "Nuisance species" means a harmful, nonindigenous species including the following:
(A) Zebra mussel.
(B) Round goby.
(C) Spiny water flea.
(D) Sea lamprey.
(E) Eurasian watermilfoil.
(F) Purple loosestrife.
(G) Ruffle.
(33) "Open waters of Lake Michigan" means all of the surface waters within Lake Michigan lakeward from a line drawn across the mouth of tributaries to the lake, including all surface waters enclosed by constructed breakwaters. For the Indiana Harbor Ship Canal, the boundary of the open waters of Lake Michigan is delineated by a line drawn across the mouth of the harbor from the East Breakwater Light (1995 United States Coast Guard Light List No. 19675) to the northernmost point of the LTV Steel property along the west side of the harbor.
(34) "Outstanding national resource water" or "ONRW" means a water designated as such by the general assembly after recommendations by the board and the environmental quality service council under IC 13-18-3-2(o) and IC 13-18-3-2(p). The designation must describe the quality of the ONRW to serve as the benchmark of the water quality that shall be maintained and protected. Waters that may be considered for designation as ONRWs include waterbodies that are recognized as any of the following:
(A) Important because of protection through official action, such as any of the following:
(i) Federal or state law.
(ii) Presidential or secretarial action.
(iii) International treaty.
(iv) Interstate compact.
(B) Having:
(i) exceptional:
(AA) recreational; or
(BB) ecological;
significance; or
(ii) other special environmental, recreational, or ecological attributes.
(C) Waters with respect to which designation as an ONRW is reasonably necessary for protection of other waterbodies designated as ONRWs.
(35) "Outstanding state resource water" or "OSRW" means any water designated as such by the board regardless of when the designation occurred or occurs. Waters that may be considered for designation as OSRWs include waterbodies that have unique or special:
(A) ecological;
(B) recreational; or
(C) aesthetic;
significance.
(36) "Parameter" means a quantitative or characteristic element that describes:
(A) physical;
(B) chemical; or
(C) biological;
conditions of water.
(37) "Permit" means:
(A) a permit;
(B) a license;
(C) a registration;
(D) a certificate; or
(E) any other type of authorization required before construction or operation;
that may be issued by the commissioner under pollution control laws or environmental management laws.
(38) "Permittee" means the holder of a permit.
(39) "Person" means any of the following:
(A) An individual.
(B) A partnership.
(C) A copartnership.
(D) A firm.
(E) A company.
(F) A corporation.
(G) An association.
(H) A joint stock company.
(I) A trust.
(J) An estate.
(K) A municipal corporation.
(L) A city.
(M) A school city.
(N) A town.
(O) A school town.
(P) A school district.
(Q) A school corporation.
(R) A county.
(S) Any consolidated unit of government.
(T) A political subdivision.
(U) A state agency.
(V) A contractor.
(W) Any other legal entity.
(40) "Point source" means any discernible, confined, and discrete conveyance, including, but not limited to, any of the following from which pollutants are or may be discharged:
(A) A pipe.
(B) A ditch.
(C) A channel.
(D) A tunnel.
(E) A conduit.
(F) A well.
(G) A discrete fissure.
(H) A container.
(I) Rolling stock.
(J) A concentrated animal feeding operation.
(K) A landfill leachate collection system.
(L) A vessel.
(M) Any other floating craft.
The term does not include return flows from irrigated agriculture or agricultural storm run-off. See 327 IAC 5-2-4 for other exclusions.
(41) "Pollutant" means:
(A) dredged spoil;
(B) solid waste;
(C) incinerator residue;
(D) filter backwash;
(E) sewage;
(F) garbage;
(G) sewage sludge;
(H) munitions;

(I) chemical wastes;
(J) biological materials;
(K) radioactive materials;
(L) heat;
(M) wrecked or discarded equipment;
(N) rock;
(O) sand;
(P) cellar dirt; and
(Q) industrial, municipal, and agricultural waste;
discharged into water.

(42) "Pollution prevention" means pollution prevention as defined by the United States Environmental Protection Agency under the following:
(A) The federal Pollution Prevention Act, 42 U.S.C. 13101 et seq.
(B) The United States Environmental Protection Agency pollution prevention policy statement (June 15, 1993).

(43) "Privately owned treatment works" means any device or system that is as follows:
(A) Used to treat wastes from any facility whose operator is not the operator of the treatment works.
(B) Not a POTW.

(44) "Publicly owned treatment works" or "POTW" means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature that is owned by a state or municipality. The term includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

(45) "RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. 6901 through 42 U.S.C. 6992k, as amended on October 19, 1996.

(46) "Recommencing discharger" means a source that recommences discharge after terminating operations.

(47) "Risk" means the probability that a pollutant or pollutant parameter, when released to the environment, will cause an adverse effect in exposed humans or other living organisms.

(48) "Sanitary sewer" means a sewer, to which storm, surface, and ground waters are not intentionally allowed to enter, that conveys liquid and water-carried wastes from the following:
(A) Residences.
(B) Commercial buildings.
(C) Industrial plants.
(D) Institutions.

(49) "Sewage" means all refuse, human excreta, garbage, waste, or waste products or any combination of these substances that:
(A) is potentially capable of contaminating the environment; and
(B) may be collected and carried off in a:
(i) pipe;
(ii) ditch; or
(iii) channel.

(50) "Sewer" means a pipe or conduit that carries wastewater or drainage water.

(51) "Stream design flow" means the stream flow that represents critical conditions, upstream from the source, for protection of:
(A) aquatic life;
(B) human health; or
(C) wildlife.

(52) "Threatened or endangered species" means the following:
(A) Species listed under Section 4 of the ESA*.
(B) Species listed as state threatened or endangered by the Indiana department of natural resources under IC 14-22-34.
(C) Species designated as state threatened or endangered species in the January 22, 1997, database for endangered, threatened, rare, and special concern species maintained by the Indiana natural heritage data center, division of nature preserves, department of natural resources**.

(53) "Tier I criteria" means numeric criteria derived by use of the Tier I procedures in 327 IAC 2-1-8.2 through 327 IAC 2-1-8.7 and 327 IAC 2-1.5-11 through 327 IAC 2-1.5-16 that either have been adopted as numeric criteria into a water quality standard or are used to implement narrative water quality criteria.

(54) "Tier II values" means numerical values derived by use of the Tier II procedures in 327 IAC 2-1.5-12 through 327 IAC 2-1.5-16 that are used to implement narrative water quality criteria.

(55) "Toxic substances" means substances that are or may become harmful to:
(A) aquatic life;
(B) humans;
(C) other animals;
(D) plants; or
(E) food chains;
when present in sufficient concentrations or combinations. The term includes those substances identified as toxic under Section 307(a)(1) of the Clean Water Act.

(56) "Tributaries of the Great Lakes system" means all surface waters of the Great Lakes system that are not open waters of Lake Michigan or connecting channels.

(57) "Unit of government" means a:
(A) county;
(B) municipality; or
(C) township.

(58) "Variance" means a deviation from a:
(A) water quality criterion or value; or
(B) narrative water quality standard;
granted by the commissioner under 327 IAC 2-1-8.8 or 327 IAC 2-1.5-17.

(59) "Wastewater" means the following:
(A) Human excreta, water, scum, sludge, and sewage from:
(i) sewage disposal systems;
(ii) retained contents of wastewater holding tanks; or
(iii) portable sanitary units.
(B) Grease, fats, and retained wastes from grease traps or interceptors.
(C) Wastes carried in liquid from ordinary living processes.
(D) Incidental or accidental seepage from sewage disposal systems.

(60) "Waters" or "waters of the state" means either:
(A) the accumulations of water:
(i) surface and underground;
(ii) natural and artificial; and
(iii) public and private; or
(B) a part of the accumulations of water;
that are wholly or partially within, flow through, or border upon Indiana. The term does not include a private pond or an off-stream pond, reservoir, or facility, built for reduction or control of pollution or cooling of water before discharge, unless the discharge from the pond, reservoir, or facility causes or threatens to cause water pollution.

(61) "Watershed" has the meaning set forth in IC 14-8-2-310.

(62) "Water use designations" means a use of the surface waters of the state as established by 327 IAC 2-1-3.

(63) "Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

*Section 4 of the ESA is incorporated by reference and may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46206.

**The database for endangered, threatened, rare, and special concern species is incorporated by reference and may be obtained from the Indiana Department of Environmental Management, Office of Water Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46206. *(Water Pollution Control Board; 327 IAC 2-1.3-2)*

327 IAC 2-1.3-3 Maintenance of surface water quality standards (antidegradation standards)

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

Sec. 3. (a) The Tier 1 antidegradation standard is as follows:
(1) For all surface waters of the state, existing uses and the level of water quality necessary to protect existing uses shall be maintained and protected. To ensure this standard is met, the commissioner shall do the following:
(A) Ensure that the level of water quality necessary to protect existing uses is maintained. In order to achieve this requirement, water quality standards use designations must include all existing uses.
(B) Establish controls as necessary on nonpoint sources, where authority exists, and point sources of pollutants to ensure the following:
(i) The criteria or values, or both, applicable to the designated use are achieved in the water.
(ii) Any designated use of a downstream water is protected.
(2) Where designated uses of the waterbody are impaired, there shall be no lowering of the water quality with respect to the pollutants or pollutant parameters that are causing the impairment. To ensure this standard is met, the commissioner shall not allow a lowering of water quality for the pollutants or pollutant parameters that prevents the attainment of the designated use or the water quality criterion or value.

(b) The Tier 2 antidegradation standard for HQWs is as follows:
(1) The surface waters of the state whose existing quality for any parameter is better than the water quality criteria or value for that parameter established in 327 IAC 2-1-6 or 327 IAC 2-1.5-8 shall be considered high quality for that parameter consistent with the definition of high quality waters.
(2) This high quality of water shall be maintained and protected unless the commissioner finds, after full satisfaction of intergovernmental coordination and public participation of Indiana's continuing planning process and the provisions in section 7 of this rule, that allowing a significant lowering of water quality is necessary to accommodate important economic or social development in the area in which the surface waters are located. In allowing a significant lowering of water quality, the commissioner shall assure the following:
(A) Water quality adequate to fully protect designated uses.
(B) That there be achieved:
(i) the highest statutory and regulatory requirements for all new and existing point sources; and
(ii) where authority exists, all cost-effective and reasonable best management practices for nonpoint source control.
(3) The commissioner shall use the antidegradation implementation procedures in sections 4 and 5 of this rule to determine if a significant lowering of water quality shall be allowed unless section 6 of this rule applies.

(c) The Tier 2.9 antidegradation standard for OSRWs is as follows:
(1) For BCCs in OSRWs, as well as waters within two (2) miles upstream of an OSRW, no new or increased loading shall be allowed unless section 6(c) of this rule applies.
(2) For non-BCCs in OSRWs, as well as waters within two (2) miles upstream of an OSRW, these waters shall be maintained and protected in their present high quality unless the commissioner finds, after full satisfaction of intergovernmental coordination and public participation of Indiana's continuing planning process and the provisions in section 7 of this rule, that allowing a significant lowering of water quality is necessary to accommodate important economic or social development in the area in which the surface waters are located. In allowing a significant lowering of water quality, the commissioner shall:
(A) assure water quality adequate to fully protect designated uses;
(B) assure that there be achieved:
(i) the highest statutory and regulatory requirements for all new and existing point sources; and
(ii) where authority exists, all cost-effective and reasonable best management practices for nonpoint source control; and
(C) use the antidegradation implementation procedures in section 5 of this rule to determine if a significant lowering of water quality shall be allowed unless section 6(d) of this rule applies.
(3) Additionally, for non-BCCs in OSRWs, any new or increased discharge limit shall only be allowed if the discharger demonstrates that the proposed discharge or other activities will result in a net improvement to the water quality of the receiving waterbody unless section 6(d) of this rule applies.

(d) The Tier 3 antidegradation standard for ONRWs is that all surface waters designated as an ONRW and their tributaries shall be maintained and protected in their present high quality without degradation except for short term, temporary discharges as described in section 6(b)(3) of this rule. To ensure this antidegradation standard is met, the following requirements apply:
(1) All deliberate actions that result in a new or increased discharge from an existing or new discharger are prohibited.
(2) Discharges to a tributary of an ONRW shall not be allowed if it would cause an increase in the ambient concentration of that pollutant in the ONRW.

(e) Except for OSRWs and ONRWs, any determination made by the commissioner in accordance with Section 316 of the Clean Water Act concerning alternative thermal effluent limitations shall be considered to be consistent with the antidegradation standards contained in this section. *(Water Pollution Control Board; 327 IAC 2-1.3-3)*

327 IAC 2-1.3-4 Antidegradation implementation procedures for bioaccumulative chemicals of concern

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

Sec. 4. (a) In HQWs, for a BCC, unless section 6(c) of this rule applies, a significant lowering of water quality will occur and an antidegradation demonstration will be required when a new or increased loading of any BCC is proposed from any new or existing discharger, either point source or nonpoint source, for which a new, renewed, or modified control document would be required as a result of any activity, including the following:

(1) Construction of a new regulated facility or modification of an existing regulated facility such that a new or modified permit is required.

(2) Modification of an existing regulated facility operating under a current permit such that the production capacity of the facility is increased.

(3) Addition of a new source of untreated or pretreated effluent containing or expected to contain any BCC to an existing wastewater treatment works, whether public or private.

(4) A request for an increased limit for a BCC in an applicable permit.

(5) Other deliberate activities that, based on the information available, could reasonably be expected to result in an increased loading of any BCC.

(b) In OSRWs, for a BCC, unless section 6(c) of this rule applies or the permittee elects to implement a water quality improvement project or payment of a fee as detailed in section 7(h) of this rule, no new or increased loading of a BCC shall be allowed from a point or nonpoint source for which a new, renewed, or modified control document would be required as a result of any of the activities listed in subsection (a). *(Water Pollution Control Board; 327 IAC 2-1.3-4)*

327 IAC 2-1.3-5 Definitions and coverage for pollutants that are not bioaccumulative

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

Sec. 5. (a) The following definitions apply throughout this section:

(1) "De minimis lowering of water quality" means:

(A) For discharges to waters that are not OSRWs or ONRWs but are within:

(i) four (4) miles upstream of any aquatic federally listed threatened and endangered species or any aquatic state listed endangered species; or

(ii) a distance the commissioner has determined to be necessary for the protection of any species listed in item (i);

there is a proposed increase in mass discharged less than or equal to five percent (5%) of the unused loading capacity. At least ninety percent (90%) of the unused loading capacity must remain unused after the lowering of water quality.

(B) For other discharges to waters that are not OSRWs or ONRWs, there is a proposed increase in mass discharged less than or equal to ten percent (10%) of the unused loading capacity. At least eighty-five percent (85%) of the unused loading capacity must remain unused after the lowering of water quality.

(C) For discharges to OSRWs, there is a proposed increase in mass discharged less than or equal to ten percent (10%) of the unused loading capacity. Except for heat, the sum of all previously approved new or increased discharges for the pollutant or pollutant parameter plus the new requested increase shall not exceed ten percent (10%) of the unused loading capacity for the pollutant or pollutant parameter as determined as of the date of the first approved increase. For heat, one (1) of the following conditions must be satisfied:

(i) The new or increased discharge will not result in an increase in temperature:

(AA) in a stream or an inland lake, outside of the designated mixing zone, where applicable; or

(BB) in Lake Michigan, as allowed in 327 IAC 2-1.5-8(c)(4)(D)(iv), at the edge of a one thousand (1,000) foot arc inscribed from a fixed point adjacent to the discharge.

(ii) The new or increased discharge will not result in an increase in waste heat:

(AA) for a stream, that is greater than the amount determined by calculating the number of British thermal units (BTUs) required to raise the temperature of the stream design flow of the receiving stream by one (1) degree Fahrenheit; or

(BB) for Lake Michigan, greater than five-tenths (0.5) billion BTUs per hour.

(2) "Total loading capacity for discharges directly into Lake Michigan" means the product of the applicable Tier I water quality criterion or Tier II value times the sum of the proposed effluent flow from a new or expanding discharger and the approved mixing volume, if any. The total loading capacity shall be expressed as a mass loading rate.

(3) "Total loading capacity for discharges directly into lakes other than Lake Michigan" means the product of the applicable Tier I water quality criterion or Tier II value times the proposed effluent flow from a new or expanding discharger. The total loading capacity shall be expressed as a mass loading rate.

(4) "Total loading capacity for streams" means the product of the applicable Tier I water quality criterion or Tier II value times the sum of the proposed effluent flow from a new or expanding discharger and the stream design flow for the waterbody in the area where the water quality is proposed to be lowered, expressed as a mass loading rate.

(5) "Unused loading capacity" means that amount of the total loading capacity not allocated to point source dischargers by NPDES permits and nonpoint source discharges at the applicable stream design flow. The unused loading capacity is established at the time a request to lower water quality is considered.

(b) For a nonbioaccumulative chemical of concern (non-BCC), except for pH and whole effluent toxicity testing, and unless section 6(d) of this rule applies, a significant lowering of water quality will occur and an antidegradation demonstration will be required when all of the following occur:

(1) One (1) of the following is met:

(A) The non-BCC has a numeric water quality criterion listed in 327 IAC 2-1-6 or 327 IAC 2-1.5-8.

(B) The non-BCC has sufficient data for a Tier I criterion or Tier II value to be calculated under 327 IAC 2-1-8.2 through 327 IAC 2-1-8.7 and 327 IAC 2-1.5-11 through 327 IAC 2-1.5-16.

(2) There is a new or increased limit, based on either mass or concentration, for the non-BCC from an existing or new point or nonpoint source discharger, either point source or nonpoint source, for which a new, renewed, or modified control document is needed, as a result of any activity.

(3) The new or increased limit for the non-BCC results in both of the following:

(A) The new or increased limit for the non-BCC will result in a calculated increase (calculated decrease for dissolved oxygen) in the ambient concentration for the non-BCC in the receiving waterbody outside of the designated mixing zone, where applicable, calculated by using the stream design flow.

(B) The lowering of water quality will be greater than a de minimis lowering of water quality.

(c) The proposed increase in mass discharged shall be determined as follows:

(1) M_p - M_E = proposed increase in mass discharged, where:

(A) M_p = monthly average mass effluent limitation for the pollutant or pollutant parameter in the proposed discharge; and

(B) M_E = monthly average mass effluent limitation for the pollutant or pollutant parameter in the existing permit.

(2) If the existing permit does not contain a monthly average mass effluent limitation for the non-BCC, but does contain a weekly average or daily maximum mass limit, the existing weekly average or daily maximum permit limit shall be converted into a monthly average value to be used in this equation.

(3) If the existing permit does not contain a monthly average mass limit for the non-BCC, but does contain a concentration limit, this concentration limit shall be converted into a monthly average mass value, using the discharge flow determined under 327 IAC 5-2-11.4(a)(9), to be used in this equation.

(4) If the existing permit does not contain an effluent limit for the non-BCC, the actual monthly average mass discharged shall be used in this equation. The actual monthly average mass discharged is the highest monthly average value of the non-BCC in the discharge derived from the most recent two (2) years of monitoring data for the pollutant. If no monitoring data exist, the permittee will be required to monitor its effluent for a minimum of three (3) months to establish a monthly average value.

(5) For a new discharge of a non-BCC, M_E shall equal zero (0).

(d) If a new or increased limit for the non-BCC would cause a significant lowering of water quality, the discharger may accept a limit for the non-BCC that:

(1) is more stringent than would otherwise be applicable; and

(2) would result in the discharge not causing a significant lowering of water quality.

(Water Pollution Control Board; 327 IAC 2-1.3-5)

327 IAC 2-1.3-6 Activities that will not constitute a significant lowering of water quality

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

Affected: IC 13-11-2-24; IC 13-18-3; IC 13-18-4

Sec. 6. (a) Any existing or new discharger that proposes a new or increased discharge under one (1) of the provisions listed in subsections (c) and (d) must submit information to the commissioner before applying for a facility construction permit under 327 IAC 3, if applicable, or for a new, renewed, or modified control document that describes how the provision is applicable. The commissioner shall review the submittal and determine whether the provision applies. If the commissioner determines the provision does apply, the commissioner shall process the request in the following manner:

(1) Approved activities not required to be public noticed under section 10 of this rule shall be public noticed as part of the draft permit and briefing memo, as described in 327 IAC 5-3-6 and 327 IAC 5-3-7, or fact sheet, as described in 327 IAC 5-3-8.

(2) Activities required to be public noticed under section 10 of this rule shall follow the process described in section 10 of this rule.

(b) Proposed new or increased discharges of a pollutant or pollutant parameter that meet one (1) of the provisions in this section are not considered a significant lowering of water quality as follows:

(1) For HQWs, subsections (c) and (d) apply in their entirety.

(2) For OSRWs, subsections (c) and (d) apply, except that subsection (d)(8) and (d)(9) are not available and subsection (d)(10) must meet the public notice requirements in section 10 of this rule before being approved by the commissioner.

(3) For ONRWs, only short term, temporary, new, or increased discharges may be allowed if the following conditions are met:

(A) The impact will last less than twelve (12) months.

(B) A proposed new or existing discharger applies for and receives authorization from the commissioner.

(c) The following new or increased discharges of BCCs are not considered a significant lowering of water quality:

(1) Changes in loadings of any BCC within the existing capacity and processes that are covered by an existing applicable control document. These changes include the following:

(A) Normal operational variability, including intermittent increased discharges due to wet weather conditions.

(B) Changes in intake water pollutants not caused by the discharger.

(C) Increasing the production hours of the facility, for example, adding a second shift.

(D) Increasing the rate of production.

(2) Bypasses not prohibited by 327 IAC 5-2-8(11).

(3) New or increased discharges of a BCC above the existing mass discharged due to increasing the sewered area, connection of new sewers and customers, or acceptance of trucked-in wastes, such as septage and holding tank wastes, by a POTW, provided that:

(A) the increase is within the existing NPDES permit limits of the facility;

(B) there is no increased loading of BCCs from nondomestic wastes; and

(C) no significant change is expected in the composition of the wastewater discharged.

(4) New or increased discharges of a pollutant or pollutant parameter due to:

(A) response actions under CERCLA, as defined in IC 13-11-2-24, as amended;

(B) corrective actions under RCRA, as amended; or

(C) similar federal or state authorities;

undertaken to alleviate a release into the environment of hazardous substances, pollutants, or contaminants that may pose an imminent and substantial danger to public health or welfare.

(d) The following new or increased discharges of non-BCCs are not considered a significant lowering of water quality:

(1) Changes in loadings of any non-BCC within the existing capacity and processes that are covered by an existing applicable control document. These changes include the following:

(A) Normal operational variability, including intermittent

increased discharges due to wet weather conditions.
(B) Changes in intake water pollutants not caused by the discharger.
(C) Increasing the:
(i) production hours of the facility, for example, adding a second shift; or
(ii) rate of production.
(2) New limits for a non-BCC for an existing permitted discharger that will not allow an increase in either the existing mass or concentration of the non-BCC discharged, including new limits that are a result of the following:
(A) New or improved:
(i) monitoring data; or
(ii) analytical methods.
(B) New or modified:
(i) water quality criteria or values; or
(ii) effluent limitations guidelines, pretreatment standards, or control requirements for POTWs.
(3) New or increased discharges of a pollutant when the:
(A) facility withdraws intake water containing the pollutant from the same body of water; and
(B) new or increased discharge of the pollutant is due solely to the presence of the pollutant in the intake.
(4) New or increased discharges of a non-BCC due solely to implementation of enforceable industrial or municipal controls on wet weather flows, including combined sewer overflows and individual NPDES permits for storm water associated with industrial activity, when there is not a calculated increase in the quantity and concentration of pollutants discharged to the same body of water.
(5) New or increased discharges of a non-BCC that will result only in a short term, temporary (not to exceed twelve (12) months) lowering of water quality.
(6) A new or increased discharge of a substance used to treat zebra mussels or other nuisance species in an intake water pipe or structure if the commissioner determines that the new or increased discharge will not cause adverse effects on the following:
(A) Human health.
(B) Aquatic life.
(C) Wildlife.
(7) New or increased discharges of a pollutant or pollutant parameter due to:
(A) response actions under CERCLA, as defined in IC 13-11-2-24, as amended;
(B) corrective actions under RCRA, as amended; or
(C) similar federal or state authorities;
undertaken to alleviate a release into the environment of hazardous substances, pollutants, or contaminants that may pose an imminent and substantial danger to public health or welfare.
(8) New or increased discharges of a non-BCC, where there is a contemporaneous enforceable decrease in the actual loading of the non-BCC from sources contributing to the same body of water such that there is a net decrease in the loading of the non-BCC to the same body of water or sensitive area.
(9) A new or increased discharge of a non-BCC if the applicant demonstrates the following:
(A) The new or increased discharge is necessary to accomplish a reduction in the discharge of another pollutant or pollutant parameter.
(B) All reasonable and cost-effective methods for minimizing or preventing the new or increased discharge have been taken.
(C) There will be an improvement in water quality in the waterbody. An improvement in water quality will occur if the new or increased discharge of the non-BCC is:
(i) not more bioaccumulative; and
(ii) either less bioaccumulative or less toxic than the reduced pollutant or pollutant parameter.
In making these determinations regarding bioaccumulation, the bioaccumulation factor methodology under 327 IAC 2-1.5-13 will be used.
(10) New or increased discharges of a pollutant or pollutant parameter due to increasing the sewered area, connection of new sewers and customers, or acceptance of trucked-in wastes, such as septage and holding tank wastes, by a POTW, provided that:
(A) the increase is within the design flow of the facility;
(B) there is no increased loading of BCCs from nondomestic wastes; and
(C) no significant change is expected in the characteristics of the wastewater discharged.
(11) New or increased discharges of noncontact cooling water that will not:
(A) increase the temperature of the receiving waterbody outside of the designated mixing zone, where applicable; or
(B) require numeric WQBELs for toxic substances or WET as determined under 327 IAC 5-2-11.5.

(e) As used in subsection (c), the following definitions apply:
(1) "Same body of water" has the meaning set forth in section 327 IAC 5-2-11.5(b)(4)(B)(i).
(2) "Sanitary wastewater" means the liquid and water-carried waste from:
(A) residences;
(B) commercial buildings;
(C) industrial plants;
(D) institutions; and
(E) other places of human occupancy;
that is transported by sewers and is primarily composed of human and household waste. The term does not include industrial process wastewater.
(Water Pollution Control Board; 327 IAC 2-1.3-6)

327 IAC 2-1.3-7 Antidegradation demonstration and determination

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-1; IC 13-18-4-3
Affected: IC 13-18-3-14; IC 13-18-4; IC 13-18-7; IC 13-23-13; IC 13-24-1; IC 13-25-5

Sec. 7. (a) If the provisions listed in section 6 of this rule do not apply, the person or entity proposing a significant lowering of water quality, as defined in sections 4 and 5 of this rule, must submit an antidegradation demonstration to the commissioner in accordance with this section. The antidegradation demonstration shall be submitted with the application for a new, renewed, or modified NPDES permit.

(b) All antidegradation demonstrations shall contain the following elements:
(1) An identification of all pollutants or pollutant parameters for which the antidegradation demonstration is required, including:
(A) an estimate of the mass and concentration proposed to be discharged; and
(B) the current and projected concentration in the receiving water.

(2) An identification of the receiving water or waters that would be affected by the new or increased discharge, and a description of the physical, biological, and chemical conditions of the waterbody as determined by:
(A) available information; or
(B) a reasonable investigation conducted by the applicant if no information is available.
(3) An identification of measures available to the applicant to minimize or prevent the proposed lowering of water quality. A separate analysis shall be performed for each pollutant or pollutant parameter for which there may be significant lowering of water quality. Each analysis shall include the following:
(A) An analysis of:
(i) pollution prevention alternatives and techniques, including:
(AA) new and innovative technologies; and
(BB) the ways to avoid the new discharge;
available to the applicant that would minimize or prevent the proposed significant lowering of water quality;
(ii) the mass loadings and effluent concentrations attainable by the alternatives and techniques; and
(iii) their costs relative to the cost of treatment necessary to achieve applicable effluent limitations.
(B) An analysis of:
(i) alternative or enhanced treatment techniques available to the applicant that would minimize or prevent the proposed significant lowering of water quality;
(ii) the mass loadings and effluent concentrations attainable by the alternatives and enhanced treatment techniques; and
(iii) their costs relative to the cost of treatment necessary to achieve applicable effluent limitations.
(C) An evaluation of the feasibility and costs of connecting to an existing publicly or privately owned treatment works within the vicinity of the applicant that is willing to accept wastewater from other entities.
(D) For POTWs, if the proposed significant lowering of water quality is a result of a proposed new or increased discharge from one (1) or more indirect dischargers, the antidegradation demonstration shall also include the following:
(i) The requirements of clauses (A) and (B) shall be completed for the indirect discharger or dischargers as well as for the POTW. The POTW may require the indirect dischargers to prepare this information.
(ii) If one (1) or more of the indirect dischargers proposes or does discharge to a:
(AA) combined sewer; or
(BB) sanitary sewer that is connected to a combined sewer;
all combined sewer overflows (CSOs) between the point of discharge to the sewer and the POTW shall be identified.
(4) Documentation showing that the applicant has made a good faith effort to provide notice to all government or privately sponsored conservation projects that have specifically targeted improved water quality or enhanced recreational opportunities on the proposed receiving waterbody in the area of the new or increased discharge. The notice shall include a list of the parameters for which a significant lowering of water quality is proposed.

(c) The antidegradation demonstration shall also contain an analysis of the positive and negative social or economic development impacts to the area in which the receiving waters are located that will occur if the significant lowering of water quality is allowed. This analysis shall include the following:
(1) The important social, economic, and environmental benefits to be realized through the project or activity if the water quality is lowered, including, as appropriate, the following:
(A) Industrial, commercial, or residential growth in the community.
(B) Changes in or retention of the number and types of jobs.
(C) Changes in the tax revenues generated.
(D) The extent to which an environmental or public health problem is corrected.
(E) Other social and economic benefits to the community.
(2) The important social, economic, and environmental benefits to be lost if water quality is lowered, such as lost or lowered recreational opportunities.

(d) Instead of the information required by subsections (b) and (c), dischargers proposing:
(1) a response action under CERCLA;
(2) a corrective action under RCRA;
(3) an action under similar federal or state authorities, including:
(A) an underground storage tank (UST) corrective action under IC 13-23-13;
(B) a remediation of petroleum releases under IC 13-24-1;
(C) a voluntary remediation under IC 13-25-5; or
(D) an abatement or correction of any polluted condition under IC 13-18-7;
(4) a new or increased discharge of a non-BCC that demonstrates:
(A) the new or increased discharge is necessary to accomplish a reduction in the release of one (1) or more air pollutants;
(B) all reasonable and cost-effective methods for minimizing or preventing the new or increased discharge have been taken; and
(C) there will be an environmental improvement, which will occur when the applicant demonstrates that the reduction in the discharge of the air pollutant:
(i) is necessary to meet a state or federal air quality standard or emission requirement; or
(ii) will substantially reduce human exposure to hazardous air pollutants or other air pollutants that are subject to state or federal air quality standards; or
(5) a new discharge from a sanitary wastewater treatment plant constructed to alleviate a public health concern, for example, a connection of existing residences currently on septic systems;
may submit information to the commissioner demonstrating that the action minimizes the proposed lowering of water quality and will use the most cost-effective pollution prevention and treatment techniques available.

(e) Upon receipt of an antidegradation demonstration, the commissioner shall provide notice and request comment. The commissioner shall hold a public meeting on the application in accordance with section 10 of this rule if:
(1) the proposed discharge is to an OSRW; or
(2) a public meeting is requested by at least twenty-five (25) persons.
The commissioner may hold a public meeting in accordance with section 10 of this rule if the commissioner otherwise deems such a meeting necessary or appropriate. The commissioner shall quantify the increased risk to human health due to new or increased discharges of BCCs. This information shall be available for inspection and copying as a public record before the public meeting

is held.

(f) Once the commissioner determines that the information provided by the discharger proposing a new or increased discharge is administratively complete, the commissioner shall make an antidegradation determination in accordance with the following:

(1) The commissioner shall consider the following, as appropriate:

(A) The magnitude of the proposed lowering of water quality.

(B) The anticipated impact of the proposed lowering of water quality on aquatic life and wildlife, including the following:

(i) Threatened and endangered species.

(ii) Important commercial or recreational sport fish species.

(iii) Other individual species.

(iv) The overall aquatic community structure and function.

(C) The anticipated impact of the proposed lowering of water quality on the following:

(i) Human health.

(ii) The overall quality and value of the water resource.

(D) The degree to which water quality may be lowered in waters located within the following:

(i) National, state, or local parks.

(ii) Preserves or wildlife areas.

(iii) OSRWs or ONRWs.

(E) The effects of lower water quality on the economic value of the waterbody for the following:

(i) Recreation, tourism, and other commercial activities.

(ii) Aesthetics.

(iii) Other use and enjoyment by humans.

(F) The extent to which the resources or characteristics adversely impacted by the lowered water quality are unique or rare within the locality or state.

(G) The cost of the water pollution controls associated with the proposed activity.

(H) The availability, reliability, cost-effectiveness, and technical feasibility of the:

(i) nondegradation;

(ii) minimal degradation; or

(iii) mitigative technique;

alternatives and the effluent reduction benefits and water quality benefits associated with such alternatives.

(I) The availability, cost-effectiveness, and technical feasibility of central or regional sewage collection and treatment facilities, including long range plans outlined in:

(i) state or local water quality management; and

(ii) applicable facility;

planning documents.

(J) The reliability of the preferred alternative including, but not limited to, the possibility of recurring operational and maintenance difficulties that would lead to increased degradation.

(K) The following economic and social factors:

(i) The condition of the local economy.

(ii) The changes in the number and types of jobs.

(iii) The state and local tax revenue to be generated.

(iv) Other economic and social factors as the commissioner deems appropriate.

(L) Any action or recommendation relevant to the antidegradation demonstration made by a:

(i) county;

(ii) township; or

(iii) municipality;

potentially affected by the new or increased loading.

(M) Any other information regarding the proposed activities and the affected waterbody that the commissioner deems appropriate.

(2) The commissioner shall deny some or all of the request to lower water quality if:

(A) cost-effective measures that would prevent or minimize the proposed lowering are reasonably available and the discharger has chosen not to implement these measures;

(B) the action that would cause the lowering is not necessary to accommodate important economic or social development in the area; or

(C) the action would jeopardize state listed endangered or federally listed threatened and endangered species.

(3) The commissioner may approve some or all of the activities that lower water quality only if:

(A) there has been:

(i) an examination of nondegradation, minimal degradation, and mitigative technique alternatives;

(ii) a review of the social and economic issues related to the activity;

(iii) a public participation process; and

(iv) appropriate intergovernmental coordination; and

(B) the commissioner determines that the lower water quality is necessary to accommodate important social or economic development in the area in which the waterbody is located.

(4) In no event may a permit be granted that would not meet the requirements of section 3 of this rule.

(g) When the commissioner makes a determination on an antidegradation demonstration, the determination shall be:

(1) summarized in the public notice form; and

(2) incorporated into the draft permit and the fact sheet that is made available for public comment under 327 IAC 5-3-9.

A final antidegradation decision shall be incorporated into the final NPDES permit and the fact sheet.

(h) In addition to the provisions in subsections (b) through (g), dischargers proposing to cause a significant lowering of water quality in an OSRW or exceptional use water shall choose to follow the following provisions in either subdivision (1) or (2) for each activity undertaken that will result in a significant lowering of water quality in an OSRW or exceptional use water:

(1) Implementation of a water quality project in the watershed of the OSRW or exceptional use water that will result in an overall improvement of the water quality of the OSRW or exceptional use water. The water quality project requirements are as follows:

(A) The discharger shall submit the water quality project framework to the commissioner, including the following information:

(i) A detailed description of the project, including the type and quantity of pollutants that will be eliminated as a result of the project.

(ii) Sufficient information to clearly demonstrate that the project will result in an overall improvement in water quality in the OSRW or exceptional use water.

(B) Any data used to assess overall water quality improvement must be less than seven (7) years old and specific to the OSRW or exceptional use water.

(C) Upon receipt of a water quality improvement project, the commissioner shall provide notice and request comment. The

commissioner shall hold a public meeting on the application in accordance with section 10 of this rule if:

(i) the proposed discharge is to an OSRW or exceptional use water; or

(ii) a public meeting is requested by at least twenty-five (25) persons.

The commissioner may hold a public meeting in accordance with section 10 of this rule if the commissioner otherwise deems such a meeting necessary or appropriate.

(D) Once the commissioner determines that the information provided by the discharger proposing a water quality improvement project is administratively complete, the commissioner shall make a determination within one hundred twenty (120) days.

(2) Payment of a fee determined by the department not to exceed five hundred thousand dollars ($500,000) based on the type and quantity of increased pollutant loadings for deposit in the OSRW improvement fund established under IC 13-18-3-14. The department shall calculate the fee based on projected costs of potential projects determined by the permittee that will result in a net improvement in water quality.

(Water Pollution Control Board; 327 IAC 2-1.3-7)

327 IAC 2-1.3-8 Designation of a waterbody as an outstanding state resource water

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

Affected: IC 13-14-8-4; IC 13-14-8-5; IC 13-14-9; IC 13-18-3; IC 13-18-4; IC 14-29-6

Sec. 8. (a) The department shall initiate a rulemaking to designate a waterbody as an OSRW if the waterbody has a unique or special:

(1) ecological;

(2) recreational; or

(3) aesthetic;

significance.

(b) For purposes of subsection (a), a waterbody has unique or special ecological significance if the quality of the waterbody is excellent in two (2) of the following areas:

(1) Biological.

(2) Chemical.

(3) Physical.

(c) For purposes of subsection (a), a waterbody has unique or special recreational or aesthetic significance if at least three (3) of the following are met:

(1) The waterbody has excellent aesthetic quality.

(2) The waterbody:

(A) is contained in;

(B) is partially contained in; or

(C) borders on;

a park, forest or natural area, or nature preserve designated for special protection on a federal, state, or local level.

(3) Threatened or endangered species are:

(A) contained within; or

(B) dependent on;

the waterbody.

(4) The waterbody is:

(A) an outstanding recreational sport fishery; or

(B) a first or second order stream in an undeveloped watershed.

(d) The following definitions apply throughout this section:

(1) "Excellent aesthetic quality" means a waterbody that is recommended for designation by the Indiana department of natural resources or is designated by the Indiana natural resources commission as a scenic or recreational river under IC 14-29-6 or that achieves a score of at least thirteen (13) when evaluated using the following framework:

(A) Naturalness of bank vegetation:

25% or less disturbed; some light cutting, grazing, or thinning may have occurred as long as the character of the vegetation type remains intact	3
25-50% disturbed	2
51-75% disturbed; heavy grazing, cutting, or clearing	1
More than 75% disturbed	0

(B) Vegetation depth-length index, two (2) classes of depth used in determining the index:

(i) native vegetation extending back at least one hundred (100) feet is simply measured by the miles of its length along the stream; and

(ii) forest or brush fringes and strips of vegetation less than one hundred (100) feet deep are given one-half (½) the number of miles of their length along the stream.

Index of at least 75%	3
Index of 51-74%	2
Index of 25-50%	1
Less than 25%	0

(C) Physical modification of the stream or its course:

Not channelized and no dams	3
Innundation or channelization, or both, that creates artificial pools that back up water for 3% or less of the stream length at normal summer levels	2
Innundation or channelization, or both, have a cumulative total of more than 3% but not more than 5%	1
Innundation or channelization, or both, have a cumulative total of more than 5%	0

(D) Human development of flood plains, slopes, and visible uplands. The stream (or segment) is to be rated when foliage is full for both of the following:

(i) Visible urban impact.

(ii) Additional visible structures.

Visible urban impact	
100% nonurban along banks	1.5
Up to 5% urban	1
Between 5% and 10% urban	0.5
More than 10% urban	0
Additional visible structures	
Up to 0.5 additional visible houses, cabins, industrial buildings, gravel pits, or clusters per mile	1.5
Between 0.6 and 1.0 additional visible houses, cabins, industrial buildings, gravel pits, or clusters per mile	1

Between 1.1 and 2.0 additional visible houses, cabins, industrial buildings, gravel pits, or clusters per mile	0.5
More than 2.0 additional visible houses, cabins, industrial buildings, gravel pits, or clusters per mile	0

(E) Special natural features. Views, species of plants, fish and wildlife habitat, or geological formation occurring anywhere along the length of the stream (or segment) either singly or in combinations that are significant.

National significance	4
Statewide significance	3
Regional significance	2
Local significance	1
Not of significance	0

(F) Aesthetic quality of water:

No visible pollution except for highly unusual accidents; turbid only after heavy rain	3
Visible pollution except for muddy water is rare	2
Pollution periodically but infrequently, visible, chronically turbid	1
Pollution is chronic and visible, not including muddy surface waters	0

(G) Paralleling roads:

Less than 0.08 mile of paralleling county roads within 1,000 feet of the waterbody per mile. No state, United States, or interstate highways within 1,000 feet of waterbody	3
Between 0.09 and 0.2 mile of paralleling county roads or state highways within 1,000 feet of the waterbody per mile. No United States or interstate highways within 1,000 feet of waterbody	2
Between 0.3 and 0.5 miles of paralleling county roads or state or United States highways within 1,000 feet of the waterbody per mile	1
More than 0.5 miles of paralleling roads within 1,000 feet of the waterbody per mile	0

(H) Crossings:

0.3 crossings per mile	3
0.4 0.5 crossings per mile	2
0.6 1.0 crossings per mile	1
More than 1.0 or more crossings per mile	0

(2) "Excellent biological quality" means that the:

(A) fish community scores at least fifty (50) points using a valid Index of Biotic Integrity (IBI) scoring system of Karr et al. (1986) and as modified for Indiana by Simon (1991, 1992, 1994, 1995, 1998), Simon et al. (1995), and Barbour et al. (1997)*; or

(B) instream macroinvertebrate community scores within the upper twenty-five percent (25%) of the distribution of Indiana sites sampled using an appropriate and valid invertebrate community index and classification system as presented in Barbour et al. (1997).

(3) "Excellent chemical quality" means a determination by a comprehensive assessment of the watershed. This assessment shall consider the chemical water quality, using accepted and reliable analysis techniques and methods that characterize the water quality, including the following:

(A) Suspended inorganic matter.

(B) Dissolved major ions.

(C) Dissolved nutrients.

(D) Suspended and dissolved organic matter.

(E) Gases.

(F) Trace metals.

Excellent chemical quality shall be determined by comparison to reference conditions that have been determined based upon similar studies that characterize the optimal condition for the region.

(4) "Excellent physical quality" means the waterbody or segment has exceptional physical characteristics considering:

(A) geological;

(B) morphological; and

(C) hydrological;

factors.

(5) "Outstanding recreational sport fishery" means a waterbody characterized as being sustained through natural fish reproduction and providing a variety of sport fish species including many of the following:

(A) Rock bass.

(B) Sauger.

(C) Largemouth bass.

(D) Smallmouth bass.

(E) Spotted bass.

(F) Flathead catfish.

(G) Channel catfish.

(H) Northern pike.

These sport fish populations comprise an appropriate portion of the fish community (relative abundance) and have a representative length frequency distribution and age structure indicative of stable and healthy systems. Such systems also provide higher than average sport fish catch rates, including presence of large individual fish.

(6) "Stream order" means a classification of stream size where the smallest, unbranched tributaries of a drainage basin are designated first order streams in an undeveloped watershed. Where two (2) first order streams join, a second order stream is formed. For the purposes of water quality standards application, stream order is determined from United States Geological Service topographic maps with a scale of 1:24,000.

(7) "Undeveloped watershed" means that the watershed meets all of the following tests:

(A) Less than three percent (3%) of the land in the watershed is employed in urban land uses.

(B) There are no municipalities located in the watershed that have a population greater than five thousand (5,000).

As used in this subdivision, "watershed" means all of the land area that drains to the waterbody at issue, including the land area that drains to tributaries or upstream segments.

(e) A waterbody may be recommended for designation as an OSRW through one (1) of the following procedures:

(1) The board receives a proposal for designation under IC 13-14-8-5, which must be on an application form consistent with the form described in subsection (f).

(2) The commissioner decides under subsection (a) to commence a rulemaking before the board.

(3) An interested party submits a nomination to the commissioner under the procedures set forth in subsection (f), and the commissioner:

(A) determines that the nomination has merit; and

(B) decides to commence a rulemaking before the board with

regard to that nomination.

(f) In September of each year, the commissioner shall publish a notice in the Indiana Register announcing that interested parties may submit nominations for waterbodies to be considered for designation as an OSRW. The Indiana Register notice must contain an application form requesting the submittal of available information that supports the designation of the nominated waterbody, including available information showing that the waterbody meets the prerequisites for designation as specified in subsection (a). All nominations must be:

(1) received by the commissioner within sixty (60) days after publication of the notice; and

(2) submitted on the application form published in the Indiana Register.

(g) If the board receives a proposal for designation under subsection (e)(1) and determines the proposal is not plainly devoid of merit, or if the commissioner decides to commence a rulemaking under subsection (e)(2) or (e)(3), the commissioner shall do the following:

(1) Prepare a detailed analysis of the nominated waterbody. This analysis, at a minimum, must include the following information:

(A) A specific delineation of the boundaries of the:

(i) waterbody; and

(ii) watershed area;

that would be affected by the applicable implementation procedures.

(B) A detailed discussion of the reason or reasons that the waterbody is being proposed or considered for special designation.

(C) A detailed description of the procedures to be followed by the:

(i) commissioner; and

(ii) board;

in considering whether the waterbody should be designated.

(D) A comparison of the existing antidegradation requirements applicable to the waterbody to all potential antidegradation requirements applicable to that waterbody if successfully designated as an OSRW.

(E) Economic impact analyses, presented by any interested party, taking into account future:

(i) population; and

(ii) economic development;

growth.

(F) The biological criteria scores for the waterbody, using factors that consider:

(i) fish communities;

(ii) macroinvertebrate communities; and

(iii) chemical quality criteria;

using representative biological data from the waterbody under consideration.

(G) The level of current urban and agricultural development in the watershed.

(H) Whether the designation of the waterbody as an OSRW will have a significant adverse effect on future population, development, and economic growth in the watershed, if the waterbody is in a watershed that:

(i) has more than three percent (3%) of its land in urban land uses; or

(ii) serves a municipality with a population greater than five thousand (5,000).

(I) Whether the designation of the waterbody as an OSRW is necessary to protect the unique or special:

(i) ecological;

(ii) recreational; or

(iii) aesthetic;

significance of the waterbody.

(2) The commissioner shall prepare a summary document of the detailed analysis required under subdivision (1). The summary document must be mailed, using certified mail with return receipt requested, to the following parties within thirty (30) days of completion of the analysis:

(A) All interested parties that have requested notice of proposed designations from the:

Indiana Department of Environmental Management
Office of Water Management, Planning Branch, Rules Section
P.O. Box 6015
Indianapolis, Indiana 46206-6015.

(B) All government units affected by the:

(i) designation; and

(ii) implementation procedures of the designation.

In this notification, IDEM shall indicate that the legislative body of the governmental units may adopt a resolution for consideration by the department regarding the designation.

(C) All NPDES permit holders affected by the:

(i) designation; and

(ii) implementation procedures.

(3) The commissioner shall publish a notice announcing the consideration of the rulemaking in the largest daily circulation newspaper in the county or counties in which the watershed of the waterbody being considered for designation is located. The notice shall:

(A) discuss the availability of the detailed analysis required under subdivision (1); and

(B) include the summary document required under subdivision (2).

(4) The commissioner shall also publish the summary document required under subdivision (2) in the Indiana Register.

(5) All of the notices required under subdivisions (2) through (4) must be mailed and published at least thirty (30) days before the public hearing required under subdivision (6).

(6) If the proposed designation meets the applicable eligibility requirements of this section, the commissioner shall hold a public hearing regarding the proposed designation at a location in the affected watershed. At the public hearing, the commissioner shall present the information required in subdivision (1). Any interested party may present oral testimony and written comments. After considering the oral testimony and written comments, the commissioner shall take one (1) of the following actions, as applicable:

(A) If proceeding under subsection (e)(1), submit a recommendation to the board as to whether a rulemaking should be commenced, along with copies of the following:

(i) The analysis and summary developed under subdivisions (1) and (2).

(ii) Any written comments that were submitted to the commissioner.

(iii) A summary of those comments.

(iv) The record of the public hearing.

The commissioner's recommendation must be made available to the public at least fifteen (15) days before the board holds a hearing on the proposed designation.

(B) If proceeding under subsection (e)(2) or (e)(3) and based upon:
(i) the analysis and summary developed under subdivisions (1) and (2);
(ii) any written comments submitted to the commissioner; and
(iii) the testimony at the public meeting;
publish a notice in the Indiana Register under IC 13-14-9.

(h) In adopting rules to designate a waterbody as an OSRW, the board shall take into account the applicable factors in IC 13-18-3-2 and IC 13-14-8-4.

(i) The commissioner shall present:
(1) a summary of the comments received from the comment period; and
(2) information that supports the waterbody designation under subsection (c) as an OSRW;
to the environmental quality service council not later than one hundred twenty (120) days after the rule regarding the designation is finally adopted by the board.

***Index of Biotic Integrity (IBI) scoring system of Karr et al. (1986) and as modified for Indiana by Simon (1991, 1992, 1994, 1995, 1998), Simon et al. (1995), and Barbour et al. (1997), is incorporated by reference and may be obtained from the Indiana Department of Environmental Management, Office of Water Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46206.** *(Water Pollution Control Board; 327 IAC 2-1.3-8)*

327 IAC 2-1.3-9 Designation of a waterbody as an outstanding national resource water
Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-1; IC 13-18-4-3
Affected: IC 13-14-8-4; IC 13-14-9; IC 13-18-3; IC 13-18-4

Sec. 9. (a) A waterbody may be designated as an ONRW only by the general assembly after recommendations for designation are made by the:
(1) board; and
(2) environmental quality service council.

(b) Before a waterbody may be recommended for designation as an ONRW to the general assembly under IC 13-18-3-2, the department shall provide for an adequate public notice and comment period regarding the designation, as provided under subsection (c).

(c) If a waterbody is recommended for designation as an ONRW under subsection (a), the commissioner shall do the following:
(1) Prepare a detailed analysis of the possible designation. This analysis, at a minimum, must include the following information:
(A) A specific delineation of the boundaries of the:
(i) waterbody; and
(ii) watershed area;
that would be affected by the applicable implementation procedures.
(B) A detailed discussion of the reason or reasons that the waterbody is being proposed or considered for designation as an ONRW. This discussion must include an explanation of how the waterbody meets the designation criteria set forth at IC 13-18-3-2(d).
(C) A comparison of the existing antidegradation requirements applicable to the waterbody to all potential antidegradation requirements applicable to that waterbody if successfully designated as an ONRW.
(D) Whether the designation of the waterbody as an ONRW is necessary to protect the characteristics of the waterbody that qualify it for designation as an ONRW.
(2) The commissioner shall prepare a summary document of the detailed analysis required under subdivision (1). The summary document must be mailed, using certified mail with return receipt requested, to the following parties within thirty (30) days of completion of the analysis:
(A) All interested parties that have requested notice of proposed designations from the:
Indiana Department of Environmental Management
Office of Water Management, Planning Branch, Rules Section
P.O. Box 6015
Indianapolis, Indiana 46206-6015.
(B) All government units affected by the:
(i) designation; and
(ii) implementation procedures of the designation.
In this notification, IDEM shall indicate that the legislative body of the governmental units may adopt a resolution for consideration by the department regarding the designation.
(C) All NPDES permit holders affected by the:
(i) designation; and
(ii) implementation procedures.
(3) The commissioner shall publish a notice announcing the consideration of the designation of the waterbody as an ONRW in the Indiana Register. The notice must:
(A) include the:
(i) analysis prepared under subdivision (1); and
(ii) summary document prepared under subdivision (2); and
(B) provide for a public comment period concerning the designation that must be at least thirty (30) days in duration.

(d) The commissioner shall present:
(1) a summary of the comments and information received during the comment period; and
(2) the department's recommendation concerning designation;
to the environmental quality service council not later than ninety (90) days after the end of the comment period. *(Water Pollution Control Board; 327 IAC 2-1.3-9)*

327 IAC 2-1.3-10 Public participation in antidegradation decisions
Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-1; IC 13-18-4-3
Affected: IC 13-15-4-1; IC 13-15-4-3; IC 13-18-3; IC 13-18-4

Sec. 10. An application for:
(1) an antidegradation demonstration under section 7 of this rule; and
(2) certain other activities under section 6 of this rule;
must meet the requirements of 327 IAC 5-2-11.2. *(Water Pollution Control Board; 327 IAC 2-1.3-10)*

SECTION 3. 327 IAC 2-1.5-18 IS AMENDED TO READ AS FOLLOWS:

327 IAC 2-1.5-18 Designation of a waterbody as a limited use water
Authority: IC 13-14-8; IC 13-14-9; IC 13-18-3
Affected: IC 13-18-4

Sec. 18. (a) A person who wishes to propose that a waterbody within the Great Lakes system be considered by the commissioner for designation as a limited use ~~or outstanding state resource~~ water shall submit to the commissioner a written proposal:

(1) identifying the waterbody; ~~and the proposed designation~~

(2) stating the rationale for the proposal; and

~~(2)~~ **(3)** including any other supporting documentation.

(b) The commissioner shall evaluate ~~the proposal considering the following: (1)~~ **and consider** waters that meet the following ~~conditions may be considered~~ for designation as a limited use water:

~~(A)~~ **(1)** Waters that have:

~~(i)~~ **(A)** naturally poor physical characteristics, that is, suitable habitat to support a well-balanced fish community is severely limited or absent, including lack of sufficient flow ($Q_{7,10}$ low flow upstream of any existing or proposed discharge of one-tenth (0.1) cubic foot per second or less);

~~(ii)~~ **(B)** naturally poor chemical quality;

~~(iii)~~ **(C)** irreversible man-induced conditions that came into existence ~~prior to~~ **before** January 1, 1983; and

~~(iv)~~ **(D)** no unique or exceptional features.

~~(B)~~ **(2)** No potential or existing uses made of the waterbody by people in the immediate area would be adversely affected by a limited use designation.

~~(C)~~ **(3)** The waterbody has been evaluated by a use attainability analysis.

~~(2) Factors that relate to outstanding state resource water designations may include, but are not limited to, the following:~~

~~(A) The presence of a unique or exceptional habitat or species in the waterbody.~~

~~(B) The presence of a rare or endangered species in the waterbody.~~

~~(C) The presence of exceptional aesthetic quality in the immediate environs of the waterbody.~~

~~(D) The waterbody is within the boundaries of or flows through a designated natural area, nature preserve, or state or national park or forest.~~

~~(E) The waterbody supports an excellent sports fishery.~~

~~(F) The waterbody possesses exceptional quality.~~

~~(G) Intensive recreational use is made of the waterbody.~~

~~(H) Designation as a natural, scenic, or recreational waterbody by the Indiana department of natural resources.~~

~~Irrespective of these factors, the commissioner's evaluation will generally be a case-by-case determination using information obtained from an on-site evaluation. If appropriate, the commissioner shall consult with the Indiana department of natural resources concerning the designation of a waterbody as an outstanding state resource water.~~

(c) After completion of the evaluation under subsection (b), if the commissioner determines that reclassification of the waterbody is appropriate, the commissioner shall initiate a rulemaking to include the waterbody ~~either~~ as a limited use water ~~or an outstanding state resource water~~ under section 19 of this rule.

(d) All waters that are designated as a limited use water under section 19(a) of this rule must be evaluated for restoration and upgrading at each triennial review of this rule.

(e) The department shall initiate a special designations rulemaking in accordance with the following:

(1) The special designations rulemaking shall be initiated for ~~the~~ purposes of **the following:**

(A) Determining whether any other designations in addition to:

(i) outstanding state resource waters;

(ii) high quality waters;

(iii) limited use waters; and

(iv) outstanding national resource waters;

should be established.

(B) Determining the appropriate factors to consider in designating a waterbody;

(C) Identifying a list of waterbodies for each special designation. ~~and~~

(D) Specifying antidegradation implementation procedures for ~~outstanding state resource waters, outstanding national resource waters, and for~~ any ~~other~~ newly established designation.

(2) ~~Prior to~~ **Before** the presentation of proposed rules on special designations to the board, the department shall consult with:

(A) other state and federal agencies; and ~~with~~

(B) interested persons within Indiana;

as appropriate. ~~The department shall provide information to the public on the history, intent, and importance of the current outstanding state resource water designation and the list of outstanding state resource waters.~~

~~(3) The department shall seek comment, as part of the second notice on special designations, on adding waterbodies to the list of outstanding national resource waters, on the specific interim antidegradation implementation procedures included in 327 IAC 5-2-11.7 for outstanding state resource waters, and on procedures for addressing increases not included in the specific exceptions listed in 327 IAC 5-2-11.7(c)(2).~~

~~(4) The following statement shall be included in the second notice and shall be used as a guide during the special designation rulemaking, "The interim antidegradation implementation procedures for outstanding state resource waters in 327 IAC 5-2-11.7 are intended only to assure that a specific process exists to address proposed changes pending the completion of the special designation rulemaking. The board does not consider the specific procedures listed in 327 IAC 5-2-11.7 as a final policy statement or as binding on the board in the special designation rulemaking.".~~

~~(5) The department shall present rules to the board on a schedule such that final rules may be adopted and made effective prior to the expiration of 327 IAC 5-2-11.7.~~

(Water Pollution Control Board; 327 IAC 2-1.5-18; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1410; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3378)

SECTION 4. 327 IAC 5-2-11.1, AS AMENDED AT 28 IR 2097, SECTION 24, IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-2-11.1 Establishment of water quality-based effluent limitations for dischargers not discharging to waters within the Great Lakes system

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3
Affected: IC 13-11-2; IC 13-18-4

Sec. 11.1. (a) The water quality standards established through the criteria set forth in 327 IAC 2-1-6 and 327 IAC 2-1-8.9 or under the procedures described in 327 IAC 2-1-8.2 through 327 IAC 2-1-8.6 and 327 IAC 2-1-8.9 shall:

(1) be the basis for water quality-based effluent limitations (WQBELs) applicable to point source dischargers, not discharging to waters within the Great Lakes system, through NPDES permits, except for instances where a variance has been approved under 327

IAC 2-1-8.8 and 327 IAC 5-3-4.1; and
(2) not be enforceable against point source dischargers until translated into effluent limitations that are incorporated in NPDES permits in accordance with this article.

(b) This subsection describes how the surface water quality criteria in 327 IAC 2-1-6(a) and 327 IAC 2-1-8.9(g) or those criteria derived using the procedures in 327 IAC 2-1-8.2 through 327 IAC 2-1-8.6 and 327 IAC 2-1-8.9 will be applied in determining appropriate WQBELs to NPDES permits as follows:
(1) The: ~~final acute value~~
(A) FAV (FAV = 2(AAC)) will be applied directly to the undiluted discharge; or
(B) if dilution by discharge induced mixing is allowed, the AAC will be applied outside the discharge induced mixing zone.
If the AAC for a metal is expressed in the form of dissolved metal, the AAC shall be set equal to $C_{instream}$ determined for the AAC in accordance with subdivision (8).
(2) The CAC and the TLSC will be applied outside of the mixing zone. In the absence of site-specific mixing zone data, the allowable mixing zone dilution shall be determined by applying the guideline in 327 IAC 2-1-4 to the $Q_{7,10}$ low flow of the receiving stream. If the CAC for a metal is expressed in the form of dissolved metal, the CAC shall be set equal to $C_{instream}$ determined for the CAC in accordance with subdivision (8).
(3) The HLSC shall be applied outside of the mixing zone if based on the consumption of organisms and incidental water intake. If based on consumption of organisms and drinking water, the HLSC shall apply at the point of the public water system intake, if this does not cause the HLSC based on consumption of organisms and incidental water intake to be exceeded outside of the mixing zone. Allowable mixing zone dilution shall be determined by applying the guideline of 327 IAC 2-1-4 to the:
(A) $Q_{7,10}$ low flow of the receiving stream if the HLSC is based on consumption of organisms and incidental water intake; and ~~the~~
(B) $Q_{7,10}$ flow at the point of the public water system intake (provided the effluent has had time to fully mix with the receiving water) shall be allowed for dilution if the HLSC is based on consumption of organisms and drinking water.
(4) The criterion to provide an acceptable degree of protection to public health for cancer effects shall apply outside of the mixing zone if the criterion is based on consumption of organisms and incidental water intake and at the point of the public water system intake if based on the consumption of organisms and drinking water, if this would not cause the criterion based on the consumption of organisms and incidental water intake to be exceeded outside of the mixing zone. For calculation of allowable dilution:
(A) one-fourth (¼) of the fiftieth percentile flow of the receiving stream shall be used if the criterion is based on consumption of organisms and incidental water intake; and
(B) the fiftieth percentile flow of the receiving stream at the point of the public water system intake can be used if the criterion is based on the consumption of organisms and drinking water.
(5) As used in this rule:
(A) "FAV";
(B) "AAC";
(C) "CAC";
(D) "TLSC"; and
(E) "HLSC";
have the meanings set forth in 327 IAC 2-1-9.
(6) For a new discharge of a BCC, the water quality standard for a BCC shall be applied directly to the undiluted discharge. Beginning January 1, 2004, the water quality criteria for a BCC shall be applied directly to the undiluted discharge for all discharges of a BCC. As used in this subdivision, "new discharge" means a discharge of a BCC that is initiated after the effective date of this subdivision.
(7) For intermittent or controlled discharges, the mixing zone dilution may be determined using stream flows other than those specified in this subsection if these alternate stream flows will ensure compliance with water quality criteria.
(8) The following procedures shall be used to calculate $C_{instream}$, the total recoverable metal concentration outside the mixing zone that equates to an AAC or CAC expressed in the form of dissolved metal:
(A) For an AAC expressed in the form of dissolved metal, $C_{instream}$ shall be calculated by dividing the AAC by the acute translator found in clause (D).
(B) For a CAC expressed in the form of dissolved metal, $C_{instream}$ shall be calculated by dividing the CAC by the chronic translator found in clause (D).
(C) If all approved analytical methods for the metal inherently measure only its dissolved form, such as hexavalent chromium, $C_{instream}$ shall not be calculated and the AAC and CAC expressed in the form of dissolved metal shall be applied in determining appropriate WQBELs.
(D) Unless a site-specific translator is determined in accordance with clause (E), the following translators shall be used:

Table 11.1-1
Metals Translators
Dissolved to Total Recoverable

Substances	Acute Translators	Chronic Translators
Arsenic (III)	1.000	1.000
Cadmium	$1.136672-[(\ln hardness)(0.041838)]$	$1.101672-[(\ln hardness)(0.041838)]$
Chromium (III)	0.316	0.860
Copper	0.960	0.960
Lead	$1.46203-[(\ln hardness)(0.145712)]$	$1.46203-[(\ln hardness)(0.145712)]$
Nickel	0.998	0.997
Silver	0.85	
Zinc	0.978	0.986

(E) A discharger or proposed discharger may request the use of an alternate translator by using site-specific data. The discharger must conduct a site-specific study to identify the ratio of the dissolved fraction to the total recoverable fraction for a metal in the receiving waterbody outside the mixing zone. If the discharger provides an acceptable study and other provisions of 327 IAC 2-1, **327 IAC 2-1.3,** and this article are satisfied (such as antibacksliding and antidegradation), the commissioner shall use the site-specific translator. A translator derived for one (1) discharge into a waterbody segment may be applied to other discharges on the same waterbody segment if the translator would adequately represent the site-specific conditions applicable to the other discharges.

(c) In a case where a variance has been granted from a water quality standard under 327 IAC 2-1-8.8 and 327 IAC 5-3-4.1, WQBELs for the pollutant that is the subject of the variance shall be calculated under subsection (b) on the basis of the variance rather than the water quality standard.

(d) WQBELs in an NPDES permit for a metal calculated from a water quality criterion expressed in the form of dissolved metal that is:
(1) contained in 327 IAC 2-1; or

(2) subsequently developed under the procedures contained in 327 IAC 2-1;

shall be expressed in the permit as total recoverable metal unless all approved analytical methods for the metal inherently measure only its dissolved form, such as hexavalent chromium.

(e) WQBELs for cyanide, calculated from a criterion for free cyanide contained in 327 IAC 2-1, shall be limited in the permit as free cyanide and monitored in the effluent using the:

(1) "Cyanides Amenable to Chlorination" (CATC) method (40 CFR 136, Method 4500-CN G); or

(2) another method approved by the commissioner.

The commissioner may include additional monitoring, limitations, or other requirements in a permit, on a case-by-case basis, if the additional requirements are necessary to ensure that water quality standards will be attained.

(f) When the WQBEL for any substance is less than the limit of quantitation normally achievable and determined by the commissioner to be appropriate for that substance in the effluent, the permit shall contain the following provisions:

(1) The permittee shall be required to use an approved analytical methodology for the substance in the effluent to produce the LOD and LOQ achievable in the effluent. This analytical method, and the LOD and LOQ associated with this method, shall be specified in the permit in addition to the following requirements:

(A) The permit shall include conditions that state that effluent concentrations less than the limit of quantitation are in compliance with the effluent limitations.

(B) ~~In addition,~~ The permit shall require the permittee to implement one (1) or more of the following requirements:

(i) Develop a more sensitive analytical procedure.

(ii) Use an existing, more sensitive, analytical procedure that has not been approved by EPA.

(iii) Conduct studies to determine the bioaccumulative or bioconcentrative properties of the substance in aquatic species through caged-biota studies or fish tissue analyses of resident species.

(iv) Conduct effluent bioconcentration evaluations.

(v) Conduct whole effluent toxicity testing.

(vi) Other requirements, as appropriate, such as engineering assessments or sediment analyses.

For substances defined as BCCs, at a minimum, either item (iii) or (iv) shall be included in the permit.

(2) If the measured effluent concentrations for a substance are above the WQBELs and above the LOD specified by the permit in any three (3) consecutive analyses or any five (5) out of nine (9) analyses, or if any of the additional analyses required under subdivision (1)(B) indicate that the substance is present in the effluent at concentrations exceeding the WQBELs, the permit shall contain provisions that require the discharger to:

(A) determine the source of this substance through evaluation of:

(i) sampling techniques;

(ii) analytical/laboratory procedures; and

(iii) industrial processes and wastestreams; and

(B) increase the frequency of sampling and testing for the substance.

(3) The permit shall contain provisions allowing the permit to be reopened, in accordance with section 16 of this rule, to include additional requirements or limitations if the information gathered under subdivisions (1) and (2) indicates that such additional requirements or limitations are necessary.

(g) The department shall use the representative ambient upstream concentration of a substance in determining the WQBELs for that substance. This upstream concentration shall be determined by the department on a case-by-case basis using existing, acceptable data for the receiving water. Where limited or no acceptable data exists, the permittee shall be required to supply the necessary data. Whenever the representative ambient upstream concentration for a substance in the receiving water is determined to be greater than any applicable water quality criterion for that substance, the following conditions apply:

(1) If the source of the wastewater is not the receiving water, the permit limitations shall be calculated using the applicable water quality criterion and a value of zero (0) for the upstream dilution flow. Except for substances defined as BCCs, the department may establish limitations greater than the applicable water quality criterion for the substance as required in this subdivision in a range up to, but not greater than, the lesser of the representative ambient upstream concentration of the substance in the receiving water or the representative ambient concentration of the substance in the body of water at the point of intake. The limitation shall only be increased above the criterion if it is demonstrated to the department that:

(A) the concentration of the substance in the body of water at the point of intake exceeds the applicable criterion for that substance; and ~~that~~

(B) reasonable, practical, or otherwise required methods are implemented to minimize the addition of the substance to the wastewater.

(2) If the source of the wastewater is the receiving water, the effluent limitation for that substance shall equal the representative ambient upstream concentration of that substance in the receiving water as determined by the department. Where circumstances allow, such as the discharge of once through noncontact cooling water, this will be implemented through the use of net limitations, with a net limitation of zero (0) being applied to the effluent. The representative ambient upstream concentration applicable to this subdivision shall be:

(A) established at the upper ninety-ninth percentile of the available acceptable upstream data; or

(B) otherwise appropriately determined as the reasonably expected upstream concentration for that substance.

(h) In addition to the requirements of 40 CFR 122.43(a), NPDES permits shall include limitations more stringent than promulgated effluent limitations guidelines from Sections 301, 306, 307, 318, and 405 of the CWA where necessary to achieve water quality standards established under Section 303 of the CWA, including narrative criteria for water quality as follows:

(1) Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) that the commissioner determines are, or may be, discharged at a level that:

(A) will cause;

(B) have the reasonable potential to cause; or

(C) contribute to;

an excursion above any narrative or numeric water quality criterion promulgated under 327 IAC 2-1-6.

(2) When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an instream excursion above a narrative or numeric criterion within an Indiana water quality standard, the commissioner shall use procedures that account for **the following:**

(A) Existing controls on point and nonpoint sources of pollution.

(B) The variability of the pollutant or pollutant parameter in the

effluent.

(C) The sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity). ~~and~~

(D) Where appropriate, the dilution of the effluent in the receiving water.

(3) When the commissioner determines, using the procedures in subdivision (2), that a discharge:

(A) causes;

(B) has the reasonable potential to cause; or

(C) contributes to;

an instream excursion above the allowable ambient concentration of a numeric criterion from 327 IAC 2-1-6 for an individual pollutant, the permit must contain effluent limitations for that pollutant.

(4) When the commissioner determines, using the procedures in subdivision (2), that a discharge:

(A) causes;

(B) has the reasonable potential to cause; or

(C) contributes to;

an instream excursion above the numeric criterion for whole effluent toxicity, the permit must contain effluent limits for whole effluent toxicity.

(5) Except as provided in this subdivision, when the commissioner determines, using the procedures in subdivision (2), toxicity testing data, or other information, that a discharge:

(A) causes;

(B) has the reasonable potential to cause; or

(C) contributes to;

an instream excursion above a narrative criterion from 327 IAC 2-1-6, the permit must contain effluent limitations for whole effluent toxicity. Limitations on whole effluent toxicity are not necessary where the commissioner demonstrates in the fact sheet or briefing memo of the NPDES permit, using the procedures in subdivision (2), that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative water quality criteria.

(6) Where a water quality criterion has not been established for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion from 327 IAC 2-1-6, the commissioner must establish effluent limits using one (1) or more of the following options:

(A) Establish effluent limits using a calculated numeric water quality criterion for the pollutant that the commissioner demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using a proposed state criterion, or an explicit policy or rule interpreting the narrative water quality criterion, supplemented with other relevant information that may include **the following:**

(i) EPA's Water Quality Standards Handbook, Second Edition–Revised (1994).

(ii) Risk assessment data.

(iii) Exposure data.

(iv) Information about the pollutant from the Food and Drug Administration. ~~and~~

(v) Current EPA criteria documents.

(B) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under Section 304(a) of the CWA, supplemented where necessary by other relevant information.

(C) Establish effluent limitations on an indicator parameter for the pollutant of concern, provided the following:

(i) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation.

(ii) The fact sheet required by 327 IAC 5-3-8 sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern that are sufficient to attain and maintain applicable water quality standards.

(iii) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards.

(iv) The permit contains a reopening clause allowing the permitting authority to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

(7) When developing WQBELs under this subsection, the commissioner shall ensure the following:

(A) The level of water quality to be achieved by limits on point sources established under this subsection is derived from, and complies with, all applicable water quality standards.

(B) Effluent limits developed to protect a narrative water quality criterion or a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available WLA for the discharge prepared by the commissioner and approved by EPA under 40 CFR 130.7.

(Water Pollution Control Board; 327 IAC 5-2-11.1; filed Feb 1, 1990, 4:30 p.m.: 13 IR 1043; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1749; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1432; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3378; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2097)

SECTION 5. 327 IAC 5-2-11.2, AS AMENDED AT 28 IR 2101, SECTION 25, IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-2-11.2 Public notice of comment period and public meetings for site-specific modification of water quality criteria and values; implementation of antidegradation; alternate mixing zone demonstrations; variances

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3
Affected: IC 13-11-2; IC 13-15-4-1; IC 13-15-5-1; IC 13-18-4; IC 13-18-7; IC 13-23-13; IC 13-24-1; IC 13-25-5

Sec. 11.2. (a) This section is applicable to an application for the following:

(1) Site-specific modification to water quality criteria under 327 IAC 2-1-8.9 and Tier I water quality criteria and Tier II water quality values under 327 IAC 2-1.5-16.

(2) An antidegradation demonstration under ~~section 11.3(b)(4) of this rule.~~ **327 IAC 2-1.3-7.**

(3) ~~An~~ **Other** antidegradation ~~exception~~ **activities** under ~~section 11.7(c) of this rule.~~ **327 IAC 2-1.3-6.**

(4) An alternate mixing zone under section 11.4(b)(4)(F) of this rule.

(5) A variance under 327 IAC 5-3-4.1(c).

(b) Upon receipt of an application listed in subsection (a), the commissioner shall provide notice, request comment, and, if requested, schedule and hold a public meeting on the application in accordance with the following conditions:

(1) The commissioner shall provide notice of receipt of an application in the following manner:

(A) Publication of a notice in a daily or weekly newspaper in general circulation throughout the area affected by the discharge

for which the application was submitted.

(B) Send the notice to **the following:**

(i) Interested persons on either mailing list identified under the following:

~~(i)~~ **(AA)** 327 IAC 5-3-8(a).

~~(ii)~~ **(BB)** 327 IAC 5-3-12(b)(1).

~~(C) Send the notice to~~ **(ii)** The applicant.

(2) The notice under subdivision (1) shall contain the following:

(A) The name and address of the **following:**

(i) Department.

~~(B) The name and address of the~~ **(ii)** Applicant.

~~(C)~~ **(B)** An identification of the type of application submitted, such as alternate mixing zone or variance.

~~(D)~~ **(C)** A brief description of the **following:**

(i) Location of any existing or proposed discharge point subject to the application, including an identification of the receiving water.

~~(E) A brief description of the~~ **(ii)** Applicant's activities or operations that result in the discharge identified in the application.

~~(F)~~ **(D)** An identification of the substance for which the application was submitted.

~~(G)~~ **(E)** The name of an agency contact person and an address and telephone number where interested persons may obtain further information, including a copy of the application.

~~(H)~~ **(F)** A brief description of the comment procedures and the procedures to request a public meeting.

(3) If requested, the commissioner shall hold a public meeting on the application in accordance with the following provisions:

(A) The commissioner shall provide notice of the public meeting as follows:

(i) Publication of a notice in a daily or weekly newspaper in general circulation throughout the area affected by the discharge for which the application was submitted.

(ii) Send the notice to the following interested persons:

(AA) Persons on the mailing list identified under 327 IAC 5-3-8(a).

(BB) Persons on the mailing list identified under 327 IAC 5-3-12(b)(1).

(CC) Those persons that commented on the notice of receipt of the application.

(iii) Send the notice to the applicant.

(B) The notice required by clause (A) shall contain **the following:**

(i) The date, time, and place of the public meeting. ~~and~~

(ii) The information required under subdivision (2).

(C) The meeting shall be held at least ten (10) days after the later of the following:

(i) The notice ~~in accordance with~~ **under** clause (A)(i) appears in the newspaper.

(ii) The postmark date of the written notice sent to interested parties and to the applicant ~~in accordance with~~ **under** clause (A)(ii) and (A)(iii).

(D) The meeting shall be recorded by any of the following:

(i) Audiotape.

(ii) Videotape.

(iii) Any other method of accurately and completely recording the details of the meeting.

(E) The commissioner shall request the applicant to provide a summary and rationale for the application at the meeting.

(F) At the commissioner's discretion, a public meeting may be noticed and held without having first received a request for a public meeting. In these instances, the notice for the public meeting may be contained in the notice of receipt of the application.

(4) The time period under IC 13-15-4-1 is hereby changed to increase the period by thirty (30) days for any permit application subject to the time period that is affected by the application. If a public meeting is requested, the time period under IC 13-15-4-1 is hereby changed to increase the period by an additional thirty (30) days.

(Water Pollution Control Board; 327 IAC 5-2-11.2; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1435; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3378; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2101)

SECTION 6. 327 IAC 5-2-12.1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-2-12.1 Great Lakes systems dischargers; schedules of compliance

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3
Affected: IC 13-11-2; IC 13-18-4

Sec. 12.1. (a) When a permit issued to a new Great Lakes discharger contains a WQBEL, the permittee shall comply with such a limitation upon the commencement of the discharge.

(b) Any existing permit that is reissued or modified to contain a new or more restrictive WQBEL or a more restrictive ~~limit of quantitation~~ LOQ (when an LOQ is used as the compliance value for a WQBEL below an LOQ) may allow a reasonable period of time, up to five (5) years from the date of permit issuance or modification, for the permittee to comply with that limit in accordance with the following conditions:

(1) When the compliance schedule established under this subsection goes beyond the term of the permit, an interim permit limit effective upon the expiration date shall be included in the permit and addressed in the permit's fact sheet or statement of basis. The permit shall reflect the final limit and its compliance date.

(2) If a permit establishes a schedule of compliance under this subsection, which exceeds one (1) year from the date of permit issuance or modification, the schedule shall set forth interim requirements and dates for their achievement as follows:

(A) The time between such interim dates may not exceed one (1) year.

(B) If the time necessary for completion of any interim requirement is:

(i) more than one (1) year; and ~~is~~

(ii) not readily divisible into stages for completion;

the permit shall require, at a minimum, specified dates for annual submission of progress reports on the status of any interim requirements.

(c) Whenever a limit based upon a Tier II value is included in a reissued or modified permit for an existing Great Lakes discharger, the permit may provide a reasonable period of time, up to two (2) years, in which to provide additional studies necessary to develop a Tier I criterion or to modify the Tier II value. In such cases, the permit shall require compliance with the Tier II limitation within a reasonable period of time, ~~no~~ **not** later than five (5) years after permit issuance or modification, and contain a reopener clause in accordance with the following conditions:

(1) The reopener clause shall authorize permit modifications if specified studies have been completed by the permittee or provided by a third party during the time allowed to conduct the specified

studies, and the permittee or a third party demonstrates, through ~~such~~ **the** studies, that a revised limit is appropriate. ~~Such a~~ **The** revised limit shall be incorporated through a permit modification, and a reasonable time period, up to five (5) years, shall be allowed for compliance. If incorporated ~~prior to~~ **before** the compliance date of the original Tier II limitation, ~~any such~~ **the** revised limit shall not be considered less stringent for purposes of the antibacksliding provisions of section 10(11) of this rule and Section 402(o) of the ~~Clean Water Act~~ CWA.

(2) If the specified studies have been completed and do not demonstrate that a revised limit is appropriate, the commissioner may provide a reasonable additional period of time, not to exceed five (5) years, with which to achieve compliance with the original effluent limitation.

(3) Where a permit is modified to include new or more stringent limitations, on a date within five (5) years of the permit expiration date, such compliance schedules may extend beyond the term of a permit consistent with subsection (b)(1).

(4) If future studies (other than those conducted under this subsection) result in a Tier II value being changed to a less stringent Tier II value or Tier I criterion, after the effective date of a Tier II-based limit, the existing Tier II-based limit may be revised to be less stringent if:

(A) it complies with section 10(11)(B) and 10(11)(C) of this rule and Section 402(o)(2) and 402(o)(3) of the CWA;

(B) in nonattainment waters, the cumulative effect of the revised effluent limitation will assure compliance with water quality standards; or

(C) in attained waters, the revised effluent limitation complies with the antidegradation standard and procedures contained ~~under 327 IAC 2-1.5-4 and section 11.3 of~~ **in** this ~~rule.~~ **title.**

(Water Pollution Control Board; 327 IAC 5-2-12.1; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1464; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3380)

SECTION 7. 327 IAC 5-3-8 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-3-8 Fact sheet

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3
Affected: IC 13-11-2; IC 13-18-4

Sec. 8. (a) A fact sheet shall be prepared for every draft permit for a major discharger, any draft permit ~~which~~ **that** incorporates a statutory variance or modification or requires explanation under subsection (b)(5), general permits, and every draft permit ~~which~~ **that** the commissioner finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the major facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The commissioner shall send this fact sheet to the following:

(1) The applicant.
(2) EPA Region 5.
(3) The district engineer of the Corps of Engineers.
(4) The regional director of the U.S. Fish and Wildlife Service.
(5) Other interested state and federal agencies.
(6) Any other person on request.
(7) All persons on a mailing list for receipt of fact sheets (see section 12(g) of this rule).

Any of these persons may waive their right to receive a fact sheet for any classes and categories of permits.

(b) The fact sheet shall include the following:

(1) A brief description of the type of facility or activity that is the subject of the draft permit and, where appropriate, a sketch or detailed description of the discharge described in the application.

(2) A description of the type and quantity of pollutants ~~which~~ **that** are, or are proposed to be, discharged.

(3) A brief explanation of the express statutory or regulatory provisions on which permit requirements are based.

(4) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, including **the following:**

(A) A citation to the applicable guideline or development documents or standard provisions as required under 327 IAC 5-2-10. ~~and~~

(B) Reasons why they are applicable or an explanation of how alternate effluent limitations were developed.

(5) When the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:

(A) Technology-based limitations to control toxic pollutants under 327 IAC 5-2-10.

(B) Limitations on:

(i) internal wastestreams in accordance with 327 IAC 5-2-11(h); **or**

~~(C) Limitations on~~ **(ii)** indicator pollutants under 327 IAC 5-2-10(6) and 327 IAC 5-5-2(f).

~~(D)~~ **(C)** Limitations:

(i) allowing an increase in the discharge of any pollutant, including an explanation that satisfies the requirements of 327 IAC 5-2-10(11) and the antidegradation requirements of ~~327 IAC 2-1, 327 IAC 2-1.5, and 327 IAC 5-2-11.3.~~ **327 IAC 2-1.3; or**

~~(E) Limitations~~ **(ii)** implementing a variance from water quality standards under 327 IAC 2-1-8.8 or 327 IAC 2-1.5-17 and section 4.1 of this rule.

(6) Reasons why requested variances or modifications from otherwise required effluent limitations do or do not appear justified.

(7) **The** name and telephone number of a departmental contact person who can provide additional information.

(8) Any information, not otherwise specified herein, required under section 12 ~~or 12.1~~ of this rule **or 327 IAC 5-2-12.1.**

(Water Pollution Control Board; 327 IAC 5-3-8; filed Sep 24, 1987, 3:00 p.m.: 11 IR 638; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1761; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1472; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 8. THE FOLLOWING ARE REPEALED: 327 IAC 2-1.5-4; 327 IAC 5-2-11.3; 327 IAC 5-2-11.7.

Notice of First Meeting/Hearing

These rules are not scheduled for hearing at this time. When the public hearing is scheduled, it will be noticed in the IC 13-14-9 Notices section of the Indiana Register.

Additional information regarding this action may be obtained from Megan Wallace, Rules Section, Office of Water Quality, (317) 233-8669 or (800) 451-6027 (in Indiana).

Copies of these rules are now on file at the Office of Water Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Twelfth Floor, Indianapolis, Indiana and are open for public inspection.

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
Office of Land Quality
100 North Senate Avenue
Indianapolis, IN 46204
OLQ PH: (317) 232-8941

Title: Methyl-Tertiary Butyl Ether (MTBE) Remediation
Identification Number: WASTE-0055-NPD
Date Originally Effective: March 17, 2005
Dates Revised: None
Other Policies Repealed or Amended: None
Brief Description of Subject Matter: This document addresses Remediation and Closure Levels for Methyl-Tertiary Butyl Ether (MTBE), a common additive to gasoline.
Citations Affected: IC 13-23-13; IC 13-24-1; IC 13-25-4; IC 13-25-5

This nonrule policy document is intended solely as guidance and does not have the effect of law or represent formal Indiana Department of Environmental Management (IDEM) decisions or final actions. This nonrule policy document shall be used in conjunction with applicable laws. It does not replace applicable laws, and if it conflicts with these laws, the laws shall control. This nonrule policy document may be put into effect by IDEM thirty days after presentation to the appropriate board. Pursuant to IC 13-14-1-11.5, this policy will be available for public inspection for at least forty-five (45) days prior to presentation to the appropriate board. If the nonrule policy is presented to more than one board, it will be effective thirty days after presentation to the last. IDEM will submit the policy to the Indiana Register for publication. Revisions to the policy will follow the same procedure of presentation to the board and publication.

Background

Methyl-Tertiary Butyl Ether (MTBE) is a common additive to gasoline, particularly in areas where smog and ozone are health concerns. It is an octane enhancing replacement for lead and used as an oxygenate to lower motor vehicle emissions by reducing the need for benzene, a known carcinogen and ozone precursor. MTBE concentrations in enhanced or re-engineered gasoline, generally ranges from 3 to 15 percent by volume. Due to cross mixing of products in storage, distribution and transportation, MTBE can be found in virtually all petroleum products. Releases of gasoline and other petroleum products are common, mainly occurring through leaking underground storage tank releases and spills.

MTBE is considered by the U.S. Environmental Protection Agency (EPA) to be a potential human carcinogen. The EPA is evaluating carcinogenic information on this additive and will be performing additional research on the risk to humans. CERCLA lists MTBE as a hazardous substance. Since MTBE is more soluble than other petroleum hydrocarbons, MTBE is usually out in front or downgradient of the main body of a groundwater plume of gasoline. Therefore areas with drinking water wells present are more susceptible to MTBE impacts than from the other gasoline constituents. While the EPA considers establishing a Maximum Contaminant Level (MCL), they have issued a drinking water advisory of 40 parts per billion (ppb) for MTBE intake. This level is below a taste/odor threshold for a majority of the population. This drinking water advisory concentration will likely protect consumers from potential health effects.

Policy Statement

The Indiana Department of Environmental Management has established default risk-based site cleanup/closure levels for the gasoline additive MTBE. The following default levels apply to sites per their land use determination as Residential or Industrial.

	Soil	Groundwater
Residential	0.18 ppm	40 ppb
Industrial	3.9 ppm	870 ppb

ppm = parts per million
ppb = parts per billion

The use of a risk-based approach for the cleanup of MTBE provides environmental and human health benefits for the citizens of Indiana. This policy protects the drinking waters of the state by establishing soil levels that will not allow MTBE to have an adverse effect on groundwater while setting a drinking water level which protects against adverse taste and odor effects. This policy meets the regulatory mandate that IDEM use a risk-based approach to cleanup. This is not a significant departure from the way the Leaking Underground Storage Tank Program and the Excess Liability Fund (ELF) Program currently deal with MTBE issues. The cost of delineating MTBE is an eligible reimbursable expense under the ELF Program. This policy will only affect sites that have a release of gasoline with MTBE present.

Implementation

All sites with gasoline releases should delineate for the constituent MTBE regardless of whether closing using IDEM's RISC (Risk Integrated System of Closure) Program (February 2001) including the RISC Technical Resource Guidance Document, Appendix I, July 2004 updates or the Underground Storage Tank (UST) Guidance Manual (October 1994) criteria. Delineation should be to the RISC Residential levels both on- and off-site.

For sites using the RISC program for closure, in a situation where surrounding properties are a mixture of Residential and Industrial the most protective numbers will apply (Residential) for both soils and groundwater. However, industrial levels may be used if the MTBE is confined to the Industrial property where the release occurred and it can be shown that the plume is stable and/or shrinking. Non-default RISC closure where site specific issues can be addressed is also an option.

For sites using the UST Guidance Manual criteria to close a site, MTBE needs to be delineated in the groundwater only. The RISC Residential groundwater numbers apply. The UST Guidance Manual does not allow for differences between residential and industrial land uses.

For sites where a Corrective Action Plan has already been approved as of the effective date of this policy, the responsible party will not be required to go back and delineate MTBE unless there is potential impact to a receptor (such as a private or public drinking water wells and/or vapors in structures or other impact). Sites that have been issued a No Further Action (NFA) letter for closure of a site will not be reopened unless MTBE contamination is discovered at a receptor (such as a private or public drinking water well and/or vapors in structures or other impact) and the site is the probable cause of that contamination. An exposure issue must be confirmed before IDEM will require the responsible party to provide further delineation for the closed sites.

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
Office of Land Quality
100 North Senate Avenue
Indianapolis, IN 46204-2241
OLQ PH: (317) 232-8941

Title: Methane Monitoring Program
Identification Number: WASTE-0056-NPD
Date Originally Effective: March 17, 2005
Dates Revised: None
Other Policies Repealed or Amended: Enclosure D1 Guidance
Citations Affected: 329 IAC 10-20-17
Brief Description of Subject Matter: In accordance with the Solid Waste Rule 329 IAC 10-20-17, the owner, operator, or permittee of a municipal solid waste landfill (MSWLF) is required to monitor and control the landfill gas generated by their site to prevent methane concentrations from exceeding 25% of the lower explosive limit for methane in MSWLF structures, and the lower explosive limit for methane at the facility boundary. This document provides guidance for content, design considerations, and specifications that should be included in a Methane Monitoring Program.

This nonrule policy document is intended solely as guidance and does not have the effect of law or represent formal Indiana Department of Environmental Management (IDEM) decisions or final actions. This nonrule policy document shall be used in conjunction with applicable laws. It does not replace applicable laws, and if it conflicts with these laws, the laws shall control. This nonrule policy document may be put into effect by IDEM thirty days after presentation to the appropriate board. Pursuant to IC 13-14-11.5, this policy will be available for public inspection for at least 45 days prior to presentation to the appropriate board. If the nonrule policy is presented to more than one board, it will be effective thirty days after presentation to the last. IDEM will submit the policy to the Indiana Register for publication. Revisions to the policy will follow the same procedure of presentation to the board and publication.

Methane Monitoring Program

In accordance with the Solid Waste Rule 329 IAC 10-20-17, the owner, operator, or permittee of a municipal solid waste landfill (MSWLF) is required to monitor and control the landfill gas generated by their site to prevent methane concentrations from exceeding 25% of the lower explosive limit for methane in MSWLF structures, and the lower explosive limit for methane at the facility boundary. This document provides guidance for content, design considerations, and specifications that will satisfy the commissioner that a Methane Monitoring Program proposal complies with 329 IAC 10-20-17.

This nonrule policy document will be utilized during the commissioner's review of Methane Monitoring Program proposals submitted as required by the Solid Waste Rule for new sites and site expansions. The commissioner shall approve alternatives to the final design as outlined in this guidance if they are demonstrated, to the satisfaction of the commissioner, to provide at least the equivalent protection to human health and the environment. Currently approved Methane Monitoring Programs may continue as approved unless it is determined that the program is ineffective due to physical evidence of gas migration or geological conditions that warrant revision based on 329 IAC 10-20-17(c). Revisions to current Methane Monitoring Programs will follow this guidance only as it is directly supported by the Rule.

Much of the geological information requested in this guidance is available in the site hydrostudy submitted in the permit application under 329 IAC 10-15-4, in subsequent boring information and in the results of the regular ground water sampling.

Policy Standards for Landfill Methane Monitoring Programs

329 IAC 10-20-17(b) requires MSWLFs to prepare, propose for the commissioner's approval, and implement an approved

routine Methane Monitoring Program. The proposal for a facility Methane Monitoring Program should include the following:

1. Facility Conditions

329 IAC 10-20-17(c) requires that the type and frequency of methane monitoring be based on the facility's structural and geological conditions. Conditions applicable to the design of the methane monitoring system should be included in the proposal as follows:

1.1 A narrative describing the following landfill conditions:

a. Maximum depth of landfill and/or waste;

b. Description of the bottom liner design components;

c. Activities and/or practices that might increase or decrease production of landfill gas;

d. The current condition of the facility as it relates to gas and gas-migration related stress including current gas venting spots and leachate seeps on-site and off-site; and

e. A general description and location of any devices currently in-place that are designed to vent landfill gas from the soil or from the waste.

1.2 A narrative with plans and charts describing the following geological conditions:

a. Time versus water level graphs of the uppermost aquifer using all available data collected from the ground water monitoring well system;

b. Determination of stratigraphic target zones for the installation of gas probes;

c. Plans depicting locations where such target zones might provide natural venting of gas (such as cut-banks and borrow-pits); and

d. Geologic cross-sections depicting stratigraphic layers and their predicted role in aiding or preventing gas migration both vertically and laterally. The greatest depth of the liner and waste placement should be indicated on the cross-section.

2. MSWLF Structures

329 IAC 10-20-17(a)(1) requires the facility to measure methane gas in MSWLF structures, excluding gas control, leachate collection manholes, or recovery system components.

The Methane Monitoring Program proposal should include the following information:

2.1 A narrative describing the method of methane measurement including:

a. Equipment used;

b. Procedures of structure monitoring; and

c. A plan including the identification of all applicable structures.

3. Facility Boundary

329 IAC 10-20-17(a)(2) requires the facility to ensure that sub-surface methane gas at the facility boundary does not exceed 100% of the lower explosive limit (LEL) of methane (5%). The facility may make this assurance under one of two systems: Early Warning or Perimeter. A detection in an early warning system allows the facility time to react prior to a violation, while a perimeter system detection automatically triggers a violation. The facility may opt for a mixture of both systems of testing locations within a Methane Monitoring Program. The Methane Monitoring Program should include the following considerations:

3.1 Testing locations under a perimeter system are designed to determine whether gas is migrating across the facility boundary and therefore need to be placed as close as practicable to the facility boundary but not more than fifty (50) feet inside the facility boundary. A detection over the LEL will be considered a transgression of methane across the facility boundary and therefore a violation of 329 IAC 10-20-17(a)(2).

3.2 Testing locations under an early warning system should be as close as possible to the solid waste boundary, however any well between the solid waste boundary and fifty (50) feet from the facility boundary should be considered early warning testing locations.

3.3 All facility boundary testing locations should be spaced on the schedule below. MSWLF structures that are subject to 329 IAC 10-20-17(a)(1) are not intended to be considered in these spacing guidelines.

a. Every 100 feet when occupied buildings, or enclosed non-vented structures, are located at or within 600 feet of the solid waste boundary.

b. Every 300 feet when occupied buildings, or enclosed non-vented structures, are located between 600 and 1,200 feet of the solid waste boundary.

c. Every 1,000 feet when occupied buildings, or enclosed non-vented structures, are located greater than 1,200 feet of the solid waste boundary.

d. The number of permanent probes may be increased or the distance between the probes reduced based on factors such as:

1. Evidence of active gas migration;
2. Absence of bottom liner; or
3. Presence of frequent unconnected or poorly connected conduit zones.

e. The number of permanent probes may be decreased or the distance between the probes expanded based on factors such as:

1. Topographic barriers to methane migration such as ditches and borrow areas that completely expose the target zones

identified in 1.2; or

2. Reducing the circumference of the monitoring boundary by utilizing an early warning system as described in 3.2.

3.4 329 IAC 10-20-17(c) requires the facility to consider the geology of the site to determine gas migration. Generally, this will require a permanent probe at each test location capable of accessing soil gas at depths identified in 1.2.

3.5 329 IAC 10-21-4 should be used as a general guideline for gas probe installation. While this regulation pertains to ground water monitoring wells, the construction and reporting requirements are similar to gas probes. The major exception is 329 IAC 10-21-4(c)(5)(C), which limits screen length. In the case of gas probes, screen lengths should be specified and justified. IDEM prefers probe screen lengths to be as long as possible, though geological conditions may require specific adjustments.

3.6 The installation of permanent probes may be phased to coincide with cell construction provided the facility has interim measures in place and the approval of IDEM.

3.7 The testing location proposal should include landfill topographic plot plans clearly delineating the following on a scaled map as required by 329 IAC 10-11-2.5 and 329 IAC 10-15-2. Items requested below not applicable to the facility should be noted as such in the text or on the plan.

a. Enclosed structures located on-site or within twelve hundred (1,200) feet of the facility's solid waste boundary (As required in 329 IAC 10-11-2.5(a)(9)(B));

b. Solid waste, facility, and property boundaries (As required in 329 IAC 10-15-2(b));

c. Location of proposed gas monitoring probes (As required in 329 IAC 10-15-2(d)(1)(G));

d. Possible methane gas passageways identified such as utility lines, pipes, railroads, mines, field tiles, storm sewers, water lines, electric cables, and sand and/or gravel seams located within one hundred (100) feet of the solid waste boundary of the facility. Such items may be found on the map required in 329 IAC 10-11-2.5(a)(9).

3.8 The Methane Monitoring Program proposal should include a description of the system for measuring the methane gas concentration including:

a. Gas probe installation procedures;

b. Construction materials and methods;

c. Design of probe and/or probe cluster;

d. Gas probe schedule including the total length of the probe, length of the riser, and length and depth range of the screened interval, for all probes.

**Please be aware that, depending on the method chosen for installing permanent probes, the Department of Natural Resources may require borehole drillers to be certified per 312 IAC 13.*

3.9 Testing methods, at each location, should be capable of monitoring methane:

a. At elevations capable of detecting migrating gas at depths across the targeted zones identified in 1.2;

b. In identified natural methane gas migration zones such as sand and/or gravel seams and open karst conduits located within one hundred (100) feet of the solid waste boundary of the facility;

c. Near sensitive methane gas migration zones such as utility lines, and pipes located within one hundred (100) feet of the solid waste boundary of the facility; and

d. At locations where a single screen might provide cross-contamination of perched ground water into an unsaturated zone below, the facility needs to propose a system of dealing with multiple unsaturated zones. Such a proposal should be developed in consultation with the IDEM Geology Section.

3.10 Additional probes might be needed after a Methane Monitoring Program is approved if evidence of gas migration is found through other means. (Ground water indications of gas migration can include volatile organic compounds and select inorganic compounds in ground water analysis results. Gas might also vent from ground water wells partially screened in unsaturated soils. Gas presence within the ground water well risers should be reported to IDEM based on 329 IAC 10-21-1(f). A facility could be put into an unnecessary ground water corrective action when a replacement well is more warranted.)

3.11 The installation of any device designed to vent landfill gas from the soil should be done in consultation with IDEM. Additional, or replacement, probes may be needed after a Methane Monitoring Program is approved if the function of a detection probe is impaired by nearby soil-gas venting.

4. Monitoring

329 IAC 10-20-17(c) requires a determination of type and frequency of methane monitoring. The Methane Monitoring Program should include collection method and quality control of landfill gas monitoring data as follows:

4.1 A description of the methods and equipment used to measure the concentration of methane at the landfill. The description should include procedures to ensure minimal air intrusion, calibration check, and employee and public safety. The equipment must be capable of measuring methane gas. It is preferred that oxygen and carbon dioxide percentages also be measured.

4.2 A sample of the form used to record data that includes the following field information:

a. Analyst name;

b. Gas instrument used;

c. Calibration information;

d. Date of monitoring event;

e. Water level (if applicable);
f. Name of probe and time monitored;
g. Methane concentration (in either percent gas, or percent LEL); and
h. Oxygen and carbon dioxide percentages (if available).

4.3 Methane monitoring should be done:
a. Using permanent probes located around the perimeter of the facility;
b. In all enclosed structures located at or within one hundred (100) feet of the solid waste boundary; and
c. On a quarterly basis unless the site location and the initial methane gas concentration levels dictate a more frequent monitoring schedule.

4.4 Measurements taken within the top few feet of the ground surface have typically proven to be an ineffective measurement of landfill gas migration. Such methods might not take the hydrogeologic conditions into account as is required in 329 IAC 10-20-17(c).

5. Contingency

329 IAC 10-20-17(d) requires an MSWLF facility to follow a schedule of remedial measures if methane gas criteria are exceeded. The Methane Monitoring Program should include a contingency plan, as required in all current permits, that allows the facility to follow pre-developed steps for the initial response to a violation of gas criteria. This general remedial contingency plan should be designed to be performed without acquiring formal approval of a modification to the permit. Performance of any such remedial work should be done in consultation with the Geology Section. Completion of an approved contingency plan should satisfy the implementation portion of 329 IAC 10-20-17(d)(4). The Methane Monitoring Program should include an explanation of how the facility will comply with 329 IAC 10-20-17(d) with a contingency plan including the items in 5.1 and 5.2 below:

5.1 Notification information including:
a. A list of property owners and residences immediately adjacent to the facility boundary;
b. Criteria for notifying residents and owners of property that may be impacted by migrating gas;
c. Location and contact information of the local fire department;
d. Criteria for notifying the local fire department of a potential explosive gas threat;
e. Name, phone number, and e-mail of IDEM contact personnel (either the site-assigned Geologist or the Geology Section Chief) and how they will be contacted in compliance with 329 IAC 10-20-17(d)(2).

5.2 A general narrative including:
a. Immediate actions that might be taken to protect human health from uncontrolled landfill gas as required under 329 IAC 10-20-17(d)(1). This is meant to be a very general discussion, or list, that will be used as a starting point for consultation with the IDEM Geology Section in the event of an exceedance.
b. Methods that will be used to determine the nature and extent of the problem as required under 329 IAC 10-20-17(d)(4). Any delineation of a gas migration plume should be established through supplemental sampling of soil gas from the same zone where the problem was first established.
c. Criteria to be used to determine whether additional investigation is necessary;
d. Criteria to be used to determine whether additional remedial action is necessary;
e. Criteria to be used to determine when a remedial action is deemed finished.
f. A schedule for the development of remedial investigation including:
1. Nature and extent of a problem;
2. The proposed remedy;
3. Historical sampling results for use in comparison; and
4. Methods to measure the effectiveness of the remedial action.

5.3 If the methane limits specified in 329 IAC 10-20-17(a) are exceeded:
a. The contingency plan should be implemented immediately and with consultation with the Geology Section;
b. Work done in compliance with the contingency plan must be compiled and placed in the operating record as per 329 IAC 10-20-17(d)(4) including the nature and extent determination and a proposed remedy within sixty (60) days of the detection;
c. The Geology Section must be notified that the work has been done as per 329 IAC 10-20-17(d)(4) along with the determination whether additional investigation and remediation will be necessary;
d. Completion of the work done in compliance with the approved contingency plan, including 5.1 and 5.2, should satisfy the implementation portion of 329 IAC 10-20-17(d)(4).
e. To comply with the remedy proposal portion of 329 IAC 10-20-17(d)(4), please see Section 6 below.

5.4 Facilities with early warning systems, as described under 3.2, should include contingency plans specific to the system design. Such contingencies may include:
a. The installation of sentinel probes, with the consultation of IDEM Geology Section, at the point nearest to the facility boundary from the well that has detected;
b. A step-out system of probes toward the facility boundary to demonstrate that gas does not migrate to the facility boundary; or

c. Installation of a remedial measure to cease additional gas migration.

6. Remedy Proposal

329 IAC 10-20-17(d)(4) requires a facility to propose a remedy within sixty (60) days of detecting levels of methane that exceed the limits defined in 329 IAC 10-20-17(a). The proposal that is inserted in the facility operating record should include both the work that has already been done, and any additional work that is deemed necessary. In the event that remediation tactics are ineffective and probe concentrations continue to exceed the regulatory limits of 329 IAC 10-20-17 for two quarters of monitoring, a gas venting system or a gas extraction system proposal for the facility should be submitted to IDEM for review. For more information on landfill gas venting systems, refer to the IDEM guidance document entitled "Methane Gas Venting System"

7. Probe Maintenance

329 IAC 10-20-17(b) requires the Methane Monitoring Program to be a long-term routine program. Monitoring devices should be properly protected and maintained to ensure continued compliance with the approved Methane Monitoring Program. Owing to time constraints between monitoring events, submittal of the plans and details of repairs and replacements of monitoring devices in the approved Methane Monitoring Program due to accidental damage may be done after the work is completed as allowed under 329 IAC 10-3-3(b).

7.1 If a probe is damaged, it should be fixed or replaced before the next monitoring event.

7.2 If a gas probe is damaged beyond repair, the probe should be properly abandoned and a replacement probe be installed within ten (10) feet of the original. A description of the work done should be submitted as part of the approved Methane Monitoring Program. A probe will automatically be considered 'replaced' if it is installed within ten (10) feet of the original. If it is installed farther than ten (10) feet from the original, it will be considered a relocation, and a modification under 329 IAC 10-3-3(c), unless the new location is approved as a replacement by the Geology Section.

7.3 Abandonment procedures should follow 329 IAC 10-21-1(i). A description of the abandonment procedure should be submitted as part of the approved Methane Monitoring Program.

8. Modifications

Changes in an approved Methane Monitoring Program are, in effect, a modification to the permit. A change in the program may be prompted by such things as facility activities requiring probes to be relocated or any remedial work required under 329 IAC 10-20-17 (d). Any change to the Methane Monitoring Program, excluding maintenance, repair or replacement, must be submitted to IDEM prior to implementation under 329 IAC 10-3-3.

9. Reporting

9.1 A Methane Monitoring Program is required (329 IAC 10-20-17(b)(1)) to be submitted, per the schedule devised in the facility permit, for approval prior to implementation and should include the information described in this document.

9.2 An As-Built Report will be required, as part of the pre-operational conditions of applicable solid waste permits. An as-Built Report for an approved revision to a Methane Monitoring Program needs to be submitted sixty (60) days after the implementation of the revision. This report should include such information that is gathered during the implementation of the Methane Monitoring Plan such as: probe construction, boring logs and a brief narrative, with geological cross-sections, on the probable interconnection between the screened interval of each probe and the zones targeted for screening in the Plan under 1.2.

9.3 Quarterly data are required (329 IAC 10-20-8(a)(10)) to be compiled and stored in the facility operating record. The Commissioner may request submittal or inspection of these data at any time (329 IAC 10-20-8(b)). Information in the quarterly data should include the items listed in 4.2.

9.4 Compilation of exceeding data and steps taken to protect human health are required by 329 IAC 10-20-17(d)(3) to be placed in the operating record within seven (7) days of a gas exceedance.

9.5 Within sixty (60) days of a detection of greater than 25% LEL (1.25% methane gas) in MSWLF structures or 100% LEL (5% methane gas) at the facility boundary, 329 IAC 10-20-17(d)(4) requires the following:

a. Implementation of a remediation plan that must include the nature and extent of the problem and the proposed remedy. The remediation plan should include any work done in performance of the contingency plan and a proposal for any additional work that is deemed necessary to prevent additional violations.

b. A copy of the remediation plan must be inserted into the facility operating record.

c. Notification to the Commissioner that the remediation has been implemented. Notification should be in the form of a document outlining the work done, in consultation with IDEM Geology Section, and include a proposal for any additional work deemed necessary

9.6 Implementation of any remediation plan required under 329 IAC 10-20-17(d)(4) is considered a change to, or revision of, the Methane Monitoring Program and therefore a modification to the permit under 329 IAC 10-3-3. Items that require expediency to protect human health and the environment may be approved verbally, and in consultation, with the IDEM Geology Section until a formal revision of the Methane Monitoring Program can be compiled and submitted for approval.

For questions regarding this guidance contact Thomas Brown at 317/233-6540.

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Office of Land Quality
100 North Senate Avenue
Indianapolis, IN 46204
OLQ PH: (317) 232-8941

Title: Sampling and Analysis of Ground Water for Metals at Remediation Sites
Identification Number: WASTE-0057-NPD
Date Originally Effective: March 17, 2005
Dates Revised: None
Other Policies Repealed or Amended: None
Brief Description of Subject Matter: Provides background information for using unfiltered ground water sampling for metals at remediation sites, also, outlines the ground water sampling methods for water supply wells, monitoring wells and boreholes. Guidance applies to those sites being remediated under the following programs in the Remediation Services Branch of the Office of Land Quality: Voluntary Remediation Program, Leaking Underground Storage Tanks, Federal Cleanup Programs, State Cleanup Programs, RCRA Corrective Action, and Site Assessments & Brownfields as well as Environmental Emergency Responses. This guidance does not apply to those sites in the Solid Waste Permits or Hazardous Waste Permits programs.
Citations Affected: 40 CFR 264, Subpart F, as incorporated by reference in 329 IAC 3-1-9

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Sampling and Analysis of Ground Water for Metals at Remediation Sites

INTRODUCTION:

Over the years there has been debate regarding the merits of using filtered vs. non-filtered samples for the analysis of metals in ground water. The primary considerations are: the turbidity of a sample; the type of well (*e.g.* drinking water vs. monitoring well vs. direct push); and whether total or dissolved metals are the parameters of concern, *e.g.* monitoring for health risk vs. leak detection.

This guidance briefly provides background information for using unfiltered ground water sampling for metals at remediation sites. It then outlines the ground water sampling methods for water supply wells, monitoring wells and boreholes. This guidance applies to those sites being remediated under the following programs in the Remediation Services Branch of the Office of Land Quality: Voluntary Remediation Program, Leaking Underground Storage Tanks, Federal Cleanup Programs, State Cleanup Programs, RCRA Corrective Action, and Site Assessments & Brownfields as well as Environmental Emergency Responses. This guidance does not apply to those sites in the Solid Waste Permits or Hazardous Waste Permits programs.

BACKGROUND:

Historically, ground water samples have been filtered as a means of excluding naturally occurring metals and non-mobile organics that were sorbed to aquifer matrix elements (*i.e.* suspended solids, colloids, *etc.*), and to ensure that only site-related inorganic contaminants were evaluated. A growing body of evidence indicates that sample filtration may not achieve this goal, and may instead alter the characteristics of site-related hazardous constituents in a ground water sample.

Sample agitation, aeration, and rapid purge and sample rates, which exceed 1.0 liter/minute or cause a drawdown of more than 0.3 feet, may induce physical and chemical changes in a sample. These changes may include induced turbidity, exposure of fresh suspended sorptive surfaces (capable of adsorbing dissolved contaminants), mixing (may cause dilution), oxidation, and other changes in metal speciation. Any of these could affect sample analysis in the laboratory (Luftig, 2003).

Proper sampling techniques minimizes induced turbidity and the need for filtering and, thus, does not alter the sample. Filtration may cause a number of unintended changes (oxidation, aeration, etc.) to occur by introducing artifacts to the analytical results, which may be misleading (Puls and Barcelona, 1996). Filtering a ground water sample may remove contaminants that exist in the dissolved and mobile phase or remove colloidal particles that are known to be mobile in certain ground water conditions and may be important to the transport of hydrophobic contaminants and metals. The resulting sample analysis will produce false negatives and not accurately reflect the true concentrations for these contaminants. In comparison, proper sampling techniques that minimize stress to the well/aquifer interface should achieve acceptably low levels of induced turbidity without the risk of altering the sample by filtering (Luftig, 2003). USEPA and several states recommend testing unfiltered ground water samples for metals (USEPA, 1992). The analysis of filtered samples for ground water without also including the analysis of unfiltered (totals) samples is rarely considered acceptable (USEPA, 1998).

Filtration cannot correct improper sampling technique nor is it a "cure" for improperly built/developed wells that produce turbid samples (O'Toole, 1988). As a result, sample filtration is an unacceptable alternative to proper sampling methods.

GROUND WATER SAMPLING AT REMEDIATION SITES:

Sampling Considerations

The following minimum conditions should be met to ensure that ground water samples are representative and of sufficient quality for the intended data use.

1. The sample location is in the appropriate area;
2. The sample comes from the appropriate depth;
3. If taken from a well, the well is properly constructed according to 312 IAC 13;
4. If taken from a well, the is well properly developed according to 312 IAC 13; and
5. The sampling method will yield a representative sample.

Water Supply Well Sampling Methodology (Metals)

Conditions 1 through 4 may be unknown or uncertain when sampling an existing water supply well. One certainty, though, is people, plants, and/or animals are in contact with or drinking the water from that well. To obtain a representative ground water sample in this situation:

1. If there is an aerator at the sampling point, remove it.
2. Either shut down or bypass treatment systems (*e.g*. softener, reverse osmosis, carbon filtration, *etc)*.
3. Completely purge the storage tank until fresh ground water comes from the tap. This may take several minutes, depending on the volume of the storage tank and flow rate. Typically a fifteen-minute purge time is utilized.
4. Collect the sample and preserve (acidify) it without filtration.

Monitoring Well Sampling Methodology (Metals)

If conditions 1 through 4 can be met, then sampling may proceed. If one or more of the conditions is not met, then the well probably should not be used for ground water sampling, (however, the well may be suitable for other purposes, such as determining ground water elevation). Proper sampling technique involves gathering samples that more accurately represent the mobile composition of ground waters (Matanoski, and Murarka, 1997). Bailers increase turbidity while purging and sampling and should be avoided when sampling for metals (Yeskis and Zavala, 2002). Low-flow, low-stress purging and sampling (micro-purge sampling) has been shown to significantly reduce induced turbidity problems. This method may prove particularly valuable with low permeability sediments and highly turbid ground water (OLQ Geological Services, 2003). For example, micro-purge sampling was approved for a landfill in Indiana, with very high turbidity. The turbidity dropped from over 40,000 NTUs (nephelometric turbidity units) to 6 or less (OLQ Geological Services, 1998). A review of micro-purge sampling, listing advantages and disadvantages of the technique is on the web at: http://www.in.gov/idem/land/geology/pdf/micropurgereview.pdf

The complete text for using Micro-Purge Sampling for Monitoring Wells is on the web at: http://www.in.gov/idem/land/geology/pdf/micropurgesampling.pdf

Sometimes, a well may be properly installed, developed and sampled; yet turbidity is high. In this situation field-filtered samples may be taken but only in conjunction with unfiltered samples to determine if particle size and mobility affect the results. A large difference between unfiltered and filtered samples does not preclude the use of unfiltered data for risk assessment decisions (Puls and Barcelona, 1989).

Sample filtration may be used if the OLQ determines that conditions 1 through 4 are met and that micro-purge sampling does not reduce turbidity to <10 NTU (Yeskis and Zavala, 2002)**.** (The project chemist should be consulted to determine if proper water quality screening and sampling techniques have been conducted. Also, the project geologist should be consulted to determine if proper well construction and development occurred). When filtration is necessary, a 10 mm in-line filter should be used to minimize contact with air and avoid metals precipitation (Yeskis and Zavala, 2002). This recommendation is similar to what other states suggest. Also, a filter pore size of 10 mm approximates the efficiency of a common household filter. The filter should be allowed to acclimate before a sample is collected. Approximately 500 to 1000 ml of water should pass through the filter (depending on manufacturer's recommendation) before a sample is collected and preserved. If volatile organic compounds are also to be collected, they should be collected first and metals last.

Other filter sizes may be appropriate but their usage should be predetermined based on several factors such as, grain-size distribution, ground water flow and velocity, mineralogy, and the project Data Quality Objectives (DQO). The changing of filter media pore size may limit the comparability of the data obtained with other data sets from a site, region, or aquifer and the DQOs should be taken into consideration (Yeskis and Zavala, 2002).

Borehole Sampling Methodology (Metals)

Boreholes should meet the first two conditions, (appropriate sample location and sample depth); however, they will probably not meet the conditions of proper construction and development. Nevertheless, the same considerations and procedures for monitoring well sampling and sample treatment should be followed. When sampling boreholes, particular care needs to be taken to ensure that samples do not include:

1. Drilling fluids;
2. Soil materials sloughed from upper horizons; and
3. Water or other fluids encountered in other zones during drilling (cross contamination).

Following these steps for micro-purge sampling should reduce the turbidity and, thus, the need for field filtration.

REFERENCES CITED

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INDIANA DEPARTMENT OF INSURANCE
March 3, 2005
Bulletin 128
NOTICE TO POLICYHOLDERS REGARDING
FILING COMPLAINTS WITH THE DEPARTMENT OF INSURANCE

This Bulletin is directed to all insurers issuing life, health, or personal lines property and casualty products, health maintenance organizations, and limited service health maintenance organizations doing business in the state of Indiana. Bulletin 63, issued on May 7, 1990, required a standardized notice to all existing policyholders about their right to file a complaint with the Indiana Department of Insurance. Thereafter insurers were required to provide the notice on all newly issued policies. The Department of Insurance has determined that the notice contained in Bulletin 63 is ambiguous and has resulted in confusion to policyholders as to when they should contact the insurance company and when they should contact the Department of Insurance. Therefore, the Department is revising the standard language to be as follows:

[in bold] Questions regarding your policy or coverage should be directed to:

[Company Name]
Contact number

[not in bold] If you (a) need the assistance of the governmental agency that regulates insurance; or (b) have a complaint you have been unable to resolve with your insurer you may contact the Department of Insurance by mail, telephone or email:

State of Indiana Department of Insurance
Consumer Services Division
311 West Washington Street, Suite 300
Indianapolis, Indiana 46204

Consumer Hotline: (800) 622-4461; (317) 232-2395

Complaints can be filed electronically at www.in.gov/idoi.

Bulletin 63 applied to insurance companies. This Bulletin specifically applies to all insurers, health maintenance organizations, and limited service health maintenance organizations.

This standardized language is required for policies issued or renewed 180 days after the issuance of this Bulletin. In order to fully comply with the bulletin each entity shall maintain a contact number for consumer inquiries.

INDIANA DEPARTMENT OF INSURANCE
James Atterholt

INDIANA DEPARTMENT OF INSURANCE
March 3, 2005
Bulletin 129
PATIENT'S COMPENSATION FUND
FILING AND PROCESSING FEES

This Bulletin is directed to all persons that file a Proposed Complaint for Damages under Indiana's Medical Malpractice Act, IC 34-18. IC 34-18-8-2 requires that each Proposed Complaint for Damages be accompanied by a filing fee in the amount of five dollars ($5) and a processing fee in the amount of two dollars ($2) for each defendant after the first named defendant. IC 34-18-9-1 requires the Commissioner to forward a copy of the Complaint by registered or certified mail to each health care provider named as a defendant. The filing and processing fees are intended to cover the Department's costs in accomplishing these tasks. While the statute does not specifically require the Department to serve all Amended Proposed Complaints on all health care providers, the Department has determined that it is appropriate to do so and has historically processed all Amended Proposed Complaints the same as the initial filing. The Department receives a significant number of Amended Proposed Complaints. In addition, there is often more than one defendant required to be served. In order to support the cost of serving these Amended Proposed Complaints the Department has determined that the filing and processing fees should be collected at the time of filing any amendment to a Proposed Complaint.

Therefore, effective May 1, 2005, all persons filing an amendment to a Proposed Complaint for Damages shall submit a filing fee in the amount of five dollars ($5) and a processing fee in the amount of two dollars ($2) for each defendant after the first named defendant. An Amended Proposed Complaint, as with the initial Proposed Complaint, shall not be considered filed with the Department until the filing and processing fees are received by the Department.

INDIANA DEPARTMENT OF INSURANCE
James Atterholt, Commissioner

DEPARTMENT OF STATE REVENUE

01980577.LOF

LETTER OF FINDINGS: 98-0577
Indiana Adjusted Gross Income Tax
For 1995

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Net Operating Losses – Adjusted Gross Income Tax.

Authority: IC 6-3-2-2.6; IC 6-8.1-5-1(b); 45 IAC 3.1-1-6; I.R.C. § 172(b)(1)(A)(ii); I.R.C. § 172(b)(3); I.R.C. § 172(c), (d); Treas. Reg. § 1.172-2; Treas. Reg. § 1.172-3.

Taxpayer argues that it was entitled to carry forward a net operating loss and that – as a result – taxpayer did not owe Indiana adjusted gross income tax for 1995.

STATEMENT OF FACTS

The Department of Revenue (Department) determined that taxpayer owed a delinquent state income tax liability for 1995, offset a year 2000 refund otherwise owed taxpayer, and sent taxpayer a notice to that effect. Taxpayer challenged the decision. Taxpayer did so on the ground that a net operating loss – carried forward from 1987 – more than compensated for any 1995 tax liability.

Taxpayer and the Department exchanged correspondence without resolving the matter. The unresolved issue was treated as a protest. Because taxpayer's representative declined the opportunity to take part in an administrative hearing, this Letter of Findings was written based upon the information contained within the Department's file and the correspondence furnished by taxpayer's representative.

DISCUSSION

I. Net Operating Losses – Adjusted Gross Income Tax.

According to taxpayer, her farm business incurred a net operating loss of approximately $200,000 in 1987. Taxpayer then carried forward the 1987 loss to 1988 entirely offsetting taxpayer's income received during that year. Taxpayer carried forward the "unused" portion of the loss to 1989 thereby offsetting the 1989 income. Because the original loss was substantial and the personal income received during each following year was comparatively small, the original net operating loss was carried forward again and again offsetting each subsequent year's income. Taxpayer repeated this process through 1995 after which nothing remained of the original $200,000 loss.

The Department's only challenge was to taxpayer's 1995 calculation. The Department requested documentation substantiating the source and nature of the 1987 loss. Taxpayer's representative supplied copies of the underlying federal return and copies of the

taxpayer's state returns. The Department remained unsatisfied with the documentation supplied and the explanations offered.

Taxpayer's contention is that the 1987 net operating loss offset any potential 1995 tax liability. The rule governing net operating losses for individuals is found at 45 IAC 3.1-1-6 which states in part as follows:

> The following provisions pertain to the use of a Federal net operating loss deduction as it applies to an individual subject to the Indiana Adjusted Gross Income Tax Act. The amount of the net operating loss that may be carried back and forward for Indiana income tax purposes shall be that portion of the Federal net operating loss allocated to Indiana for the taxable year the operating loss is sustained.

Indiana treatment of individual net operating losses is governed by the provisions of the federal law concerning corporate net operating losses. IC 6-3-2-2.6. I.R.C. § 172(c), (d), defines a net operating loss as the excess in allowable deductions over gross income computer under the law in effect during the loss year. Treas. Reg. §§ 1.172-2; 1.172-3. This net operating loss (NOL) can be carried back and used as a deduction for the two years preceding the loss year. If some of the NOL has not been used up by the carryback, it is carried forward into the 20 years after the loss year and used as a deduction. I.R.C. § 172(b)(1)(A)(ii). Alternatively, taxpayer may elect to forgo the entire carryback period. I.R.C. § 172(b)(3). If this election is made, the loss will then be carried forward only.

Taxpayer has the responsibility to show that the 1995 income was offset by the serial carry forward of the 1987 NOL. IC 6-8.1-5-1(b) states that, "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

The Department has no quarrel with taxpayer's calculations because the serial carry forward calculations appear to be correct. However, what is missing is any sort of explanation as to the manner in which the $200,000 was originally incurred or how that loss was calculated. The Department is left to speculate as to the nature and source of this loss. (What did taxpayer lose? How did taxpayer figure that it was worth $200,000?) The Department has no reason to doubt taxpayer's veracity or good intentions, but with nothing more to go on than taxpayer's repeated assurance that there *was* a $200,000 loss in 1987, the Department is unable to conclude that taxpayer has met her burden of demonstrating that the proposed assessment is incorrect.

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

04990511.LOF

LETTER OF FINDINGS NUMBER: 99-0511
Sales and Use Tax
For The Tax Period 1989-1998

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales and Use Tax - Imposition
Authority: IC 6-2.5-2-1, IC 6-2.5-3-2 (a), IC 6-2.5-2 (c)(1), IC 6-8.1-5-1 (b), IC 6-8.1-5-4.

The taxpayer protests the assessment of sales and use tax.

II. Tax Administration – Fraud Penalty
Authority: IC 6-8.1-10-4 (a), 45 IAC 15-11-4.

The taxpayer protests the imposition of the fraud penalty.

STATEMENT OF FACTS

The taxpayer is the sole proprietor and operator of a body repair shop. In addition to revenue from repairing cars, taxpayer also purchases wrecked vehicles to repair and repaint. He then sells the repaired cars on a consignment basis from a local car lot. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional sales and use tax, interest, and penalty. The taxpayer protested a portion of the sales tax assessment and the penalty. A hearing was held and this Letter of Findings results.

I. Sales and Use Tax -Imposition

DISCUSSION

Indiana imposes a sales tax on the transfer of tangible personal property in a retail transaction. IC 6-2.5-2-1. Indiana imposes a complementary excise tax, the use tax, on tangible personal property purchased in a retail transaction and stored, used, or consumed in Indiana. IC 6-2.5-3-2 (a). Payment of sales tax at the time of purchase exempts the use of tangible personal property from the use tax. IC 6-2.5-2(c)(1).

Pursuant to IC 6-8.1-5-1(b), all tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that

any assessment is incorrect. Taxpayers have a statutory duty to keep records as set out at IC 6-8.1-5-4 as follows:

Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

The taxpayer did not submit any documentation to substantiate his claim that the department's assessment was inaccurate. Therefore, the taxpayer did not sustain his burden of proof.

FINDING

The taxpayer's protests to the assessments of sales and use tax are denied.

II. Tax Administration – Fraud Penalty

DISCUSSION

The department assessed the one hundred percent (100%) fraud penalty pursuant to the provisions of IC 6-8.1-10-4 (a) as follows:

If a person fails to file a return or to make a full tax payment with that return with the fraudulent intent of evading the tax, the person is subject to a penalty.

This penalty is further explained at 45 IAC 15-11-4 as follows:

The penalty for failure to file a return or to make full payment with that return with the fraudulent intent of evading the tax is one hundred percent (100%) of the tax owing. Fraudulent intent encompasses the making of a misrepresentation of a material fact which is known to be false, or believed not to be true in order to evade taxes. Negligence, whether slight or great, is not equivalent to the intent required. An act is fraudulent if it is an actual, intentional wrongdoing, and the intent required is the specific purpose of evading tax believed to be owing.

The taxpayer was registered to collect sales tax and collected it from most customers. He never, however, filed sales tax returns with the department or voluntarily remitted collected sales taxes. The taxpayer admitted that he "borrows" other dealers' identification numbers. He also deals in "cash only" sales and purchases without recording any transactions. The taxpayer acknowledged that he destroyed purchase invoices. The business records were poorly kept and minimal. The taxpayer clearly knew that he was required to collect and remit sales taxes but failed to do so. The taxpayer intentionally misrepresented to the state the amount of sales taxes that he was required to remit to the state. These actions constitute fraud.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

02-20020087.LOF

LETTER OF FINDINGS NUMBER: 02-0087
Adjusted Gross Income Tax
For Tax Years 1998 through 1999

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Adjusted Gross Income—Nexus

Authority: Quill Corporation v. North Dakota, 504 U.S. 298 (U.S. 1992); in Miles, Inc. v. Indiana Department of State Revenue, 659 N.E.2d 1158, 1164 (Ind. Tax 1995); Chief Industries, Inc. v. Indiana Department of State Revenue, 792 N.E.2d 972 (Ind. Tax 2000); Subaru-Isuzu Automotive, Inc., Company v. Indiana Department of State Revenue, 782 N.E.2d 1071 (Ind. Tax 2003); IC 6-3-2-2; IC 6-3-4-14; IC 6-8.1-3-3; 45 IAC 3.1-1-50; 45 IAC 3.1-1-55; 45 IAC 15-3-2; Geoffry, Inc. v. South Carolina Tax Commission, 437 S.E. 2d 13 (S.C. 1993)

Taxpayer protests the imposition of adjusted gross income tax on activity it believes has no nexus with Indiana.

II. Tax Administration—Negligence Penalty and Interest

Authority: IC 6-8.1-10-1; IC 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests imposition of a ten percent (10%) negligence penalty and interest.

STATEMENT OF FACTS

Taxpayer is a member of a consolidated group which operates several chains of retail clothing stores in multiple states and affiliated companies which hold the rights to trademarks and trade brands associated with each particular retail chain. For example, a retail chain named "Retail Clothing Store" would have an affiliated company with a similar name such as "Retail Clothing Store Holdings" which held the rights to the trademarks and trade brand of "Retail Clothing Store". The retailer would pay the affiliated

company royalties for the use of the trademarks and trade brands. Also, the affiliated company made loans to the retail company, upon which the retail company paid interest to the trademark holding company. All of these companies are listed together on the Federal consolidated returns, while only the retail stores are listed on the Indiana consolidated returns. As the result of an audit conducted for the tax years at issue, the Indiana Department of Revenue ("Department") issued proposed assessments for additional adjusted gross income tax on the income the trademark holding companies received in the form of royalty payments and interest payments. Taxpayer protests these proposed assessments on the grounds that it has insufficient nexus with the state for Indiana to tax the activities at issue. Further facts will be supplied as necessary.

I. Adjusted Gross Income—Nexus

DISCUSSION

Taxpayer is a member of a group which consists of several related chains of retail clothing stores and affiliated companies which file a consolidated Indiana adjusted gross income tax return. Taxpayer paid royalty income from a retail company to another affiliated company, which the audit refers to as a "royalty-receiving company" (hereinafter "RRC") and which taxpayer refers to in its protest as a "Trademark Protection Company", for the use of trademarks and trade names owned by the RRC. The retail company also paid interest to the RRC on loans from the RRC. The audit report notes that the RRCs in the group had no payroll or employees and that the tangible property such as is used to compute the property factor of the apportionment computation was so small as to be negligible. Also, the RRCs in the group each had total depreciable assets everywhere of less than ten thousand dollars ($10,000).

The Department conducted an audit for the tax years at issue and determined that the royalty income paid to the RRC and interest paid to the RRC on loans made by the RRC to the retail company should have been included in the consolidated return. Accordingly, the Department issued proposed assessments for adjusted gross income tax on the newly included income. Taxpayer protests that the income should not be included and that the proposed assessments are incorrect.

Taxpayer presents several arguments supporting its position. Taxpayer's first argument is that the amounts of taxes assessed and the methods used to compute such amounts are unexplained by and inconsistent with the audit report, are based on an overstatement of corporate income tax liability for the period at issue, and fail to allow taxpayer appropriate credit for corporate income tax paid for the period at issue. Taxpayer refers to IC 6-3-4-14(a), which provides in part:

> An affiliated group of corporations shall have the privilege of making a consolidated return with respect to the taxes imposed by IC 6-3.

Next, taxpayer refers to IC 6-3-4-14(b), which states:

> For purposes of this section the term "affiliated group" shall mean an "affiliated group" as defined in Section 1504 of the Internal Revenue Code with the exception that the affiliated group shall not include any corporation which does not have adjusted gross income derived from sources within the state of Indiana.

Taxpayer does not believe that the RRCs should be included in a consolidated return due to the provision of IC 6-3-4-14(b) excluding corporations which do not have adjusted gross income derived from sources within the state of Indiana.

In support of its position that the RRCs do not have adjusted gross income derived from sources within the state of Indiana, taxpayer refers to IC 6-3-2-2(a), which states in part:

> With regard to corporations and nonresident persons, "adjusted gross income derived from sources within the state of Indiana", for the purposes of this article, shall mean and include:
> (1) income from real or tangible personal property located in this state;
> (2) income from doing business in this state;
> (3) income from a trade or profession conducted in this state;
> (4) compensation for labor or services rendered within this state; and
> (5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property if the receipt from the intangible is attributable to Indiana under section 2.2 of this chapter.
> …

Taxpayer believes that the modifier,"…if the receipt from the intangible is attributable to Indiana under section 2.2 of this chapter" applies to all income sources listed in IC 6-3-2-2(a)(5). Since IC 6-3-2-2.2 deals primarily with interest income and income from loans, and does not mention income from trademarks or trade brands, taxpayer does not believe that the income received by the royalty receiving corporations for trademark and trade brand use qualifies as adjusted gross income derived from sources within the state of Indiana.

In its protest, taxpayer refers to the Indiana Tax Court case, Chief Industries, Inc. v. Indiana Department of State Revenue (which was issued in 2000 and ruled "For Publication" in 2004) for support in its assertion that the Department's regulations are out of date, but Chief also provides guidance in determining if the modifier found in IC 6-3-2-2(a)(5) applies to all categories listed therein. Chief Industries, Inc. v. Indiana Department of State Revenue, 792 N.E.2d 972 (Ind. Tax 2000). In that case, the Tax Court examined IC 6-3-2-2(a)(5) as it was written in 1986, which was the time Chief Industries stock sales took place. At that time, the modifier in IC 6-3-2-2(a)(5) read, "…and other intangible personal property having a situs in this state." The Tax Court explained that modifiers in the first four subsections clearly modify each item referenced within each subsection, and added:

To be consistent throughout section 6-3-2-2, the pattern must be read to extend to subsection (5). It would be absurd to read subsection (5) differently than the immediately preceding four subsections.

Id., at 977.

However, as the Tax Court explained in footnote 10 of Chief Industries:

The current version of section 6-3-2-2(a)(5) omits the phrase "having a situs in this state" and replaces it with "if the receipt from the intangible is attributable under section 2.2 of this chapter. *INDIANA CODE ANN. §6-3-2-2.2* (West 2000), effective January 1, 1990, discusses when income from, among other things, certain loans, sales contracts and dividends is attributable to Indiana.

Id., at 976.

The Tax Court decided that the pre-January 1, 1990 version of IC 6-3-2-2(a)(5) required all items listed therein to have a situs in Indiana, and proceeded to provide a three-part test to determine whether income is derived from an Indiana source or tax situs.

With the language change in the modifier of IC 6-3-2-2(a)(5) came a significant change in the effect the modifier had on the subsection. IC 6-3-2-2.2 contains no reference to eleven (11) of the twelve (12) categories listed in IC 6-3-2-2(a)(5). If all twelve categories were subject to the modification of being attributable to Indiana under IC 6-3-2-2.2, which only discusses one of the twelve categories, it would render eleven of the twelve items not applicable to Indiana under any circumstances.

As the Indiana Tax Court explained in Miles, Inc. v. Indiana Department of State Revenue, 659 N.E.2d 1158, 1164 (Ind. Tax 1995), "The Court cannot presume the legislature intended to enact a nullity." To read the reference to IC 6-3-2-2.2 as modifying all twelve items in IC 6-3-2-2(a)(5) would render the eleven excluded items nullified. Also, more direct evidence that the legislature did not intend to nullify the eleven items in IC 6-3-2-2(a)(5) is the fact that the modification to the subsection was enacted by P.L.347-1989(ss), Sec. 6, while IC 6-3-2-2.2 was enacted by P.L.347-1989(ss), Sec. 7. If the legislature intended to eliminate the eleven items in question from taxation under IC 6-3-2-2(a)(5), it could have simply modified the subsection to incorporate the language of IC 6-3-2-2.2 rather than go to the effort of leaving eleven meaningless categories and creating an entire separate statute to describe the sole remaining relevant category. That the legislature did not do this indicates that it did not intend to nullify the eleven categories, including trademarks and trade names.

Therefore, since IC 6-3-2-2(a)(5) was altered to include the eleven categories not related to IC 6-3-2-2.2 in 1990, and since the eleven categories can not be presumed to be nullified by the language of IC 6-3-2-2.2, the decisions in Chief Industries and in Miles leads to the conclusion that taxpayer's reliance on the descriptive language in IC 6-3-2-2.2 is misplaced. The legislature altered IC 6-3-2-2(a)(5) so that the modifier can not be logically applied to all twelve categories listed therein. The Chief Industries decision that the entire subsection is modified can only be applied to the pre-January 1, 1990 version of IC 6-3-2-2(a)(5), and taxpayer's belief that IC 6-3-2-2.2 must be satisfied for the eleven non-related categories is incorrect.

In the course of its argument, taxpayer refers to two Revenue Rulings in support of its argument. These two Revenue Rulings deal with Financial Institutions Tax (FIT). Since this protest deals with Adjusted Gross Income tax, and these Revenue Rulings are based on FIT statutes, they are not relevant to this protest and will receive no further discussion.

Taxpayer's next argument that the proposed assessments are invalid is that taxpayer believes that the Department relied on invalid regulations in its audit report. In the audit report the Department referred to several regulations to support its position. 45 IAC 3.1-1-50, in describing sales to be included in the sales factor of the apportionment formula, states in relevant part:

Sales Made in General Business Operations. "Sales" means all gross receipts of the taxpayer which are not subject to allocation as nonbusiness income. The following are examples of "sales" in various situations:

…

(5) If the taxpayer is in the business of selling, assigning, or licensing of intangible personal property such as patents and copyrights, "sales" includes the gross receipts therefrom.

…

Also, the Department referred to 45 IAC 3.1-1-55, which states in relevant part:

When Sales Other Than Sales of Tangible Personal Property Are in This State. Gross receipts from transactions other than sales of tangible personal property shall be included in the numerator of the sales factor if the income-producing activity which gave rise to the receipts is performed wholly within this state. Except as provided below if the income producing activity is performed within and without this state such receipts are attributed to this state if the greater portion of the income producing activity is performed here, based on costs of performance.

The term "income producing activity" means the act or acts directly engaged in by the taxpayer for the ultimate purpose of obtaining gains or profit. Such activity does not include activities performed on behalf of the taxpayer, such as those conducted on its behalf by an independent contractor. Accordingly, "income producing activity" includes but is not limited to the following: (1) The rendering of personal services by employees or the utilization of tangible and intangible personal property by the taxpayer in performing a service. (2) The sale, rental, leasing, or licensing the use of other use of tangible personal property. (3) The sale, licensing the use of or other use of intangible personal property.

Income producing activity is deemed performed at the situs of real, tangible and intangible personal property or the place where personal services are rendered. The situs of real and tangible personal property is at its physical location. The situs of intangible personal property is the commercial domicile of the taxpayer (i.e., the principal place from which trade or business of the

taxpayer is directed or managed), unless the property has acquired a "business situs" elsewhere. "Business situs" is the place at which intangible personal property is employed as capital; or the place where the property is located if possession and control of the property is localized in connection with a trade or business so that the substantial use or value attaches to the property….

Taxpayer believes that since these regulations were promulgated in 1979, prior to the changes to IC 6-3-2-2 which became effective on January 1, 1990, these regulations are invalid. Taxpayer states that since the regulations use the phrase "business situs" they are no longer applicable to determining adjusted gross income tax derived from intangible personal property. The Indiana Tax Court has addressed the impact a change in the underlying statute will have on a regulation. In Subaru-Isuzu Automotive, the legislature had repealed a two-sentence provision dealing with apportionment of Net Operating Losses and replaced it with a lengthy and complex four-step process for calculating Net Operating Losses. Subaru-Isuzu Automotive, Inc., Company v. Indiana Department of State Revenue, 782 N.E.2d 1071 (Ind. Tax 2003). The Department did not promulgate a new regulation in accordance with the new four-step process, and the Court explained:

An administrative rule is a nullity where the provision upon which the rule is based has been repealed.

Id., at 1076

The Court decided that the regulations relied upon by the Department no longer adequately reflected apportionment process they were designed to enhance, and therefore were no longer valid. Taxpayer's position in the instant case is that the administrative rules (regulations) referred to in the audit report are invalid under the same reasoning used by the Tax Court to describe a nullity in Subaru-Isuzu Automotive.

There is a fundamental difference between a nullified regulation, as described in Subaru-Isuzu Automotive, and the instant case. In Subaru-Isuzu Automotive, the underlying statute had been repealed and wholly replaced while the related regulation did not reflect this change. Here, the underlying statute has merely been simplified, with more complex analysis of one of twelve categories listed being relegated to a separate statute, while the regulation remains applicable to the remaining, unaffected eleven categories in IC 6-3-2-2(a)(5). The underlying statute was not repealed, but rather was modified, and the regulations are therefore not nullities as explained in Subaru-Isuzu Automotive.

Taxpayer's next argument is that the Department erroneously relied on the authority of a South Carolina case, Geoffry, Inc. v. South Carolina Tax Commission, 437 S.E. 2d 13 (S.C. 1993), for its assessments. Taxpayer states that the decision in Geoffrey does not address Indiana adjusted gross income tax, which is of relevance here, but instead addresses Federal constitutional issues. Taxpayer also states that the court in Geoffrey made the wrong decision in that case, and offers a New Jersey case in its place.

A review of the audit report reveals that the Department did not rely on the authority of Geoffrey to reach its assessments. Rather, the Department relied on the regulations previously discussed, and merely used Geoffrey as an example of how a court decided that state taxation of royalty income to a non-resident business was not prohibited by the Due Process Clause or Commerce Clause of the United States Constitution. In any event, a case decided in another state's courts has no authority in Indiana, which means that both South Carolina's Geoffrey and New Jersey's case are useful only for example purposes, do not form the basis of the assessments, and will not be discussed further.

Taxpayer's next argument is that the Due Process Clause and Commerce Clause of the United States Constitution both bar Indiana from taxing the royalty income. Taxpayer refers to Quill Corporation v. North Dakota, 504 U.S. 298 (U.S. 1992), to support its contention that physical presence is required for a state to impose tax. Quill deals with sales tax, as the Court explains when it discusses the Commerce Clause requirements, "In sum, although in our cases subsequent to *Bellas Hess* and concerning other types of taxes we have not adopted a similar, bright-line, physical presence requirement, our reasoning in those cases does not compel that we now reject the rule in *Bellas Hess* established in the area of sales and use taxes." Id., at 317. Also, in its discussion of the Due Process Clause, the Court explains that physical presence is not required for a state to impose sales tax. Id., at 308. Therefore, since the instant case deals with income tax rather than sales and use taxes, and the Court specifically states that the physical presence requirement has not been adopted for taxes other than sales and use, Quill provides no support for taxpayer.

Taxpayer's next argument is that the Department changed its interpretation of a listed tax without properly promulgating new regulations. Taxpayer refers to IC 6-8.1-3-3(b), which states:

No change in the department's interpretation of a listed tax may take effect before the date the change is:

(1) adopted in a rule under this section; or

(2) published in the Indiana Register under IC 4-22-7-7(a)(5), if IC 4-22-2 does not require the interpretation to be adopted as a rule;

if the change would increase a taxpayer's liability for a listed tax.

Taxpayer also refers to 45 IAC 15-3-2(d)(3), which states:

In respect to rulings issued by the department, based on a particular fact situation which may affect the tax liability of the taxpayer, only the taxpayer to whom the ruling was issued is entitled to rely on it. Since the department publicizes summaries of rulings which it makes, other taxpayers with substantially identical factual situations may rely on the publicized rulings for informational purposes in preparing returns and making tax decisions. Generally, department publications may be relied on by any taxpayer if their fact situation does not vary substantially from those facts upon which the department based its publication. If a taxpayer relies on a publicized ruling and the department discovers, upon examination, that the fact situation of the particular taxpayer is different in any material respect from that situation on which the original ruling was issued, the ruling

will afford the taxpayer no protection and the examination will apply to all open years under the statutes. Letters of findings that are issued by the department, as a result of protested assessments, are to be considered rulings of the department as applied to the particular facts protested.

Taxpayer believes that the Department is changing its interpretation in the instant case from its interpretation found in two revenue rulings issued in April, 1982. The text of a summary of one of the rulings states in its entirety:

Advice was requested as to the taxability of an Indiana-based corporation engaged in receiving copyright royalties from various sources worldwide. All of the property and employees are located in Indiana.

The Department ruled that the taxpayer was subject to gross income tax on its entire gross receipts. IC 6-2.1-1-2(e)(6) provides an exclusion for amounts received at an out-of-state business situs, but this taxpayer has no such situs. Likewise, its entire adjusted gross income is taxable in Indiana because no other state has jurisdiction to impose a net income tax.

Taxpayer states that the rulings could not be clearer or more on point, and that their interpretation of the tax statutes can not be changed prior to the promulgation of a rule or publication in the Indiana Register as required under IC 6-8.1-3-3. Taxpayer states that the audit report's attempt to do so is plainly impermissible under IC 6-8.1-3-3 and would violate taxpayer's rights under 45 IAC 15-3-2 to rely on rulings issued to other taxpayers. Taxpayer is incorrect.

The summary taxpayer refers to is a short summary and provides little information. One obvious difference is that the summary discusses a taxpayer with no activities outside Indiana, while the instant case deals with taxpayers who have activities in several states. Taxpayer emphasizes the last sentence of the summary, which mentions adjusted gross income and is also the tax at issue in this protest. In the summary, the Department explained that the taxpayer's entire royalty income was taxable in Indiana since there was no other taxing jurisdiction to apportion the income with. In the instant case, the Department has apportioned the royalty income according to the apportionment formula explained in IC 6-3-2-2. In other words, there was no reason to apportion in the 1982 instance and there is a reason to apportion in this instance. Taxpayer fails to explain why the last sentence of the summary means that the instant audit represents an attempt to change the Department's interpretation of adjusted gross income tax statutes in this case.

In its protest, taxpayer cites only the first two sentences of 45 IAC 15-3-2(d)(3). It is clear that the two situations are materially different from one another, and as explained in the fourth sentence of 45 IAC 15-3-2(d)(3), "If a taxpayer relies on a publicized ruling and the department discovers, upon examination, that the fact situation of the particular taxpayer is different in any material respect from that situation on which the original ruling was issued, the ruling will afford the taxpayer no protection and the examination will apply to all open years under the statutes." The fact situation of this particular taxpayer is different in at least one material respect from the situation on which the original ruling was issued. Therefore, the 1982 rulings afford no protection to taxpayer.

Next, taxpayer argues that the Department erred in its calculation of the apportionment factors it used to determine the proposed assessments. Taxpayer refers to 45 IAC 3.1-1-55(e), which states:

Gross receipts from intangible personal property shall, if classified as business income, be attributed to this state based upon the ratio which the total property and payroll factors in this state bears to the total of the property and payroll factors everywhere for the tax period as determined in Regulations 6-3-2-2(c)(010) *[45 IAC 3.1-1-40]* et seq. and 6-3-2-2(d)(010) *[45 IAC 3.1-1-47]* et seq.

Taxpayer states that the audit report does not attribute the royalty-receiving corporation's intangible income to Indiana based on their Indiana property and payroll factors, but rather by multiplying the royalty-receiving corporation's total royalty and interest income by the sales factor of the retailers to whom the royalty-receiving corporations licensed intangibles or lent money. Taxpayer believes that to do so is not only unsupportable under the Adjusted Gross Income act, but is contrary to the regulations. Taxpayer's interpretation of 45 IAC 3.1-1-55(e) is that with zero tangible personal property and zero payroll in Indiana, the apportionment factor should be zero. Taxpayer is incorrect.

The Department refers to IC 6-3-2-2(l), which states:

If the allocation and apportionment provisions of this article do not fairly represent the taxpayer's income derived from sources within the state of Indiana, the taxpayer may petition for or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(1) separate accounting;

(2) the exclusion of any one (1) or more of the factors;

(3) the inclusion of one (1) or more additional factors which will fairly represent the taxpayer's income derived from sources within the state of Indiana; or

(4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

In this case, taxpayer is correct that the royalty-receiving corporations have no Indiana payroll or real or tangible personal property. As previously explained, they do not have payroll or real or tangible personal property anywhere else either. Yet they clearly have income, and if the Department were to follow taxpayer's suggestion that the apportionment be calculated at zero, the result would not fairly represent taxpayer's income derived from sources within the state of Indiana. This situation is resolved by IC 6-3-2-2(l) which allows the exclusion of one or more of the three factors and the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income. The Department included the total receipts of the royalty-receiving corporations in the denominator of the sales apportionment factor. The Department multiplied the total receipts for the royalty-receiving corporations by the sales factors of the related retail corporation since royalty revenues are directly based on sales

revenues. As explained in the audit report, this results in an accurate and equitable Indiana sales factor numerator.

Taxpayer's next argument deals with the interest payments made by the retailer to the RRC. The Department referred to 45 IAC 3.1-1-59, which explains when interest is treated as business or nonbusiness income, while describing the adjustments in the audit report. Taxpayer states that it is irrelevant if the interest is business or nonbusiness income and refers to IC 6-3-2-2.2 to raise the point that the type of interest income in question is not included in the various descriptions therein and concludes that the interest payment income is therefore not to be included in Indiana income. IC 6-3-2-2.2 states:

(a) Interest income and other receipts from assets in the nature of loans or installment contracts that are primarily secured by or deal with real or tangible personal property are attributable to this state if the security or sale property is located in Indiana.

(b) Interest income and other receipts from consumer loans not secured by real or tangible personal property are attributable to this state if the loan in made to a resident of Indiana, whether at a place of business, by a traveling loan officer, by mail, by telephone, or by other electronic means.

(c) Interest income and other receipts from commercial loans and installment obligations not secured by real or tangible personal property are attributable to this state if the proceeds of the loan are to be applied in Indiana. (b) If it cannot be determined where the funds are to be applied, the income and receipts are attributable to the state in which the business applied for the loan. As used in this section, "applied for" means the initial inquiry (including customer assistance in preparing the loan application) or submission of a completed loan application, whichever occurs first.

(d) Interest income, merchant discount, and other receipts including service charges from financial institution credit card and travel and entertainment credit card receivables and credit card holders' fees are attributable to the state to which the card charges and fees are regularly billed.

(e) Receipts from the performance of fiduciary and other services are attributable to the state in which the benefits of the services are consumed. If the benefits are consumed in more than one (1) state, the receipts from those benefits are attributable to this state on a pro rata basis according to the portion of the benefits consumed in Indiana.

(f) Receipts from the issuance of traveler's checks, money orders, or United States savings bonds are attributable to the state in which the traveler's checks, money orders, or bonds are purchased.

(g) Receipts in the form of dividends from investments are attributable to this state if the taxpayer's commercial domicile is in Indiana.

Taxpayer states that it is not possible to determine where the proceeds of the loan were applied, therefore IC 6-3-2-2.2(c) requires the income and receipts to be attributed to the state where the loan was applied for. Since the loan was applied for wholly outside of Indiana, taxpayer believes that the income and receipts can not be attributed to Indiana. Taxpayer also reiterates its argument that the regulation relied upon by the Department is invalid due to new statutory language.

Regarding the loan interest payments, the Department referred to 45 IAC 3.1-1-59 which states in relevant part:

Interest income is nonbusiness income if the intangible with respect to which the interest was received did not arise out of or was not created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the intangible was not related to or incidental to such trade or business operations. The term "interest" as used in this regulation *[45 IAC 3.1-1-59]* includes service charges, time-price differentials, and all other charges for the use of money.

…

The Department determined that the interest in question did arise out of the regular course of the taxpayer's business operations and was therefore business income and therefore should be included in the apportionment calculations.

Regarding taxpayer's argument that the regulation is invalid because it has not been updated since the enactment of IC 6-3-2-2.2, IC 6-3-2-2.2 does provide a new statutory-level method for how to determine if loan interest is attributable to Indiana which is not referred to by 45 IAC 3.1-1-59. However, the two are not discussing the same thing. IC 6-3-2-2.2 is designed to determine the attribution of business income while 45 IAC 3.1-1-59 is designed to determine if interest income is business or nonbusiness income, not where it should be attributed.

It appears that the loans are generally applied to the retail company. Therefore, a portion of the loans are applied to the retail company's Indiana operations. The Department apportioned the amount of interest applied to Indiana with the same formula as it used to apportion royalty income, as provided in IC 6-3-2-2(m), which states:

In the case of two (2) or more organizations, trades or businesses owned or controlled directly or indirectly by the same interests, the department shall distribute, apportion, or allocate the income derived from sources within the state of Indiana between and among those organizations, trades, or businesses in order to fairly reflect and report the income derived from sources within the state of Indiana by various taxpayers.

In this case, the loans are made by one business to another which is controlled directly or indirectly by the same interests. The Department apportioned the income from the interest payments with the same formula as it used to apportion the royalty income which fairly reflects the income derived from sources within the state of Indiana by the various taxpayers.

Additional support for the proposed assessments is found in the Department's treatment of companies that claim deductions for royalty income paid to related companies, such as the companies in the instant case. The Department has consistently determined that such a company cannot deduct such royalty payments, using virtually identical language and referring to the same statutes and regulations to reach those conclusions. Since this taxpayer is sufficiently close to the other companies to qualify as a consolidated

group, the Department could have denied a deduction taken by the clothing companies for the royalty payments to the RRCs. This would have had the same effect on the consolidated group's income.

In conclusion, taxpayer availed itself of Indiana's markets by licensing its trademarks and trade brands to an affiliated company doing business in Indiana. IC 6-3-2-2(a)(5) provides that this activity creates adjusted gross income derived from sources in Indiana and is therefore taxable here. The Department did not rely on a South Carolina case as its authority to tax the income. The regulations the Department did rely on are not invalid, even taking into account the 1990 revision to IC 6-3-2-2. The Due Process Clause and Commerce Clause of the Federal Constitution do not prevent Indiana from taxing the income. It can be determined that the proceeds of the loans are partially applied to Indiana, and IC 6-3-2-2.2(c) provides that the interest on those loans are partially applicable to Indiana. The Department properly included and apportioned the royalty and interest income.

FINDING

Taxpayer's protest is denied.

II. Tax Administration—Negligence Penalty

DISCUSSION

Taxpayer protests the imposition of a ten percent (10%) negligence penalty and interest, and states that the imposition of a negligence penalty is contrary to IC 6-8.1-10-2.1, which deals with the negligence penalty and its imposition. The Department refers to IC 6-8.1-10-1(e), which states, "Except as provided by IC 6-8.1-5-2(e)(2), the department may not waive the interest imposed under this section." Therefore, the Department may not waive interest.

Taxpayer states that the audit report states no factual basis for the imposition of penalties and that no factual basis exists. Taxpayer reiterates its position from Issue I that the proposed assessments are attributable to the treatment of the royalty-receiving company as subject to the adjusted gross income tax and includable in the consolidated returns, which taxpayer disagreed with. As explained in Issue I, the royalty-receiving company is subject to adjusted gross income tax and includable in the consolidated returns. At hearing, taxpayer was adamant that it had diligently attempted to comply with Indiana's tax methods and that it should not be subject to the negligence penalty.

IC 6-8.1-10-2.1(f) explains:

> The department shall adopt rules under IC 4-22-2 to prescribe the circumstances that constitute reasonable cause and negligence for purposes of this section.

The relevant regulation is 45 IAC 15-11-2(b), which states:

> Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

Also, 45 IAC 15-11-2(c) provides in pertinent part:

> The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, taxpayer has not affirmatively established that its failure to pay the full amount of tax due was due to reasonable cause and not due to negligence. In its protest in Issue I, taxpayer's arguments include relying on Financial Institutions Tax statutes to determine its actions regarding Adjusted Gross Income Tax, relying on an Indiana Tax court case which was not published until after the audit period, and relying on revenue rulings with materially different fact situations from its own. These are not reasonable causes to not pay the full amount of adjusted gross income tax due.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

18-20020120.LOF

LETTER OF FINDINGS NUMBER: 02-0120
Financial Institutions Tax
For Tax Years 1994-1996

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Financial Institutions Tax—Credit Card Operations

Authority: Quill Corporation v. North Dakota, 504 U.S. 298 (U.S. 1992); IC 6-5.5-3-1; IC 6-5.5-3-8; IC 6-5.5-4-4; IC 6-5.5-4-5; IC 6-5.5-4-6; IC 6-5.5-4-8; 45 IAC 17-2-8

Taxpayer protests imposition of Financial Institutions Tax on income from credit card-related activities.

II. Tax Administration—Negligence Penalty and Interest

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests imposition of a ten percent (10%) negligence penalty and interest.

STATEMENT OF FACTS

Taxpayer was a member of a group of companies which included several retail clothing store chains. Taxpayer ran the group's credit card operations from an out-of-state location. The Indiana Department of Revenue ("Department") conducted an audit for the tax years in question and issued proposed assessments along with a ten percent (10%) negligence penalty and interest for those years. Taxpayer protests that the proposed assessments are incorrect as are the imposition of the negligence penalty and interest. Further facts will be provided as necessary.

I. Financial Institutions Tax—Credit Card Operations

DISCUSSION

Taxpayer protests the imposition of the Financial Institutions Tax (FIT) for the tax years in question. The Department conducted an audit and concluded that taxpayer was subject to the FIT and issued proposed assessments. Taxpayer protests that it is not subject to the FIT and argues that it has not conducted business in Indiana as defined in FIT statutes. Taxpayer refers to IC 6-5.5-3-8(5), and states that its only activity associated with Indiana falls within subsections (C) or (D).

IC 6-5.5-3-8 states:

Notwithstanding any other provision of this chapter, a taxpayer, except for a trust company formed under IC 28-1-4, is not considered to be transacting business in Indiana if the only activities of the taxpayer in Indiana are or are in connection with any of the following:

(1) Maintaining or defending an action or suit.

(2) Filing, modifying, renewing, extending, or transferring a mortgage, deed of trust, or security interest.

(3) Acquiring, foreclosing, or otherwise conveying property in Indiana as a result of a default under the terms of a mortgage, deed of trust or other security instrument relating to the property.

(4) Selling tangible personal property, if taxation under this article is precluded by 15 U.S.C. 381 through 384.

(5) Owning an interest in the following types of property, including those activities within Indiana that are reasonably required to evaluate and complete the acquisition or disposition of the property, the servicing of the property, or the acquisition or liquidation of collateral relating to the property:

(A) An interest in a real estate mortgage investment conduit, a real estate investment trust, or a regulated investment company (as those terms are defined in the Internal Revenue Code).

(B) An interest in a loan backed security representing ownership or participation in a pool of promissory notes or certificates of interest that provide for payments in relation to payments or reasonable projections of payments on the notes or certificates.

(C) An interest in a loan or other asset from which the interest is attributed in IC 6-5.5-4-4, IC 6-5.5-4-5, and IC 6-5.5-4-6 and in which the payment obligations were solicited and entered into by a person that is independent and not acting on behalf of the owner.

(D) An interest in the right to service or collect income from a loan or other asset from which interest on the loan or other asset is attributed in IC 6-5.5-4-4, IC 6-5.5-4-5, and IC 6-5.5-4-6 and in which the payment obligations were solicited and entered into by a person that is independent and not acting on behalf of the owner.

(E) An amount held in an escrow or a trust account with respect to property described in this subdivision.

(6) Acting:

(A) as an executor of an estate;

(B) as a trustee of a benefit plan;

(C) as a trustee of an employee's pension, profit sharing, or other retirement plan;

(D) as a trustee of a testamentary or inter vivos trust or corporate indenture; or

(E) in any other fiduciary capacity, including holding title to real property in Indiana.

Since taxpayer states that its only activity relating to Indiana is described in IC 6-5.5-3-8(5)(C) and IC 6-5.5-3-8(5)(D), it is important to review the statutes listed therein. IC 6-5.5-4-4 states:

Interest income and other receipts from assets in the nature of loans or installment sales contracts that are primarily secured by or deal with real or tangible personal property must be attributed to Indiana if the security or sale property is located in Indiana.

IC 6-5.5-4-5 states:

Interest income and other receipts from consumer loans not secured by real or tangible property must be attributed to Indiana

if the loan is made to a resident of Indiana, whether at a place of business, by a traveling loan officer, by mail, by telephone, or by other electronic means.

IC 6-5.5-4-6 states:

Interest income and other receipts from commercial loans and installment obligations not secured by real or tangible personal property must be attributed to Indiana if the proceeds of the loan are to be applied in Indiana. If it cannot be determined where the funds are to be applied, the income and receipts are attributed to the states in which the business applied for the loan. As used in this section, "applied for" means initial inquiry (including customer assistance in preparing the loan application) or submission of a completed loan application.

None of these activities describe taxpayer's business of issuing and servicing credit cards, and if these were the only statutes available, taxpayer might have a point. However, IC 6-5.5-4-8 explains:

Interest income, merchant discount, and other receipts including service charges from financial institution credit card and travel and entertainment credit card receivables and credit card holders' fees must be attributed to the state to which the card charges and fees are regularly billed.

Therefore, the portion of income taxpayer received from its Indiana customers must be attributed to Indiana since Indiana is the state to which the card charges and fees were regularly billed.

Taxpayer protests that it was not transacting business within Indiana. Taxpayer states that the employees of the retailers were not agents, employees or representatives of taxpayer and that agreements between taxpayer and retailers and their factoring companies disclaimed any agency relationship among those parties. Taxpayer has not provided documentation establishing the nature of this relationship.

Also, IC 6-5.5-3-8 deals with "Events not considered transacting business in state". Equally valuable is a review of IC 6-5.5-3-1, which deals with "Transacting business within state". IC 6-5.5-3-1 states:

For the purposes of this article, a taxpayer is transacting business within Indiana in a taxable year only if the taxpayer:

(1) maintains an office in Indiana;
(2) has an employee, representative, or independent contractor conducting business in Indiana;
(3) regularly sells products or services of any kind or nature to customers in Indiana that receive the product or service in Indiana;
(4) regularly solicits business from potential customers in Indiana;
(5) regularly performs services outside Indiana that are consumed within Indiana;
(6) regularly engages in transactions with customers in Indiana that involve intangible property, including loans, but not property described in section 8(5) of this chapter, and result in receipts flowing to the taxpayer from within Indiana;
(7) owns or leases tangible personal property or real property located in Indiana; or
(8) regularly solicits and receives deposits from customers in Indiana.

45 IAC 17-2-8 explains:

A taxpayer is not required to be physically present within Indiana to be soliciting business. Soliciting business includes, but is not limited to, the following:

(1) The distribution, by mail or otherwise, of catalogs, periodicals, advertising flyers, or other written solicitation of business to potential customers in Indiana, without regard to the state from where the distribution originated or where the materials were prepared.
(2) Display of advertisements on billboards or other outdoor advertising in this state.
(3) Advertisements in newspapers published in this state.
(4) Advertisements in trade journals or other periodicals, the circulation of which is primarily within this state.
(5) Advertisements in an Indiana edition of a national or regional publication or a limited regional edition of which this state is included as part of a broader regional or national publication, and which are not placed in other geographically defined editions of the same issue of the same publication.
(6) Advertisements in regional or national publications in an edition which is not by its contents geographically targeted to Indiana, but which is sold over the counter in Indiana or by subscription to Indiana residents.
(7) Advertisements broadcast on a radio or television station which are received by Indiana residents.
(8) Any other solicitation by telegraph, telephone, computer data base, cable, optic, microwave, or other communication system.

Taxpayer states that the retailer's employees were not agents. While it has not been definitely established that the retailers and retailer's employees were not acting in an agency capacity, it remains that Indiana customers were acquiring taxpayer's credit cards. Therefore, either the retailers and their employees were acting as agents for taxpayer or taxpayer must have been distributing, by mail or otherwise, catalogs, periodicals, advertising flyers, or other written solicitation of business to potential customers in Indiana. One way or another, Indiana business was being solicited.

Since 45 IAC 17-2-8(1) establishes that taxpayer's activities constituted soliciting business in Indiana, IC 6-5.5-3-1(4) establishes that taxpayer was transacting business within Indiana for FIT purposes. Also, taxpayer regularly performed services outside Indiana that were consumed within Indiana which qualifies as transacting business within Indiana under IC 6-5.5-3-1(5).

Therefore, taxpayer was transacting business within Indiana as explained by IC 6-5.5-3-1.

Next, taxpayer states that Indiana is prohibited from imposing FIT on taxpayer by the Commerce Clause of the United States Constitution. Taxpayer states that it has no substantial nexus with Indiana and a substantial nexus is required. Taxpayer refers to Quill Corporation v. North Dakota, 504 U.S. 298 (U.S. 1992), to support its contention that physical presence is required for a state to impose tax. Quill deals with use tax, as the Court explains when it discusses the Commerce Clause requirements, "In sum, although in our cases subsequent to *Bellas Hess* and concerning other types of taxes we have not adopted a similar, bright-line, physical presence requirement, our reasoning in those cases does not compel that we now reject the rule in *Bellas Hess* established in the area of sales and use taxes." Id., at 317. Therefore, since the instant case deals with financial institutions tax rather than sales and use taxes, and the Court specifically states that the physical presence requirement has not been adopted for taxes other than sales and use, Quill provides no support for taxpayer.

In conclusion, 45 IAC 17-2-8(1) establishes that taxpayer's activities constituted soliciting business within Indiana. IC 6-5.5-3-1(4) establishes that taxpayer was transacting business within Indiana for FIT purposes. The Federal Commerce Clause does not prohibit Indiana from imposing FIT on a nonresident taxpayer.

FINDING

Taxpayer's protest is denied.

II. Tax Administration—Negligence Penalty and Interest

DISCUSSION

Taxpayer protests the imposition of a ten percent (10%) negligence penalty and interest, and states that the imposition of a negligence penalty is contrary to IC 6-8.1-10-2.1, which deals with the negligence penalty and its imposition. The Department refers to IC 6-8.1-10-1(e), which states, "Except as provided by IC 6-8.1-5-2(e)(2), the department may not waive the interest imposed under this section." Therefore, the Department may not waive interest.

Taxpayer states that the audit provides no indication of any wrongdoing on taxpayer's part to justify the imposition of penalties and that no factual basis exists. At hearing, taxpayer was adamant that it had diligently attempted to comply with Indiana's tax methods and that it should not be subject to the negligence penalty.

IC 6-8.1-10-2.1(f) explains:

> The department shall adopt rules under IC 4-22-2 to prescribe the circumstances that constitute reasonable cause and negligence for purposes of this section.

The relevant regulation is 45 IAC 15-11-2(b), which states:

> Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

Also, 45 IAC 15-11-2(c) provides in pertinent part:

> The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, taxpayer has not affirmatively established that its failure to pay the full amount of tax due was due to reasonable cause and not due to negligence. As explained in Issue I, taxpayer was clearly soliciting business from with Indiana, which clearly qualified as transacting business within Indiana for FIT purposes. Taxpayer has not affirmatively established a reason why it did not pay the full amount of adjusted gross income tax due.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

02-20020310.LOF

LETTER OF FINDINGS NUMBER: 02-0310
Adjusted Gross Income Tax
For Tax Years 1998 through 1999

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Adjusted Gross Income—Nexus

Authority: Quill Corporation v. North Dakota, 504 U.S. 298 (U.S. 1992); Miles, Inc. v. Indiana Department of State Revenue, 659 N.E.2d 1158, 1164 (Ind. Tax 1995); Chief Industries, Inc. v. Indiana Department of State Revenue, 792 N.E.2d 972 (Ind. Tax 2000); Subaru-Isuzu Automotive, Inc., Company v. Indiana Department of State Revenue, 782 N.E.2d 1071 (Ind. Tax 2003); IC 6-3-2-2; IC 6-3-4-14; IC 6-8.1-3-3; 45 IAC 3.1-1-50; 45 IAC 3.1-1-55; 45 IAC 15-3-2; Geoffrey, Inc. v. South Carolina Tax Commission, 437 S.E. 2d 13 (S.C. 1993); Lanco, Inc. v. Director, Division of Taxation, 21 N.J. Tax 200

Taxpayer protests the imposition of adjusted gross income tax on activity it believes has no nexus with Indiana.

II. Tax Administration—Negligence Penalty and Interest

Authority: IC 6-8.1-10-1; IC 6-8.1-10-2.1;45 IAC 15-11-2

Taxpayer protests imposition of a ten percent (10%) negligence penalty and interest.

STATEMENT OF FACTS

Taxpayer is a member of a consolidated group which operates several chains of retail clothing stores in multiple states and affiliated companies which hold the rights to trademarks and trade brands associated with each particular retail chain. For example, a retail chain named "Retail Clothing Store" would have an affiliated company with a similar name such as "Retail Clothing Store Holdings" which held the rights to the trademarks and trade brand of "Retail Clothing Store". The retailer would pay the affiliated company royalties for the use of the trademarks and trade brands. Also, the affiliated company made loans to the retail company, upon which the retail company paid interest to the trademark holding company. All of these companies are listed together on the Federal consolidated returns, while only the retail stores are listed on the Indiana consolidated returns. As the result of an audit conducted for the tax years at issue, the Indiana Department of Revenue ("Department") issued proposed assessments for additional adjusted gross income tax on the income the trademark holding companies received in the form of royalty payments and interest payments. Taxpayer protests these proposed assessments on the grounds that it has insufficient nexus with the state for Indiana to tax the activities at issue. Further facts will be supplied as necessary.

I. Adjusted Gross Income—Nexus

DISCUSSION

Taxpayer is a member of a group which consists of several related chains of retail clothing stores and affiliated companies which file a consolidated Indiana adjusted gross income tax return. Royalty income was paid from a retail company to an affiliated company, which the audit refers to as a "royalty-receiving company" (hereinafter "RRC") and which taxpayer refers to in its protest as a "Trademark Protection Company", for the use of trademarks and trade names owned by the RRC. The retail company also paid interest to the RRC on loans from the RRC. The audit report notes that the RRCs in the group had no payroll or employees and that the tangible property used to compute the property factor of the apportionment computation was so small as to be negligible. Also, the RRCs in the group each had total depreciable assets of less than ten thousand dollars ($10,000).

The Department conducted an audit for the tax years at issue and determined that the royalty income paid to the RRC and interest paid to the RRC on loans made by the RRC to the retail company should have been included in the consolidated return. Accordingly, the Department issued proposed assessments for adjusted gross income tax on the newly included income. Taxpayer protests that the income should not be included and that the proposed assessments are incorrect.

Taxpayer presents several arguments supporting its position. Taxpayer's first argument is that the amounts of taxes assessed and the methods used to compute such amounts are unexplained by and inconsistent with the audit report, are based on an overstatement of corporate income tax liability for the period at issue, and fail to allow taxpayer appropriate credit for corporate income tax paid for the period at issue. Taxpayer refers to IC 6-3-4-14(a), which provides in part:

> An affiliated group of corporations shall have the privilege of making a consolidated return with respect to the taxes imposed by IC 6-3.

Next, taxpayer refers to IC 6-3-4-14(b), which states:

> For purposes of this section the term "affiliated group" shall mean an "affiliated group" as defined in Section 1504 of the Internal Revenue Code with the exception that the affiliated group shall not include any corporation which does not have adjusted gross income derived from sources within the state of Indiana.

Taxpayer does not believe that the RRCs should be included in a consolidated return due to the provision of IC 6-3-4-14(b) excluding corporations which do not have adjusted gross income derived from sources within the state of Indiana.

In support of its position that the RRCs do not have adjusted gross income derived from sources within the state of Indiana, taxpayer refers to IC 6-3-2-2(a), which states in part:

> With regard to corporations and nonresident persons, "adjusted gross income derived from sources within the state of Indiana", for the purposes of this article, shall mean and include:
>
> (1) income from real or tangible personal property located in this state;
> (2) income from doing business in this state;
> (3) income from a trade or profession conducted in this state;
> (4) compensation for labor or services rendered within this state; and

(5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property if the receipt from the intangible is attributable to Indiana under section 2.2 of this chapter.

…

Taxpayer believes that the modifier,"…if the receipt from the intangible is attributable to Indiana under section 2.2 of this chapter" applies to all income sources listed in IC 6-3-2-2(a)(5). Since IC 6-3-2-2.2 deals primarily with interest income and income from loans, and does not mention income from trademarks or trade brands, taxpayer does not believe that the income received by the royalty receiving corporations for trademark and trade brand use qualifies as adjusted gross income derived from sources within the state of Indiana.

In its protest, taxpayer refers to the Indiana Tax Court case, Chief Industries, Inc. v. Indiana Department of State Revenue (which was issued in 2000 and ruled "For Publication" in 2004) for support in its assertion that the Department's regulations are out of date, but Chief also provides guidance in determining if the modifier found in IC 6-3-2-2(a)(5) applies to all categories listed therein. Chief Industries, Inc. v. Indiana Department of State Revenue, 792 N.E.2d 972 (Ind. Tax 2000). In that case, the Tax Court examined IC 6-3-2-2(a)(5) as it was written in 1986, which was the time Chief Industries stock sales took place. At that time, the modifier in IC 6-3-2-2(a)(5) read, "…and other intangible personal property having a situs in this state." The Tax Court explained that modifiers in the first four subsections clearly modify each item referenced within each subsection, and added:

To be consistent throughout section 6-3-2-2, the pattern must be read to extend to subsection (5). It would be absurd to read subsection (5) differently than the immediately preceding four subsections.

Id., at 977.

However, as the Tax Court explained in footnote 10 of Chief Industries:

The current version of section 6-3-2-2(a)(5) omits the phrase "having a situs in this state" and replaces it with "if the receipt from the intangible is attributable under section 2.2 of this chapter. *INDIANA CODE ANN. §6-3-2-2.2* (West 2000), effective January 1, 1990, discusses when income from, among other things, certain loans, sales contracts and dividends is attributable to Indiana.

Id., at 976.

The Tax Court decided that the pre-January 1, 1990 version of IC 6-3-2-2(a)(5) required all items listed therein to have a situs in Indiana, and proceeded to provide a three-part test to determine whether income is derived from an Indiana source or tax situs.

With the language change in the modifier of IC 6-3-2-2(a)(5) came a significant change in the effect the modifier had on the subsection. IC 6-3-2-2.2 contains no reference to eleven (11) of the twelve (12) categories listed in IC 6-3-2-2(a)(5). If all twelve categories were subject to the modification of being attributable to Indiana under IC 6-3-2-2.2, which only discusses one of the twelve categories, it would render eleven of the twelve items not applicable to Indiana under any circumstances.

As the Indiana Tax Court explained in Miles, Inc. v. Indiana Department of State Revenue, 659 N.E.2d 1158, 1164 (Ind. Tax 1995), "The Court cannot presume the legislature intended to enact a nullity." To read the reference to IC 6-3-2-2.2 as modifying all twelve items in IC 6-3-2-2(a)(5) would render the eleven excluded items nullified. Also, more direct evidence that the legislature did not intend to nullify the eleven items in IC 6-3-2-2(a)(5) is the fact that the modification to the subsection was enacted by P.L.347-1989(ss), Sec. 6, while IC 6-3-2-2.2 was enacted by P.L.347-1989(ss), Sec. 7. If the legislature intended to eliminate the eleven items in question from taxation under IC 6-3-2-2(a)(5), it could have simply modified the subsection to incorporate the language of IC 6-3-2-2.2 rather than go to the effort of leaving eleven meaningless categories and creating an entire separate statute to describe the sole remaining relevant category. That the legislature did not do this indicates that it did not intend to nullify the eleven categories, including trademarks and trade names.

Therefore, since IC 6-3-2-2(a)(5) was altered to include the eleven categories not related to IC 6-3-2-2.2 in 1990, and since the eleven categories can not be presumed to be nullified by the language of IC 6-3-2-2.2, the decisions in Chief Industries and in Miles leads to the conclusion that taxpayer's reliance on the descriptive language in IC 6-3-2-2.2 is misplaced. The legislature altered IC 6-3-2-2(a)(5) so that the modifier can not be logically applied to all twelve categories listed therein. The Chief Industries decision that the entire subsection is modified can only be applied to the pre-January 1, 1990 version of IC 6-3-2-2(a)(5), and taxpayer's belief that IC 6-3-2-2.2 must be satisfied for the eleven non-related categories is incorrect.

In the course of its argument, taxpayer refers to two Revenue Rulings, 2000-01 FIT and 2000-02 FIT in support of its argument. These two Revenue Rulings deal with Financial Institutions Tax (FIT). Since this protest deals with Adjusted Gross Income tax, and these Revenue Rulings are based on FIT statutes, they are not relevant to this protest and will receive no further discussion.

Taxpayer's next argument that the proposed assessments are invalid is that taxpayer believes that the Department relied on invalid regulations in its audit report. In the audit report the Department referred to several regulations to support its position. 45 IAC 3.1-1-50, in describing sales to be included in the sales factor of the apportionment formula, states in relevant part:

Sales Made in General Business Operations. "Sales" means all gross receipts of the taxpayer which are not subject to allocation as nonbusiness income. The following are examples of "sales" in various situations:

…

(5) If the taxpayer is in the business of selling, assigning, or licensing of intangible personal property such as patents and copyrights, "sales" includes the gross receipts therefrom.

…

Also, the Department referred to 45 IAC 3.1-1-55, which states in relevant part:

When Sales Other Than Sales of Tangible Personal Property Are in This State. Gross receipts from transactions other than sales of tangible personal property shall be included in the numerator of the sales factor if the income-producing activity which gave rise to the receipts is performed wholly within this state. Except as provided below if the income producing activity is performed within and without this state such receipts are attributed to this state if the greater portion of the income producing activity is performed here, based on costs of performance.

The term "income producing activity" means the act or acts directly engaged in by the taxpayer for the ultimate purpose of obtaining gains or profit. Such activity does not include activities performed on behalf of the taxpayer, such as those conducted on its behalf by an independent contractor. Accordingly, "income producing activity" includes but is not limited to the following: (1) The rendering of personal services by employees or the utilization of tangible and intangible personal property by the taxpayer in performing a service. (2) The sale, rental, leasing, or licensing the use of other use of tangible personal property. (3) The sale, licensing the use of or other use of intangible personal property.

Income producing activity is deemed performed at the situs of real, tangible and intangible personal property or the place where personal services are rendered. The situs of real and tangible personal property is at its physical location. The situs of intangible personal property is the commercial domicile of the taxpayer (i.e., the principal place from which trade or business of the taxpayer is directed or managed), unless the property has acquired a "business situs" elsewhere. "Business situs" is the place at which intangible personal property is employed as capital; or the place where the property is located if possession and control of the property is localized in connection with a trade or business so that the substantial use or value attaches to the property….

Taxpayer believes that since these regulations were promulgated in 1979, prior to the changes to IC 6-3-2-2 which became effective on January 1, 1990, these regulations are invalid. Taxpayer states that since the regulations use the phrase "business situs" they are no longer applicable to determining adjusted gross income tax derived from intangible personal property. The Indiana Tax Court has addressed the impact a change in the underlying statute will have on a regulation. In Subaru-Isuzu Automotive, the legislature had repealed a two-sentence provision dealing with apportionment of Net Operating Losses and replaced it with a lengthy and complex four-step process for calculating Net Operating Losses. Subaru-Isuzu Automotive, Inc., Company v. Indiana Department of State Revenue, 782 N.E.2d 1071 (Ind. Tax 2003). The Department did not promulgate a new regulation in accordance with the new four-step process, and the Court explained:

An administrative rule is a nullity where the provision upon which the rule is based has been repealed.

Id., at 1076

The Court decided that the regulations relied upon by the Department no longer adequately reflected apportionment process they were designed to enhance, and therefore were no longer valid. Taxpayer's position in the instant case is that the administrative rules (regulations) referred to in the audit report are invalid under the same reasoning used by the Tax Court to describe a nullity in Subaru-Isuzu Automotive.

There is a fundamental difference between a nullified regulation, as described in Subaru-Isuzu Automotive, and the instant case. In Subaru-Isuzu Automotive, the underlying statute had been repealed and wholly replaced while the related regulation did not reflect this change. Here, the underlying statute has merely been simplified, with more complex analysis of one of twelve categories listed being relegated to a separate statute, while the regulation remains applicable to the remaining, unaffected eleven categories in IC 6-3-2-2(a)(5). The underlying statute was not repealed, but rather was modified, and the regulations are therefore not nullities as explained in Subaru-Isuzu Automotive.

Taxpayer's next argument is that the Department erroneously relied on the authority of a South Carolina case, Geoffrey, Inc. v. South Carolina Tax Commission, 437 S.E. 2d 13 (S.C. 1993), for its assessments. Taxpayer states that the decision in Geoffrey does not address Indiana adjusted gross income tax, which is of relevance here, but instead addresses Federal constitutional issues. Taxpayer also states that the court in Geoffrey made the wrong decision in that case, and offers the New Jersey case Lanco, Inc. v. Director, Division of Taxation, 21 N.J. Tax 200, in its place.

A review of the audit report reveals that the Department did not rely on the authority of Geoffrey to reach its assessments. Rather, the Department relied on the regulations previously discussed, and merely used Geoffrey as an example of how a court decided that state taxation of royalty income to a non-resident business was not prohibited by the Due Process Clause or Commerce Clause of the United States Constitution. In any event, a case decided in another state's courts has no authority in Indiana, which means that both South Carolina's Geoffrey and New Jersey's Lanco decision are useful only for illustrative purposes only and do not form the basis of these assessments.

Taxpayer's next argument is that the Due Process Clause and Commerce Clause of the United States Constitution both bar Indiana from taxing the royalty income. Taxpayer refers to Quill Corporation v. North Dakota, 504 U.S. 298 (U.S. 1992), to support its contention that physical presence is required for a state to impose tax. Quill deals with use tax, as the Court explains when it discusses the Commerce Clause requirements, "In sum, although in our cases subsequent to *Bellas Hess* and concerning other types of taxes we have not adopted a similar, bright-line, physical presence requirement, our reasoning in those cases does not compel that we now reject the rule in *Bellas Hess* established in the area of sales and use taxes." Id., at 317. Also, in its discussion of the Due Process Clause, the Court explains that physical presence is not required for a state to impose sales tax. Id., at 308. Therefore, since the instant case deals with income tax rather than sales and use taxes, and the Court specifically states that the physical presence

requirement has not been adopted for taxes other than sales and use, Quill provides no support for taxpayer.

Taxpayer's next argument is that the Department changed its interpretation of a listed tax without properly promulgating new regulations. Taxpayer refers to IC 6-8.1-3-3(b), which states:

No change in the department's interpretation of a listed tax may take effect before the date the change is:

(1) adopted in a rule under this section; or

(2) published in the Indiana Register under IC 4-22-7-7(a)(5), if IC 4-22-2 does not require the interpretation to be adopted as a rule;

if the change would increase a taxpayer's liability for a listed tax.

Taxpayer also refers to 45 IAC 15-3-2(d)(3), which states:

In respect to rulings issued by the department, based on a particular fact situation which may affect the tax liability of the taxpayer, only the taxpayer to whom the ruling was issued is entitled to rely on it. Since the department publicizes summaries of rulings which it makes, other taxpayers with substantially identical factual situations may rely on the publicized rulings for informational purposes in preparing returns and making tax decisions. Generally, department publications may be relied on by any taxpayer if their fact situation does not vary substantially from those facts upon which the department based its publication. If a taxpayer relies on a publicized ruling and the department discovers, upon examination, that the fact situation of the particular taxpayer is different in any material respect from that situation on which the original ruling was issued, the ruling will afford the taxpayer no protection and the examination will apply to all open years under the statutes. Letters of findings that are issued by the department, as a result of protested assessments, are to be considered rulings of the department as applied to the particular facts protested.

Taxpayer believes that the Department is changing its interpretation in the instant case from its interpretation found in two revenue rulings issued in April, 1982. Taxpayer refers to DRG 82-1 and DRG 82-2, which are summaries of revenue rulings issued to a non-related taxpayer. The text of DRG 82-2 states in its entirety:

Advice was requested as to the taxability of an Indiana-based corporation engaged in receiving copyright royalties from various sources worldwide. All of the property and employees are located in Indiana.

The Department ruled that the taxpayer was subject to gross income tax on its entire gross receipts. IC 6-2.1-1-2(e)(6) provides an exclusion for amounts received at an out-of-state business situs, but this taxpayer has no such situs. Likewise, its entire adjusted gross income is taxable in Indiana because no other state has jurisdiction to impose a net income tax.

DRG 82-1 merely states, "See DRG 82-2, supra.".

Taxpayer states that the rulings could not be clearer or more on point, and that their interpretation of the tax statutes can not be changed prior to the promulgation of a rule or publication in the Indiana Register as required under IC 6-8.1-3-3. Taxpayer states that the audit report's attempt to do so is plainly impermissible under IC 6-8.1-3-3 and would violate taxpayer's rights under 45 IAC 15-3-2 to rely on rulings issued to other taxpayers. Taxpayer is incorrect.

DRG 82-2 is a short summary and provides little information. One obvious difference is that DRG 82-2 discusses a taxpayer with no activities outside Indiana, while the instant case deals with taxpayers who have activities in several states. Taxpayer emphasizes the last sentence of DRG 82-2, which mentions adjusted gross income and is also the tax at issue in this protest. In DRG 82-2, the Department explained that the taxpayer's entire royalty income was taxable in Indiana since there was no other taxing jurisdiction with whom to apportion the income. In the instant case, the Department has apportioned the royalty income according to the apportionment formula explained in IC 6-3-2-2. In other words, there was no reason to apportion in the 1982 instance and there is a reason to apportion in this instance. Taxpayer fails to explain why the last sentence of DRG 82-2 means that the instant audit represents an attempt to change the Department's interpretation of adjusted gross income tax statutes in this case.

In its protest, taxpayer cites only the first two sentences of 45 IAC 15-3-2(d)(3). It is clear that the two situations are materially different from one another, and as explained in the fourth sentence of 45 IAC 15-3-2(d)(3), "If a taxpayer relies on a publicized ruling and the department discovers, upon examination, that the fact situation of the particular taxpayer is different in any material respect from that situation on which the original ruling was issued, the ruling will afford the taxpayer no protection and the examination will apply to all open years under the statutes." The fact situation of this particular taxpayer is different in at least one material respect from the situation on which the original ruling was issued. Therefore, the 1982 rulings afford no protection to taxpayer.

Next, taxpayer argues that the Department erred in its calculation of the apportionment factors it used to determine the proposed assessments. Taxpayer refers to 45 IAC 3.1-1-55(e), which states:

Gross receipts from intangible personal property shall, if classified as business income, be attributed to this state based upon the ratio which the total property and payroll factors in this state bears to the total of the property and payroll factors everywhere for the tax period as determined in Regulations 6-3-2-2(c)(010) *[45 IAC 3.1-1-40]* et seq. and 6-3-2-2(d)(010) *[45 IAC 3.1-1-47]* et seq.

Taxpayer states that the audit report does not attribute the royalty-receiving corporation's intangible income to Indiana based on their Indiana property and payroll factors, but rather by multiplying the royalty-receiving corporation's total royalty and interest income by the sales factor of the retailers to whom the royalty-receiving corporations licensed intangibles or lent money. Taxpayer believes that to do so is not only unsupportable under the Adjusted Gross Income act, but is contrary to the regulations. Taxpayer's interpretation of 45 IAC 3.1-1-55(e) is that with zero tangible personal property and zero payroll in Indiana, the apportionment factor should be zero. Taxpayer is incorrect.

The Department refers to IC 6-3-2-2(l), which states:

If the allocation and apportionment provisions of this article do not fairly represent the taxpayer's income derived from sources within the state of Indiana, the taxpayer may petition for or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(1) separate accounting;

(2) the exclusion of any one (1) or more of the factors;

(3) the inclusion of one (1) or more additional factors which will fairly represent the taxpayer's income derived from sources within the state of Indiana; or

(4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

In this case, taxpayer is correct that the royalty-receiving corporations have no Indiana payroll or real or tangible personal property. As previously explained, they do not have payroll or real or tangible personal property anywhere else either. Yet they clearly have income, and if the Department were to follow taxpayer's suggestion that the apportionment be calculated at zero, the result would not fairly represent taxpayer's income derived from sources within the state of Indiana. This situation is resolved by IC 6-3-2-2(l) which allows the exclusion of one or more of the three factors and the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income. The Department included the total receipts of the royalty-receiving corporations in the denominator of the sales apportionment factor. The Department multiplied the total receipts for the royalty-receiving corporations by the sales factors of the related retail corporation since royalty revenues are directly based on sales revenues. As explained in the audit report, this results in an accurate and equitable Indiana sales factor numerator.

Taxpayer's next argument deals with the interest payments made by the retailer to the RRC. The Department referred to 45 IAC 3.1-1-59, which explains when interest is treated as business or nonbusiness income. Taxpayer states that it is irrelevant if the interest is business or nonbusiness income and refers to IC 6-3-2-2.2 to raise the point that the type of interest income in question is not included in the various descriptions therein and concludes that the interest payment income is therefore not to be included in Indiana income. IC 6-3-2-2.2 states:

(a) Interest income and other receipts from assets in the nature of loans or installment contracts that are primarily secured by or deal with real or tangible personal property are attributable to this state if the security or sale property is located in Indiana.

(b) Interest income and other receipts from consumer loans not secured by real or tangible personal property are attributable to this state if the loan in made to a resident of Indiana, whether at a place of business, by a traveling loan officer, by mail, by telephone, or by other electronic means.

(c) Interest income and other receipts from commercial loans and installment obligations not secured by real or tangible personal property are attributable to this state if the proceeds of the loan are to be applied in Indiana. If it cannot be determined where the funds are to be applied, the income and receipts are attributable to the state in which the business applied for the loan. As used in this section, "applied for" means the initial inquiry (including customer assistance in preparing the loan application) or submission of a completed loan application, whichever occurs first.

(d) Interest income, merchant discount, and other receipts including service charges from financial institution credit card and travel and entertainment credit card receivables and credit card holders' fees are attributable to the state to which the card charges and fees are regularly billed.

(e) Receipts from the performance of fiduciary and other services are attributable to the state in which the benefits of the services are consumed. If the benefits are consumed in more than one (1) state, the receipts from those benefits are attributable to this state on a pro rata basis according to the portion of the benefits consumed in Indiana.

(f) Receipts from the issuance of traveler's checks, money orders, or United States savings bonds are attributable to the state in which the traveler's checks, money orders, or bonds are purchased.

(g) Receipts in the form of dividends from investments are attributable to this state if the taxpayer's commercial domicile is in Indiana.

Taxpayer states that it is not possible to determine where the proceeds of the loan were applied, therefore IC 6-3-2-2.2(c) requires the income and receipts to be attributed to the state where the loan was applied for. Since the loan was applied for wholly outside of Indiana, taxpayer believes that the income and receipts can not be attributed to Indiana. Taxpayer also reiterates its argument that the regulation relied upon by the Department is invalid due to new statutory language.

Regarding the loan interest payments, the Department referred to 45 IAC 3.1-1-59 which states in relevant part:

Interest income is nonbusiness income if the intangible with respect to which the interest was received did not arise out of or was not created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the intangible was not related to or incidental to such trade or business operations. The term "interest" as used in this regulation *[45 IAC 3.1-1-59]* includes service charges, time-price differentials, and all other charges for the use of money.

…

The Department determined that the interest in question did arise out of the regular course of the taxpayer's business operations and was therefore business income and therefore should be included in the apportionment calculations.

Regarding taxpayer's argument that the regulation is invalid because it has not been updated since the enactment of IC 6-3-2-2.2, IC 6-3-2-2.2 does provide a new statutory-level method for how to determine if loan interest is attributable to Indiana which is

not referred to by 45 IAC 3.1-1-59. However, the two are not discussing the same thing. IC 6-3-2-2.2 is designed to determine the attribution of business income while 45 IAC 3.1-1-59 is designed to determine if interest income is business or nonbusiness income, not where it should be attributed.

It appears that the loans are generally applied to the retail company. Therefore, a portion of the loans are applied to the retail company's Indiana operations. The Department apportioned the amount of interest applied to Indiana with the same formula as it used to apportion royalty income, as provided in IC 6-3-2-2(m), which states:

> In the case of two (2) or more organizations, trades or businesses owned or controlled directly or indirectly by the same interests, the department shall distribute, apportion, or allocate the income derived from sources within the state of Indiana between and among those organizations, trades, or businesses in order to fairly reflect and report the income derived from sources within the state of Indiana by various taxpayers.

In this case, the loans are made by one business to another which is controlled directly or indirectly by the same interests. The Department apportioned the income from the interest payments with the same formula as it used to apportion the royalty income which fairly reflects the income derived from sources within the state of Indiana by the various taxpayers.

In conclusion, taxpayer availed itself of Indiana's markets by licensing its trademarks and trade brands to an affiliated company doing business in Indiana. IC 6-3-2-2(a)(5) provides that this activity creates adjusted gross income derived from sources in Indiana and is therefore taxable here. The Department did not rely on a South Carolina case as its authority to tax the income. The regulations the Department did rely on are not invalid, even taking into account the 1990 revision to IC 6-3-2-2. The Due Process Clause and Commerce Clause of the Federal Constitution do not prevent Indiana from taxing the income. It can be determined that the proceeds of the loans are partially applied to Indiana, and IC 6-3-2-2.2(c) provides that the interest on those loans are partially applicable to Indiana. The Department properly included and apportioned the royalty and interest income.

FINDING

Taxpayer's protest is denied.

II. Tax Administration—Negligence Penalty

DISCUSSION

Taxpayer protests the imposition of a ten percent (10%) negligence penalty and interest, and states that the imposition of a negligence penalty is contrary to IC 6-8.1-10-2.1, which deals with the negligence penalty and its imposition. The Department refers to IC 6-8.1-10-1(e), which states, "Except as provided by IC 6-8.1-5-2(e)(2), the department may not waive the interest imposed under this section." Therefore, the Department may not waive interest.

Taxpayer states that the audit report states no factual basis for the imposition of penalties and that no factual basis exists. Taxpayer reiterates its position from Issue I that the proposed assessments are attributable to the treatment of the royalty-receiving company as subject to the adjusted gross income tax and includable in the consolidated returns, which taxpayer disagreed with. As explained in Issue I, the royalty-receiving company is subject to adjusted gross income tax and includable in the consolidated returns. At hearing, taxpayer was adamant that it had diligently attempted to comply with Indiana's tax methods and that it should not be subject to the negligence penalty.

IC 6-8.1-10-2.1(f) explains:

> The department shall adopt rules under IC 4-22-2 to prescribe the circumstances that constitute reasonable cause and negligence for purposes of this section.

The relevant regulation is 45 IAC 15-11-2(b), which states:

> Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

Also, 45 IAC 15-11-2(c) provides in pertinent part:

> The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, taxpayer has not affirmatively established that its failure to pay the full amount of tax due was due to reasonable cause and not due to negligence. In its protest in Issue I, taxpayer's arguments include relying on Financial Institutions Tax statutes to determine its actions regarding Adjusted Gross Income Tax, relying on an Indiana Tax court case which was not published until after the audit period, and relying on revenue rulings with materially different fact situations from its own. These are not reasonable causes to not pay the full amount of adjusted gross income tax due.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0420020507.LOF

LETTER OF FINDINGS NUMBER: 02-0507
Sales and Use Tax
For the Years 1998-2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales and Use Tax-Exemption Certificates
Authority: IC 6-8.1-5-1 (b), IC 6-2.5-2-1, IC 6-2.5-8-8, IC 6-2.5-5-25, 45 IAC 2.2-8-8, 45 IAC 2.2-8-12, Indiana Department of Revenue Information Bulletin #10, dated February 10, 1986.

The taxpayer protests the disallowance of certain exemption certificates.

II. Sales and Use Tax-Brochures and Prizes
Authority: IC 6-2.5-3-2(a), IC 6-2.5-5-6, Maurer v. Indiana Department of State Revenue, 607 N.E.2d985 (Ind. Tax 1993).

The taxpayer protests the imposition of use tax on brochures and prizes.

III. Tax Administration-Penalty
Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b)

The taxpayer protests the imposition of the ten (10%) percent negligence penalty.

STATEMENT OF FACTS

The taxpayer is an Indiana corporation operating as a wholesaler of fundraising materials such as candy and novelty items. The taxpayer's customers are typically not-for-profit organizations such as schools, youth sports leagues, and churches who use the taxpayer's services to raise money for their organizations. Occasionally there is a for-profit business as a customer. The taxpayer supplies their customers' members with brochures and selling tools for the members to show to family and friends. Orders are compiled and a total order of items is placed with the taxpayer. The taxpayer's customers pay for the orders at a wholesale price and collect the marked up price from their own customers. Therefore the not-for-profits collect and keep the difference for their fundraising efforts. As part of the sales agreement, the taxpayer will offer to add funds to the prize accounts or they may agree to supply prizes for sales persons selling at a certain level. The taxpayer also supplies the order forms, specialty bags, and explanation letters for the fundraising members. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional sales and use tax, interest, and penalty. The taxpayer protested a portion of the assessment. A hearing was held and this Letter of Findings results.

I. Sales and Use Tax-Exemption Certificates

DISCUSSION

The taxpayer protested assessments of sales tax on certain sales to two youth organizations where the exemption certificates provided by the taxpayers did not include registered retail merchant certificate numbers. The taxpayer also protested the sales tax on a third youth organization that is referred to in the audit report as having given an incomplete exemption certificate but the certificate is not currently available. The taxpayer contended that these sales qualified for a statutory exemption in that they were sales to qualified not-for-profit organizations to raise money for their exempt activities. Further, the taxpayer argued that the exemption certificates were completed in accordance with the law. The first issue to be determined is whether or not the exemption certificates were properly completed.

All tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC 6-8.1-5-1 (b).

Indiana sales of tangible personal property are subject to the Indiana sales tax unless they qualify for a statutory exemption. The sellers of the property are required to collect the sales tax from the purchasers and remit that tax to the state. IC 6-2.5-2-1.

IC 6-2.5-8-8 provides for exemption certificates from sales tax in pertinent part as follows:

(a) A person, authorized under subsection (b), who makes a purchase in a transaction which is exempt from the state gross retail and use taxes, may issue an exemption certificate to the seller instead of paying the tax. The person shall issue the certificate on forms and in the manner prescribed by the department. A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase.

(b) The following are the only persons authorized to issue exemption certificates:

(1) retail merchants, wholesalers, and manufacturers, who are registered with the department under this chapter;

(2) organizations which are exempt from the state gross retail tax under IC 6-2.5-5-21, IC 6-2.5-5-25, or IC 6-2.5-5-26 and which are registered with the department under this chapter; and...

45 IAC 2.2-8-8 clarifies the law pertaining to exemption certificates of not-for-profit organizations such as the taxpayer's customers as follows:

(a) Organizations exempt from gross retail tax under IC 6-2.5-5-21, IC 6-2.5-5-25, or IC 6-2.5-5-26 may register with the Not-

For-Profit Section, Income tax Division, in order to issue proper exemption certificates for exempt transactions.

(b) An exempt organization making taxable sales must register with the Central Registration Section and obtain a registered retail merchants' certificate.

45 IAC 2.2-8-12 clarifies the law concerning exemption certificates in pertinent part as follows:

(a) Exemption certificates may be issed [sic.]only by purchasers authorized to issue such certificates by the Department of Revenue. Retail merchants, manufacturers, wholesalers and others who must register with the Department of Revenue and who qualify to purchase exempt from tax under this Act [IC 6-2.5] may issue exemption certificates with respect to exempt transactions. All persons or entities not required to register with the Department as retail merchants, manufacturers, or wholesalers, and who are exempt under this [Act IC 6-2.5] with respect to all or a portion of their purchases are authorized to issue exemption certificates with respect to exempt transaction provided an exemption number has been assigned by the Department of Revenue, or provided that the Department of Revenue has specifically provided a form and manner for issuing exemption certificates without the need for assigning an exemption number...

Indiana Department of Revenue Sales Tax Information Bulletin #10 dated February 10, 1986 provides directions for the application of sales and use tax to not-for-profit corporations in pertinent part as follows:

Not-for-profit organizations (except governmental entities) are no longer required to obtain retail merchant certificates unless they conduct retail sales on which tax must be collected.

Such organizations must register with the Income Tax division of the Indiana Department of Revenue and receive a Not-For-Profit Registration Number... The Not-For-Profit Registration Number may be used on sales tax exemption certificates (form ST-105) when making qualified purchases, unless the organization has been classified as a social organization and issued a number in the 800,000 series.

The law provides for two categories of organizations that can issue exemption certificates. The first is registered retail merchants. None of the three disputed exemption certificates were issued by an organization with a valid registered retail certificate number.

The second category is organizations that qualify for exemption from the payment of sales tax pursuant to certain provisions of the Indiana Code. One of those categories is not-for-profit organizations exempted at IC 6-2.5-5-25. The taxpayer contends that the exemption certificates submitted, although improperly completed, are adequate to extinguish its responsibility to collect and remit the protested sales taxes. Since the three exemption certificates under consideration did not meet the stated standards to be valid, they cannot relieve the taxpayer of its duty to collect and remit sales taxes on items sold to these not-for-profit organizations.

Pursuant to the statute and explanatory regulation, the production of a valid exemption certificate exempts the merchant from the duty of collecting and remitting sales tax. Without a valid exemption certificate, the burden shifts back to the merchant to prove that the sales were not actually subject to sales tax as provided in 45 IAC 2.2-8-12 as follows:

(d) Unless the seller receives a properly completed exemption certificate the merchant must prove that sales tax was collected and remitted to the state or that the purchaser actually used the item for an exempt purpose. It is, therefore, very important to the seller to obtain an exemption certificate in order to avoid the necessity for such proof...

Although the exemption certificates presented were not adequate to exempt the taxpayer from the collecting and remitting of sales tax, the taxpayer could demonstrate that the taxpayer's customers actually used the purchased products for an exempt purpose. The taxpayer provided documentation that the soccer club and youth basketball association actually used the items for an exempt purpose.

FINDING

The taxpayer's protest is sustained as to the sales made to the soccer club and the youth basketball association. The remainder of the protest is denied.

II. Sales and Use Tax-Brochures and Prizes

DISCUSSION

Indiana imposes an excise tax on tangible personal property stored, used or consumed in Indiana when no sales tax was paid at the time of purchase unless the use qualifies for an exemption. IC 6-2.5-3-2(a).

The taxpayer purchased brochures which describe the items being sold by the fundraising customers. The brochures were included in the sales kits. The customers' members used these brochures to illustrate what they were selling to their families and friends and procure orders. The department assessed use tax on the taxpayer's use of these brochures. The taxpayer protested the assessments on the brochures based on the contention that the brochures were an integral part of the sales kit and therefore qualified for exemption pursuant to IC 6-2.5-5-6. The brochures act as both advertising for the products being sold and a means by which customers choose the products they will buy. They are clearly an essential part of the sales price. As a major cost, the cost of the brochures is factored into the cost of the candy and novelties sold and the percentage of profits going to the selling organizations. There is, however, no indication in the audit or materials provided by the taxpayer that the brochures were ever sold to the taxpayer's customers. Rather, the taxpayer provides the brochures free of charge. The taxpayer had the option of either selling the brochures or providing them free of charge. It chose the second option. Presumably that choice offered advantages to the taxpayer. It also offered the disadvantage of subjecting the taxpayer's use of the brochures to Indiana use tax.

The taxpayer also provided prizes such as pens, radios, stuffed animals, and bicycles to serve as motivators for the customers'

members making the sales. The department assessed use tax on these items. The taxpayer protested the assessment contending that the prizes were exempt from gross retail and use tax based upon the Indiana Tax Court's finding in Maurer v. Indiana Department of State Revenue, 607 N.E.2d985 (Ind. Tax 1993). That case concerned a not-for-profit organization that held a fundraising raffle for a car. The not-for-profit organization purchased a car from a dealer and then sold chances to win the car. Mr. Maurer won the raffle and was charged sales tax on the transaction transferring the car. He paid the tax and claimed a refund. The Court held that Mr. Maurer had purchased the "right to claim a prize upon the happening of a contingency." Id. at 987. Since he had not purchased tangible personal property, there was no sales tax due. Further, the Court held that the not-for-profit organization had purchased the car to be used to further its exempt not-for-profit purpose. Therefore it did not owe use tax on the use of the car.

The cited Tax Court case concerned the sale of a car to an exempt not-for-profit organization and the sale of a chance to win the car. The taxpayer's situation is different. The use tax in this instance is imposed on the taxpayer. Although the taxpayer could have chosen to do so, the taxpayer did not sell the prizes to its customers. Rather the taxpayer provided the prizes free of charge. The taxpayer was the user of the prizes. The taxpayer is like the car dealer in the cited case. Had the car dealer given the car away, the car dealer would have been liable for use tax on its use of the car.

FINDING

The taxpayer's protest to the assessments of use tax on brochures and prizes is denied.

III. Tax Administration-Penalty

The taxpayer protested the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

> Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

During the period of the audit, the taxpayer ignored the law and departmental instructions for the payment of Indiana sales tax. The taxpayer did not pay sales tax on office supplies and computer and other equipment used in the office as clearly required by the law. This breach of the taxpayer's duty constitutes negligence.

FINDING

The taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

01-20020555.LOF

LETTER OF FINDINGS NUMBER: 02-0555
ADJUSTED GROSS INCOME TAX
For 1997

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Adjusted Gross Income Tax —Exemption for taxes paid to another state

Authority: IC § 6-8.1-5-4; 1997 IT-40

Taxpayer protests the proposed assessments of Indiana's adjusted gross income tax.

STATEMENT OF FACTS

The Department was contacted by taxpayer regarding a warrant for a 1997 tax assessment. Review of his records indicated that the warrant may have been issued improperly and was consequently expunged by the department, but also indicated that while earning income in Indiana, taxpayer was reporting his residence as South Carolina and indicated on his return that he was claiming credit for the taxes paid to South Carolina. Taxpayer protested that despite a residence and office in Indiana, he earned the income for the year at issue in South Carolina and had filed and paid taxes in South Carolina on the income in question. A hearing was held on January 29th, 2003 and taxpayer made these assertions and offered to provide documentation to support them. Taxpayer failed to provide documentation on this matter, and an inquiry with the South Carolina Department of Revenue- as well as a criminal investigation conducted by the Indiana Department of Revenue concurrent to this protest- found no evidence to support taxpayer's contention.

I. Adjusted Gross Income Tax—Exemption for taxes paid to another state

DISCUSSION

Taxpayer asserted that due to his payment of taxes to South Carolina, he did not owe taxes to the state of Indiana. The income

in question was originally sourced to Indiana by the Department of Revenue based on information in the taxpayer's Federal returns. Taxpayer failed to respond to notices as to this assessment until after a warrant was issued. Since the Department could not confirm that the issuance of the warrant was procedurally correct, it was expunged and a protest was granted. An inquiry to the South Carolina Department of Revenue indicates that taxpayer did not file a 1997 South Carolina individual income tax return, nor did he file an extension. His Indiana IT-40 filed in 1997 stated that he had paid $2,307 as taxes paid outside of Indiana. Taxpayer reported this on Line 1 of Schedule 2, Indiana Credits, which states "Credit for Local Taxes Paid Outside Indiana (see page 19)." The page 19 reference states in relevant part:

> **Line 1 - Credit for Local Taxes Paid Outside of Indiana**
> If you figured county tax on Form IT-40, line 14, **and** had to pay a local income tax outside Indiana, you may be able to take a credit. This credit applies only if the tax you paid outside Indiana was to another city, county, town, or other local government, and they did not refund the tax or give you a credit for Indiana county tax. The credit can be used against the Indiana county tax figured if the tax is the County Adjusted Gross Income Tax (CAGIT) or County Option Income Tax (COIT). This credit **cannot** be claimed against the County Economic Development Income Tax (CEDIT). The *County Income Tax Chart* found on page 17 of this booklet lists the counties with their combined tax rates, if applicable.

The taxpayer did not mark the appropriate line on Schedule 2, Indiana Credits, under the scenario the taxpayer asserts. The line indicated by the taxpayer was explicitly for an offset of county taxes, not for the state liability. Line 4 of Schedule 2, Indiana Credits, states, "Credit for Taxes Paid to Other States: Attach other state's return (see page 21)." This issue revolves around the burden of proof, which IC § 6-8.1-5-4 defines as:

> Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

Taxpayer does not cite any statute, regulation, or case law for the proposition that the Department was required to accept taxpayer's assertions as to the nature of the transactions without any of the required supporting documentation. Under the facts that have been established, i.e., no return filed in South Carolina and an inaccurate and misleading completion of the Indiana return, the Department denies taxpayer's protest.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

02-20030206.LOF

LETTER OF FINDINGS NUMBER: 03-0206
Gross Income Tax and Adjusted Gross Income Tax
For the Years 1998-2001

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Adjusted Gross Income Tax- Net operating loss elections
Authority: Ind. Code § 6-3-2-2.6; 45 IAC 3.1-1-9; I.R.C. § 172

Taxpayer protests the Department's disallowance of an election by taxpayer to forgo net operating loss carrybacks.

II. Gross Income Tax-Applicability
Authority: Ind. Code § 6-2.1-1-2.

Taxpayer protests the imposition of gross income tax with respect to the proceeds from the sale of a parcel of real estate.

STATEMENT OF FACTS

Taxpayer is a corporation engaged in managing several businesses in Indiana and other states. For fiscal year 1997, taxpayer had incurred a net operating loss for those businesses subject to Indiana taxation, but not for its entire consolidated group for federal purposes. However, the federal pro forma return submitted by taxpayer did not indicate that taxpayer had elected to forego carryback of its losses. Taxpayer then used the net operating loss on its returns for 1998, 1999 and 2000.

During 2000, taxpayer also sold a piece of real estate located in Indiana for a substantial sum of money. However, taxpayer listed the piece of property as being sold for a considerably lower sum of money. The difference, according to taxpayer, was that expenses for depreciation and losses were booked against the real estate for accounting purposes.

As a result of the audit, the Department found that taxpayer should have carried its net operating loss back to 1994, 1995 and 1996 prior to any application for years after 1997. The Department further found that the taxpayer should have used the gross proceeds from the sale of its real estate as opposed to the net proceeds. Taxpayer protested these issues, and accordingly this letter

of findings results.

I. Adjusted Gross Income Tax- Net operating loss elections

DISCUSSION

Taxpayer argues that its net operating losses should be carried forward. In particular, taxpayer argues that its failure to check the relevant box on its federal pro forma return was inadvertent, and therefore the election should be permitted to be made.

However, taxpayer's failure to elect was greater than merely this oversight. Ordinarily, the federal election controls the state election. 45 IAC 3.1-1-9. On the corporate tax return, Schedule IT-20NOL, is a box that can be checked if a taxpayer has a net operating loss for a given tax year for state purposes but not for federal purposes. However, the box for making the election with respect to the net operating loss was not checked. The act of checking the relevant box constitutes the election in question. Conversely, failure to check the box is not an election. Taxpayer, by failing to comply with the requirements to make a timely election to waive the carryback of its losses, is subject to carryback of its losses.

Taxpayer also cites to a Department letter of findings for the proposition that the Department is willing to overlook innocent mistakes by a taxpayer. In that letter of findings, the taxpayer had a net operating loss carryover that was not shown on a federal pro forma return after the taxpayer had merged with another company. The auditor treated the net operating loss as being eliminated by the merger, which would have ended any net operating loss carryover for Indiana. However, it was determined that the successor corporation was entitled to continue using its net operating loss carryovers for federal purposes, and accordingly the taxpayer's return was proper in that respect.

Unlike the corporation in the letter of findings cited by taxpayer, where the corporation was compliant with state and federal law, the failure to make an election to not carry back its net operating losses was non-compliance with state and federal law. Such non-compliance denies the election. Further, permitting the election to waive carrybacks in this case where the taxpayer does not properly make the election on the initial return would be a license to permit future taxpayers to not make the election, and then allow them to make (or not make) the election if circumstances permitted at a later time, renders the phrase "irrevocable for such taxable year" meaningless. I.R.C. § 172(b)(3).

Taxpayer further maintains that the years prior to fiscal year 1997 were loss years, and thus a carryback would have been superfluous. First, taxpayer's returns actually show a net profit for Indiana purposes during the first two of those prior years. Second, if taxpayer had net operating losses from years prior to 1994 that were not utilized in those three years, then an election to waive a carryback would have been a functional nullity – the loss could realistically only be carried forward, regardless of any election. As a result, taxpayer's net operating losses are to be carried back in accordance with Ind. Code § 6-3-2-2.6.

FINDING

Taxpayer's protest is denied.

II. Gross income tax- Applicability

DISCUSSION

Taxpayer has also protested the imposition of gross income tax with respect to the sale of a parcel of real estate. In particular, taxpayer protested the imposition of tax with respect to the full sale price as opposed to the net sale price. Under Ind. Code § 6-2.1-1-2(a)(3), all proceeds from the sale of real property in Indiana are subject to tax, subject to certain deductions and exemptions not at issue here. Accordingly, taxpayer's protest must be denied.

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0220030216.LOF

LETTER OF FINDINGS: 03-0216
Indiana Corporate Income Tax
For 1999, 2000, and 2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Rent Expense Computational Error.

Authority: IC 6-8.1-5-1(b).

Taxpayer argues that the audit erred by understating the amount of its rent expenses.

II. Royalty Income Received from the Licensing Trademarks to Foreign Subsidiaries – Adjusted Gross Income Tax.

Authority: IC 6-3-1-20; IC 6-3-2-2(a); IC 6-3-2-2(a)(5); IC 6-3-2-2(b); IC 6-3-2-2(g) to (k); IC 6-3-2-2.2; Container Corp. of America v. Franchise Tax Bd., 463 U.S. 159 (1983); May Department Store Co. v. Indiana Dept. of State Revenue, 746 N.E.2d 651

(Ind. Tax Ct. 2001); Chief Industries v. Dep't of Revenue, 792 N.E.2d 972 (Ind. Tax Ct. 2000); Hunt Corp. v. Dep't of State Revenue, 709 N.E.2d 766 (Ind. Tax Ct. 1999); 45 IAC 3.1-1-29; 45 IAC 3.1-1-30.

Taxpayer claims that the audit incorrectly classified its royalty income as "business" income and that the income should be classified as "non-business."

STATEMENT OF FACTS

Taxpayer is an out-of-state air carrier in the business of transporting and delivering packages. Taxpayer operates both within and without the United States.

The Department of Revenue (Department) conducted an audit review of taxpayer's returns and business records. The audit made a number of adjustments. Taxpayer challenged two of these adjustments and submitted a protest to that effect. An administrative hearing was conducted during which taxpayer explained the basis for the protest. This Letter of Findings results.

DISCUSSION

I. Rent Expense Computational Error.

In preparing its federal income tax return for the fiscal year ending May 31, 2001, taxpayer erroneously listed certain royalty payments as "other deductions." Before taxpayer filed the return, the error was discovered and corrected. When taxpayer's general ledger was incorporated into its tax software, the royalty payments were "mapped" to the rents expense line of its pro forma income tax return. An "adjusting entry" was made in the software program to move these royalty payments from the return's expense line to the gross royalties' income line. However, while the income portion of the adjusting entry was credited correctly, the wrong expense line was debited. This posting error resulted in an offsetting debit and credit being reported on two separate expense lines on the federal return.

In reviewing taxpayer's records, the audit made an adjustment to taxpayer's rent expense. According to taxpayer – and in apparent reliance upon the taxpayer's own records – the audit substantially understated the amount of taxpayer's rent expense.

Taxpayer now asks that this error be corrected.

The audit's original determination is presumed correct. IC 6-8.1-5-1(b) states in part that, "The notice of proposed assessment is prima facie evidence that the department's claim for unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with person against whom the proposed assessment is made."

Taxpayer has provided detailed financial records purporting to establish that the amount of rent expense as indicated on the audit report was erroneous and attempting to explain the basis for that error.

A letter of findings is not the appropriate means by which to correct mathematical or accounting errors. However, taxpayer has met its burden of demonstrating that its argument is neither wholly unsubstantiated nor entirely frivolous. The audit review is requested to review the original audit report, taxpayer's newly provided information, taxpayer's narrative, and to make whatever adjustment may be appropriate.

FINDING

Subject to audit's review, taxpayer's protest is sustained.

II. Royalty Income Received from the Licensing Trademarks to Foreign Subsidiaries – Adjusted Gross Income Tax.

Taxpayer has foreign subsidiaries. The subsidiaries are also in the business of transporting and delivering packages. Taxpayer entered into agreements which permit these subsidiaries to use taxpayer's trademarks. These agreements are called "Service Mark Agreements." In return for the right to use these trademarks, the foreign subsidiaries pay taxpayer royalties.

The taxpayer originally classified this income as "non-business income" and reported it on Schedule F of taxpayer's Indiana corporate income tax returns. During the audit review, the income was reclassified from "non-business income" to "business income." The audit did so citing as authority 45 IAC 3.1-1-29. In part, that regulation reads as follows:

> "Business Income" defined. "Business Income" is defined in the Act as income from transactions and activity in the regular course of the taxpayer's trade or business including income from tangible and intangible property if the acquisition, management, or disposition of the property are integral parts of the taxpayer's regular trade or business.
>
> Nonbusiness income means all income other than business income.
>
> The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, non-operating income, etc., is of no aid in determining whether income is business or nonbusiness income. Income of any type or class and from any source is business income if it arises from transactions and activity occurring in the regular course of a trade or business.

Whether taxpayer's income is classified as "business" or "non-business" makes a difference because of the way in which a corporate taxpayer's adjusted gross income is calculated. For purpose of determining a taxpayer's adjusted gross income tax liability, business income is apportioned between Indiana and other states using a three-factor formula. IC 6-3-2-2(b). In contrast, non-business income is either allocated to Indiana or is allocated to another state. IC 6-3-2-2(g) to (k). Therefore, "whether income is deemed business income or non-business income determines whether it is allocated to a specific state or whether it is apportioned between Indiana and other states [in which] the taxpayer is conducting its trade or business." May Department Store Co. v. Indiana Dept. of State Revenue, 746 N.E.2d 651, 656 (Ind. Tax Ct. 2001).

If – as taxpayer contends – these royalty payments constitute "non-business" income, then the income is allocated outside of Indiana. In addition, taxpayer raises alternative threshold issues.

A. Royalty Income as Derived From Sources Within Indiana.

Taxpayer states the royalty payments are not taxable under Indiana law because the royalty payments are not "derived from sources within Indiana." Taxpayer contends that it is not necessary to reach the "business" / "non-business" distinction because the income should be "sourced" to the out-of-state location where the royalty income was generated. In support of that argument, taxpayer cites to Chief Industries v. Dep't of Revenue, 792 N.E.2d 972 (Ind. Tax Ct. 2000).

Taxpayer seeks to turn the adjusted gross income tax scheme on its head by setting out a threshold sourcing test. It is difficult to accept taxpayer's argument in the face of the generally accepted statutory scheme under IC 6-3-2-2(a) to (k). The scheme asks whether the royalties are business or non-business income and whether the sales, payroll, and property of the taxpayer are apportionable to Indiana in the case of business income or the income is allocable to Indiana in the case of non-business income.

"[S]tates do not have to evaluate each income generating activity of the corporate enterprise in order to determine whether the income gained from that activity is properly taxable by the state. Instead the state may look at all of the income gained by the corporate enterprise's business activity and determine the state's fair share of that total." Hunt Corp. v. Dep't of State Revenue, 709 N.E.2d 766, 769 (Ind. Tax Ct. 1999). Taxpayer's effort to interpose a threshold sourcing test for royalty income does not survive close scrutiny. "In order to determine what income is attributable to Indiana, it must *first* be determined whether the income sought to be attributed is business or non-business income." Id. at 771 (*Emphasis added*).

Taxpayer's argument that out-of-state royalty income – by definition – falls outside Indiana's adjusted gross income tax scheme is not well founded. The Indiana legislature has defined "adjusted gross income" as including "(1) income from real or tangible personal property in this state; (2) income from doing business in this state; (3) income from a trade or profession conducted in this state; (4) compensation for labor or services rendered within this state; and (5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property if the receipt from the intangible is attributable to Indiana under section 2.2 of this chapter." IC 6-3-2-2(a). IC 6-3-2-2(a)(5) includes an internal reference to IC 6-3-2-2.2 but IC 6-3-2-2.2 is limited in its effect acting only to describe the manner in which interest and dividend is attributed to the state.

B. Royalties as Business / Non-business Income.

The audit found that the royalty income received from taxpayer's foreign subsidiaries constituted "business" income. Taxpayer disagrees arguing that it is in the package transportation business and not in the business of licensing intangibles.

The benchmark for determining whether income can be apportioned is the distinction between "business income" and "non-business income." That distinction is defined by the Indiana Code as follows:

> The term "business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitutes integral parts of the taxpayer's regular trade or business operation. IC 6-3-1-20.

"Non-business income," in turn, "means all income other than business income." IC 6-3-1-21. For purposes of calculating an Indiana corporation's adjusted gross income tax liability, business income is apportioned between Indiana and other states using a three-factor formula, while non-business income is allocated to Indiana or another state in which the taxpayer is doing business. May, 749 N.E.2d at 656. In that decision, the Tax Court determined that IC 6-3-1-20 incorporates two tests for determining whether the income is business or non-business: a transactional test and a functional test. Id. at 662-63. Under the transactional test, gains are classified as business income when they are derived from a transaction in which the taxpayer regularly engages. The particular transaction from which the income derives is measured against the frequency and regularity of similar transactions and practices of the taxpayer's business. Id. at 658-59.

Under the functional test, the gain arising from the sale of an asset will be classified as business income if the acquisition, management, and disposition of the property generating income constitutes an integral part of the taxpayer's regular trade or business operations. *See* IC 6-3-1-20.

Department regulations 45 IAC 3.1-1-29 and 45 IAC 3.1-1-30 provide guidance in determining whether income is business or non-business under the transactional test. 45 IAC 3.1-1-29 states in relevant part that, "Income of any type or class and from any source is business income if it arises from transactions and activity occurring in the regular course of a trade or business. Accordingly, the critical element in determining whether income is 'business income' or 'non-business income' is the identification of the transactions and activity which are the elements of a particular trade or business." 45 IAC 3.1-1-30 provides that, "[f]or purposes of determining whether income is derived from an activity which is in the regular course of the taxpayer's trade or business, the expression 'trade or business' is not limited to the taxpayer's corporate charter purpose of its principal business activity. A taxpayer may be in more than one trade or business, and derive business therefrom depending upon but not limited to some or all of the following:

(1) The nature of the taxpayer's trade or business.
(2) The substantiality of the income derived from the activities and the percentage that income is of the taxpayer's total income for a given tax period.
(3) The frequency, number of continuity of the activities and transactions involved.
(4) The length of time the property producing income was owned by the taxpayer.
(5) The taxpayer's purpose in acquiring and holding the property producing income.

The functional test focuses on the property being disposed of by the taxpayer. Id. Specifically, the functional test requires examining the relationship of the property at issue with the business operations of the taxpayer. May, 749 N.E.2d at 664. In order to satisfy the functional test, the property generating income must have been acquired, managed, and disposed by the taxpayer in a process integral to taxpayer's regular trade or business operations. Id. In May, the Tax Court defined "integral" as "part of or [a] constituent component necessary or integral to complete the whole." Id. at 664-65. The court concluded that petitioner retailer's sale of one of its retailing divisions was not "necessary or essential" to the petitioner's regular trade or business because the sale was executed pursuant to a court order that benefited a competitor and not the petitioner. Id. at 665. In effect, the court determined that because the petitioner was forced to sell the division in order to reduce its competitive advantage, the sale was not integral to the petitioner's own business operations. Id. Therefore, the proceeds from the division's sale were not business income under the functional test. Id.

The audit correctly decided that the money received in the form of royalty payments constituted "business income." Taxpayer's core business involves the transportation and delivery of packages; however, taxpayer has also entered into agreements whereby it licenses its trademarks – developed during and associated with the package delivery and transport business – to its foreign subsidiaries. These agreements are ongoing arrangements by which taxpayer receives royalty payments acknowledging taxpayer's primary ownership of the trademarks, acknowledging the value of the trademarks to the foreign subsidiaries' business, and acknowledging the value of the trademarks developed through taxpayer's business acumen, experience, and reputation. The royalty proceeds are properly classified as "business income" pursuant to the transactional test.

In addition, the income is properly classified as "business income" under the functional test because the trademark properties are an integral part of taxpayer's package transportation and delivery business. Although taxpayer may be correct in stating that it is not in the business of licensing trademarks, that distinction is irrelevant. The issue is not whether taxpayer is or is not in the business of licensing trademarks. The issue is whether the royalties are classified as "business" or non-business" income. During the regular course of its business, taxpayer decided to license its valuable trademarks to its subsidiaries, to exploit the value of the trademarks it had nurtured, and thereafter to allow – in return for valuable consideration – its own subsidiaries to employ those trademarks in developing and promoting the subsidiaries' package transportation and delivery business. The royalty income is properly classified as "business income" pursuant to the functional test.

C. Royalty Expense Deductions.

Taxpayer argues that if the Department classifies the royalties as "business income," it is being inconsistent because – in addressing issues related to royalty payments – the Department "has repeatedly held that the licensee should not be entitled to a deduction for [royalty] payments, holding in essence that the payments should be disregarded for Indiana adjusted gross income tax purposes." Taxpayer refers to instances in which a trademark licensee has been refused permission to claim, as legitimate business expenses, royalty payments made to a licensor with which the licensee has a symbiotic business relationship. Taxpayer refers to instances in which a claimed business expense has been disallowed because the royalty payments were based upon a sham transaction without any rational or justifiable business purpose. Taxpayer cites to instances in which the claimed business expenses were disallowed because the royalty payments were simply a charade to avoid state income tax liability. Nonetheless, taxpayer argues that because – in certain instances – the Department has disallowed royalty business expenses, the Department cannot now classify royalty receipts as "business income."

Taxpayer is mixing apples and oranges. Taxpayer is correct in pointing out that the Department has disallowed claimed business expenses because the royalty payments upon which the expenses were claimed were simply an elaborate accounting ruse. However, the allowance or disallowance of business expenses is an issue entirely separate from the issue of whether royalty income is or is not "business income."

D. Constitutionality.

Taxpayer argues that "any attempt to impose tax would in fact violate the Commerce Clause and Due Process Clause of the United States Constitution." Taxpayer cites to Container Corp. of America v. Franchise Tax Bd., 463 U.S. 159 (1983) in support of its argument that because "All aspects of the licensing transactions occurred outside Indiana... [a]ny efforts to impose tax under these facts would violate the constitutional prerequisites for apportionment of income." Taxpayer somewhat overstates the constitutional constraints imposed on Indiana. The Constitution does indeed restrict an individual state's right to "tax value earned outside its borders." Id. at 164. However, Indiana does not seek to levy an income tax on taxpayer's royalty payments; Indiana seeks to tax taxpayer's unitary business – which necessarily includes the royalty payments – based upon well-founded, long-established, apportionment principles which observe the distinction between "business" and "non-business" income. "[I]t is constitutionally permissible for a State to tax an apportioned share of a corporate enterprise's multi-state income." Hunt, 709 N.E.2d at 769. Having determined that the royalty income should be included within the formulary tax calculation, taxpayer then "has the burden of showing by clear and cogent evidence that the state tax results in extraterritorial values being taxed." Container Corp. at 164. (Punctuation omitted). Taxpayer has failed to do so, and the Department is unable to agree that apportionment of taxpayer's royalty income is constitutionally offensive.

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

0220030223.LOF

LETTER OF FINDINGS: 03-0223
Indiana Corporate Income Tax
For 1998, 1999, 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Applicability of the Throw-Back Rule – Adjusted Gross Income Tax.

Authority: Public Law 86-272; IC 6-3-2-1(b); IC 6-3-2-2; IC 6-3-2-2(e); IC 6-3-2-2(n); IC 6-3-2-2(n)(1); First Chicago NBD Corp. v. Dept. of State Revenue, 708 N.E.2d 631 (Ind. Tax Ct. 1999); 45 IAC 3.1-1-64; Mich. Comp. Laws § 208.31(3); Jerome R. Hellerstein and Walter Hellerstein, State and Local Taxation: Cases and Materials (7th ed. 2001); Black's Law Dictionary (7th ed. 1999).

Taxpayer argues that the Department of Revenue erred when it required that taxpayer – in calculating its adjusted gross income – add back the income obtained from selling goods to Michigan customers.

STATEMENT OF FACTS

Taxpayer is a holding company for several businesses which sell packaging materials. The Department of Revenue (Department) conducted an audit review of taxpayer's tax returns and business records. The audit found that – in arriving at its adjusted gross income – taxpayer had deducted sales made to Michigan customers by two of taxpayer's businesses. The Department concluded that this specific deduction was unwarranted and that the sales should have been "thrown back" to Indiana. The consequent adjustment resulted in the assessment of additional Indiana corporate income tax.

Taxpayer disagreed with the Department's conclusion and submitted a protest to that effect. An administrative hearing was conducted during which taxpayer explained the basis for the protest. This Letter of Findings results.

DISCUSSION

I. Applicability of the Throw-Back Rule – Adjusted Gross Income Tax.

For purposes of calculating taxpayer's adjusted gross income, the money that two of taxpayer's businesses received from selling goods to Michigan customers was "thrown back" to Indiana. The audit did so on the ground that the two businesses were not subject to Michigan's taxing jurisdiction pursuant to Public Law 86-272.

The basic rule is found at IC 6-3-2-2. IC 6-3-2-2(e) provides that "[s]ales of tangible personal property are in this state if... (2) the property is shipped from an office, a store, a warehouse, a factory, or other place of storage in this state and... (B) the taxpayer is not taxable in the state of the purchaser." IC 6-3-2-2(n) provides that "[f]or purposes of allocation and apportionment of income... a taxpayer is taxable in another state if: (1) in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business or a corporate stock tax; or (2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not." Therefore, in order to properly attribute income to a foreign state, taxpayer must show that one of the taxes listed in IC 6-3-2-2(n)(1) has been levied against him or that the state has the jurisdiction to impose a net income tax regardless of "whether, in fact, the state does or does not." Id.

Taxpayer argues that it is subject to the Michigan Single Business Tax (MSBT) which states that, "[T]he tax levied under this section and imposed is upon the privilege of doing business and not upon income...." Mich. Comp. Laws § 208.31(3). Taxpayer maintains that it has a taxable nexus with Michigan based upon the number of days its sales persons worked in that state. Taxpayer asserts that it did not file the MSBT returns simply as a ploy to eliminate sales to Indiana. According to taxpayer, the MBST falls squarely within IC 6-3-2-2(n) because it is a "franchise tax for the privilege of doing business...." Id.

The Department has interpreted IC 6-3-2-2(n) to mean, "A corporation is 'taxable in another state' under the Act when such state has jurisdiction to subject it to a net income tax. This test applies if the taxpayer's business activities are sufficient to give the state jurisdiction to impose a net income tax under the Constitution and statutes of the United States. Jurisdiction to tax is not present where the state is prohibited from imposing the tax by reason of Public Law 86-272...." 45 IAC 3.1-1-64.

Nonetheless, taxpayer maintains that 45 IAC 3.1-1-64 "certainly does not conform to the Indiana statute 6-3-2-2 Section 2n." However, resolution of the question presented by taxpayer does not turn on the finer points of statutory or regulatory interpretation. Under a fair reading of IC 6-3-2-2(n), the issue is whether or not taxpayer's activities within Michigan provided that state with the authority to tax the income received from those activities. Conversely, were taxpayer's activities such that federal law (Public Law 86-272) precluded Michigan from imposing a net income tax on those receipts. Taxpayer chooses to sidestep this standard and focuses entirely on the fact that it paid the MSBT. Taxpayer's rationale is that because it paid the MSBT, it does not have to pay the Indiana tax.

The Department must respectfully disagree with taxpayer's conclusion that imposition of the MSBT automatically precludes Indiana from throwing back taxpayer's Michigan sourced sales receipts. The Indiana Tax Court has stated, "The MSBT is a type of value added tax. VAT" First Chicago NBD Corp. v. Dept. of State Revenue, 708 N.E.2d 631, 632 (Ind. Tax Ct. 1999). "Although taxable income is one portion of the tax base formula, *the MSBT is not measured by or based on income.*" Id. at 634 (*Emphasis*

added). "The law [Public Law 86-272] applies only to net income taxes... and does not apply to the general business of taxes of states that do not employ a net income measure, such as Michigan's Single Business Tax, which is a form of value-added tax." Jerome R. Hellerstein and Walter Hellerstein, State and Local Taxation: Cases and Materials 389 (7th ed. 2001).

In every sales transaction, at least one state has the power to impose a net income tax on the money derived from the sale of tangible personal property; if the state in which the sale occurred is forbidden to do so by Public Law 86-272, then the income is "thrown-back" to the originating state. In this case, taxpayer sold goods to Michigan customers, but Indiana was the originating state. Michigan is not constrained by Public Law 86-272 from imposing the MSBT because the MSBT is not a net income tax. Therefore, the issue is whether taxpayer's activities within Michigan were such that Michigan has "jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, [Michigan] does or does not." However, taxpayer has declined the opportunity to do so because it" [does] not believe it is necessary to provide any additional information related to Michigan activities." Instead, taxpayer concludes that imposition of the MSBT is entirely dispositive of the question of whether Indiana may throw back these sales; taxpayer errs because the MSBT is not "a *franchise* tax for the privilege of doing business...." IC 6-3-2-2(n). The MSBT is not "based on or measured by income." First Chicago NBD, 708 N.E.2d at 634. (*Emphasis* added). As a VAT, the MSBT is one of the costs of doing business in Michigan; however, the MSBT itself is akin to a sales tax, it is plainly not a tax based on or measured by income.

Based upon the information taxpayer chose to provide, it is not known whether taxpayer's activities within Michigan gave that state the authority to impose a tax based on taxpayer's Michigan income. Based upon the information taxpayer chose to provide, it is not known whether taxpayer's activities within Michigan were such that Public Law 86-272 *precluded* Michigan from imposing a tax based upon on taxpayer's Michigan income. Therefore, the sales proceeds were properly thrown back to Indiana.

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE

0420030293.LOF

LETTER OF FINDINGS NUMBER: 03-0293
Responsible Officer Liability—Duty to Remit Sales and Withholding Taxes
For Tax Year 2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Responsible Officer Liability—Duty to Remit Sales and Withholding Taxes

Authority: IC § 6-2.5-2-1; IC § 6-2.5-9-3; IC § 6-3-4-8; 45 IAC 2.2-9-4; *Indiana Department of Revenue v. Safayan,* 654 N.E.2d 270, 273 (Ind. 1995)

Taxpayer protests the Department's determination of responsible officer liability for sales and withholding taxes not paid during the assessment period.

STATEMENT OF FACTS

At all times relevant to the protest of the Department's determination of responsibility officer liability, taxpayer was an employee of the corporation. Taxpayer's job title was vice-president of engineering. The corporation manufactures and installs large-scale commercial skylights. Taxpayer's duties and responsibilities as an employee for the corporation were exclusively in the areas of engineering and, to a more limited extent, sales. Taxpayer's primary function was to design, develop, and test the skylights the corporation manufactured. Additional facts will be supplied as necessary.

I. Responsible Officer Liability—Duty to Remit Sales and Withholding Taxes

A gross retail (sales) tax is imposed on retail transactions made in Indiana. While this sales tax is levied on the purchaser of retail goods, it is the retail merchant who must "collect the tax as agent for the state." *See*, IC § 6-2.5-2-1.

Individuals may be held personally responsible for failing to remit any sales tax. In determining who may acquire personal liability, IC § 6-2.5-9-3 is applicable:

An individual who:

(1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and

(2) has a duty to remit state gross retail or use taxes (as described in IC § 6-2.5-3-2) to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes to the state.

An income tax is assessed on wages that employers pay to their employees. The employer is responsible, and liable, for deducting, retaining, and paying "the amount prescribed in [the] withholding instructions. *See*, IC § 6-3-4-8(a). Like the sales tax, employers hold the withholding tax in trust for the state.

IC § 6-3-4-8(f) provides in pertinent part:

All money deducted and withheld by an employer shall immediately upon such deduction be the money of the state, and every employer who deducts and retains any amount of money under the provisions of IC § 6-3 shall hold the same in trust for the state of Indiana.

In order to determine which persons are personally liable for the payment of these "trust" taxes, the Department must initially determine which parties had a duty to remit the taxes to the Department. *Indiana Department of Revenue v. Safayan*, 654 N.E.2d 270, 273 (Ind. 1995) is instructive:

The method of determining whether a given individual is a responsible person is the same under the gross retail and the withholding tax…. An individual is personally liable for unpaid sales and withholding taxes if she is an officer, employee, or member of the employer who has a duty to remit the taxes to the Department…. The statutory duty to remit trust taxes falls on any officer or employee who has the authority to see that the taxes are paid.

The Indiana Supreme Court in *Safayan* identified three relevant factors:

(1) the person's position within the power structure of the corporation;

(2) the authority of the officer or employee as established by the articles of incorporation, bylaws, or the person's employment contract; and

(3) whether the person actually exercised control over the finances of the business.

The Supreme Court also stated in *Safayan* that "where the individual was a high ranking officer, we presume that he or she had sufficient control over the company's finances to give rise to a duty to remit the trust taxes." Id. at 273. The Department further notes that *Safayan* specifically rejects the defense of failure by an officer to exercise oversight.

In addition to the duties set forth *supra*, taxpayer also had other responsibilities, such as designing equipment for bending, extrusions, and break metal used in the skylight manufacturing process. Taxpayer also designed tanks for pretreatment, a part baking oven and overhead conveyor system for the painting system the corporation used. In addition, taxpayer also called upon architects and contractors in a sales capacity and assumed the duties of a project manager in connection with the corporation's larger installation projects.

Previous to and/or during the relevant time period, the corporation decided to expand its plant on six occasions, taxpayer was consulted regarding the engineering and production capacity issues involved with the plant expansions and designed the building expansions. However, taxpayer did not participate in the basic decisions whether to expand or not, nor did he participate in any financial matters relating to the financing of the plant. Taxpayer's duties did not include any office functions. He had no duties relating to the corporation's accounting functions or the corporation's financial management. Taxpayer did not participate in decisions regarding which creditors were to be paid. Taxpayer did not have access to the corporation's books or accounting records and was not otherwise consulted regarding financial matters, nor did he attend meetings at which accounting or financial matters were discussed. Taxpayer did not participate in, prepare, or review the corporation's tax returns, and was unaware the corporation had failed to pay its withholding and sales tax liabilities.

To the best of taxpayer's knowledge, he was not a member of the corporation's board of directors, and to the extent any corporate filings may have listed him as, such, the filings were made without his knowledge or consent. Taxpayer does not know, and did not know at the time, who was on the board; he assumes the owner was. Taxpayer did not sign checks on behalf of the corporation nor to his knowledge was he an authorized signatory on any corporate checking account. Taxpayer was compensated on a salary basis, and received 10% of the corporation's stock as a bonus.

All major decisions of the corporation were made by its founder, president, and majority stockholder, Mr. X. Taxpayer's receipt of the stock bonus had no effect on how Mr. X operated the corporation and stock ownership did not, as a practical matter, entitle taxpayer to any say in how the corporation was operated, or in any of its financial decisions. According to taxpayer, what Mr. X decided controlled, and his decisions were final. Mr. X relied on taxpayer's expertise in engineering matters. Taxpayer's role in the corporation did not extend beyond engineering matters and taxpayer had no role in the financial management of the corporation and was unaware of any tax problems.

Taxpayer had authority over design engineering matters, but Mr. X ran the company, founded it, and was the majority owner. Things were either done his way, or an employee who disagreed could "hit the highway." There are no documents in existence showing taxpayer had the duty or authority to pay trust taxes. Taxpayer exercised no control whatsoever over the corporation's business and finances; again, Mr. X had total control in those areas.

FINDING

Based on all the above, taxpayer's protest of the Department's determination of responsible officer liability is sustained.

DEPARTMENT OF STATE REVENUE

0420030472.LOF

LETTER OF FINDINGS: 03-0472
Indiana Gross Retail Tax
For 2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Contract for the Purchase and Installation of HVAC Equipment – Gross Retail Tax.

Authority: IC 6-2.5-2-1; IC 6-2.5-3-2(a); 45 IAC 2.2-4-22(e); 45 IAC 2.2-4-25(a); 45 IAC 2.2-4-26(a); Sales Tax Information Bulletin 60 (Dec. 2002).

Taxpayer argues that that it is not required to pay use tax on the cost of purchasing and installing air conditioning and heating equipment at taxpayer's business location.

STATEMENT OF FACTS

Taxpayer operates an Indiana service business. During 2003, the Department of Revenue (Department) conducted an audit review of taxpayer's business records and concluded that taxpayer had failed to pay sales tax on a contract for the purchase and installation of heating and air conditioning equipment. The Department concluded that the sales tax should have been collected by the contractor at the time taxpayer paid for the equipment and installation. Accordingly, the Department assessed use tax and sent a notice of proposed assessment dated November 2003.

Taxpayer challenged the assessment and sent a protest to that effect during November 2003. Taxpayer declined the opportunity take part in an administrative hearing on the challenged assessment. Instead, taxpayer instructed the Department to prepare a Letter of Findings based upon the contents of taxpayer's initial protest letter, the information contained within the Department's audit report, and on other correspondence sent by the taxpayer. This Letter of Findings results.

DISCUSSION

I. Contract for the Purchase and Installation of HVAC Equipment – Gross Retail Tax.

In 2001, taxpayer hired a contractor to install new air conditioning and heating equipment. After the equipment was installed, the contractor submitted a bill for $5,060. The bill stated charges of $3,100 for a "new 90% gas furnace" and $1,960 for a "5 ton condensing unit." The bill was apparently for both labor and materials although the bill did not differentiate between those costs. The bill had a space listed for "tax," but there was nothing written in that space.

The audit found that, "The taxpayer entered into a time and material contract for building improvements, i.e. furnace and air conditioning system." The audit stated that the contractor was acting as a retail merchant with respect to the materials furnished and should have collected sales tax with respect to those materials. Because the contractor failed to do so, the audit concluded that taxpayer was required to pay the corresponding use tax.

Taxpayer protested this decision and sent the Department a letter from the contractor in which the contractor stated that "sales tax was included in our quote... for the [] HVAC work that was completed in November of 2001 in the amount of $5,060." The contractor's letter also stated that, "The exact amount of sales tax paid was $108.34 on the materials involved in this job."

The Department requested that taxpayer provide a copy of the contractor's original quote which purportedly included the sales tax charge. Taxpayer did so but the contractor's original quote did not state that sales tax would be charged. Instead the quote provided that the contractor would "supply all labor, equipment, and supplies necessary to replace the existing furnace...." The quote stated that it would charge $3,100 for the new furnace and $1,960 for the new air conditioner.

It is taxpayer's contention that "sales tax was paid on the materials...." Taxpayer stated that the furnace and air conditioning equipment were "a permanent attachment to real estate and... are not subject to sales tax." Taxpayer concludes that it is not its responsibility to "determine how [contractor] computes and pays sales tax to the state of Indiana."

Indiana imposes a sales tax on retail sales of tangible personal property. IC 6-2.5-2-1. Indiana also imposes a complementary use tax on tangible personal property stored used, or consumed in Indiana when the sales tax was not paid at the time of the purchase. IC 6-2.5-3-2(a). The audit found that because the contractor's bill did not include a listing for sales tax, taxpayer should have paid use tax when it bought the air conditioning and heating units.

From the information provided by taxpayer and the contractor, it becomes apparent that the parties entered into a lump sum contract for improvements to taxpayer's business location. Sales Tax Information Bulletin 60 (Dec. 2002) states that, "'Lump sum contract' means a contract to incorporate construction materials into real estate with the charge for labor and materials being quoted as one price." *See also* Sales Tax Information Bulletin 60 (Nov. 2000). The fact that the parties entered into a lump sum contract is significant because taxpayer is not subject to use tax liability for those transactions – entered into for the purpose of improving the taxpayer's realty – in which the agreement is couched in terms of a lump sum contract. Under 45 IAC 2.2-4-22(e), "With respect to construction material a contractor acquired tax-free, the contractor is liable for the use tax and must remit such tax (measured on the purchase price) to the Department of Revenue when he disposes of such property in the following manner... He converts the construction material into realty on land he does not own pursuant to a contract that includes all elements of cost in the total contract price." Accordingly, the contractor will either pay the gross retail tax "up-front" when he initially purchases the construction materials or at the point where the materials are incorporated into the taxpayer's realty. Either "up-front" or at the point where the materials are incorporated into the taxpayer's realty, in lump sum contracts between the taxpayer and its contractors, it is the contractors which are ultimately responsible for paying the gross retail tax on the construction materials. 45 IAC 2.2-4-26(a) provides

that "[a] person making a contract for the improvement to real estate whereby the material becoming a part of the improvement and the labor are quoted as one price is liable for the payment of sales tax on the purchase price of all material so used." 45 IAC 2.2-4-25(a) states that, "For purposes of [45 IAC 2.2], 'contractor' means any person engaged in converting construction material into realty." The regulation defines the term "contractor" to include "persons engaged in building, cement work, carpentry, plumbing, *heating*, electrical work, roofing, wrecking, excavating, plastering, tile and road construction." Id. (*Emphasis added*).

Taxpayer entered into an agreement with its contractor for the purchase and installation of new heating and air conditioning equipment. The agreement was framed in terms of a lump sum contract. The contractor was responsible for paying sales tax when it initially purchased the equipment or use tax when it installed the equipment at taxpayer's business location. The contractor's responsibility for doing so is not the taxpayer's concern.

FINDING

Taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 04-0097
Sales/Use Tax
For the Year 2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Sales/Use Tax—Assessment on Purchase of Aircraft

Authority: IC 6-2.5-5-27; IC 6-8.1-5-1; 45 IAC 2.2-5-61; Title 14 CFR, (Part) section 21, 43, 91, 121, 125, 135; Panhandle Eastern Pipeline Company v. Dept. of Revenue, 741 N.E.2d 816 (Ind. Tax 2001); Cambria Iron Co., v. Union Trust Co., 154 Ind. 291, 55 N.E. 745 (1899); *Indiana Register*, Volume 25, Number 7, April 1, 2002; FAA AC 120-12A (4/24/86).

Taxpayer protests the assessment of sales tax on the purchase of an aircraft Taxpayer asserts is used in Public Transportation.

II. Sales/Use Tax—Trade in value of an aircraft

Authority: IC 6-8.1-5-1; IC 6-2.5-1-1; 45 IAC 2.2-3-6

Taxpayer protests the disallowance of the trade in value of an aircraft against the purchase cost of a new aircraft in determining the amount subject to sale/use tax.

STATEMENT OF FACTS

Taxpayer is a single member LLC disregarded for federal and state income tax purposes—consolidated with its owner, Parent. In March 2001, Taxpayer purchased an aircraft—a Raytheon Beechcraft King Air 350. Taxpayer was established with the intent to transport the employees, property, customers, and suppliers of Parent and Parent's affiliates. Taxpayer seeks the Public Transportation exemption to sales/use tax permitted in IC 6-2.5-5-27, which states:

> **Public transportation; acquisitions**
>
> Transactions involving tangible personal property and services are exempt from the state gross retail tax, if the person acquiring the property or service directly uses or consumes it in providing public transportation for persons or property.

The Department has promulgated a regulation addressing and defining Public Transportation, as it relates to the exemption. 45 IAC 2.2-5-61(b) states:

> **Definition: Public Transportation**.
>
> Public transportation shall mean and include the movement, transportation, or carrying of persons and/or property for consideration by a common carrier, contract carrier, household goods carrier, carriers of exempt commodities, and other specialized carriers performing public transportation service for compensation by highway, rail, air, or water, which carriers operate under authority issued by, or are specifically exempt by statute or regulation from economic regulation of, the public service commission of Indiana, the Interstate Commerce Commission, the aeronautics commission of Indiana, the U.S. Civil Aeronautics Board, the U.S. Department of Transportation, or the Federal Maritime Commissioner; however, the fact that a company possesses a permit or authority issued by the P.S.C.I., I.C.C., etc., does not of itself mean that such a company is engaged in public transportation unless it is in fact engaged in the transportation of persons or property for consideration as defined above.

Taxpayer owns the aircraft, and contracts with third parties for operation services and accounting services. Since the purchase of the aircraft, Third-party Operations has provided to Taxpayer travel related services—including pilots, maintenance, training, and assistance with certifications and warranties. Third-party Operations maintains Taxpayer's authority to operate under a Part 91 certification by the FAA. Third-party Operations initially provided to Taxpayer accounting services—including billing, check writing, and bookkeeping. In 2002, Third-party Accounting took over the accounting services previously provided to Taxpayer by Third-party

Operations. Taxpayer, initially through Third-party Operations, and now through Third-party Accounting, bills Parent for the use of Taxpayer's aircraft by Parent's affiliates.

I. Sales/Use Tax—Assessment on Purchase of Aircraft

DISCUSSION

All tax assessments are presumed to be accurate. The taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b). Tax exemption statutes are construed strictly in favor of taxation. Panhandle Eastern Pipeline Company v. Dept. of Revenue, 741 N.E.2d 816, 818 (Ind. Tax 2001). To prevail, a taxpayer must prove that it meets the requirements of IC 6-2.5-5-27. *See id*. Taxpayer asserts that it meets the statutory requirements of IC 6-2.5-5-27 for entitlement to the Public Transportation exemption. Taxpayer asserts it meets the regulatory requirements of 45 IAC 2.2-5-61(b) to be defined as a Public Transportation company. Taxpayer asserts it operates under 45 IAC 2.2-5-61(b) as a contract carrier.

Having received the evidence presented by Taxpayer and having considered the testimony given at hearing, the Department must apply the elements of the Public Transportation statute and regulation.

The Tax Court has stated that the public transportation exemption provided by IC 6-2.5-5-27 is an all-or-nothing exemption; if a taxpayer acquires tangible personal property for predominate use in providing public transportation for third parties, then it is entitled to the exemption, but if a taxpayer is not predominately engaged in transporting [third-parties or] the property of another, it is not entitled to the exemption. Panhandle, 741 N.E.2d at 819.

Public transportation of others is a serious matter—a high duty of care is imposed. Air travel is highly regulated. The Indiana Supreme Court—as well as courts across the land—have stated that a party cannot have the benefits without the burdens. *See* Cambria Iron Co., v. Union Trust Co., 154 Ind. 291, 301-02; 55 N.E. 745, 749 (1899). Taxpayer is seeking the benefits of the Public Transportation exemption—without assuming the burdens of being a Public Transportation entity. 45 IAC 2.2-5-61(b) states that public transportation carriers are required to operate under an authority—unless specifically exempted.

The aircraft is registered with the FAA to operate under Part 91 and is registered with the State of Indiana. Under the Department's Public Transportation regulation, an entity seeking the Public Transportation exemption is required to demonstrate that it is a public transportation entity by operating under the authority of—in this case—the U.S. Department of Transportation, specifically the FAA. While the regulation also mentions the Aeronautics Commission of Indiana, the agency has been subsumed into the Indiana Department of Transportation. Its primary function is the regulation and administration of airports. The *Indiana Register*, Volume 25, Number 7, April 1, 2002, p. 2206, states that the Aeronautics Commission of Indiana's rules are entirely repealed, transferred, or otherwise voided. The regulation also names the U.S. Civil Aeronautics Board. Taxpayer has not stated it operates as a Public Transportation entity under the authority of the Aeronautics Commissions of Indiana or the U.S. Civil Aeronautics Board. The Department mentions these two agencies so as to address those potential agencies that could possibly be invoked for qualifying for the Public Transportation exemption by operating under their authority. Taxpayer has stated that it operates as a Public Transportation entity only under the authority of the FAA. While Taxpayer is authorized to operate its aircraft—Taxpayer has not registered to operate its aircraft under FAA regulations as a Public Transportation entity. Taxpayer has not sought a Part 135, 121, or 125 registration with the FAA. These are public transportation registrations; they will be discussed further below.

The FAA has issued an Advisory Circular discussing private carriage versus common carriage of persons or property. FAA AC 120-12A (4/24/86). The FAA states that the advisory circular furnishes general guidelines for determining whether transportation operations constitute private or common carriage. *Id*. at 1. Operations that constitute common carriage are required to be conducted under Federal Aviation Regulations (FAR) Parts 121 or 135. Private carriage may be conducted under FAR Parts 125 or 91, Subpart D. Of note, the Department only permits the Public Transportation exemption for those operating under Part 125 if there exists a bona fide third party carriage operation. In Indiana, those operating under Part 125 in private carriage are not entitled to the Public Transportation exemption. An example of a bona fide Public Transportation exemption under Part 125 is where a professional sports team has a contract with an air carrier to transport the team. This is a contract carrier. An aircraft is dedicated to transporting the team; the general public cannot obtain a ticket. But the aircraft is owned and operated by a bona fide third party. The professional sports team has secured exclusive rights to use that aircraft. Lest Taxpayer attempt to argue that it is structured similarly to this, it needs to be noted that these professional sports teams have secured the exclusive right to fly on an airliner aircraft. Airliner aircraft are held to stricter safety and operation standards. An airliner aircraft cannot be operated under Part 91; they must operate under the safety and operation requirements of an airliner; they are held to the requirements of transporting the public. It is this combination of heightened regulatory standards and a bona fide contract to carry a third party that qualifies a taxpayer in Indiana to secure the Public Transportation exemption under Part 125.

Concerning operating as a Public Transportation Company under the authority of the FAA—Taxpayer is registered with the FAA under Part 91 instead of Part 135. The significance of this difference requires an explanation of FAA registration regulations. All aircraft are required to possess an airworthiness certificate—an FAA document which grants authorization to operate an aircraft in flight. There are two different classifications of FAA airworthiness certificates: FAA Form 8100-2, **Standard Airworthiness Certificate**, and FAA Form 8130-7, **Special Airworthiness Certificate**. Title 14 CFR, section 21.175 (FAR Part 21.175) defines the two different classifications of airworthiness certificates. Standard Airworthiness Certificates are airworthiness certificates issued for aircraft types certificated in the normal, utility, acrobatic, commuter, or transport category, and for manned free balloons, and for aircraft designated by the FAA Administrator as special classes of aircraft. Taxpayer's aircraft qualifies under this. Special

Airworthiness Certificates are restricted, limited, and provisional airworthiness certificates, special flight permits, and experimental certificates. A Special Airworthiness Certificate is issued to aircraft not meeting the requirements for a standard airworthiness certificate. This LOF only will address Standard Airworthiness Certificates—because the Special Airworthiness Certificates are beyond the scope of concern for this LOF. An airworthiness certificate is transferred with the aircraft. FAR Part 21.179. Standard airworthiness certificates are effective as long as the aircraft is registered in the United States and the maintenance, preventive maintenance, and alterations are performed in accordance with FAR Part 43 and FAR Part 91. FAR Part 21.181.

Under Standard Airworthiness Certificates, a registered owner or an owner's agent of an aircraft applies for particular operation certificates. These commonly are referred to as (FAR) Part Registrations. There are four Part Registrations:

Part 91—**Private Carriers**
General Operating and Flight Rules
Part 121—**Airline Operators**
Air Carriers and Commercial Operators
Part 125—**Business and Commercial Airlines**
Airplanes having a Seating Capacity of 20 or more passengers or a maximum payload capacity of 6,000 pounds or more
Part 135—**Air Taxi Operators**
Commuter and On-Demand Operations

As can be seen, Parts 121, 125, and 135 are operation certificates for airlines, commercial operators, commuter, and on-demand (charter) services. These are Public Transportation operations—the systematic transportation of others (persons and property). Parts 121, 125, and 135 are classified under Subchapter G of Title 14. Subchapter G is entitled, **Air Carriers and Operators for Compensation or Hire: Certification and Operations**. Those operating under these Parts need to acquire a Part 119 Air Carriers and Commercial Operations Certification. Part 91 is classified under Subchapter F, entitled, **Air Traffic and General Operating Rules**.

The baseline registration is a Part 91 registration. All owners and aircraft are required to adhere to these general operating and flight rules—as well as the basic pilot and maintenance requirements. Specific types of aircraft and business operations are required to obtain more stringent Part Registrations and to operate under more demanding regulations. For example, under a Part 91 registration, any qualified pilot may fly an aircraft—regardless of age. But under a Part 121 registration, a pilot may no longer fly an airline aircraft after age 60—because of safety and operation concerns. There are five pilot certificates (licenses) granted by the FAA:

1. A **student pilot certificate** (license) is designed for the initial training period of flying. The student pilot must have a flight instructor present. He or she can solo after appropriate instructor endorsements.
2. A **recreational pilot certificate** limits the holder to: specific categories and classes of aircraft, the number of passengers which may be carried, the distance that may be flown from the departure point, flight into controlled airports, and other limitations.
3. A **private pilot certificate** lets the pilot carry passengers and provides for limited business use of an airplane.
4. A **commercial pilot certificate** lets the pilot conduct some operations for compensation and hire.
5. An **airline transport pilot certificate** is required to fly as captain by some air transport operations.

The FAA regulations require that a pilot operating under a Part 135 air carrier certificate hold a commercial pilot license—with a minimum of 1200 hours of experience as a pilot-in-command. FAR Part 135.243(c)(2). Some operations are required to have a flight crew of at-least two pilots. FAR Part 135.4. This LOF focuses on the requirements for a Part 135 because Taxpayer owns and operates a Raytheon Beechcraft King Air 350 with the potential to seat from nine to fifteen passengers. Taxpayer has configured its aircraft to accommodate eleven passengers, plus a pilot and co-pilot seat. Such an aircraft best qualifies to operate commercial and public transportation services under a Part 135—instead of a Part 121 or Part 125—since the aircraft is not a commercial airliner. Operations under Part 135 are designed for smaller commercially operated aircraft.

Under a Part 135, those engaged in commuter or air-taxi operations are held to higher safety and operation standards than Part 91. FAR Part 135.141 prescribes the additional aircraft and equipment requirements for operations as an air carrier. Some of the heightened requirements apply only to certain aircraft or passenger numbers, but all demonstrate heightened regulation of those being carried in public transportation.

Taxpayer stated at the protest hearing that Third-party Operations maintains Taxpayer's aircraft according to Part 135 requirements. There is no requirement under Part 91 that the aircraft be maintained and operated according to Part 135 requirements. Taxpayer voluntarily chooses to do so. Taxpayer could choose in the future to maintain the aircraft merely to Part 91 requirements. Certification to operate under Part 135 as an air carrier would ensure that Taxpayer—consistently and without waiver—is mandated to the standards of a Public Transportation entity. With a Part 135 Registration, Taxpayer would be operating under FAA authority as a Public Transportation entity—as required under 45 IAC 2.2-5-61(b). Also note that Taxpayer stated only the aircraft is maintained to Part 135 standards; Taxpayer did not state that the aircraft is operated according to Part 135 requirements. Because Taxpayer has configured the plane to seat eleven passengers, certain heightened safety and operations regulations are triggered under Part 135. There are additional requirements for air carriers when they transport nine or more passengers. Because Taxpayer's aircraft is registered under Part 91, these additional measures are not triggered as mandatory requirements; Taxpayer voluntarily can choose

to adopt and adhere to them, but it is not held to the mandatory requirements by any authority to which it has submitted itself.

Taxpayer seeks the benefits of the Public Transportation exemption without the burdens of public transportation regulations. The Department requires those seeking the Public Transportation exemption to act as a public transportation entity—subject to the stringent regulations of Part 135 (or Part 121, Part 125). Taxpayer operates under Part 91—a less stringent set of regulations. If Taxpayer seeks the Public Transportation exemption—then Taxpayer is required to seek authority to do so and must submit and operate as required by that authority. That means Taxpayer be registered and operate under Part 135, not Part 91.

Taxpayer asserts it purchased the aircraft for the purpose of engaging in Public Transportation. Concerning Taxpayer's assertion that it is a Public Transportation entity, this introduces evidence of Taxpayer's intentions when it registered the aircraft with the State of Indiana. In March 2001, Taxpayer filed a Form 7695, **Application for Aircraft registration or Exemption**. The registration process is similar to the registration of a motor vehicle—legal registration occurs and a concurrent assessment of sales/use tax is made. On the form, Taxpayer in Section D, **Sales/Use Tax Information**, checked the box to claim a tax exemption, choosing **Rental or Lease to others**. A cross check of the merchant number shows a filed Form ST-105, **General Sales Tax Exemption Certificate**, in which Taxpayer has checked off to indicate a **Single Purchase** for the aircraft as a **Sale to Retailer, Wholesaler or Manufacturer for Resale Only**. Taxpayer held out at the time of registration that it was purchasing the aircraft for rental or leasing to others. Taxpayer now seeks the Public Transportation exemption. The Department is confused by Taxpayer's assertion that Taxpayer purchased the aircraft for the purpose of engaging in Public Transportation—since it originally filed an exemption for rental and leasing. Accepting the premise that Taxpayer decided to reclassify the exemption to which it is entitled, if Taxpayer genuinely seeks to hold itself out as a public transportation entity, it would have filed with the Department to amend Form 7695.

Two years later in September 2003, the Department requested that Taxpayer provide documentation to substantiate the Purchase for Resale exemption. The Department asked to be provided flight schedules and logs, the entities leasing the aircraft, and a copy of the rental and lease agreements. Taxpayer indicates that it received the letter in the wrong department and because of this unintentional failure to provide information, the use tax assessment was triggered. The fact exists that Taxpayer now is arguing it is entitled to the Public Transportation exemption—not purchase for resale for rental and leasing—but the registration has not been amended to indicate this intention. Form 7695 requires that a taxpayer seeking the Public Transportation exemption indicate under what FAA Part the taxpayer is operating the aircraft. The taxpayer also is required to submit a copy of the FAA Certificate for Public Transportation. This would be evidence of an authority to be classified and operate as a public transportation entity. The FAA Certificate for Public Transportation is a document issued by the FAA permitting an aircraft to be operated in the public transportation of others. Taxpayer has not submitted a Part 121, Part 125, or Part 135 Certificate for Public Transportation. Common sense indicates that it is a Part 135 Public Transportation Certificate that is due to the Department—given that Taxpayer's aircraft is not a large airliner, but a small aircraft with a maximum passenger capacity of fifteen. Taxpayer may submit an FAA Certificate for Public Transportation under Part 121, Part 125, or Part 135. The Department merely is exercising common sense as to which Part Certificate it likely should expect from Taxpayer.

Taxpayer is entitled to amend Form 7695, **Application for Aircraft Registration or Exemption**. However, the September 2003 letter sent by the Department seeking documentation to substantiate Taxpayer's claim for exemption is the focal point at this time. Evidence was presented at the hearing in an attempt to substantiate an exemption under Public Transportation. But Taxpayer has not submitted any evidence of an attempt to amend Form 7695 to indicate its change in the basis of its exemption status. An attempt to amend Form 7695 would be strong evidence to indicate the intentions of Taxpayer's exempt claim. That and the submission of an Air Carrier Certificate. As it currently stands, Taxpayer is arguing the Public Transportation exemption without having amended Form 7695 and submitting the requisite documentation to accompany the registration. Based on Form 7695, Taxpayer still is seeking a tax exemption for Rental or Lease. Since no evidence has been submitted to substantiate renting or leasing to others, and since Taxpayer did not present this argument at the hearing, the exemption is denied on this basis. Taxpayer has based its tax protest on seeking the Public Transportation exemption. The Department wishes to foreclose Taxpayer from coming back later to try a second time under another exemption provision. The Department will not be caught between conflicting positions. Taxpayer brought forward its protest under Public Transportation—so this is the one to which Taxpayer is held.

Directly addressing the Public Transportation exemption, Taxpayer has not provided the requisite documentation to indicate that it operates as a Public Transportation entity. To have done, so Taxpayer would have needed to have amended Form 7695. Overlooking this—for the sake of discussion—Taxpayer still would need to submit documentation that it is operating as a Public Transportation entity. That requires submitting to the Department a copy of an FAA Certificate for Public Transportation. Taxpayer argues that the statutes and regulations permit it to operate under Part 91. This is unconvincing. As discussed in length and detail above, the FAA has stringent requirements regarding the registration and operation of aircraft for hire. Taxpayer cannot glean the benefits of the Public Transportation tax exemption without also assuming the regulatory burdens of being a Public Transportation entity. Taxpayer is not operating under the authority of the FAA as a Public Transportation entity.

I. Sales/Use Tax—Assessment on Purchase of Aircraft

FINDING

For the reasons named above, Taxpayer's claim for the Public Transportation exemption is denied. Additionally, a future attempt to claim under the Rental and Sales exemption is denied.

II. Sales/Use Tax—Trade in value of an aircraft

DISCUSSION

All tax assessments are presumed to be accurate. The taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b). Taxpayer purchased its aircraft from an Indiana dealer. Every aircraft dealer making a sale of an aircraft required to be licensed in the State of Indiana must complete a Form ST-108AC and must send the original to the Department. Form ST-108AC is a summary of the transaction and requires that a description of the aircraft purchased and any aircraft traded in. Then there is a computation for the amount subject to sales or use tax.

The dealer entered the selling price of the aircraft purchased as $5,138,292.00. Where the trade-in allowance should be entered, the area has been stricken with a stripe of correction fluid. This means that no trade-in allowance has been entered. Taxpayer seeks to be able to subtract $825,000 for the trade-in allowance. IC 6-2.5-1-1 permits a like kind exchange of personal property. However, the persons exchanging the property must own the property prior to the exchange. Implicit in the meaning of the word **exchange** is a contemporaneous transfer to each other. *Webster's Third New International Dictionary* includes in the definition of exchange, "the process of reciprocal transfer of ownership." For a sale to have occurred, a contract must exist. That means that all bargaining has been completed. Because all bargaining has been completed, it is understood that each party understands what has been offered and accepted. For this reason, at the time of the sale, the dealer would have known the agreed trade-in value of the aircraft being exchanged. That agreed price would be listed on Form ST-108AC. The trade-in allowance amount listed is blank, but more importantly—whatever had been placed in the space for the trade-in allowance amount has been stricken with a stripe of correction fluid.

45 IAC 2.2-3-6 states that only the trade-in value of an aircraft for another aircraft may be deducted from the selling price for sales [and use] tax purposes. The Department will grant the trade-in allowance amount listed on the original ST-108AC. That amount is blank. An attempt to amend the trade-in allowance amount after the fact does not comport with the intention of the like kind exchange—which is a contemporaneous transfer. Form 7695, **Application for Aircraft Registration or Exemption**, also has a stripe of correction fluid in Section D where the trade-in allowance is to be placed—which would reduce the amount subject to sales and use tax. Taxpayer's attempt to seek $825,000 as the trade-in allowance is disallowed because the indicia of reliability as to that amount is suspect. Without speculating as to why the amount of the trade-in allowance has been stricken and left blank, the Department looks to the amount listed by the dealer on Form ST-108AC. That amount is blank.

II. Sales/Use Tax—Trade in value of an aircraft

FINDING

The taxpayer is sustained on the amount listed on the ST-108AC and denied the $825,000 trade-in allowance sought.

DEPARTMENT OF STATE REVENUE

0220040295.LOF

LETTER OF FINDINGS: 04-0295
Indiana Corporate Income Tax
For 1999, 2000, and 2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Exclusion of Taxpayer's Telemarketing Subsidiary from Taxpayer's Consolidated Indiana Income Tax Returns.
Authority: IC 6-3-2-2(l), (m); 45 IAC 3.1-1-38; 45 IAC 3.1-1-111.

Taxpayer maintains that the Department of Revenue (Department) erred when it determined that taxpayer's telemarketing subsidiary should have been included in the taxpayer's 1999, 2000, and 2001 consolidated adjusted gross income tax returns.

II. Ten-Percent Negligence Penalty.
Authority: IC 6-8.1-10-2.1; IC 6-8.1-10-2.1(d); 45 IAC 15-11-2(b); 45 IAC 15-11-2(c).

Taxpayer asks that the Department exercise its discretion to abate the ten-percent negligence penalty on the ground that any errors taxpayer made were not attributable to negligence.

STATEMENT OF FACTS

Taxpayer is an affiliated group of companies engaged in the funeral and cemetery business. Taxpayer submitted consolidated Indiana tax returns reporting its state income tax liability for 1999, 2000, and 2001. During an audit review of those returns, it was determined that taxpayer's telemarketing subsidiary should not have been included in the consolidated returns. That determination mirrored a similar decision made at the time taxpayer's 1998 return was reviewed. For each of the returns, the audit concluded that the telemarketing subsidiary did not have an Indiana nexus.

Taxpayer first protested the decision as it related to the 1998 audit. An administrative hearing was held, a Letter of Findings (LOF) was issued, taxpayer – being dissatisfied with that initial decision – asked for a rehearing, the request was granted, and a Supplemental Letter of Findings (SLOF) was issued. In that SLOF, the Department concluded that the telemarketing subsidiary was – by virtue of its part-time employees and a small amount of personal property – doing business within the state. Nevertheless, the

SLOF concluded that the telemarketing subsidiary was correctly excluded from the 1998 consolidated return. The Department found that including the telemarketing subsidiary would have the result of distorting the taxpayer's overall adjusted gross income.

Taxpayer now raises the identical issue in regards to the 1999, 2000, and 2001 returns. Taxpayer protests the audit's decision to exclude the telemarketing subsidiary from these consolidated returns. An administrative hearing was conducted during which taxpayer explained the basis for its protest, and this LOF results.

DISCUSSION

I. Exclusion of Taxpayer's Telemarketing Subsidiary from Taxpayer's Consolidated Indiana Income Tax Returns.

As one part of its funeral and cemetery business, taxpayer owns a telemarketing subsidiary. This telemarketing subsidiary operates in Indiana and in other states. In Indiana, taxpayer hires part-time employees who work out of borrowed office space. The borrowed space is provided by one of the taxpayer's other subsidiaries. The telemarketing subsidiary owns a small amount of personal property, but it does not own its own offices or other real property within the state.

The part-time employees phone Indiana residents soliciting the sale of pre-need funeral insurance policies. If a particular resident expresses interest in a pre-need funeral insurance policy, the telemarketer sends the potential customer an insurance application. The application is for an insurance policy issued by one of taxpayer's other subsidiaries; the telemarketing subsidiary does not sell these policies but cultivates consumer interest in the sale of this form of insurance. If the potential customer fills out an application, is accepted as an insured, and proceeds to make premium payments, the telemarketing subsidiary becomes entitled to a commission on the particular sale.

Therefore, telemarketing subsidiary's business consists of hiring part-time employees who facilitate the sale of insurance policies sold by a related insurance company.

As it was in the original protest, the issue is whether the Department was correct when it decided to exclude the telemarketing subsidiary from the 1999, 2000, and 2001 returns.

The information provided by taxpayer indicates that the telemarketing subsidiary had as many as 17 part-time employees during 1999. During 2000 and 2001, these 17 part-time employees were "merged with employees of Taxpayer." In late 2001, the 17 part-time employees were terminated "as the Taxpayer shifted away from pre-need marketing initiatives."

The Department is prepared to accept taxpayer's contention that the telemarketing subsidiary is "doing business" within Indiana pursuant to 45 IAC 3.1-1-38. On the basis of taxpayer's evidence, the telemarketing subsidiary "operates a business enterprise or activity in [Indiana]." 45 IAC 3.1-1-38. As a consequence of this business enterprise, the telemarketing subsidiary, "has adjusted gross income derived from sources within the state...." 45 IAC 3.1-1-111.

The Department has addressed the identical issue insofar as taxpayer's 1998 consolidated return. In that LOF, the Department found that although the telemarketing subsidiary had established an Indiana nexus during 1998, the telemarketing subsidiary was properly excluded from the 1998 consolidated return. The Department did so because – pursuant to IC 6-3-2-2(l), (m) – including the telemarketing subsidiary in the consolidated return would not result in a "fair, equitable, or realistic representation of taxpayer's adjusted gross income." The Department arrived at this conclusion because including the telemarketing subsidiary in the consolidated return would permit taxpayer to "import" into its overall adjusted gross income calculation an untoward amount of the telemarketing subsidiary's federal losses thereby offsetting the entire amount of taxpayer's Indiana adjusted gross income.

In the absence of any compelling reason to do otherwise, the Department is not prepared to depart from its original conclusion that the telemarketing subsidiary's marginal business presence is sufficient to justify including the telemarketing subsidiary in the 1999, 2000, and 2001 consolidated returns.

FINDING

Taxpayer's protest is respectfully denied.

II. Ten-Percent Negligence Penalty.

Taxpayer asks that the Department abate the ten-percent negligence penalty. Taxpayer does so on the ground that it has demonstrated reasonable cause for the filing positions it has taken.

IC 6-8.1-10-2.1 requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. Departmental regulation 45 IAC 15-11-2(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

IC 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation 45 IAC 15-11-2(c) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed...."

In regards to the 1999, 2000, and 2001 assessments, the Department agrees that taxpayer has demonstrated a reasonable basis for the positions taken.

FINDING

Taxpayer's protest is sustained.

DEPARTMENT OF STATE REVENUE

0120040336P.LOF

LETTER OF FINDINGS NUMBER: 04-0336P
Income Tax
Calendar Year 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration – Penalty
Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2
The taxpayer protests the negligence penalty.
II. Tax Administration - Interest
Authority: IC 6-8.1-10-1
The taxpayer protests the interest assessment.

STATEMENT OF FACTS

The negligence penalty and interest were assessed on the filing of an individual income tax return for the calendar year 2000.
The taxpayer is an individual residing in Indiana.
I. Tax Administration – Penalty

DISCUSSION

The taxpayer requests the penalty be waived as (1) the error was the result of a reasonable assumption by the taxpayer that the State of Indiana would recognize gambling losses since the Federal government recognizes gambling losses, and (2) the error was not the result of willful intent.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer was ignorant of tax regulations. As ignorance is negligence and subject to penalty, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.
I. Tax Administration – Interest
Interest may not be waived according to statute. IC 6-8.1-10-1.

DEPARTMENT OF STATE REVENUE

0120040363P.LOF

LETTER OF FINDINGS NUMBER: 04-0363P
Income Tax
For the Calendar Years 2000 & 2002

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration – Penalty
Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;
The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late payment and filing of amended income tax returns for the calendar years 2000 and 2002.
The taxpayer is an individual residing in Indiana.
I. Tax Administration – Penalty

DISCUSSION

The taxpayer requests the late penalty be waived as the filing of the amended returns was late due to the lateness of the amended K-1s which were received from a Sub-S corporation the taxpayer has an interest in.

The Department points out that the corporation from which the K-1s came is owned by the taxpayer. Thus, the taxpayer is responsible for the late K-1s and fails to establish reasonable cause.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer was inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.

DEPARTMENT OF STATE REVENUE

0420040365P.LOF

LETTER OF FINDINGS NUMBER: 04-0365P
Sales Tax
For the months of November 2003, December 2003, January 2004, and February 2004

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration – Penalty
Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late payment of monthly sales tax returns for the months of November 2003, December 2003, January 2004, and February 2004.

The taxpayer is a company residing in Indiana.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer requests the penalty be waived as the taxpayer relied on advise from the Department, and, the taxpayer has a good compliance record.

The taxpayer states the taxpayer was filing under an incorrect number throughout 2003. When the taxpayer realized the taxpayer was filing under an incorrect number, the taxpayer applied for a new sales tax ID number. The taxpayer states the Department told the taxpayer to not send in any more payments under the incorrect number and to wait for the new number.

The Department points out the conversation with the Department employee happened three months after the liabilities in question were paid. Thus the conversation with the Department employee is not a factor in the waiver of penalty.

With regard to the compliance record, the Department points out the taxpayer has had numerous errors. The Department feels the taxpayer has a poor compliance record, and therefore, the compliance record is not a factor in the waiver of penalty.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.

DEPARTMENT OF STATE REVENUE

0120040412P.LOF

LETTER OF FINDINGS NUMBER: 04-0412P
Income Tax
For the Calendar Year 2003

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration – Penalty
Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the underpayment penalty for estimated tax.

STATEMENT OF FACTS

The underpayment penalty for estimated tax was assessed for the calendar year 2003.

The taxpayer is an individual residing in Indiana.

I. Tax Administration – Penalty

DISCUSSION

The taxpayer requests the underpayment penalty be waived as the error was the result of the taxpayer being unaware of tax regulations. Also, the taxpayer cites a good compliance record as a factor in waiving the penalty.

With regard to the compliance record, the Department notes the taxpayer had a prior error in 1999. The Department does not consider the taxpayer's compliance record to be a factor in the waiver of the penalty.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer was ignorant of the tax duties. Ignorance is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.

DEPARTMENT OF STATE REVENUE

0220020501.SLOF

SUPPLEMENTAL LETTER OF FINDINGS: 02-0501
Indiana Corporate Income Tax
For 1998

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Exclusion of Taxpayer's Telemarketing Subsidiary from Taxpayer's Consolidated Indiana Income Tax Return.
Authority: IC 6-3-2-2(a); IC 6-3-2-2(l); IC 6-3-2-2(m); IC 6-3-4-14(a); IC 6-3-4-14(b); 45 IAC 3.1-1-38; 45 IAC 3.1-1-110; 45 IAC 3.1-1-111.

Taxpayer argues that the Department of Revenue (Department) erred when it excluded taxpayer's telemarketing subsidiary from taxpayer's consolidated adjusted gross income tax return. Taxpayer maintains that, by virtue of the telemarketing subsidiary's activities within the state, the telemarketing subsidiary has established an Indiana nexus and that the telemarketing subsidiary should have been included in the calculation of its Indiana adjusted gross income.

II. Negligence Penalty.
Authority: IC 6-8.1-10-2.1; IC 6-8.1-10-2.1(d); 45 IAC 15-11-2(b); 45 IAC 15-11-2(c).

Taxpayer asks that the Department exercise its discretion to abate the ten-percent negligence penalty. Taxpayer maintains that any errors it made were not due to negligence and that it is entitled to an abatement of the penalty.

STATEMENT OF FACTS

Taxpayer is an affiliated group of companies engaged in the funeral and cemetery business. Taxpayer submitted a consolidated

Indiana tax return reporting its state income tax liability for 1998. During an audit review of taxpayer's business records and tax returns, the Department decided that a number of adjustments were warranted. Included among those adjustments was a determination that taxpayer's telemarketing subsidiary should not have been included in the 1998 consolidated return. The decision to eliminate the telemarketing subsidiary had the result of increasing taxpayer's state income tax liability. Taxpayer challenged the decision resulting in various communications between the Department; the net result of those initial communications was that the Department declined to reverse its original decision excluding the telemarketing subsidiary. Taxpayer submitted a protest, and an administrative hearing was conducted. Subsequently, a Letter of Findings (LOF) was issued in which the Department found that the telemarketing subsidiary's activities were insufficient to establish an Indiana nexus and that – even if taxpayer were to establish an Indiana nexus for the telemarketing subsidiary – including the telemarketing subsidiary within the consolidated return would not fairly reflect taxpayer's overall adjusted gross income for 1998. Taxpayer disagreed with the LOF and requested a rehearing on the matter. The Department decided that it would be appropriate to grant the rehearing, a second administrative hearing was conducted, and this Supplemental Letter of Findings (SLOF) results.

DISCUSSION

I. Exclusion of Taxpayer's Telemarketing Subsidiary from Taxpayer's Consolidated Indiana Income Tax Return.

Taxpayer is a multi-state company which supplies consumers with funeral and cemetery services. As part of that business, taxpayer owns a telemarketing subsidiary which promotes the sale of pre-need insurance policies. The telemarketing subsidiary conducted similar sales activities in 30 to 40 other states. In its August 5, 2002, letter to the Department, taxpayer maintained that it "had one part-time employee working in the [Indiana] office...." In its July 23, 2003, letter to the Department, taxpayer claimed that it "had as many as seven employees working in Indiana." At the original administrative hearing, taxpayer asserted that the telemarketing subsidiary had between one and seven employees working in Indiana during 1998. Taxpayer now indicates that it had seven part-time employees during 1998 and that it paid the seven employees approximately $26,000 in wages during 1998.

The telemarketing subsidiary conducts its Indiana business operation from a location (or locations) owned by taxpayer's other Indiana subsidiaries. The telemarketing company does not own any real property in Indiana. Taxpayer has indicated that telemarketing subsidiary owns approximately $1,000 worth of office furniture. Taxpayer has submitted information indicating that the Indiana telemarketing subsidiary was "charged" with the purchase of computer software containing residential telephone listings. This computer software costs approximately $2,700. The office furniture and software represent the telemarketing subsidiary's personal property located within Indiana.

Taxpayer's telemarketing business works like this:

1. Telemarketing subsidiary hires part-time employees who work out of office space provided by another of taxpayer's subsidiaries.
2. Telemarketing subsidiary's part-time employees call Indiana residents soliciting the sale of pre-need funeral insurance policies.
3. If the recipient of the phone call expresses interest, the telemarketer will send the prospective customer an insurance policy application form. The telemarketer does not sell the insurance policy; the telemarketer opens up the possibility that the prospective customer will complete the application and buy insurance from the related insurance company.
4. Prospective customer sends a completed application form to related insurance company. Related insurance company then decides whether to accept the application. If it does, the transaction is completed, one of taxpayer's local funeral homes is designated the beneficiary, and customer sends premium payments to related insurer.
5. Once related insurer begins to receive the insured's payments, the related insurance company owes taxpayer a commission by virtue of the fact that telemarketing subsidiary solicited the sale of the underlying insurance policy.
6. Yet another of taxpayer's subsidiaries – acting as common paymaster – receives and then forwards the commissions to the individual telemarketer who originally invited the sale.

Therefore, telemarketing subsidiary's Indiana business consists of hiring part-time employees who facilitate the sale of insurance policies sold by a related insurance company. In consideration of a completed sale, the insurance company pays commissions to taxpayer's common paymaster subsidiary, which then forwards those commissions to the originating part-time employee. Telemarketer owns personal property in Indiana consisting of office furniture and a computerized phone list.

The issue is whether taxpayer was correct when it originally decided to include the telemarketing subsidiary in its consolidated state income tax return.

IC 6-3-4-14(a) provides that, "An affiliated group of corporations shall have the privilege of filing a consolidated return with respect to the taxes imposed by IC 6-3."

The Department's regulation states that, "An affiliated group as defined in IC 6-3-4-14(b) may file consolidated returns for Adjusted Gross Income Tax and Supplemental Net Income Tax...." 45 IAC 3.1-1-110. The term "affiliated group," is defined at 45 IAC 3.1-1-111 which provides that, "The Adjusted Gross Income Tax Act adopts the definition of 'affiliated group' contained in Internal Revenue Code Section 1504, except that no member of the affiliated group may be included in the Indiana return unless it has adjusted gross income derived from sources within the state, as that phrase is defined in IC 6-3-2-2."

I.R.C. § 1504 defines, among other things, the degree of ownership which must exist before related businesses can be considered to be members of a federal "affiliated group." For purposes of this SLOF, it will be assumed that taxpayer owns the

telemarketing subsidiary and that there are no I.R.C. "ownership" questions which otherwise affect the parties' qualifications to be included as members of a federal "affiliated group."

However, meeting the I.R.C. § 1504 ownership criteria – standing alone – is insufficient to qualify the related businesses to file an Indiana consolidated tax return. In this situation, the telemarketing subsidiary must have received "adjusted gross income derived from sources within the state, as that phrase is defined in IC 6-3-2-2." 45 IAC 3.1-1-111.

IC 6-3-2-2(a) provides as follows:

With regards to corporations and non resident persons "adjusted gross income derived from sources within Indiana," for purposes of this article shall mean and include:

(1) income from real or tangible personal property located in this state;
(2) income from doing business in this state;
(3) income from a trade or profession conducted in this state;
(4) compensation from a trade or profession conducted in this state; and
(5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, trademarks, trade brands, franchises, and other intangible personal property if the receipt from the intangible is attributable to Indiana under section 2.2 of this chapter.

The Department's regulation sets out a definition for "doing business" within the state. The regulation states:

For apportionment purposes, a taxpayer is "doing business" within the state if it operates a business enterprise or activity in such a state including, but not limited to:

(1) Maintenance of an office or other place of business in the state
(2) Maintenance of an inventory of merchandise or material for sale, distribution, or manufacture, or consigned goods
(3) Sale or distribution of merchandise to customers in the state directly from company-owned or operated vehicles where title to the goods passes at the time of sale or distribution
(4) Rendering services to customers in the state
(5) Ownership, rental or operation of a business or of property (real or personal) in the state
(6) Acceptance of orders in the state
(7) Any other act in such state which exceeds the mere solicitation of orders so as to give the state nexus under P.L. 86-272 to tax its net income. 45 IAC 3.1-1-38.

The Department agrees with taxpayer's contention that the telemarketing subsidiary is "doing business" within Indiana pursuant to 45 IAC 3.1-1-38. By virtue of the part-time employees, the borrowed sales offices, and the telemarketing subsidiary's ownership of personal property in this state, the telemarketing subsidiary "operates a business enterprise or activity in [Indiana]." 45 IAC 3.1-1-38. Moreover, the telemarketing subsidiary, "has adjusted gross income derived from sources within the state...." 45 IAC 3.1-1-111.

Nonetheless, the Department remains disinclined to overrule the audit's determination that the telemarketing subsidiary should not have been included in the taxpayer's 1998 consolidated Indiana tax return. The Department is not convinced that the result would fairly or accurately reflect the taxpayer's 1998 Indiana income. IC 6-3-2-2(l) provides as follows:

If the allocation and apportionment provisions of this article do not fairly represent the taxpayer's income derived from sources within the state of Indiana, the taxpayer may petition for *or the department may require*, in respect to all or any part of the taxpayer's business activity, if reasonable;

(1) separate accounting;
(2) the exclusion of any one (1) or more of the factors;
(3) the inclusion of one (1) or more additional factors which will fairly represent the taxpayer's income derived from sources within the state of Indiana; or
(4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income. (*Emphasis added*).

In addition, IC 6-3-2-2(m) provides:

In the case of two (2) or more organizations, trades or businesses owned or controlled directly or indirectly by the same interests, the department shall distribute, apportion, or allocate the income derived from sources within the state of Indiana between and among those organizations, trades, or businesses in order to fairly reflect and report the income derived from sources within the state of Indiana by various taxpayers.

IC 6-3-2-2(l), (m) provides the Department discretionary authority to adjust the allocation and apportionment provisions of the adjusted gross income tax in order to arrive at an equitable and accurate allocation of the taxpayer's Indiana income. The goal is to "fairly reflect... the income derived from sources with the state...." IC 6-3-2-2(m).

During 1998, the telemarketing subsidiary employed approximately seven part-time employees. The telemarketing subsidiary paid those seven part-time employees approximately $26,000 in wages during 1998. The $26,000 in Indiana wages represents about one-tenth of one percent of the taxpayer's payroll "everywhere." During that same year, the telemarketing subsidiary sustained – in its 30 to 40-state telemarketing business –approximately $8,000,000 in losses. Those losses were sustained because the telemarketing subsidiary's nationwide operation earned approximately $20,000,000 during 1998 but spent almost $28,000,000. Some of those expenditures were explained as the cost of salaries, advertising, and interest; eighteen percent of the expenditures –

approximately $5,000,000 – is classified by the taxpayer as "other." If the taxpayer were permitted to include the telemarketing subsidiary in its 1998 Indiana consolidated return, taxpayer would be entitled to "import" 57 percent of the $8,000,000 nationwide loss into the Indiana adjusted gross income computation and then employ that amount to entirely offset the income earned by all of taxpayer's Indiana business operations. If the telemarketing subsidiary was included in the taxpayer's consolidated return, the overall apportionment would increase by approximately 1.5%. That comparatively minor increase in the apportionment calculation would result in a 120% *decrease* in taxpayer's adjusted gross income. Instead of reporting $3,800,000 in adjusted gross income, taxpayer would instead report a "loss" of $630,000. The Department does not quarrel with taxpayer's arithmetic, but it continues to maintain that the proposed reporting methodology does not accurately or fairly reflect taxpayer's business activity or Indiana income.

Based upon the telemarketing subsidiary's marginal Indiana business presence, taxpayer seeks to import into the Indiana adjusted gross income calculation a disproportionate amount the telemarketing subsidiary's federal losses and to entirely offset the income it earned in this state. The Department is unable to agree that the result would be a fair, equitable, or a realistic representation of taxpayer's Indiana adjusted gross income.

FINDING

Taxpayer's protest is respectfully denied.

II. Negligence Penalty.

Taxpayer asks that the ten-percent negligence penalty be abated on the ground that the positions on its original return were correct and that the, "Taxpayer has adequately demonstrated reasonable cause for the positions taken in its 1998 tax return."

IC 6-8.1-10-2.1 requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. Departmental regulation 45 IAC 15-11-2(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

IC 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation 45 IAC 15-11-2(c) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed...."

The Department is unable to agree that taxpayer exercised "reasonable care" sufficient to justify abating the ten-percent negligence penalty. During the extended period of time during these issues have remained unresolved, the taxpayer has provided inconsistent, contradictory, and incomplete information related to its business operations. To cite two examples, taxpayer provided conflicting information regarding the number of part-time employees working for the telemarketing subsidiary and – when asked to supply documentation establishing the telemarketing subsidiary's 1998 employment roster – supplied W2 forms from 1999 for employees working for an entirely different company.

Although taxpayer has raised legitimate questions concerning its 1998 Indiana corporate income tax returns, the Department is unwilling to conclude that taxpayer exercised the "reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." 45 IAC 15-11-2(b).

FINDING

Taxpayer's protest is denied.

DEPARTMENT OF STATE REVENUE

0220030248.LOF

SUPPLEMENTAL LETTER OF FINDINGS: 03-0248
Indiana Corporate Income Tax
For the Tax Years 1997 to 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Money Received in an Agency Capacity – Gross Income Tax.

Authority: IC 6-2.1-2-2(a)(1); IC 6-2.1-2-2(a)(2); 45 IAC 1.1-1-2; 45 IAC 1.1-6-10; Criterion Catalyst, Co. v. Dept. of State Revenue, No. 49T10-9612-TA-00180 (Ind. Tax Ct., Feb. 2, 1999); Ind. Tax Ct. R. 17.

Taxpayer – on behalf of taxpayer operating company – argues that it is not subject to Indiana gross income tax on money it received while purportedly acting in an agency capacity. According to taxpayer, by rendering an unfavorable opinion in the original Letter of Findings, the Department simply compounded that original, erroneous determination.

STATEMENT OF FACTS

Taxpayer is an out-of-state company which filed consolidated Indiana tax returns. One particular return included an operating

company which was in the business of running an Indiana riverboat casino. The operating company is hereinafter referred to as "taxpayer operating company." Taxpayer operating company did not own the casino; it managed the day-to-day operations of the Indiana casino on behalf of the casino owner.

The Department of Revenue (Department) conducted an audit review of taxpayer's business records and tax returns. The Department concluded that taxpayer operating company had received money from the casino owner which was subject to gross income tax. Taxpayer disagreed with this conclusion arguing that the money was received from the casino owner while taxpayer operating company was acting in an agency capacity. According to taxpayer operating company, it was not subject to gross income tax on these amounts because it received the money while acting as an agent and because taxpayer operating company was simply being reimbursed – on a dollar-for-dollar basis – for the money it had paid to the casino's employees.

Taxpayer (on behalf of itself and taxpayer operating company) submitted a protest challenging the audit's determination that the money was subject to Indiana gross income tax. An administrative hearing was conducted during which taxpayer explained the basis for its protest. A Letter of Findings (LOF) was issued in response to the protest with the Department concluding that taxpayer operating company was not acting as an agent and that the money was indeed subject to gross income tax. Taxpayer was not satisfied with the conclusions arrived at or the explanation provided in the LOF. Taxpayer requested a rehearing asking that the Department revisit the agency issue. The request for rehearing was granted and, based upon taxpayer's written presentation, this Supplemental Letter of Findings (SLOF) results.

DISCUSSION

I. Money Received in an Agency Capacity – Gross Income Tax.

Casino owner and taxpayer operating company entered into a "Project Development and Management Agreement" (Agreement) whereby taxpayer operating company arranged for the construction of the casino and agreed to subsequently provide for the day-to-day operation of the casino once construction was completed. Taxpayer operating company assisted in obtaining the casino license, but casino owner was the entity which actually held the casino's license.

Under the terms of the parties' Agreement, taxpayer operating company had the responsibility to recruit and train the casino staff members, create and implement a casino marketing program, obtain the casino license on behalf of the owner, acquire the necessary start-up supplies and equipment, and develop start-up and operating budgets.

Under the terms of the Agreement, the casino owner designated taxpayer operating company as the casino owner's "exclusive agent, to supervise, manage, direct and operate the [casino] during the Terms of this Agreement." Taxpayer operating company was granted "all the prerogatives normally accorded to management in the ordinary course of commerce, including... the collection of receivables, the incurring of trade debts, the approval and payment of checks, the advance of credit and the negotiating and signing of operational leases and contracts." In addition, the Agreement stipulated that "Unless this Agreement expressly provides for an item or service to be at [taxpayer operating company's] own expense, all costs and expenses incurred by [taxpayer holding company]... in the performance of [taxpayer operating company's] obligations under this Agreement shall be for and on behalf of [casino owner]." The Agreement specifically provides that, "All debts and liabilities incurred to third parties by [taxpayer operating company] on behalf of either the [casino] Owner or the Project are and shall remain the sole obligation of [casino] Owner."

In terms of the people who worked at the casino, taxpayer operating company was granted "sole authority to hire, promote, discharge, and supervise all personnel." With the exception of the casino manager, department managers, credit manager, and chief financial officer, all the casino employees were designated as employees of the casino owner. All of the costs related to the casino owner's employees were designated as an "Operating Expense of the Project and reimbursed to [taxpayer operating company] on a current basis."

After the Agreement was signed, casino owner began to pay taxpayer operating company money in the form of "management fees" in addition to money which taxpayer operating company characterized as reimbursement for expenses representing the payments advanced by taxpayer operating company to the casino owner's employees. Taxpayer operating company correctly included the "management fees" in the gross income tax base as originally filed. However, what still remains at issue is the amount of money which taxpayer operating company received from casino owner which was used to pay the casino employees. Taxpayer operating company contends that this money is not subject to gross income tax because it was received while it was acting in an agency capacity. According to taxpayer operating company, "it was under the control of the [casino owner]," it did not "have any right, title or interest in the money or property received from the transaction," but that the money "passed through to third parties." In sum, taxpayer operating company "was merely the agent through which the funds passed to the third parties."

Indiana imposes a gross income tax upon the entire gross receipts of a taxpayer who is a resident or domiciliary of Indiana. IC 6-2.1-2-2(a)(1). For the taxpayer who is not a resident or domiciliary of Indiana, the tax is imposed on the gross receipts which are derived from business activities conducted within the state. IC 6-2.1-2-2(a)(2). However, 45 IAC 1.1-6-10 exempts that portion of a taxpayer's income which the taxpayer receives when acting in an agency capacity. 45 IAC 1.1-1-2 defines an "agent" as follows:

(a) "Agent" means a person or entity authorized by another to transact business on its behalf.

(b) A taxpayer will qualify as an agent if it meets both of the following requirements:

(1) The taxpayer must be under the control of another. An agency relationship is not established unless the taxpayer is under the control of another in transacting business on its behalf. The relationship must be intended by both parties and may be established by contract or implied from the conduct of the parties. The representation of one (1) party that it is the agent of another party without the manifestation of consent and control by the alleged principal is insufficient to

establish an agency relationship.

(2) The taxpayer must not have any right, title, or interest in the money or property received from the transaction. The income must pass through, actually or substantively, to the principal or a third party, with the taxpayer being merely a conduit through which the funds pass between a third party and the principal.

The original LOF found that, "[N]either the parties' Agreement nor the parties' business practices indicate that taxpayer operating company was acting as a 'true agent' sufficient to warrant finding that the income was not subject to Indiana's gross income tax." The LOF did so finding that the casino owner did not exercise the degree of authority over taxpayer operating company characteristic of an agent/principal business relationship but that taxpayer operating company retained total operational control over the means and the manner in which the casino was operated. In addition, the LOF concluded that the taxpayer operating company failed to establish that it was merely acting as a conduit for the money which was eventually paid to the employees. Instead, the LOF found that taxpayer operating company had a direct, beneficial interest in the money it received from the casino owner.

In its request for rehearing, taxpayer maintained that the Department ignored the findings of the Indiana Tax Court in Criterion Catalyst, Co. v. Dept. of State Revenue, No. 49T10-9612-TA-00180 (Ind. Tax Ct., Feb. 2, 1999). In reviewing taxpayer's argument, the Department will set aside questions regarding the appropriateness of citing to an unpublished decision. *See* Ind. Tax Ct. R. 17 ("Unless specifically designated 'For Publication,' such written memorandum decisions shall not be published and shall not be regarded as precedent nor cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case."). In the Criterion Catalyst case, Criterion was the sole general partner of a limited partnership. Under the terms of the parties' partnership agreement, the workers at the limited partnership's plant were designated as employees of Criterion. Criterion paid the employees' salaries. However, the limited partnership reimbursed Criterion for the amount of money paid to the employees. The Department assessed Criterion gross income tax on this amount of money. The Tax Court held that Criterion was acting as the general agent for the limited partnership, that the employees worked for the limited partnership, and that the reimbursements were intended to restore Criterion to the same position it held before it advanced the wages.

The Tax Court found that the reimbursement payments made to Criterion were not subject to gross income tax because the payments merely restored Criterion to the same position it occupied before it paid the employees. In addition, the court found that "no direct benefit inure[d] to Criterion Catalyst as a result of the labor of the [employees]." The court concluded that "Criterion Catalyst, as [limited partner's] agent is merely making payments to third parties for which Criterion is reimbursed."

Taxpayer operating company argues that it occupies the same position as that of Criterion and that it is being reimbursed on a dollar-for-dollar basis for the money it pays to the casino employees. The Department does not quarrel with taxpayer operating company's arithmetic but is unable to agree that taxpayer operating company has the same agency status as that occupied by Criterion. Criterion was acting as a disinterested intermediary between the limited partner's employees and the employees. Criterion had no direct interest in what the limited partner's employees were doing because Criterion did not benefit in the work performed by the limited partner's employees. In contrast, taxpayer operating company has a direct and immediate interest in the work performed by the casino employees who – for all intents and purposes – work for and are responsible to taxpayer operating company. Taxpayer operating company is in the business of running a riverboat casino. It was responsible for the design, construction, staffing, and start-up of the casino. After the initial start-up, taxpayer operating company retained complete responsibility for all aspects of the casino's day-to-day operation. Taxpayer operating company was granted the "the absolute discretion and authority to determine operating policies and procedures, standards of operation, credit polices, complimentary policies, win payment arrangements, standards of service and maintenance, food and beverage quality and service, pricing, and other standards affecting the [casino], or the operation thereof, to implement all such polices and procedures, and to perform any act on behalf of [casino owner] which [taxpayer operating company] deems necessary or desirable for the operation and maintenance of the [casino]...."

Taxpayer operating company casts itself in the role of a simple paymaster handing out monthly paychecks to employees who work for someone else. Taxpayer operating company oversimplifies its business interests beyond recognition. Under the terms of the casino operating Agreement, the casino owners may have been designated as employees of the casino owner. However the employees did not work for the casino owner; they worked for taxpayer operating company. Taxpayer operating company's business fortunes rose and fell with the interest of the casino and the employees who worked for that casino. Taxpayer operating company had an unconditional and immediate beneficial interest in the operation of this riverboat casino.

To characterize taxpayer operating company as a bemused and disinterested bystander is to ignore the authority that taxpayer operating company exercised over the casino and its employees and to ignore the interest that it had in the success or failure of the casino for which it was totally responsible.

FINDING

Taxpayer's protest is respectfully denied.

DEPARTMENT OF STATE REVENUE
Revenue Ruling #2004-04 ST
December 30, 2004

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Sales and Use Tax—Medical Devices

Authority: IC 6-2.5-5-18(a); IC 6-2.5-1-25; 45 IAC 2.2-5-28(h); IC 6-2.5-8-8.

STATEMENT OF FACTS

The taxpayer manufactures and sells a proprietary dental product for treating dental malocclusion—the misalignment of teeth. Aligners cover a patient's teeth and are commonly are worn as a pair, over the upper and lower teeth. They are removed for meals, brushing, or flossing. Each aligner is worn for approximately two weeks, then is discarded; the patient then uses the next aligner in the progressive set. The taxpayer seeks a ruling as to whether the aligners are exempt from sales and use tax under IC 6-2.5-5-18(a).

DISCUSSION

IC 6-2.5-5-18(a), **Medical equipment, supplies, and devices**, states:

(a) Sales of durable medical equipment, prosthetic devices, artificial limbs, orthopedic devices, dental prosthetic devices, eyeglasses, contact lenses, and other medical supplies and devices are exempt from the state gross retail tax, if the sales are prescribed by a person licensed to issue the prescription.

IC 6-2.5-1-25 defines **prosthetic device** to mean: a replacement, corrective, or supportive device, including repair and replacement parts for the device, worn on or in the body to:

(1) artificially replace a missing part of the body;

(2) prevent or correct physical deformity or malfunction; or

(3) support a weak or deformed part of the body.

The face of IC 6-2.5-5-18(a) refers specifically to dental prosthetics. The application of the definition of **prosthetic** in IC 6-2.5-1-25(2) encompasses the aligners; they correct misaligned teeth. 45 IAC 2.2-5-28(h) further supports the exemption—stating that **medical devices** are those items, the use of which is directly required to correct injury to, or the malfunction of the purchaser's body.

In addition, the aligners are transferred to the patient and consumed directly by the patient—which is necessary for exemption from sales and use tax. It should be noted, however, when applicable—the seller is required to receive a proper Indiana exemption certificate from the purchaser, as required under IC 6-2.5-8-8.

RULING

The Department rules that the sale of the propriety dental aligners is exempt from sales and use tax.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection

Indiana Department of State Revenue

DEPARTMENT OF STATE REVENUE

Revenue Ruling #2005-01 IT

January 27, 2005

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Corporate Adjusted Gross Income Tax—Domestic International Sales Corporation

Authority: IRC § 991; IRC § 992; § IRC 993; IC 6-3-1.3.5(b); IC 6-3-2-1(b).

The shareholders of the taxpayer request the Department to rule on the application of taxes administered under IC 6-3 concerning the treatment of a Domestic International Sales Corporation (DISC).

STATEMENT OF FACTS

The taxpayer is a corporation. The shareholders are contemplating the formation of a DISC, as defined in IRC § 992. The DISC will have an Indiana domicile and will receive qualified export receipts, as defined in IRC § 993, from affiliates of the corporation.

Under IRC § 991, the DISC will not be subject to federal income tax.

DISCUSSION

IRC § 991 states that a DISC is not subject to income taxes. A **Domestic International Sales Corporation** is defined in IRC § 992(a)(1) as:

For purposes of this title, the term "DISC" means, with respect to any taxable year, a corporation which is incorporated under the laws of any State and satisfies the following conditions for the taxable year:

(A) 95 percent or more of the gross receipts (as defined in section 993(f)) of such corporation consist of qualified export receipts (as defined in section 993 (a)),

(B) the adjusted basis of the qualified export assets (as defined in section 993(b)) of the corporation at the close of the taxable year equals or exceeds 95 percent of the sum of the adjusted basis of all assets of the corporation at the close of the taxable year,

(C) such corporation does not have more than one class of stock and the par or stated value of its outstanding stock is at least $2,500 on each day of the taxable year,

(D) the corporation has made an election pursuant to subsection (b) to be treated as a DISC and such election is in effect for the taxable year, and

(E) such corporation is not a member of any controlled group of which a FSC is a member.

IC 6-3-1.3.5(b) defines **adjusted gross income** for corporations. The calculation of adjusted gross income is tied to the federal Internal Revenue code—subject to modifications imposed by Indiana's tax code. None of those modifications encompass DISCs. IC 6-3-2-1(b) states the tax rate to be imposed on a corporation's adjusted gross income derived from sources within Indiana. Because IRC § 991 does not impose income tax on a DISC and because Indiana does not impose a modification on DISC adjusted gross income, the corporate taxpayer is not subject to Indiana adjusted gross income tax.

RULING

The Department rules that to the extent that the DISC is not subject to federal income taxes under IRC § 991, the DISC also would not be subject to Indiana adjusted gross income tax pursuant to IC 6-3-1-3.5 and IC 6-3-2-1.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection

Indiana Department of State Revenue

DEPARTMENT OF STATE REVENUE
Revenue Ruling #2005-01 ST
February 10, 2005

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Sales and Use Tax- Exemptions for Lease and Rental of Forklift Equipment

Authority: IC 6-2.5-2-1, IC 6-2.5-4-10, IC 6-2.5-5-3 (b), IC 6-2.5-8-8, 45 IAC 2.2-5-8 (c), 45 IAC 2.2-8-12, 45 IAC 2.2-8-12 (d).

The taxpayer requests the department to rule on whether or not it should collect and remit sales tax on leases and rentals of forklift equipment when their customers state that they are entitled to manufacturing, processing or fabrication exemptions.

STATEMENT OF FACTS

The taxpayer has recently acquired leases and rentals of forklift equipment. They are currently collecting and remitting sales tax on the leases and rentals. Some of their customers state that they are exempt from Indiana sales tax due to manufacturing, processing or fabrication.

DISCUSSION

Indiana imposes a sales tax on the transfer of tangible personal property in a retail transaction. IC 6-2.5-2-1. The rental or leasing of tangible personal property constitutes a retail transaction subject to the Indiana sales tax. IC 6-2.5-4-10. The transfer of tangible personal property pursuant to a conditional sales agreement is also a taxable retail transaction.

Indiana provides an exemption from the sales tax for property purchased "for direct use in the direct production, manufacture,

fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property." IC 6-2.5-5-3 (b). To be considered exempt, the item leased must have an immediate effect on the property being manufactured. "Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces tangible personal property."

Exemption is not provided for pre-production or post-production activities. Exemption is only provided for activities during the production process, "an integrated series of operations which places tangible personal property in a form, composition, or character different from that in which it was acquired." 45 IAC 2.2-5-8 (k). Pre-production activities are any activities performed prior to the beginning of the integrated production process. Post-production activities take place after the end of the integrated production process.

Warehouse activities are not part of the production process. Therefore, equipment and materials used in warehouse activities do not qualify for exemption.

Indiana provides for exemption certificates from sales tax at IC 6-2.5-8-8 in pertinent part as follows:

(a) A person, authorized under subsection (b), who makes a purchase in a transaction which is exempt from the state gross retail and use taxes, may issue an exemption certificate to the seller instead of paying the tax. The person shall issue the certificate on forms and in the manner prescribed by the department. A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase.

(b) The following are the only persons authorized to issue exemption certificates:

(1) retail merchants, wholesalers, and manufacturers, who are registered with the department under this chapter;

(2) organizations which are exempt from the state gross retail tax under IC 6-2.5-5-21, IC 6-2.5-5-25, or IC 6-2.5-5-26 and which are registered with the department under this chapter; and...

45 IAC 2.2-8-12 clarifies the law concerning exemption certificates in pertinent part as follows:

(a) Exemption certificates may be issed [sic.]only by purchasers authorized to issue such certificates by the Department of Revenue. Retail merchants, manufacturers, wholesalers and others who must register with the Department of Revenue and who qualify to purchase exempt from tax under this Act [IC 6-2.5] may issue exemption certificates with respect to exempt transactions. All persons or entities not required to register with the Department as retail merchants, manufacturers, or wholesalers, and who are exempt under this Act [IC 6-2.5] with respect to all or a portion of their purchases are authorized to issue exemption certificates with respect to exempt transaction provided an exemption number has been assigned by the Department of Revenue, or provided that the Department of Revenue has specifically provided a form and manner for issuing exemption certificates without the need for assigning an exemption number...

Pursuant to the statute and explanatory regulation, the production of a valid exemption certificate exempts the merchant from the duty of collecting and remitting sales tax. Without a valid exemption certificate, the burden shifts back to the merchant to prove that the sales were not actually subject to sales tax as provided in 45 IAC 2.2-8-12 (d) as follows:

Unless the seller receives a properly completed exemption certificate the merchant must prove that sales tax was collected and remitted to the state or that the purchaser actually used the item for an exempt purpose. It is, therefore, very important to the seller to obtain an exemption certificate in order to avoid the necessity for such proof...

The taxpayer should collect and remit sales tax unless the customer provides a valid exemption certificate. With a valid exemption certificate, the taxpayer need not concern himself its customers' records and supporting documentation on the exempt status of the leased equipment.

RULING

The Department rules that the taxpayer's proposed method of operations does not comply with the Indiana law.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

Indiana Department of State Revenue

DEPARTMENT OF STATE REVENUE
Revenue Ruling #2005-02 ST
January 19, 2005

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Sales and Use Tax—Processing/Fabricating Charges on Structural Steel

Authority: Sales Tax Information Bulletin #60 (April 2004); 45 IAC 2.2-3-9(e); IC 6-2.5-4-9; IC 6-2.5-2-1; IC 6-2.5-4-1.

STATEMENT OF FACTS

The taxpayer bids on subcontracts to provide, install, and erect structural steel for buildings under construction in Indiana. If the taxpayer is the successful bidder, it then will enter into a lump-sum contract with the general contractor on the building project to furnish material, labor, tools and equipment, and supervision to complete the structural steel portion of the building in accordance with the architect's drawings. The typical executed contract is an AIA (American Institute of Architects) contractor—subcontractor form, with language modified to name the specific job.

If the taxpayer is the successful bidder, it also will:

(1) order the steel necessary from a steel service center to complete the job;

(2) separately contract with a third party processor/fabricator to bend, shape, cut, or otherwise fabricate or process the steel to meet the building specifications—if necessary; and

(3) subcontract the on-site steel installation and erection work to a third party that performs those services. The taxpayer actually does not perform installation or erection itself.

If the steel requires processing or fabrication, it is shipped directly from the steel service center or the steel producer (from whom the steel service center purchased the steel) to the processor/fabricator. The taxpayer takes title to the steel upon shipment to the processor/fabricator and holds title to the steel throughout the processing/fabricating process. After the steel is processed by the processor/fabricator, it is shipped directly to the jobsite—where the employees of the installer/erector install and erect the steel structure. Until it is installed/erected at the jobsite, the taxpayer holds title to the steel.

The taxpayer invoices the general contractor on a periodic basis as the steel is delivered to the jobsite and installed. The invoices break out the charges for steel delivered and its installation so that the general contractor can verify performance. However, the contracts are charged as lump-sum.

For the steel it purchases, the taxpayer receives an invoice from the steel service center that also specifies any delivery charge. The taxpayer provides the steel service center with a direct pay permit so that no sales tax is imposes on that invoice. When the steel is installed at the jobsite, the taxpayer remits use tax to the Department on the total amount invoiced by the steel service center, unless the taxpayer has received an exemption certificate from the contractor. Many of the building projects that taxpayer works on are for not-for-profit or tax exempt entities.

The taxpayer also receives an invoice from the installer/erector for installation and erection services only; sales tax is not included. The taxpayer does not remit use tax on the installation/erection charges.

The taxpayer also receives an invoice from the processor/fabricator for the processing and fabrication work done on the steel prior to its delivery to the jobsite. No sales tax is charged on an invoice from the processor/fabricator. At issue—the taxpayer is asking the Department to rule whether use tax is owed on charges for processing/fabrication.

DISCUSSION

The taxpayer enters into contracts to provide the labor and materials for placement of structural steel into buildings. It does so pursuant to lump-sum contracts with general contractors. **Sales Tax Information Bulletin #60** (April 2004), states that although a contractor may subsequently furnish a breakdown of charges for labor and materials, he does so without changing the nature of the lump-sum contract.

45 IAC 2.2-3-9(e), interpreting IC 6-2.5-4-9 with respect to construction materials, states that a contractor is liable for the use tax and must remit the amount due (measured by the purchase price) when he converts the construction materials into realty on land he does not own, pursuant to a contract that includes all elements of cost in the total contract price—*i.e.*, a lump-sum contract. IC 6-2.5-2-1 imposes sales tax on retail transactions made in Indiana. IC 6-2.5-4-1 defines a retail transaction as the transfer of tangible personal property for consideration. However, the charges for processing/fabricating services are non-taxable because no tangible personal property is transferred during processing/fabricating.

RULING

The Department rules that the charges for processing/fabricating are non-taxable.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection

Indiana Department of State Revenue

For Cumulative Tables of Nonrule Policy Documents printed in the Indiana Register in previous years, consult the following table:

1982	See 5 IR 2586	(December 1982)
1983	See 7 IR 252	(December 1983)
1984	See 8 IR 1220	(June 1985)
1985	See 9 IR 932	(January 1986)
1986	See 10 IR 173	(October 1986)
1987	See 11 IR 2786	(April 1988)
1988	See 12 IR 1023	(January 1989)
1989	See 13 IR 791	(January 1990)
1990	See 14 IR 956	(January 1991)
1991	See 15 IR 651	(January 1992)
1992	See 16 IR 1311	(January 1993)
1993	See 17 IR 897	(January 1994)
1994	See 18 IR 1166	(January 1995)
1995	See 19 IR 954	(January 1996)
1996	See 20 IR 1040	(January 1997)
1997	See 21 IR 1628	(January 1998)
1998	See 22 IR 1324	(January 1999)
1999	See 23 IR 1013	(January 2000)
2000	See 24 IR 1241	(January 2001)
2001	See 25 IR 1406	(January 2002)
2002	See 26 IR 1423	(January 2003)
2003	See 27 IR 1466	(January 2004)
2004	See 28 IR 1407	(January 2005)

Cumulative Table of Executive Orders and Attorney General's Opinions

EXECUTIVE ORDERS

Number/Digest		Published
04-17	Kevin Lee Stringer, pardon	28 IR 1564
04-18	Clemency for Darnell Williams, Doc No. 872037-ISP	28 IR 1564
04-19	Declaring a disaster emergency in the state of Indiana due to severe storms, flooding and tornadoes	28 IR 1565
04-20	Michael A. McKinney #995375, medical clemency	28 IR 1566
04-21	Roger Good, pardon	28 IR 1567
04-22	Jodi L. Gillman, pardon	28 IR 1567
04-23	Ralph D. Hague, pardon	28 IR 1568
04-24	Michelle L. Miller, pardon	28 IR 1569
04-25	Phillip Horst, pardon	28 IR 1570
04-26	Charles D. Stoner, pardon	28 IR 1570
04-27	The Hoosiers Helping Hoosiers food drive	28 IR 1571
04-28	David Grant Pursell, pardon	28 IR 1572
04-29	Christopher W. Vernon, pardon	28 IR 1572
04-30	Declaring a disaster emergency in the state of Indiana due to severe winter weather	28 IR 1573
04-31	Postponement of the date of expiration of rule until one year after date specified in Indiana Code 4-22-2.5	28 IR 1574
04-32	Declaring a utility service emergency in the state of Indiana during severe weather	28 IR 1882
04-33	Declaring a disaster emergency in the state of Indiana due to severe winter weather	28 IR 1882
04-34	James Lincoln, pardon	28 IR 1883
04-34	Extending a utility service emergency in the state of Indiana during severe weather	28 IR 1884
04-35	Charles I. Thurman, pardon	28 IR 1885
04-37	Clemency for Michael Daniels, no. 13135	28 IR 1886
05-1	Creation of the office of secretary of commerce and coordination of the state's economic development and job training efforts	28 IR 1886
05-2	Creation of the office of management and budget	28 IR 1888
05-3	Creation of the office of inspector general	28 IR 1889
05-4	Continuing the office of public finance	28 IR 1891
05-5	Establishment of the "Buy Indiana" presumption	28 IR 1892
05-6	Directive to account for all state assets and to divest of unused or underutilized assets	28 IR 1893
05-7	Directive to the department of administration to log written state contracts on the Internet	28 IR 1894
05-8	Creation of the office of federal grants and procurements	28 IR 1895
05-9	Establishing and clarifying duties of state agencies for all matters relating to emergency management	28 IR 1896
05-10	Directive to establish medical error reporting and quality system	28 IR 1900
05-11	Recognition of private minority business enterprise certification	28 IR 1901
05-12	Establishing ethical rules of conduct for state officers, employees, and special appointees	28 IR 1902
05-13	Extending a utility service emergency in the state of Indiana during severe weather	28 IR 1903
05-14	Providing a complaint procedure to state employees and rescinding certain prior executive orders	28 IR 1904
05-15	Creation of the Indiana department of child services	28 IR 1905
05-16	Creation of the office of faith-based and community initiatives	28 IR 1907
05-17	Creation of the office of technology	28 IR 1908
05-18	Maintenance of salary and health coverage for active duty military personnel employed by state government	28 IR 1910
05-19	Directive to department of local government finance regarding school building project financings	28 IR 1911

ATTORNEY GENERAL'S OPINIONS

Number/Digest		Published
04-6	Existing and planned runways	28 IR 1913
04-7	Gambling tax revenues and historic preservation	28 IR 1916
04-8	Department of insurance bulletin 123	28 IR 1917
04-9	Compensation for elected city officer	28 IR 1919
04-10	Distribution of wagering tax under Indiana Code section 4-33-13-5	28 IR 1920

For Cumulative Tables of Executive Orders and Attorney General's Opinions printed in the Indiana Register in previous years, consult the following table:

1978	See 2 IR 181	(February 1979)
1979	See 3 IR 336	(March 1980)
1980	See 3 IR 2266	(December 1980)
1981	See 5 IR 179	(January 1982)
1982	See 5 IR 2588	(December 1982)
1983	See 7 IR 256	(December 1983)
1984	See 8 IR 249	(December 1984)
1985	See 9 IR 933	(January 1986)
1986	See 10 IR 175	(October 1986)
1987	See 11 IR 2790	(April 1988)
1988	See 12 IR 1025	(January 1989)
1989	See 13 IR 792	(January 1990)
1990	See 14 IR 957	(January 1991)
1991	See 15 IR 652	(January 1992)
1992	See 16 IR 1312	(January 1993)
1993	See 17 IR 898	(January 1994)
1994	See 18 IR 1167	(January 1995)
1995	See 19 IR 955	(January 1996)
1996	See 20 IR 1043	(January 1997)
1997	See 21 IR 1633	(January 1998)
1998	See 22 IR 1332	(January 1999)
1999	See 23 IR 1022	(January 2000)
2000	See 24 IR 1249	(January 2001)
2001	See 25 IR 1413	(January 2002)
2002	See 26 IR 1431	(January 2003)
2003	See 27 IR 1474	(January 2004)
2004	See 28 IR 1412	(January 2005)

TITLE 25 INDIANA DEPARTMENT OF ADMINISTRATION

25 IAC 6	N	04-172	27 IR 3595	*CPH (28 IR 234)

TITLE 28 STATE INFORMATION TECHNOLOGY OVERSIGHT COMMISSION

28 IAC	N	04-123	28 IR 986	*CPH (28 IR 1498)

TITLE 31 STATE PERSONNEL DEPARTMENT

31 IAC 1-9-4	A	04-170	27 IR 4049	
31 IAC 2-11-4	A	04-170	27 IR 4049	

TITLE 40 STATE ETHICS COMMISSION

40 IAC 2-1-5.5	N	04-198	28 IR 987	
			28 IR 2160	
40 IAC 2-1-6	A	04-198	28 IR 987	
			28 IR 2160	
40 IAC 2-1-7	A	04-198	28 IR 988	
			28 IR 2161	

TITLE 45 DEPARTMENT OF STATE REVENUE

45 IAC 1.3	N	04-125	27 IR 3101	
45 IAC 18	R	04-292	28 IR 1518	
45 IAC 18-3-7	R	04-255	28 IR 624	*AWR (28 IR 971)
45 IAC 18-3-7.1	N	04-255	28 IR 623	*AWR (28 IR 971)
45 IAC 18-3-8	R	04-255	28 IR 624	*AWR (28 IR 971)
45 IAC 18-3-8.1	N	04-255	28 IR 623	*AWR (28 IR 971)
45 IAC 20	N	04-292	28 IR 1500	

TITLE 50 DEPARTMENT OF LOCAL GOVERNMENT FINANCE

50 IAC 20	N	04-174	27 IR 3603	*AROC (27 IR 3707)
				28 IR 1458
50 IAC 21	N	02-297	27 IR 4050	**28 IR 1452**

TITLE 65 STATE LOTTERY COMMISSION

65 IAC 1-4-5.5	A	04-237		*ER (28 IR 217)
65 IAC 4-2-6	A	05-36		*ER (28 IR 2153)
65 IAC 4-90	R	04-249		*ER (28 IR 227)
65 IAC 4-99	R	04-249		*ER (28 IR 227)
65 IAC 4-205	R	04-249		*ER (28 IR 227)
65 IAC 4-248	R	04-249		*ER (28 IR 227)
65 IAC 4-272	R	04-249		*ER (28 IR 227)
65 IAC 4-287	R	04-249		*ER (28 IR 227)
65 IAC 4-317	R	04-249		*ER (28 IR 227)
65 IAC 4-319	R	04-249		*ER (28 IR 227)
65 IAC 4-321	R	04-249		*ER (28 IR 227)
65 IAC 4-332	R	04-249		*ER (28 IR 227)
65 IAC 4-343	R	04-249		*ER (28 IR 227)
65 IAC 4-348	N	04-241		*ER (28 IR 221)
65 IAC 4-349	N	04-283		*ER (28 IR 975)
65 IAC 4-350	N	04-252		*ER (28 IR 229)
65 IAC 4-352	N	04-284		*ER (28 IR 978)
65 IAC 4-353	N	04-329		*ER (28 IR 1492)
65 IAC 4-354	R	04-249		*ER (28 IR 227)
65 IAC 4-355	N	05-32		*ER (28 IR 2147)
65 IAC 4-359	R	04-249		*ER (28 IR 227)
65 IAC 4-367	R	04-249		*ER (28 IR 227)
65 IAC 4-383	R	04-249		*ER (28 IR 227)
65 IAC 4-390	R	04-249		*ER (28 IR 227)
65 IAC 4-401	R	04-249		*ER (28 IR 227)
65 IAC 4-402	R	04-249		*ER (28 IR 227)
65 IAC 4-403	R	04-249		*ER (28 IR 227)
65 IAC 4-404	R	04-249		*ER (28 IR 227)
65 IAC 4-405	R	04-249		*ER (28 IR 227)
65 IAC 4-406	R	04-249		*ER (28 IR 227)
65 IAC 4-408	R	04-249		*ER (28 IR 227)
65 IAC 4-437	R	04-249		*ER (28 IR 227)
65 IAC 4-439	R	04-249		*ER (28 IR 227)
65 IAC 4-440	R	04-249		*ER (28 IR 227)
65 IAC 4-441	R	04-249		*ER (28 IR 227)
65 IAC 4-442	R	04-249		*ER (28 IR 227)
65 IAC 4-443	R	04-249		*ER (28 IR 227)
65 IAC 4-445	R	04-249		*ER (28 IR 227)
65 IAC 4-446	R	04-249		*ER (28 IR 227)
65 IAC 4-447	R	04-249		*ER (28 IR 227)
65 IAC 4-448	R	04-249		*ER (28 IR 227)
65 IAC 4-450	R	04-249		*ER (28 IR 227)
65 IAC 4-453	R	04-249		*ER (28 IR 227)
65 IAC 5-2-6	A	05-36		*ER (28 IR 2153)
65 IAC 5-13	R	04-249		*ER (28 IR 227)
65 IAC 5-14	R	04-249		*ER (28 IR 227)
65 IAC 5-15	R	04-249		*ER (28 IR 227)
65 IAC 5-16	N	05-28		*ER (28 IR 2142)
65 IAC 6-2-6	A	05-36		*ER (28 IR 2154)

TITLE 68 INDIANA GAMING COMMISSION

68 IAC 1-5-1	A	04-103	27 IR 3115	**28 IR 532**
68 IAC 2-3-5	A	04-103	27 IR 3115	**28 IR 533**
68 IAC 2-3-6	A	04-103	27 IR 3117	**28 IR 535**
68 IAC 2-3-9	A	04-103	27 IR 3118	**28 IR 535**
68 IAC 2-6-49	A	04-102	27 IR 3109	**28 IR 526**
68 IAC 2-7-12	A	04-102	27 IR 3109	**28 IR 526**
68 IAC 5-3-2	A	04-102	27 IR 3109	**28 IR 526**
68 IAC 5-3-7	A	04-102	27 IR 3109	**28 IR 527**
68 IAC 8-1-11	A	04-102	27 IR 3110	**28 IR 527**
68 IAC 8-2-29	A	04-102	27 IR 3110	**28 IR 527**
68 IAC 9-4-8	A	04-102	27 IR 3110	**28 IR 527**
68 IAC 10-1-5	A	04-102	27 IR 3110	**28 IR 527**
68 IAC 11-1-8	A	04-102	27 IR 3110	**28 IR 528**
68 IAC 11-3-1	A	04-102	27 IR 3110	**28 IR 528**
68 IAC 12-1-15	A	04-102	27 IR 3111	**28 IR 529**
68 IAC 14-4-8	A	04-102	27 IR 3112	**28 IR 529**
68 IAC 14-5-6	A	04-102	27 IR 3112	**28 IR 529**
68 IAC 15-1-8	A	04-102	27 IR 3112	**28 IR 530**
68 IAC 15-3-3	A	04-179	28 IR 237	**28 IR 2014**
68 IAC 15-5-2	A	04-179	28 IR 237	**28 IR 2014**
68 IAC 15-6-2	A	04-179	28 IR 238	**28 IR 2015**
68 IAC 15-6-3	A	04-179	28 IR 239	**28 IR 2016**
68 IAC 15-6-5	A	04-179	28 IR 240	**28 IR 2016**
68 IAC 15-9-4	A	04-102	27 IR 3112	**28 IR 530**
68 IAC 15-10-4.1	A	04-102	27 IR 3113	**28 IR 530**
68 IAC 15-13-2.5	N	04-102	27 IR 3113	**28 IR 531**
68 IAC 16-1-16	A	04-102	27 IR 3113	**28 IR 531**
68 IAC 17-1-5	A	04-102	27 IR 3114	**28 IR 531**
68 IAC 17-2-6	A	04-102	27 IR 3114	**28 IR 531**
68 IAC 18-1-2	A	04-102	27 IR 3114	**28 IR 531**
68 IAC 18-1-6	A	04-102	27 IR 3114	**28 IR 532**

TITLE 71 INDIANA HORSE RACING COMMISSION

71 IAC 7.5-6-3	A	05-27		*ER (28 IR 2154)

TITLE 140 BUREAU OF MOTOR VEHICLES

140 IAC 4-4	RA	04-162	28 IR 323	**28 IR 1315**
140 IAC 8-4	RA	04-162	28 IR 323	**28 IR 1315**

TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

170 IAC 1-4	RA	04-163	27 IR 4140	*CPH (28 IR 620)
				28 IR 1315
170 IAC 1-5	RA	04-163	27 IR 4140	*CPH (28 IR 620)
				28 IR 1315
170 IAC 4-1-15	R	04-144	27 IR 4095	*CPH (28 IR 620)
170 IAC 4-1-16	R	04-144	27 IR 4095	*CPH (28 IR 620)
170 IAC 4-1-16.5	R	04-144	27 IR 4095	*CPH (28 IR 620)
170 IAC 4-1-16.6	R	04-144	27 IR 4095	*CPH (28 IR 620)
170 IAC 4-1-17	R	04-144	27 IR 4095	*CPH (28 IR 620)
170 IAC 4-1-23	A	04-68	27 IR 2765	**28 IR 789**
170 IAC 4-1.2	N	04-144	27 IR 4057	*CPH (28 IR 620)
170 IAC 4-4.2	N	03-305	27 IR 2312	**28 IR 786**
170 IAC 5-1-15	R	04-144	27 IR 4095	*CPH (28 IR 620)

170 IAC 5-1-16	R	04-144	27 IR 4095	*CPH (28 IR 620)
170 IAC 5-1-16.5	R	04-144	27 IR 4095	*CPH (28 IR 620)
170 IAC 5-1-16.6	R	04-144	27 IR 4095	*CPH (28 IR 620)
170 IAC 5-1-17	R	04-144	27 IR 4095	*CPH (28 IR 620)
170 IAC 5-1.2	N	04-144	27 IR 4065	*CPH (28 IR 620)
170 IAC 6-1-15	R	04-144	27 IR 4095	*CPH (28 IR 620)
170 IAC 6-1-16	R	04-144	27 IR 4095	*CPH (28 IR 620)
170 IAC 6-1-17	R	04-144	27 IR 4095	*CPH (28 IR 620)
170 IAC 6-1.1	N	04-268	28 IR 1518	*CPH (28 IR 1710)
170 IAC 6-1.2	N	04-144	27 IR 4073	*CPH (28 IR 620)
170 IAC 7-1.3-2	A	04-144	27 IR 4080	*CPH (28 IR 620)
170 IAC 7-1.3-3	A	04-144	27 IR 4081	*CPH (28 IR 620)
170 IAC 7-1.3-8	A	04-144	27 IR 4083	*CPH (28 IR 620)
170 IAC 7-1.3-9	A	04-144	27 IR 4084	*CPH (28 IR 620)
170 IAC 7-1.3-10	A	04-144	27 IR 4085	*CPH (28 IR 620)
170 IAC 8.5-2-1	A	04-144	27 IR 4086	*CPH (28 IR 620)
170 IAC 8.5-2-3	A	04-144	27 IR 4087	*CPH (28 IR 620)
170 IAC 8.5-2-4	A	04-144	27 IR 4089	*CPH (28 IR 620)
170 IAC 8.5-2-5	A	04-144	27 IR 4092	*CPH (28 IR 620)

TITLE 203 VICTIM SERVICES DIVISION

203 IAC	N	04-63	27 IR 2526	**28 IR 6**

TITLE 207 CORONERS TRAINING BOARD

207 IAC 2	N	04-231	28 IR 624	

TITLE 240 STATE POLICE DEPARTMENT

240 IAC 8	RA	04-164	27 IR 4140	**28 IR 677**

TITLE 305 INDIANA BOARD OF LICENSURE FOR PROFESSIONAL GEOLOGISTS

305 IAC 1-2-6	A	03-212	27 IR 216	*ARR (28 IR 215) **28 IR 12**
305 IAC 1-3-4	A	03-212	27 IR 216	*ARR (28 IR 215) **28 IR 12**
305 IAC 1-4-1	A	03-212	27 IR 217	*ARR (28 IR 215) **28 IR 12**
305 IAC 1-4-2	A	03-212	27 IR 217	*ARR (28 IR 215) **28 IR 13**
305 IAC 1-5	N	03-212	27 IR 217	*ARR (28 IR 215) **28 IR 13**

TITLE 312 NATURAL RESOURCES COMMISSION

312 IAC 2-4-6	A	04-215	28 IR 626	
312 IAC 2-4-12	A	04-67	27 IR 3604	**28 IR 1460**
312 IAC 2-4-14	N	04-215	28 IR 626	
312 IAC 3-1-7	A	04-263	28 IR 1203	
312 IAC 4-6-6	A	04-208	28 IR 625	*ARR (28 IR 2140)
312 IAC 5-6-5	A	04-84	28 IR 240	**28 IR 1680**
312 IAC 5-6-5.5	N	04-210	28 IR 989	
312 IAC 5-14-1	A	04-155	27 IR 4100	**28 IR 1461**
312 IAC 5-14-2	A	04-155	27 IR 4100	**28 IR 1461**
312 IAC 5-14-4	A	04-155	27 IR 4101	**28 IR 1462**
312 IAC 5-14-5	R	04-155	27 IR 4109	**28 IR 1470**
312 IAC 5-14-5.1	N	04-155	27 IR 4101	**28 IR 1462**
312 IAC 5-14-6	R	04-155	27 IR 4109	**28 IR 1470**
312 IAC 5-14-6.1	N	04-155	27 IR 4102	**28 IR 1463**
312 IAC 5-14-7	A	04-155	27 IR 4102	**28 IR 1463**
312 IAC 5-14-8	A	04-155	27 IR 4102	**28 IR 1464**
312 IAC 5-14-9	A	04-155	27 IR 4103	**28 IR 1464**
312 IAC 5-14-11	A	04-155	27 IR 4103	**28 IR 1464**
312 IAC 5-14-15	A	04-155	27 IR 4103	**28 IR 1465**
312 IAC 5-14-16	A	04-155	27 IR 4104	**28 IR 1465**
312 IAC 5-14-17	A	04-155	27 IR 4104	**28 IR 1465**
312 IAC 5-14-18	A	04-155	27 IR 4105	**28 IR 1466**
312 IAC 5-14-19	A	04-155	27 IR 4105	**28 IR 1467**
312 IAC 5-14-20	A	04-155	27 IR 4106	**28 IR 1467**
312 IAC 5-14-21	A	04-155	27 IR 4106	**28 IR 1467**
312 IAC 5-14-22	A	04-155	27 IR 4106	**28 IR 1468**
312 IAC 5-14-24	A	04-155	27 IR 4107	**28 IR 1468**
312 IAC 5-14-25	A	04-155	27 IR 4108	**28 IR 1469**
312 IAC 5-14-26	R	04-155	27 IR 4109	**28 IR 1470**
312 IAC 5-14-27	N	04-155	27 IR 4109	**28 IR 1470**
312 IAC 6.2	N	04-66	27 IR 3119	**28 IR 1459**
312 IAC 6.5	N	04-3	27 IR 2767	**28 IR 15**
312 IAC 8	RA	03-315	27 IR 2339	**28 IR 1315**
312 IAC 9-1-9.5	N	03-311	27 IR 1946	**28 IR 536**
312 IAC 9-1-11.5	N	03-311	27 IR 1946	**28 IR 536**
312 IAC 9-2-14	N	04-253	28 IR 1522	
312 IAC 9-2-15	N	04-253	28 IR 1522	
312 IAC 9-3-2	A	03-311	27 IR 1946	**28 IR 536**
312 IAC 9-3-3	A	03-311	27 IR 1947	**28 IR 538**
312 IAC 9-3-4	A	03-311	27 IR 1948	**28 IR 538**
	A	04-253	28 IR 1523	
312 IAC 9-3-5	A	04-253	28 IR 1523	
312 IAC 9-3-10	A	03-311	27 IR 1949	**28 IR 539**
312 IAC 9-3-11	A	03-311	27 IR 1949	**28 IR 539**
312 IAC 9-3-12	A	03-311	27 IR 1949	**28 IR 539**
312 IAC 9-3-13	A	03-311	27 IR 1950	**28 IR 540**
312 IAC 9-3-14	A	03-311	27 IR 1950	**28 IR 540**
312 IAC 9-3-15	A	03-311	27 IR 1950	**28 IR 540**
312 IAC 9-3-17	A	03-311	27 IR 1950	**28 IR 540**
312 IAC 9-4-7	R	03-311	27 IR 1966	**28 IR 556**
312 IAC 9-4-10	A	03-311	27 IR 1951	
312 IAC 9-4-11	A	03-311	27 IR 1951	**28 IR 541**
	A	04-253	28 IR 1524	
312 IAC 9-4-14	A	03-311	27 IR 1952	**28 IR 542**
312 IAC 9-5-4	A	03-311	27 IR 1953	**28 IR 542**
	A	04-253	28 IR 1526	
312 IAC 9-5-6	A	03-311	27 IR 1953	**28 IR 543**
312 IAC 9-5-7	A	03-311	27 IR 1953	**28 IR 543**
	A	04-253	28 IR 1526	
312 IAC 9-5-9	A	03-311	27 IR 1955	**28 IR 545**
	A	04-253	28 IR 1528	
312 IAC 9-5-11	N	03-311	27 IR 1956	**28 IR 546**
312 IAC 9-6-9	A	03-311	27 IR 1957	**28 IR 547**
312 IAC 9-7-2	A	03-311	27 IR 1957	**28 IR 547**
312 IAC 9-7-6	A	03-311	27 IR 1959	**28 IR 549**
312 IAC 9-7-13	A	03-311	27 IR 1960	**28 IR 550**
312 IAC 9-10-9	A	03-311	27 IR 1960	**28 IR 550**
312 IAC 9-10-9.5	N	03-311	27 IR 1961	**28 IR 551**
312 IAC 9-10-10	A	03-311	27 IR 1962	**28 IR 552**
312 IAC 9-10-13.5	N	03-311	27 IR 1963	**28 IR 553**
312 IAC 9-10-17	A	03-311	27 IR 1964	**28 IR 554**
312 IAC 9-11-1	A	03-311	27 IR 1964	**28 IR 554**
312 IAC 9-11-2	A	03-311	27 IR 1965	**28 IR 555**
312 IAC 9-11-14	A	03-311	27 IR 1965	**28 IR 555**
312 IAC 11	RA	05-1	28 IR 2203	
312 IAC 11-2-5	A	04-157	28 IR 1521	
312 IAC 11-2-11.5	N	04-94	27 IR 4095	**28 IR 1681**
312 IAC 11-3-1	A	04-94	27 IR 4095	**28 IR 1681**
312 IAC 12	RA	05-1	28 IR 2203	
312 IAC 13	RA	05-1	28 IR 2203	
312 IAC 16	RA	03-315	27 IR 2339	**28 IR 1315**
312 IAC 16-3-2	A	04-121	27 IR 4097	**28 IR 1682**
312 IAC 16-3-8	A	04-121	27 IR 4099	**28 IR 1684**
312 IAC 16-5-14	A	04-23	27 IR 2532	**28 IR 556**
312 IAC 17	RA	03-315	27 IR 2339	**28 IR 1315**
312 IAC 17-3-1	A	04-23	27 IR 2532	**28 IR 557**
312 IAC 17-3-2	A	04-23	27 IR 2532	**28 IR 557**
312 IAC 17-3-3	A	04-23	27 IR 2532	**28 IR 557**
312 IAC 17-3-4	A	04-23	27 IR 2533	**28 IR 558**
312 IAC 17-3-6	A	04-23	27 IR 2534	**28 IR 558**
312 IAC 17-3-8	A	04-23	27 IR 2534	**28 IR 558**
312 IAC 17-3-9	A	04-23	27 IR 2534	**28 IR 558**
312 IAC 18-3-12	A	04-270	28 IR 1203	
312 IAC 18-3-18	N	04-177	28 IR 1201	
312 IAC 18-3-19	N	04-127	28 IR 1521	

312 IAC 19	RA	03-315	27 IR 2339	**28 IR 1315**
312 IAC 23	RA	05-1	28 IR 2203	
312 IAC 25-4-102				*ERR (28 IR 214)
312 IAC 25-4-114				*ERR (28 IR 214)
312 IAC 25-5-16				*ERR (28 IR 214)
312 IAC 25-6-20				*ERR (28 IR 214)
312 IAC 25-7-1				*ERR (28 IR 214)
312 IAC 26	RA	03-315	27 IR 2339	**28 IR 1315**

TITLE 315 OFFICE OF ENVIRONMENTAL ADJUDICATION

315 IAC 1	RA	04-71	27 IR 2879	**28 IR 323**
315 IAC 1-2-1	A	04-70	28 IR 990	*CPH (28 IR 1498)
315 IAC 1-3-1	A	04-70	28 IR 991	*CPH (28 IR 1498)
315 IAC 1-3-2	A	04-70	28 IR 991	*CPH (28 IR 1498)
315 IAC 1-3-2.1	N	04-70	28 IR 992	*CPH (28 IR 1498)
315 IAC 1-3-3	A	04-70	28 IR 992	*CPH (28 IR 1498)
315 IAC 1-3-4	A	04-70	28 IR 993	*CPH (28 IR 1498)
315 IAC 1-3-5	A	04-70	28 IR 994	*CPH (28 IR 1498)
315 IAC 1-3-7	A	04-70	28 IR 994	*CPH (28 IR 1498)
315 IAC 1-3-8	A	04-70	28 IR 994	*CPH (28 IR 1498)
315 IAC 1-3-9	A	04-70	28 IR 995	*CPH (28 IR 1498)
315 IAC 1-3-10	A	04-70	28 IR 995	*CPH (28 IR 1498)
315 IAC 1-3-12	A	04-70	28 IR 996	*CPH (28 IR 1498)
315 IAC 1-3-14	A	04-70	28 IR 996	*CPH (28 IR 1498)
315 IAC 1-3-15	N	04-70	28 IR 996	*CPH (28 IR 1498)

TITLE 326 AIR POLLUTION CONTROL BOARD

326 IAC 1-1-3	A	02-337	26 IR 1997	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 17
	A	04-299	28 IR 1815	
326 IAC 1-1-3.5	A	02-337	26 IR 1997	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 18
	A	04-299	28 IR 1815	
326 IAC 1-1-6	N	04-180	28 IR 248	*GRAT (28 IR 2205)
				28 IR 2046
326 IAC 1-2-52	A	03-228	27 IR 3120	**28 IR 1471**
326 IAC 1-2-52.2	N	03-228	27 IR 3121	**28 IR 1471**
326 IAC 1-2-52.4	N	03-228	27 IR 3121	**28 IR 1471**
326 IAC 1-2-65	A	02-337	26 IR 1997	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 18
326 IAC 1-2-82.5	N	03-228	27 IR 3121	**28 IR 1471**
326 IAC 1-2-90	A	02-337	26 IR 1998	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 18
326 IAC 1-3-4	A	03-228	27 IR 3121	**28 IR 1471**
326 IAC 1-4-1	A	04-148	27 IR 3606	**28 IR 1182**
326 IAC 2-2-13	A	02-337	26 IR 1998	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 19
326 IAC 2-2-16	A	02-337	26 IR 1999	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 20
326 IAC 2-5.1-1	RA	04-44	27 IR 3144	**28 IR 791**
326 IAC 2-5.1-2	RA	04-44	27 IR 3145	**28 IR 791**
326 IAC 2-5.5-1	RA	04-44	27 IR 3146	**28 IR 792**
326 IAC 2-5.5-2	RA	04-44	27 IR 3146	**28 IR 793**
326 IAC 2-5.5-3	RA	04-44	27 IR 3146	**28 IR 793**
326 IAC 2-5.5-4	RA	04-44	27 IR 3147	**28 IR 793**
326 IAC 2-5.5-5	RA	04-44	27 IR 3147	**28 IR 794**
326 IAC 2-5.5-6	RA	04-44	27 IR 3147	**28 IR 794**
326 IAC 2-6.1-1	RA	04-44	27 IR 3149	**28 IR 795**
326 IAC 2-6.1-2	RA	04-44	27 IR 3149	**28 IR 795**
326 IAC 2-6.1-3	RA	04-44	27 IR 3149	**28 IR 795**
326 IAC 2-6.1-4	RA	04-44	27 IR 3150	**28 IR 796**
326 IAC 2-6.1-5	RA	04-44	27 IR 3150	**28 IR 796**
326 IAC 2-6.1-6	RA	04-44	27 IR 3151	**28 IR 797**
326 IAC 2-6.1-7	RA	04-44	27 IR 3154	**28 IR 801**
326 IAC 2-7-3	A	02-337	26 IR 2006	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 20
326 IAC 2-7-8	A	02-337	26 IR 2006	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 20
326 IAC 2-7-18	A	02-337	26 IR 2007	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 21
326 IAC 2-8-3	A	02-337	26 IR 2008	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 22
326 IAC 2-9-1	RA	04-44	27 IR 3155	**28 IR 801**
326 IAC 2-9-2.5	RA	04-44	27 IR 3156	**28 IR 802**
326 IAC 2-9-3	RA	04-44	27 IR 3156	**28 IR 803**
326 IAC 2-9-4	RA	04-44	27 IR 3157	**28 IR 803**
326 IAC 2-9-5	RA	04-44	27 IR 3158	**28 IR 805**
326 IAC 2-9-6	RA	04-44	27 IR 3159	**28 IR 805**
326 IAC 2-9-7	A	02-337	26 IR 2009	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 23
	RA	04-44	27 IR 3159	**28 IR 805**
326 IAC 2-9-8	A	02-337	26 IR 2010	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 25
	RA	04-44	27 IR 3160	**28 IR 806**
326 IAC 2-9-9	A	02-337	26 IR 2012	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 26
	RA	04-44	27 IR 3162	**28 IR 808**
326 IAC 2-9-10	A	02-337	26 IR 2013	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 27
	RA	04-44	27 IR 3163	**28 IR 809**
326 IAC 2-9-11	RA	04-44	27 IR 3164	**28 IR 810**
326 IAC 2-9-12	RA	04-44	27 IR 3165	**28 IR 811**
326 IAC 2-9-13	A	02-337	26 IR 2014	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 28
	RA	04-44	27 IR 3165	**28 IR 811**
326 IAC 2-9-14	RA	04-44	27 IR 3167	**28 IR 814**
326 IAC 3-4-1	A	02-337	26 IR 2016	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 30
326 IAC 3-4-3	A	02-337	26 IR 2016	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 31
326 IAC 3-5-2	A	02-337	26 IR 2017	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 32
326 IAC 3-5-3	A	02-337	26 IR 2019	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 33
326 IAC 3-5-4	A	02-337	26 IR 2019	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 34
326 IAC 3-5-5	A	02-337	26 IR 2020	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 34
326 IAC 3-6-1	A	02-337	26 IR 2022	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 36
326 IAC 3-6-3	A	02-337	26 IR 2022	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 37
326 IAC 3-6-5	A	02-337	26 IR 2023	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 37

326 IAC 3-7-2	A	02-337	26 IR 2024	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 38
326 IAC 3-7-4	A	02-337	26 IR 2025	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 40
326 IAC 5-1-2	A	02-337	26 IR 2026	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 40
326 IAC 5-1-4	A	02-337	26 IR 2026	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 41
326 IAC 5-1-5	A	02-337	26 IR 2027	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 41
326 IAC 6-1-1	R	02-335	28 IR 1813	
326 IAC 6-1-1.5	R	02-335	28 IR 1813	
326 IAC 6-1-2	R	02-335	28 IR 1813	
326 IAC 6-1-3	R	02-335	28 IR 1813	
326 IAC 6-1-4	R	02-335	28 IR 1813	
326 IAC 6-1-5	R	02-335	28 IR 1813	
326 IAC 6-1-6	R	02-335	28 IR 1813	
326 IAC 6-1-7	R	02-335	28 IR 1813	
326 IAC 6-1-8.1	R	02-335	28 IR 1813	
326 IAC 6-1-9	R	02-335	28 IR 1813	
326 IAC 6-1-10.1	R	02-335	28 IR 1813	
326 IAC 6-1-10.2	R	02-335	28 IR 1813	
326 IAC 6-1-11.1	R	02-335	28 IR 1813	
326 IAC 6-1-11.2	R	02-335	28 IR 1813	
326 IAC 6-1-12	A	04-43	28 IR 242	*GRAT (28 IR 2204)
				28 IR 2037
				*ERR (28 IR 2137)
	R	02-335	28 IR 1813	
326 IAC 6-1-13	A	03-195	27 IR 2318	**28 IR 115**
	R	02-335	28 IR 1813	
326 IAC 6-1-14	R	02-335	28 IR 1813	
326 IAC 6-1-15	R	02-335	28 IR 1813	
326 IAC 6-1-16	R	02-335	28 IR 1813	
326 IAC 6-1-17	R	02-335	28 IR 1813	
326 IAC 6-1-18	R	02-335	28 IR 1813	
326 IAC 6.5	N	02-335	28 IR 1714	
326 IAC 6.5-7-13	A	04-234	28 IR 1814	
326 IAC 6.8	N	02-335	28 IR 1766	
326 IAC 7-1.1-1	A	00-236	28 IR 632	*CPH (28 IR 982)
				*CPH (28 IR 1710)
326 IAC 7-1.1-2	A	00-236	28 IR 632	*CPH (28 IR 982)
				*CPH (28 IR 1710)
326 IAC 7-2-1	A	02-337	26 IR 2028	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 42
	A	00-236	28 IR 632	*CPH (28 IR 982)
				*CPH (28 IR 1710)
326 IAC 7-4-1.1	R	00-236	28 IR 644	*CPH (28 IR 982)
				*CPH (28 IR 1710)
326 IAC 7-4-3	A	03-195	27 IR 2319	**28 IR 117**
326 IAC 7-4-10	A	02-337	26 IR 2029	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 43
326 IAC 7-4-13	A	03-282	27 IR 2768	*CPH (27 IR 3591)
				*GRAT (28 IR 2204)
				28 IR 2021
326 IAC 7-4.1	N	00-236	28 IR 633	*CPH (28 IR 982)
				*CPH (28 IR 1710)
326 IAC 8-1-4	A	02-337	26 IR 2030	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 44
326 IAC 8-4-6	A	02-337	26 IR 2032	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 47
326 IAC 8-4-9	A	02-337	26 IR 2035	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 49
326 IAC 8-7-7	A	02-337	26 IR 2036	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 51
326 IAC 8-9-2	A	02-337	26 IR 2037	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 51
326 IAC 8-9-3	A	02-337	26 IR 2037	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 51
326 IAC 8-9-4	A	02-337	26 IR 2038	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 52
326 IAC 8-9-5	A	02-337	26 IR 2040	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 54
326 IAC 8-9-6	A	02-337	26 IR 2042	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 56
326 IAC 8-10-7	A	02-337	26 IR 2044	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 58
326 IAC 8-11-2	A	02-337	26 IR 2044	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 59
326 IAC 8-11-6	A	02-337	26 IR 2046	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 61
326 IAC 8-11-7	A	02-337	26 IR 2050	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 64
326 IAC 8-12-3	A	02-337	26 IR 2050	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 65
326 IAC 8-12-5	A	02-337	26 IR 2052	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 67
326 IAC 8-12-6	A	02-337	26 IR 2053	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 68
326 IAC 8-12-7	A	02-337	26 IR 2054	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 68
326 IAC 8-13-5	A	02-337	26 IR 2055	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 69
326 IAC 10-1-2	A	02-337	26 IR 2056	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 70
326 IAC 10-1-4	A	02-337	26 IR 2057	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 71
326 IAC 10-1-5	A	02-337	26 IR 2059	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 73
326 IAC 10-1-6	A	02-337	26 IR 2059	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 74
326 IAC 11-3-4	A	02-337	26 IR 2060	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 74
326 IAC 11-7-1	A	02-337	26 IR 2061	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 75
326 IAC 13-1.1-1	A	02-337	26 IR 2062	*ARR (27 IR 2500)
				*CPH (27 IR 2521)
				28 IR 76

326 IAC 13-1.1-8	A	02-337	26 IR 2063	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 77**
326 IAC 13-1.1-10	A	02-337	26 IR 2063	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 78**
326 IAC 13-1.1-13	A	02-337	26 IR 2064	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 79**
326 IAC 13-1.1-14	A	02-337	26 IR 2065	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 80**
326 IAC 13-1.1-16	A	02-337	26 IR 2066	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 81**
326 IAC 14-1-1	A	02-337	26 IR 2066	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 81**
326 IAC 14-1-2	A	02-337	26 IR 2067	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 81**
326 IAC 14-1-4	R	02-337	26 IR 2099	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 114**
326 IAC 14-3-1	A	02-337	26 IR 2067	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 82**
326 IAC 14-4-1	A	02-337	26 IR 2067	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 82**
326 IAC 14-5-1	A	02-337	26 IR 2068	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 82**
326 IAC 14-7-1	A	02-337	26 IR 2068	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 83**
326 IAC 14-8-1	A	02-337	26 IR 2068	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 83**
326 IAC 14-8-3	A	02-337	26 IR 2069	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 83**
326 IAC 14-8-4	A	02-337	26 IR 2069	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 84**
326 IAC 14-8-5	A	02-337	26 IR 2069	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 84**
326 IAC 14-9-5	A	02-337	26 IR 2070	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 84**
326 IAC 14-9-8	A	02-337	26 IR 2071	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 85**
326 IAC 14-9-9	A	02-337	26 IR 2071	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 86**
326 IAC 14-10-1	A	02-337	26 IR 2072	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 87**
326 IAC 14-10-2	A	02-337	26 IR 2074	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 88**
326 IAC 14-10-3	A	02-337	26 IR 2076	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 91**
326 IAC 14-10-4	A	02-337	26 IR 2078	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 93**
326 IAC 15-1-2	A	02-337	26 IR 2080	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 95**
326 IAC 15-1-4	A	02-337	26 IR 2083	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 98**
326 IAC 16-3-1	A	02-337	26 IR 2084	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 98**
326 IAC 18-1-1	A	03-283	27 IR 3128	*CPH (27 IR 3591) *GRAT (28 IR 2204) **28 IR 2022**
326 IAC 18-1-2	A	02-337	26 IR 2084	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 99**
	A	03-283	27 IR 3128	*CPH (27 IR 3591) *GRAT (28 IR 2204) **28 IR 2022**
326 IAC 18-1-3	A	03-283	27 IR 3130	*CPH (27 IR 3591) *GRAT (28 IR 2204) **28 IR 2024**
326 IAC 18-1-4	A	03-283	27 IR 3131	*CPH (27 IR 3591) *GRAT (28 IR 2204) **28 IR 2025**
326 IAC 18-1-5	A	02-337	26 IR 2086	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 101**
	A	03-283	27 IR 3132	*CPH (27 IR 3591) *GRAT (28 IR 2204) **28 IR 2026**
326 IAC 18-1-6	A	03-283	27 IR 3133	*CPH (27 IR 3591) *GRAT (28 IR 2204) **28 IR 2027**
326 IAC 18-1-7	A	02-337	26 IR 2087	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 102**
326 IAC 18-1-8	A	02-337	26 IR 2088	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 103**
326 IAC 18-1-9	A	03-283	27 IR 3134	*CPH (27 IR 3591) *GRAT (28 IR 2204) **28 IR 2028**
326 IAC 18-2-2	A	02-337	26 IR 2088	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 103**
	A	03-283	27 IR 3134	*CPH (27 IR 3591) *GRAT (28 IR 2204) **28 IR 2028**
326 IAC 18-2-3	A	02-337	26 IR 2090	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 104**
	A	03-283	27 IR 3136	*CPH (27 IR 3591) *GRAT (28 IR 2204) **28 IR 2030**
326 IAC 18-2-6	A	02-337	26 IR 2096	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 111**
326 IAC 18-2-7	A	02-337	26 IR 2097	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 112**
326 IAC 20-25-1	A	03-264	27 IR 3123	*CPH (27 IR 3590) *GRAT (28 IR 2204) **28 IR 2017**
326 IAC 20-25-2	A	03-264	27 IR 3124	*CPH (27 IR 3590) *GRAT (28 IR 2204) **28 IR 2018**
326 IAC 20-56	N	03-264	27 IR 3126	*CPH (27 IR 3590) *GRAT (28 IR 2204) **28 IR 2020**

326 IAC 20-57	N	03-284	27 IR 1618	*CPH (27 IR 1937) **28 IR 119**
326 IAC 20-58	N	03-284	27 IR 1619	*CPH (27 IR 1937) **28 IR 119**
326 IAC 20-59	N	03-284	27 IR 1619	*CPH (27 IR 1937) **28 IR 119**
326 IAC 20-60	N	03-284	27 IR 1619	*CPH (27 IR 1937) **28 IR 119**
326 IAC 20-61	N	03-284	27 IR 1619	*CPH (27 IR 1937) **28 IR 120**
326 IAC 20-62	N	03-284	27 IR 1619	*CPH (27 IR 1937) **28 IR 120**
326 IAC 20-63	N	03-285	27 IR 2322	**28 IR 121**
326 IAC 20-64	N	03-285	27 IR 2322	**28 IR 121**
326 IAC 20-65	N	03-285	27 IR 2322	**28 IR 121**
326 IAC 20-66	N	03-285	27 IR 2323	**28 IR 122**
326 IAC 20-67	N	03-285	27 IR 2323	**28 IR 122**
326 IAC 20-68	N	03-285	27 IR 2323	**28 IR 122**
326 IAC 20-69	N	03-285	27 IR 2323	**28 IR 122**
326 IAC 20-70	N	03-284	27 IR 1620	*CPH (27 IR 1937) **28 IR 120**
326 IAC 20-71	N	04-107	27 IR 3168	*CPH (27 IR 3592) *CPH (28 IR 234) *GRAT (28 IR 2205) **28 IR 2043**
326 IAC 20-72	N	04-107	27 IR 3169	*CPH (27 IR 3592) *CPH (28 IR 234) *GRAT (28 IR 2205) **28 IR 2043**
326 IAC 20-73	N	04-107	27 IR 3169	*CPH (27 IR 3592) *CPH (28 IR 234) *GRAT (28 IR 2205) **28 IR 2044**
326 IAC 20-74	N	04-107	27 IR 3169	*CPH (27 IR 3592) *CPH (28 IR 234) *GRAT (28 IR 2205) **28 IR 2044**
326 IAC 20-75	N	04-107	27 IR 3169	*CPH (27 IR 3592) *CPH (28 IR 234) *GRAT (28 IR 2205) **28 IR 2044**
326 IAC 20-76	N	04-107	27 IR 3170	*CPH (27 IR 3592) *CPH (28 IR 234) *GRAT (28 IR 2205) **28 IR 2044**
326 IAC 20-77	N	04-107	27 IR 3170	*CPH (27 IR 3592) *CPH (28 IR 234) *GRAT (28 IR 2205) **28 IR 2045**
326 IAC 20-78	N	04-107	27 IR 3170	*CPH (27 IR 3592) *CPH (28 IR 234) *GRAT (28 IR 2205) **28 IR 2045**
326 IAC 20-79	N	04-107	27 IR 3170	*CPH (27 IR 3592) *CPH (28 IR 234) *GRAT (28 IR 2205) **28 IR 2045**
326 IAC 20-82	N	04-235	28 IR 997	
326 IAC 20-83	N	04-236	28 IR 998	
326 IAC 20-84	N	04-236	28 IR 998	
326 IAC 20-85	N	04-236	28 IR 999	
326 IAC 20-86	N	04-236	28 IR 999	
326 IAC 20-87	N	04-236	28 IR 999	
326 IAC 20-88	N	04-236	28 IR 999	
326 IAC 20-90	N	04-300	28 IR 1816	
326 IAC 20-91	N	04-300	28 IR 1816	
326 IAC 20-92	N	04-300	28 IR 1817	
326 IAC 20-93	N	04-300	28 IR 1817	
326 IAC 20-94	N	04-300	28 IR 1817	
326 IAC 22-1-1	A	02-337	26 IR 2098	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 113**
326 IAC 23-1-31	A	02-337	26 IR 2099	*ARR (27 IR 2500) *CPH (27 IR 2521) **28 IR 114**

TITLE 327 WATER POLLUTION CONTROL BOARD

327 IAC 1-1-1	A	03-129	27 IR 3608	*GRAT (28 IR 2205) **28 IR 2046**
327 IAC 1-1-2	A	03-129	27 IR 3608	*GRAT (28 IR 2205) **28 IR 2046**
327 IAC 1-1-3	A	03-129	27 IR 3608	*GRAT (28 IR 2205) **28 IR 2046**
327 IAC 2-1-5	A	03-129	27 IR 3608	*GRAT (28 IR 2205) **28 IR 2047**
327 IAC 2-1-6	A	03-129	27 IR 3609	*GRAT (28 IR 2205) **28 IR 2047**
327 IAC 2-1-8	A	03-129	27 IR 3617	*GRAT (28 IR 2205) **28 IR 2055**
327 IAC 2-1-8.1	A	03-129	27 IR 3617	*GRAT (28 IR 2205) **28 IR 2055**
327 IAC 2-1-8.2	A	03-129	27 IR 3618	*GRAT (28 IR 2205) **28 IR 2056**
327 IAC 2-1-8.3	A	03-129	27 IR 3620	*GRAT (28 IR 2205) **28 IR 2057**
327 IAC 2-1-8.9	N	03-129	27 IR 3621	*GRAT (28 IR 2205) **28 IR 2058**
327 IAC 2-1-9	A	03-129	27 IR 3622	*GRAT (28 IR 2205) **28 IR 2060**
327 IAC 2-1-12	A	03-129	27 IR 3627	*GRAT (28 IR 2205) **28 IR 2064**
327 IAC 2-1-13	N	03-129	27 IR 3627	*GRAT (28 IR 2205) **28 IR 2065**
327 IAC 2-1.5-2	A	03-129	27 IR 3631	*GRAT (28 IR 2205) **28 IR 2068**
327 IAC 2-1.5-6	A	03-129	27 IR 3637	*GRAT (28 IR 2205) **28 IR 2074**
327 IAC 2-1.5-8	A	03-129	27 IR 3638	*GRAT (28 IR 2205) **28 IR 2074**
327 IAC 2-1.5-10	A	03-129	27 IR 3650	*GRAT (28 IR 2205) **28 IR 2084**
327 IAC 2-1.5-11	A	03-129	27 IR 3651	*GRAT (28 IR 2205) **28 IR 2084**
327 IAC 2-1.5-16	A	03-129	27 IR 3660	*GRAT (28 IR 2205) **28 IR 2093**
327 IAC 2-1.5-20	A	03-129	27 IR 3662	*GRAT (28 IR 2205) **28 IR 2096**
327 IAC 2-4-3	A	03-129	27 IR 3663	*GRAT (28 IR 2205) **28 IR 2097**
327 IAC 3-2-1.5	N	04-320	28 IR 2192	
327 IAC 3-2-3.5	N	04-320	28 IR 2192	
327 IAC 3-2-5.5	N	04-320	28 IR 2193	
327 IAC 5-1.5-72	A	03-129	27 IR 3663	*GRAT (28 IR 2205) **28 IR 2097**
327 IAC 5-2-1.5	A	03-129	27 IR 3663	*GRAT (28 IR 2205) **28 IR 2097**
327 IAC 5-2-11.1	A	03-129	27 IR 3664	*GRAT (28 IR 2205) **28 IR 2097**
327 IAC 5-2-11.2	A	03-129	27 IR 3668	*GRAT (28 IR 2205) **28 IR 2101**
327 IAC 5-2-11.4	A	03-129	27 IR 3669	*GRAT (28 IR 2205) **28 IR 2102**
327 IAC 5-2-11.5	A	03-129	27 IR 3679	*GRAT (28 IR 2205) **28 IR 2112**
327 IAC 5-2-11.6	A	03-129	27 IR 3689	*GRAT (28 IR 2205) **28 IR 2120**
327 IAC 5-2-13	A	03-129	27 IR 3694	*GRAT (28 IR 2205) **28 IR 2125**

327 IAC 5-2-15	A	03-129	27 IR 3694	*GRAT (28 IR 2205)
				28 IR 2126
327 IAC 5-3.5	N	03-130	28 IR 650	*CPH (28 IR 1197)
327 IAC 8-1-1	A	04-106	28 IR 2163	
327 IAC 8-1-2	A	04-106	28 IR 2164	
327 IAC 8-1-3	A	04-106	28 IR 2164	
327 IAC 8-1-4	A	04-106	28 IR 2165	
327 IAC 8-2-1	A	04-13	28 IR 1206	
327 IAC 8-2-4	A	04-13	28 IR 1210	
327 IAC 8-2-4.1	A	04-13	28 IR 1212	
327 IAC 8-2-4.2	A	04-13	28 IR 1217	
327 IAC 8-2-5.1	A	04-13	28 IR 1220	
327 IAC 8-2-5.2	A	04-13	28 IR 1222	
327 IAC 8-2-5.5	A	04-13	28 IR 1225	
327 IAC 8-2-8.5	A	04-13	28 IR 1228	
327 IAC 8-2-8.7	A	04-13	28 IR 1229	
327 IAC 8-2-9	A	04-13	28 IR 1230	
327 IAC 8-2-10.1	A	04-13	28 IR 1230	
327 IAC 8-2-10.2	A	04-13	28 IR 1233	
327 IAC 8-2-10.3	N	04-13	28 IR 1237	
327 IAC 8-2-13	A	04-13	28 IR 1239	
327 IAC 8-2-34	A	04-13	28 IR 1239	
327 IAC 8-2-34.1	N	04-13	28 IR 1240	
327 IAC 8-2-45	A	04-13	28 IR 1240	
327 IAC 8-2-46	A	04-13	28 IR 1242	
327 IAC 8-2.1-3	A	04-13	28 IR 1244	
327 IAC 8-2.1-4	A	04-13	28 IR 1247	
327 IAC 8-2.1-6	A	04-13	28 IR 1248	
327 IAC 8-2.1-8	A	04-13	28 IR 1255	
327 IAC 8-2.1-9	A	04-13	28 IR 1256	
327 IAC 8-2.1-14	A	04-13	28 IR 1257	
327 IAC 8-2.1-16	A	04-13	28 IR 1257	
327 IAC 8-2.1-17	A	04-13	28 IR 1261	
327 IAC 8-2.6-1	A	04-13	28 IR 1268	
327 IAC 8-2.6-2	A	04-13	28 IR 1269	
327 IAC 8-2.6-2.1	N	04-13	28 IR 1271	
327 IAC 8-2.6-3	A	04-13	28 IR 1273	
327 IAC 8-2.6-4	A	04-13	28 IR 1274	
327 IAC 8-2.6-5	A	04-13	28 IR 1274	
327 IAC 8-3-1	A	04-106	28 IR 2165	
327 IAC 8-3-1.1	A	04-106	28 IR 2166	
327 IAC 8-3-2	A	04-106	28 IR 2166	
327 IAC 8-3-2.1	N	04-106	28 IR 2167	
327 IAC 8-3-3	A	04-106	28 IR 2168	
327 IAC 8-3-8	A	04-106	28 IR 2168	
327 IAC 8-3.1-1	A	04-106	28 IR 2169	
327 IAC 8-3.1-2	A	04-106	28 IR 2169	
327 IAC 8-3.2-1	A	04-106	28 IR 2170	
327 IAC 8-3.2-2	A	04-106	28 IR 2170	
327 IAC 8-3.2-4	A	04-106	28 IR 2171	
327 IAC 8-3.2-8	A	04-106	28 IR 2171	
327 IAC 8-3.2-11	A	04-106	28 IR 2173	
327 IAC 8-3.2-17	A	04-106	28 IR 2173	
327 IAC 8-3.2-18	A	04-106	28 IR 2174	
327 IAC 8-3.2-20	A	04-106	28 IR 2175	
327 IAC 8-3.3-4	A	04-106	28 IR 2175	
327 IAC 8-3.3-5	A	04-106	28 IR 2176	
327 IAC 8-3.3-6	A	04-106	28 IR 2176	
327 IAC 8-3.4-1	A	04-106	28 IR 2176	
327 IAC 8-3.4-2	A	04-106	28 IR 2178	
327 IAC 8-3.4-3	A	04-106	28 IR 2178	
327 IAC 8-3.4-4	A	04-106	28 IR 2179	
327 IAC 8-3.4-8	A	04-106	28 IR 2180	
327 IAC 8-3.4-9	A	04-106	28 IR 2180	
327 IAC 8-3.4-9.1	N	04-106	28 IR 2182	
327 IAC 8-3.4-12	A	04-106	28 IR 2183	
327 IAC 8-3.4-13	A	04-106	28 IR 2183	
327 IAC 8-3.4-14	A	04-106	28 IR 2183	
327 IAC 8-3.4-16	A	04-106	28 IR 2184	
327 IAC 8-3.4-17	A	04-106	28 IR 2185	
327 IAC 8-3.4-23	A	04-106	28 IR 2185	
327 IAC 8-3.4-24	A	04-106	28 IR 2186	
327 IAC 8-3.4-25	A	04-106	28 IR 2187	
327 IAC 8-3.4-27	A	04-106	28 IR 2188	
327 IAC 8-3.5-1	A	04-106	28 IR 2188	
327 IAC 8-3.5-2	A	04-106	28 IR 2189	
327 IAC 8-3.5-5	A	04-106	28 IR 2189	
327 IAC 8-4-1	A	04-106	28 IR 2190	
327 IAC 8-4-2	N	04-106	28 IR 2191	
327 IAC 8-6-1	A	04-106	28 IR 2191	
327 IAC 15-14				*ERR (28 IR 214)
327 IAC 17	N	04-228	28 IR 1288	

TITLE 328 UNDERGROUND STORAGE TANK FINANCIAL ASSURANCE BOARD

328 IAC 1-1-2	A	02-204	27 IR 2778	*CPH (27 IR 3095)
				28 IR 123
328 IAC 1-1-3	A	02-204	27 IR 2778	*CPH (27 IR 3095)
				28 IR 123
328 IAC 1-1-4	A	02-204	27 IR 2778	*CPH (27 IR 3095)
				28 IR 124
328 IAC 1-1-5.1	A	02-204	27 IR 2778	*CPH (27 IR 3095)
				28 IR 124
328 IAC 1-1-7.5	N	02-204	27 IR 2779	*CPH (27 IR 3095)
				28 IR 124
328 IAC 1-1-8	R	02-204	27 IR 2797	*CPH (27 IR 3095)
				28 IR 144
328 IAC 1-1-8.3	N	02-204	27 IR 2779	*CPH (27 IR 3095)
				28 IR 124
328 IAC 1-1-8.5	A	02-204	27 IR 2779	*CPH (27 IR 3095)
				28 IR 125
328 IAC 1-1-9	A	02-204	27 IR 2779	*CPH (27 IR 3095)
				28 IR 125
328 IAC 1-1-10	A	02-204	27 IR 2779	*CPH (27 IR 3095)
				28 IR 125
328 IAC 1-2-1	A	02-204	27 IR 2779	*CPH (27 IR 3095)
				28 IR 125
328 IAC 1-2-3	A	02-204	27 IR 2780	*CPH (27 IR 3095)
				28 IR 125
328 IAC 1-3-1	A	02-204	27 IR 2780	*CPH (27 IR 3095)
				28 IR 126
328 IAC 1-3-1.3	N	02-204	27 IR 2780	*CPH (27 IR 3095)
				28 IR 126
328 IAC 1-3-1.6	N	02-204	27 IR 2781	*CPH (27 IR 3095)
				28 IR 127
328 IAC 1-3-2	A	02-204	27 IR 2781	*CPH (27 IR 3095)
				28 IR 127
328 IAC 1-3-3	A	02-204	27 IR 2781	*CPH (27 IR 3095)
				28 IR 127
				*ERR (28 IR 608)
328 IAC 1-3-4	A	02-204	27 IR 2783	*CPH (27 IR 3095)
				28 IR 129
328 IAC 1-3-5	A	02-204	27 IR 2784	*CPH (27 IR 3095)
				28 IR 129
328 IAC 1-3-6	A	02-204	27 IR 2791	*CPH (27 IR 3095)
				28 IR 137
328 IAC 1-4-1	A	02-204	27 IR 2791	*CPH (27 IR 3095)
				28 IR 137
				*ERR (28 IR 608)
328 IAC 1-4-1.5	N	02-204		**††28 IR 140**
328 IAC 1-4-3	A	02-204	27 IR 2794	*CPH (27 IR 3095)
				28 IR 141
				*ERR (28 IR 608)
328 IAC 1-4-4	N	02-204	27 IR 2795	*CPH (27 IR 3095)
				28 IR 141
				*ERR (28 IR 608)
328 IAC 1-4-5	N	02-204		**††28 IR 141**

328 IAC 1-5-1	A	02-204	27 IR 2795	*CPH (27 IR 3095)
				28 IR 142
328 IAC 1-5-2	A	02-204	27 IR 2796	*CPH (27 IR 3095)
				28 IR 142
328 IAC 1-5-3	A	02-204	27 IR 2796	*CPH (27 IR 3095)
				28 IR 143
328 IAC 1-6-1	A	02-204	27 IR 2796	*CPH (27 IR 3095)
				28 IR 143
328 IAC 1-6-2	A	02-204	27 IR 2796	*CPH (27 IR 3095)
				28 IR 143
328 IAC 1-7-2	A	02-204	27 IR 2797	*CPH (27 IR 3095)
				28 IR 144
328 IAC 1-7-3	R	02-204	27 IR 2797	*CPH (27 IR 3095)
				28 IR 144

TITLE 329 SOLID WASTE MANAGEMENT BOARD

329 IAC 3.1-1-7	A	03-312	27 IR 4110	
329 IAC 3.1-6-2	A	03-312	27 IR 4111	
329 IAC 3.1-6-3	A	03-312	27 IR 4112	
329 IAC 3.1-6-6	A	04-318	28 IR 2194	
329 IAC 3.1-7.5	N	03-312	27 IR 4112	
329 IAC 3.1-12-2	A	03-312	27 IR 4113	
329 IAC 3.1-13-2	A	03-312	27 IR 4114	
329 IAC 9-1-1	A	01-161	26 IR 1209	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3177	**28 IR 145**
329 IAC 9-1-4	A	01-161	26 IR 1209	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3177	**28 IR 145**
329 IAC 9-1-10.1	R	01-161	26 IR 1239	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3209	**28 IR 177**
329 IAC 9-1-10.2	R	01-161	26 IR 1239	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3209	**28 IR 177**
329 IAC 9-1-10.4	N	01-161	26 IR 1209	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3177	**28 IR 146**
329 IAC 9-1-10.6	N	01-161	26 IR 1209	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3178	**28 IR 146**
329 IAC 9-1-10.8	N	01-161	26 IR 1210	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3178	**28 IR 146**
329 IAC 9-1-14	A	01-161	26 IR 1210	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3178	**28 IR 146**
329 IAC 9-1-14.1	R	01-161	26 IR 1239	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3209	**28 IR 177**
329 IAC 9-1-14.3	N	01-161	26 IR 1210	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3178	**28 IR 146**
329 IAC 9-1-14.5	N	01-161	26 IR 1210	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3178	**28 IR 146**
329 IAC 9-1-14.7	N	01-161	26 IR 1210	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)

				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3178	**28 IR 146**
329 IAC 9-1-25	A	01-161	26 IR 1210	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3178	**28 IR 146**
329 IAC 9-1-27	A	01-161	26 IR 1210	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3178	**28 IR 147**
329 IAC 9-1-29.1	R	01-161	26 IR 1239	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3209	**28 IR 177**
329 IAC 9-1-36	A	01-161	26 IR 1210	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3179	**28 IR 147**
329 IAC 9-1-36.5	N	01-161	27 IR 3179	**28 IR 147**
329 IAC 9-1-39.5	N	01-161	26 IR 1211	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3179	**28 IR 147**
329 IAC 9-1-41	R	01-161	26 IR 1239	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3209	**28 IR 177**
329 IAC 9-1-41.1	R	01-161	26 IR 1239	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3209	**28 IR 177**
329 IAC 9-1-41.5	N	01-161	26 IR 1211	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3179	**28 IR 147**
329 IAC 9-1-42.1	R	01-161	26 IR 1239	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3209	**28 IR 177**
329 IAC 9-1-47	A	01-161	26 IR 1211	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3179	**28 IR 147**
329 IAC 9-1-47.1	A	01-161	26 IR 1211	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3179	**28 IR 147**
329 IAC 9-2-1	A	01-161	26 IR 1211	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3179	**28 IR 148**
329 IAC 9-2-2	A	01-161	26 IR 1214	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3182	**28 IR 150**
				*ERR (28 IR 608)

329 IAC 9-2.1-1	A	01-161	26 IR 1215	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3183	**28 IR 151**
329 IAC 9-3-1	A	01-161	26 IR 1216	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3184	**28 IR 152**
329 IAC 9-3-2	N	01-161	26 IR 1218	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3187	**28 IR 155**
329 IAC 9-3.1-1	A	01-161	26 IR 1218	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3187	**28 IR 155**
329 IAC 9-3.1-2	A	01-161	26 IR 1219	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3187	**28 IR 155**
329 IAC 9-3.1-3	A	01-161	26 IR 1219	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3188	**28 IR 156**
329 IAC 9-3.1-4	A	01-161	26 IR 1219	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3188	**28 IR 156**
329 IAC 9-4-3	A	01-161	26 IR 1220	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3189	**28 IR 157**
329 IAC 9-4-4	A	01-161	26 IR 1221	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3189	**28 IR 158**
329 IAC 9-5-1	A	01-161	26 IR 1221	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3190	**28 IR 158**
329 IAC 9-5-2	A	01-161	26 IR 1223	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3191	**28 IR 160**
329 IAC 9-5-3.1	R	01-161	26 IR 1239	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3209	**28 IR 177**
329 IAC 9-5-3.2	N	01-161	26 IR 1223	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3192	**28 IR 160**
329 IAC 9-5-4.1	R	01-161	26 IR 1239	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3209	**28 IR 177**

329 IAC 9-5-4.2	N	01-161	26 IR 1224	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3192	**28 IR 160**
329 IAC 9-5-5.1	A	01-161	26 IR 1224	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3193	**28 IR 161**
329 IAC 9-5-6	A	01-161	26 IR 1226	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3196	**28 IR 164**
329 IAC 9-5-7	A	01-161	26 IR 1227	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3196	**28 IR 165**
329 IAC 9-6-1	A	01-161	26 IR 1229	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3199	**28 IR 168**
329 IAC 9-6-2	R	01-161	26 IR 1239	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3209	**28 IR 177**
329 IAC 9-6-2.5	N	01-161	26 IR 1230	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3200	**28 IR 168**
329 IAC 9-6-3	A	01-161	26 IR 1234	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3204	**28 IR 172**
329 IAC 9-6-4	A	01-161	26 IR 1234	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3204	**28 IR 173**
				*ERR (28 IR 1184)
329 IAC 9-6-5	A	01-161	26 IR 1235	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3205	**28 IR 173**
329 IAC 9-7-1	A	01-161	26 IR 1235	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3205	**28 IR 173**
329 IAC 9-7-2	A	01-161	26 IR 1236	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3206	**28 IR 174**
329 IAC 9-7-4	A	01-161	26 IR 1237	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3207	**28 IR 175**
329 IAC 9-7-5	A	01-161	27 IR 3209	**28 IR 177**
329 IAC 9-7-6	R	01-161	26 IR 1239	*CPH (26 IR 1962)
				*CPH (26 IR 2646)
				*CPH (26 IR 3073)
				*CPH (26 IR 3367)
				*CPH (26 IR 3671)
				*CPH (27 IR 2299)
				*CPH (27 IR 2300)
				*ARR (27 IR 2500)
				*CPH (27 IR 2521)
			27 IR 3209	**28 IR 177**

329 IAC 10-2-112	A	04-256	28 IR 1301	
329 IAC 10-8.2				*ERR (28 IR 608)
329 IAC 10-9-2				*ERR (28 IR 608)
329 IAC 10-9-4				*ERR (28 IR 608)
				*ERR (28 IR 1485)
329 IAC 10-11-6.5	N	04-256	28 IR 1301	
329 IAC 10-20-14.1				*ERR (28 IR 608)
329 IAC 10-36-19				*ERR (28 IR 608)
329 IAC 11-3-2				*ERR (28 IR 608)
329 IAC 11-8-2.5				*ERR (28 IR 608)
329 IAC 11-19-3				*ERR (28 IR 608)
329 IAC 11-20-1				*ERR (27 IR 4023)
329 IAC 12-8-4	A	03-286	27 IR 3696	*GRAT (28 IR 2204)
				28 IR 2127
329 IAC 12-8-5	A	03-286	27 IR 3697	*GRAT (28 IR 2204)
				28 IR 2128
329 IAC 12-9-2	A	03-286	27 IR 3698	*GRAT (28 IR 2204)
				28 IR 2128
329 IAC 13-3-1	A	03-312	27 IR 4115	
329 IAC 13-3-4	N	03-312	27 IR 4116	
329 IAC 13-9-5	A	03-312	27 IR 4117	
329 IAC 15-1-1				*ER (28 IR 214)

TITLE 345 INDIANA STATE BOARD OF ANIMAL HEALTH

345 IAC 1-2.5	N	04-248	28 IR 1818	
345 IAC 1-3-6.5	R	04-147	27 IR 4136	
345 IAC 1-3-7	A	04-147	27 IR 4120	
345 IAC 1-3-9	R	04-147	27 IR 4136	
345 IAC 1-3-10	A	04-147	27 IR 4121	
345 IAC 1-3-31	A	04-287	28 IR 1833	
345 IAC 2-4.1	R	04-147	27 IR 4136	
345 IAC 2.5	N	04-147	27 IR 4121	
345 IAC 4-4-1	A	04-135	27 IR 4118	**28 IR 1473**
345 IAC 6-2	N	04-158	28 IR 1000	
345 IAC 7-4.5	N	04-248	28 IR 1820	
345 IAC 7-5-12	A	04-147	27 IR 4135	
345 IAC 7-5-15.1	A	04-16	27 IR 2797	**28 IR 559**
345 IAC 7-5-22	A	04-16	27 IR 2798	**28 IR 559**
345 IAC 8-2-1.1	A	04-286	28 IR 1821	
345 IAC 8-2-1.5	A	04-286	28 IR 1823	
345 IAC 8-2-1.6	N	04-286	28 IR 1824	
345 IAC 8-2-1.7	A	04-286	28 IR 1824	
345 IAC 8-2-1.9	A	04-286	28 IR 1825	
345 IAC 8-2-4	A	04-286	28 IR 1826	
345 IAC 8-3-1	A	04-286	28 IR 1828	
345 IAC 8-3-2	A	04-286	28 IR 1829	
345 IAC 8-3-12	N	04-286	28 IR 1829	
345 IAC 8-4-1	A	04-286	28 IR 1830	
345 IAC 10-2-5	N	04-135	27 IR 4119	**28 IR 1473**
345 IAC 10-2.1-1	A	04-135	27 IR 4119	**28 IR 1474**

TITLE 355 STATE CHEMIST OF THE STATE OF INDIANA

355 IAC 2-1-1	A	04-312	28 IR 1838	
355 IAC 2-1-6	A	04-312	28 IR 1838	
355 IAC 2-2-1	A	04-312	28 IR 1839	
355 IAC 2-2-1.5	N	04-312	28 IR 1839	
355 IAC 2-2-6	A	04-312	28 IR 1839	
355 IAC 2-2-9	A	04-312	28 IR 1839	
355 IAC 2-2-10	A	04-312	28 IR 1839	
355 IAC 2-2-13	A	04-312	28 IR 1840	
355 IAC 2-2-14	A	04-312	28 IR 1840	
355 IAC 2-2-15	A	04-312	28 IR 1840	
355 IAC 2-2-17	A	04-312	28 IR 1840	
355 IAC 2-3-4	A	04-312	28 IR 1840	
355 IAC 2-3-6	A	04-312	28 IR 1841	
355 IAC 2-3-8	A	04-312	28 IR 1841	
355 IAC 2-3-11	A	04-312	28 IR 1841	
355 IAC 2-3-12	A	04-312	28 IR 1841	
355 IAC 2-4-1	A	04-312	28 IR 1842	
355 IAC 2-4-4	R	04-312	28 IR 1846	
355 IAC 2-5-1	A	04-312	28 IR 1842	
355 IAC 2-5-2	A	04-312	28 IR 1843	
355 IAC 2-5-3	A	04-312	28 IR 1844	
355 IAC 2-5-4	A	04-312	28 IR 1844	
355 IAC 2-5-6	A	04-312	28 IR 1844	
355 IAC 2-5-8	A	04-312	28 IR 1844	
355 IAC 2-5-12	A	04-312	28 IR 1845	
355 IAC 2-5-12.5	A	04-312	28 IR 1845	
355 IAC 2-5-13	A	04-312	28 IR 1846	
355 IAC 2-5-14	R	04-312	28 IR 1846	
355 IAC 2-6-1.5	A	04-312	28 IR 1846	
355 IAC 2-6-2	R	04-312	28 IR 1846	
355 IAC 2-8	R	04-312	28 IR 1846	
355 IAC 2-9-1	A	04-312	28 IR 1846	
355 IAC 4-2-2	A	04-309	28 IR 1834	
355 IAC 4-2-8	A	04-309	28 IR 1834	
355 IAC 4-5-1	A	04-310	28 IR 1835	
355 IAC 4-5-2	A	04-310	28 IR 1836	
355 IAC 4-5-3	A	04-310	28 IR 1836	
355 IAC 4-5-4	R	04-310	28 IR 1836	
355 IAC 4-5-5	R	04-310	28 IR 1836	
355 IAC 4-5-6	R	04-310	28 IR 1836	
355 IAC 4-5-11	R	04-310	28 IR 1836	
355 IAC 4-6-1	A	04-311	28 IR 1837	
355 IAC 4-6-2	R	04-311	28 IR 1837	
355 IAC 4-6-3	A	04-311	28 IR 1837	
355 IAC 4-6-4	R	04-311	28 IR 1838	
355 IAC 4-6-6	R	04-311	28 IR 1838	
355 IAC 4-6-10	R	04-311	28 IR 1838	

TITLE 357 INDIANA PESTICIDE REVIEW BOARD

357 IAC 1-6-1	A	04-160	28 IR 253	**28 IR 1689**
357 IAC 1-6-2	A	04-160	28 IR 254	**28 IR 1690**
357 IAC 1-6-3	R	04-160	28 IR 257	**28 IR 1693**
357 IAC 1-6-4	A	04-160	28 IR 256	**28 IR 1692**
357 IAC 1-6-5	A	04-160	28 IR 256	**28 IR 1692**
357 IAC 1-6-6	A	04-160	28 IR 256	**28 IR 1693**
357 IAC 1-6-7	N	04-160	28 IR 257	**28 IR 1693**
357 IAC 1-6-8	N	04-160	28 IR 257	**28 IR 1693**
357 IAC 1-7-1	A	04-159	28 IR 249	**28 IR 1685**
357 IAC 1-7-2	A	04-159	28 IR 250	**28 IR 1686**
357 IAC 1-7-3	R	04-159	28 IR 252	**28 IR 1689**
357 IAC 1-7-4	A	04-159	28 IR 251	**28 IR 1687**
357 IAC 1-7-5	A	04-159	28 IR 252	**28 IR 1688**
357 IAC 1-7-6	A	04-159	28 IR 252	**28 IR 1688**
357 IAC 1-7-7	N	04-159	28 IR 252	**28 IR 1688**
357 IAC 1-7-8	N	04-159	28 IR 252	**28 IR 1689**

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

405 IAC 1-1-3.1	N	04-321	28 IR 2196	
405 IAC 1-1-5	A	04-178	28 IR 258	*NRA (28 IR 1497)
				28 IR 2129
405 IAC 1-1.5-1	A	04-142	27 IR 3699	*NRA (28 IR 619)
				28 IR 815
				*ERR (28 IR 970)
405 IAC 1-1.5-2	A	04-178	28 IR 259	*NRA (28 IR 1497)
				28 IR 2131
405 IAC 1-1.6	N	04-142	27 IR 3699	*NRA (28 IR 619)
				28 IR 816
				*ERR (28 IR 970)
405 IAC 1-5-1	A	04-219	28 IR 655	*NRA (28 IR 1497)
				28 IR 2134
405 IAC 2-2-3	A	04-319	28 IR 1847	
405 IAC 2-3-10	A	03-263	27 IR 1210	*ARR (27 IR 4024)
				*NRA (27 IR 4044)
				28 IR 178
	A	04-321	28 IR 2196	

405 IAC 2-9-5	A	04-319	28 IR 1848	
405 IAC 5-1-5	A	04-178	28 IR 260	*NRA (28 IR 1497)
				28 IR 2131
405 IAC 5-3-13	A	04-178	28 IR 260	*NRA (28 IR 1497)
				28 IR 2132
405 IAC 5-9-1	A	04-178	28 IR 261	*NRA (28 IR 1497)
				28 IR 2132
405 IAC 5-19-1	A	04-178	28 IR 261	*NRA (28 IR 1497)
				28 IR 2133
405 IAC 5-19-3	A	03-207	27 IR 267	*AROC (27 IR 2342)
405 IAC 5-19-10	A	04-178	28 IR 262	*NRA (28 IR 1497)
				28 IR 2134
405 IAC 5-26-5	A	04-178	28 IR 262	*NRA (28 IR 1497)
				28 IR 2134
405 IAC 6-2-5	A	04-95	27 IR 3210	*NRA (27 IR 4044)
				28 IR 179
405 IAC 6-3-3	A	04-95	27 IR 3210	*NRA (27 IR 4044)
				28 IR 180
405 IAC 6-4-2	A	04-95	27 IR 3210	*NRA (27 IR 4044)
				28 IR 180
405 IAC 6-4-3	A	04-95	27 IR 3211	*NRA (27 IR 4044)
				28 IR 180
405 IAC 6-5-1	A	04-95	27 IR 3211	*NRA (27 IR 4044)
				28 IR 181
405 IAC 6-5-2	A	04-95	27 IR 3211	*NRA (27 IR 4044)
				28 IR 181
405 IAC 6-5-3	A	04-95	27 IR 3211	*NRA (27 IR 4044)
				28 IR 181
405 IAC 6-5-4	A	04-95	27 IR 3212	*NRA (27 IR 4044)
				28 IR 181
405 IAC 6-5-6	A	04-95	27 IR 3212	*NRA (27 IR 4044)
				28 IR 182

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

410 IAC 6-7.2-28				*ERR (28 IR 1695)
410 IAC 6-9-3				*ERR (28 IR 1695)
410 IAC 6-12-0.5	N	03-276	27 IR 3212	**28 IR 818**
410 IAC 6-12-1	A	03-276	27 IR 3212	**28 IR 818**
410 IAC 6-12-2	R	03-276	27 IR 3216	**28 IR 821**
410 IAC 6-12-3	A	03-276	27 IR 3213	**28 IR 818**
410 IAC 6-12-3.1	N	03-276	27 IR 3213	**28 IR 818**
410 IAC 6-12-3.2	N	03-276	27 IR 3213	**28 IR 818**
410 IAC 6-12-4	A	03-276	27 IR 3213	**28 IR 818**
410 IAC 6-12-5	R	03-276	27 IR 3216	**28 IR 821**
410 IAC 6-12-6	R	03-276	27 IR 3216	**28 IR 821**
410 IAC 6-12-7	A	03-276	27 IR 3213	**28 IR 818**
410 IAC 6-12-8	A	03-276	27 IR 3213	**28 IR 819**
410 IAC 6-12-9	A	03-276	27 IR 3214	**28 IR 820**
410 IAC 6-12-10	A	03-276	27 IR 3215	**28 IR 820**
410 IAC 6-12-11	A	03-276	27 IR 3215	**28 IR 820**
410 IAC 6-12-12	A	03-276	27 IR 3215	**28 IR 820**
410 IAC 6-12-13	A	03-276	27 IR 3215	**28 IR 820**
410 IAC 6-12-14	A	03-276	27 IR 3215	**28 IR 821**
410 IAC 6-12-15	R	03-276	27 IR 3216	**28 IR 821**
410 IAC 6-12-17	N	03-276	27 IR 3216	**28 IR 821**
410 IAC 7-20	R	04-60	27 IR 3301	**28 IR 906**
410 IAC 7-21-34				*ERR (28 IR 1695)
410 IAC 7-23-1	A	04-62	27 IR 3301	**28 IR 908**
410 IAC 7-24	N	04-60	27 IR 3216	**28 IR 822**
				*ERR (28 IR 1485)
410 IAC 15-2.6-1				*ERR (28 IR 1695)
410 IAC 16.2-1.1-19.3	N	04-7	27 IR 2542	**28 IR 189**
410 IAC 16.2-3.1-2	A	03-297	27 IR 2536	**28 IR 182**
	A	04-7	27 IR 2542	**28 IR 189**
410 IAC 16.2-3.1-21				*ERR (28 IR 1695)
410 IAC 16.2-3.1-53	N	04-7	27 IR 2545	**28 IR 192**
410 IAC 16.2-5-1.1	A	03-297	27 IR 2539	**28 IR 185**
410 IAC 16.2-5-1.4	A	04-7	27 IR 2547	**28 IR 193**
410 IAC 16.2-5-1.5				*ERR (28 IR 1695)
410 IAC 16.2-5-1.6				*ERR (28 IR 1695)
410 IAC 16.2-5-5.1				*ERR (28 IR 1695)
410 IAC 16.2-5-13	N	04-7	27 IR 2548	**28 IR 194**
410 IAC 21-3-6	R	04-161	28 IR 657	
410 IAC 21-3-8	A	04-161	28 IR 656	
410 IAC 21-3-9	A	04-161	28 IR 656	

TITLE 440 DIVISION OF MENTAL HEALTH AND ADDICTION

440 IAC 7.5-1-1	A	04-229	28 IR 657	*NRA (28 IR 1497)
440 IAC 7.5-2-1	A	04-229	28 IR 660	*NRA (28 IR 1497)
440 IAC 7.5-2-8	A	04-229	28 IR 661	*NRA (28 IR 1497)
440 IAC 7.5-2-12	A	04-229	28 IR 661	*NRA (28 IR 1497)
440 IAC 7.5-2-13	A	04-229	28 IR 662	*NRA (28 IR 1497)
440 IAC 7.5-3-3	A	04-229	28 IR 663	*NRA (28 IR 1497)
440 IAC 7.5-3-4	A	04-229	28 IR 664	*NRA (28 IR 1497)
440 IAC 7.5-3-7	A	04-229	28 IR 664	*NRA (28 IR 1497)
440 IAC 7.5-4-7	A	04-229	28 IR 664	*NRA (28 IR 1497)
440 IAC 7.5-4-8	A	04-229	28 IR 665	*NRA (28 IR 1497)
440 IAC 7.5-5-1	A	04-229	28 IR 665	*NRA (28 IR 1497)
440 IAC 7.5-8-1	A	04-229	28 IR 666	*NRA (28 IR 1497)
440 IAC 7.5-8-2	A	04-229	28 IR 666	*NRA (28 IR 1497)
440 IAC 7.5-8-3	A	04-229	28 IR 666	*NRA (28 IR 1497)
440 IAC 7.5-9-1	A	04-229	28 IR 666	*NRA (28 IR 1497)
440 IAC 7.5-9-2	A	04-229	28 IR 666	*NRA (28 IR 1497)
440 IAC 7.5-9-3	A	04-229	28 IR 667	*NRA (28 IR 1497)
440 IAC 7.5-10-1	A	04-229	28 IR 667	*NRA (28 IR 1497)
440 IAC 7.5-10-2	A	04-229	28 IR 667	*NRA (28 IR 1497)
440 IAC 7.5-10-3	N	04-229	28 IR 667	*NRA (28 IR 1497)
440 IAC 7.5-11	N	04-229	28 IR 667	*NRA (28 IR 1497)

TITLE 460 DIVISION OF DISABILITY, AGING, AND REHABILITATIVE SERVICES

460 IAC 1-10	N	03-231	27 IR 3303	*NRA (28 IR 233)
				28 IR 910
460 IAC 1.1	N	03-245	27 IR 2799	*AROC (27 IR 3344)
				*NRA (28 IR 233)
				*GRAT (28 IR 2204)
				28 IR 912
460 IAC 1-3.4	N	04-75	28 IR 1002	*NRA (28 IR 1497)
460 IAC 1-8-3	A	04-199	28 IR 1007	*NRA (28 IR 1497)
460 IAC 1-8-11	N	04-199	28 IR 1007	*NRA (28 IR 1497)
460 IAC 1-8-12	N	04-199	28 IR 1008	*NRA (28 IR 1497)
460 IAC 1-8-13	N	04-199	28 IR 1008	*NRA (28 IR 1497)
460 IAC 1-11	N	04-136	28 IR 1004	*NRA (28 IR 1497)
460 IAC 2-2.1	N	04-76	27 IR 3701	*NRA (28 IR 233)
460 IAC 3.5-2-3	N	04-269	28 IR 1303	*AWR (28 IR 1697)

TITLE 470 DIVISION OF FAMILY AND CHILDREN

470 IAC 3-1.1-0.5	A	04-77	27 IR 2837	*NRA (28 IR 1196)
				*AROC (28 IR 1317)
				*ARR (28 IR 2140)
				*GRAT (28 IR 2205)
470 IAC 3-1.1-1	A	04-77	27 IR 2838	*NRA (28 IR 1196)
				*AROC (28 IR 1317)
				*ARR (28 IR 2140)
				*GRAT (28 IR 2205)
470 IAC 3-1.1-2	A	04-77	27 IR 2838	*NRA (28 IR 1196)
				*AROC (28 IR 1317)
				*ARR (28 IR 2140)
				*GRAT (28 IR 2205)
470 IAC 3-1.1-4	A	04-77	27 IR 2838	*NRA (28 IR 1196)
				*AROC (28 IR 1317)
				*ARR (28 IR 2140)
				*GRAT (28 IR 2205)
470 IAC 3-1.1-6	A	04-77	27 IR 2838	*NRA (28 IR 1196)
				*AROC (28 IR 1317)
				*ARR (28 IR 2140)
				*GRAT (28 IR 2205)

470 IAC 3-1.1-7.2	A	04-77	27 IR 2838	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-7.4	A	04-77	27 IR 2839	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-8	A	04-77	27 IR 2839	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-9	R	04-77	27 IR 2857	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-10	A	04-77	27 IR 2839	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-12	A	04-77	27 IR 2839	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-12.5	A	04-77	27 IR 2839	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-13	A	04-77	27 IR 2839	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-14	A	04-77	27 IR 2840	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-15	A	04-77	27 IR 2840	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-16	A	04-77	27 IR 2840	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-20	A	04-77	27 IR 2840	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-20.1	N	04-77	27 IR 2840	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-22.5	A	04-77	27 IR 2840	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-24	A	04-77	27 IR 2841	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-28	A	04-77	27 IR 2841	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-28.5	A	04-77	27 IR 2842	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-29	A	04-77	27 IR 2842	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-29.5	A	04-77	27 IR 2842	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-32	R	04-77	27 IR 2857	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-32.1	N	04-77	27 IR 2843	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-33	A	04-77	27 IR 2845	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-33.5	A	04-77	27 IR 2845	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-34	A	04-77	27 IR 2845	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-35	A	04-77	27 IR 2846	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-36.5	A	04-77	27 IR 2846	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-36.6	N	04-77	27 IR 2846	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-37	A	04-77	27 IR 2846	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-38	A	04-77	27 IR 2847	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-38.5	N	04-77	27 IR 2847	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-39	A	04-77	27 IR 2848	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-40	A	04-77	27 IR 2848	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-41	A	04-77	27 IR 2848	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-41.1	N	04-77	27 IR 2848	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)

470 IAC 3-1.1-41.2	N	04-77	27 IR 2848	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-42	A	04-77	27 IR 2849	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-44	A	04-77	27 IR 2849	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-44.5	N	04-77	27 IR 2850	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-45	A	04-77	27 IR 2850	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-45.5	N	04-77	27 IR 2850	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-46	A	04-77	27 IR 2851	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-47	A	04-77	27 IR 2852	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-48	A	04-77	27 IR 2852	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-50	N	04-77	27 IR 2853	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.1-51	N	04-77	27 IR 2853	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.2-2	A	04-77	27 IR 2853	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.2-3	A	04-77	27 IR 2853	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.2-3.2	N	04-77	27 IR 2853	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.2-4	A	04-77	27 IR 2854	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.2-5	A	04-77	27 IR 2854	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.2-6	A	04-77	27 IR 2854	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.2-7	A	04-77	27 IR 2855	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.2-8	N	04-77	27 IR 2855	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.3-1	A	04-77	27 IR 2855	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.3-2	N	04-77	27 IR 2855	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.3-3	N	04-77	27 IR 2855	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.3-4	N	04-77	27 IR 2856	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.3-5	N	04-77	27 IR 2856	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.3-6	N	04-77	27 IR 2856	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-1.3-7	N	04-77	27 IR 2856	*NRA (28 IR 1196) *AROC (28 IR 1317) *ARR (28 IR 2140) *GRAT (28 IR 2205)
470 IAC 3-4.8	N	03-232	27 IR 1626	*AROC (27 IR 2882) *NRA (27 IR 4044) **28 IR 196**
470 IAC 3-18	N	03-233	27 IR 1627	*AROC (27 IR 3345) *NRA (28 IR 233) **28 IR 950**

TITLE 511 INDIANA STATE BOARD OF EDUCATION

511 IAC 1-3-1	A	04-101	27 IR 3305	**28 IR 965**
511 IAC 1-9	RA	04-47	27 IR 2879	**28 IR 323**
511 IAC 5-2-4.5	N	04-214	28 IR 668	
511 IAC 6-7-1	RA	04-47	27 IR 2879	**28 IR 323**
511 IAC 6-7-6	RA	04-47	27 IR 2879	**28 IR 323**
511 IAC 6-7-6.5	A	04-36	27 IR 2552	**28 IR 959**
511 IAC 6-7.1	N	04-277	28 IR 1303	
511 IAC 6-7.1-4.5	N	04-276	28 IR 1849	
511 IAC 6.1-2-2.5	RA	04-47	27 IR 2879	**28 IR 323**
511 IAC 6.1-5-4	RA	04-47	27 IR 2879	**28 IR 323**
511 IAC 6.1-5.1-1	A	04-317	28 IR 2198	
511 IAC 6.1-5.1-2	A	04-36	27 IR 2553	**28 IR 960**
511 IAC 6.1-5.1-3	A	04-36	27 IR 2553	**28 IR 960**
511 IAC 6.1-5.1-4	A	04-36	27 IR 2554	**28 IR 961**
511 IAC 6.1-5.1-5	A	04-36	27 IR 2555	**28 IR 962**
511 IAC 6.1-5.1-6	A	04-36	27 IR 2555	**28 IR 962**
511 IAC 6.1-5.1-8	A	04-36	27 IR 2556	**28 IR 963**
511 IAC 6.1-5.1-9	A	04-36	27 IR 2557	**28 IR 964**
	A	04-317	28 IR 2199	
511 IAC 6.1-5.1-10.1	A	04-22	27 IR 2550	**28 IR 957**
	A	04-317	28 IR 2200	
511 IAC 6.1-5.1-11	A	04-317	28 IR 2202	
511 IAC 8	RA	04-47	27 IR 2879	**28 IR 323**

TITLE 514 INDIANA SCHOOL FOR THE DEAF BOARD

514 IAC	N	03-298	27 IR 1634	**28 IR 197**

TITLE 515 PROFESSIONAL STANDARDS BOARD

515 IAC 1-4-1	A	03-320	27 IR 2558	*ARR (28 IR 610) **28 IR 1475**
515 IAC 1-4-2	A	03-320	27 IR 2558	*ARR (28 IR 610) **28 IR 1475**
515 IAC 8-1-23	A	03-321	27 IR 2330	*ARR (28 IR 610) **28 IR 1477**
515 IAC 8-1-42	A	03-321	27 IR 2330	*ARR (28 IR 610) **28 IR 1478**
515 IAC 9	N	03-11	26 IR 2451	*CPH (26 IR 2648) **27 IR 1169**
515 IAC 9-1-22	A	03-322	27 IR 2331	*ARR (28 IR 610) **28 IR 1479**
515 IAC 10	N	04-197	28 IR 263	
515 IAC 12	N	04-141	27 IR 3703	**28 IR 2135**

TITLE 540 INDIANA EDUCATION SAVINGS AUTHORITY

540 IAC 1-1-11	RA	04-54	27 IR 2880	*CPH (27 IR 3096) **28 IR 324**
540 IAC 1-1-17	RA	04-54	27 IR 2880	*CPH (27 IR 3096) **28 IR 324**

TITLE 646 DEPARTMENT OF WORKFORCE DEVELOPMENT

646 IAC 3-1-12	N	03-317	27 IR 2858	**28 IR 560**
646 IAC 3-1-13	N	03-317	27 IR 2858	**28 IR 561**
646 IAC 3-4-11	N	03-317	27 IR 2858	**28 IR 561**
646 IAC 3-5-1	A	03-317	27 IR 2859	**28 IR 561**

TITLE 655 BOARD OF FIREFIGHTING PERSONNEL STANDARDS AND EDUCATION

655 IAC 1-1-5.1	A	04-138	28 IR 1009	*AROC (28 IR 1073)
655 IAC 1-2.1-3	A	04-138	28 IR 1012	*AROC (28 IR 1073)
655 IAC 1-2.1-4	A	04-138	28 IR 1012	*AROC (28 IR 1073)
655 IAC 1-2.1-5	A	04-138	28 IR 1013	*AROC (28 IR 1073)
655 IAC 1-2.1-6	A	04-138	28 IR 1013	*AROC (28 IR 1073)
655 IAC 1-2.1-6.1	A	04-138	28 IR 1013	*AROC (28 IR 1073)
655 IAC 1-2.1-6.2	A	04-138	28 IR 1013	*AROC (28 IR 1073)
655 IAC 1-2.1-6.3	A	04-138	28 IR 1014	*AROC (28 IR 1073)
655 IAC 1-2.1-6.4	A	04-138	28 IR 1014	*AROC (28 IR 1073)
655 IAC 1-2.1-7.1	N	04-138	28 IR 1014	*AROC (28 IR 1073)
655 IAC 1-2.1-8	A	04-138	28 IR 1016	*AROC (28 IR 1073)
655 IAC 1-2.1-9	A	04-138	28 IR 1016	*AROC (28 IR 1073)
655 IAC 1-2.1-10	A	04-138	28 IR 1016	*AROC (28 IR 1073)
655 IAC 1-2.1-11	A	04-138	28 IR 1017	*AROC (28 IR 1073)
655 IAC 1-2.1-12	A	04-138	28 IR 1017	*AROC (28 IR 1073)
655 IAC 1-2.1-13	A	04-138	28 IR 1017	*AROC (28 IR 1073)
655 IAC 1-2.1-14	A	04-138	28 IR 1017	*AROC (28 IR 1073)
655 IAC 1-2.1-15	A	04-138	28 IR 1017	*AROC (28 IR 1073)
655 IAC 1-2.1-20	A	04-138	28 IR 1018	*AROC (28 IR 1073)
655 IAC 1-2.1-22	A	04-138	28 IR 1018	*AROC (28 IR 1073)
655 IAC 1-2.1-23	A	04-138	28 IR 1018	*AROC (28 IR 1073)
655 IAC 1-2.1-23.1	A	04-138	28 IR 1019	*AROC (28 IR 1073)
655 IAC 1-2.1-24	A	04-138	28 IR 1019	*AROC (28 IR 1073)
655 IAC 1-2.1-24.1	A	04-138	28 IR 1019	*AROC (28 IR 1073)
655 IAC 1-2.1-24.2	A	04-138	28 IR 1019	*AROC (28 IR 1073)
655 IAC 1-2.1-24.3	A	04-138	28 IR 1019	*AROC (28 IR 1073)
655 IAC 1-2.1-75	A	04-138	28 IR 1020	*AROC (28 IR 1073)
655 IAC 1-2.1-75.2	A	04-138	28 IR 1020	*AROC (28 IR 1073)
655 IAC 1-2.1-75.3	A	04-138	28 IR 1020	*AROC (28 IR 1073)
655 IAC 1-2.1-75.4	A	04-138	28 IR 1021	*AROC (28 IR 1073)
655 IAC 1-2.1-75.5	A	04-138	28 IR 1021	*AROC (28 IR 1073)
655 IAC 1-2.1-76.1	A	04-138	28 IR 1022	*AROC (28 IR 1073)
655 IAC 1-2.1-76.2	R	04-138	28 IR 1029	*AROC (28 IR 1073)
655 IAC 1-2.1-76.3	R	04-138	28 IR 1029	*AROC (28 IR 1073)
655 IAC 1-2.1-96	N	04-138	28 IR 1022	*AROC (28 IR 1073)
655 IAC 1-2.1-97	N	04-138	28 IR 1022	*AROC (28 IR 1073)
655 IAC 1-2.1-98	N	04-138	28 IR 1023	*AROC (28 IR 1073)
655 IAC 1-2.1-99	N	04-138	28 IR 1023	*AROC (28 IR 1073)
655 IAC 1-2.1-100	N	04-138	28 IR 1023	*AROC (28 IR 1073)
655 IAC 1-2.1-101	N	04-138	28 IR 1024	*AROC (28 IR 1073)
655 IAC 1-2.1-102	N	04-138	28 IR 1024	*AROC (28 IR 1073)
655 IAC 1-2.1-103	N	04-138	28 IR 1025	*AROC (28 IR 1073)
655 IAC 1-2.1-104	N	04-138	28 IR 1025	*AROC (28 IR 1073)
655 IAC 1-2.1-105	N	04-138	28 IR 1026	*AROC (28 IR 1073)
655 IAC 1-2.1-106	N	04-138	28 IR 1026	*AROC (28 IR 1073)
655 IAC 1-2.1-107	N	04-138	28 IR 1027	*AROC (28 IR 1073)
655 IAC 1-2.1-108	N	04-138	28 IR 1027	*AROC (28 IR 1073)
655 IAC 1-2.1-109	N	04-138	28 IR 1027	*AROC (28 IR 1073)
655 IAC 1-2.1-110	N	04-138	28 IR 1027	*AROC (28 IR 1073)
655 IAC 1-3-8	R	03-186	27 IR 941	*AROC (27 IR 1652)
655 IAC 1-4-2	A	04-138	28 IR 1028	*AROC (28 IR 1073)

TITLE 675 FIRE PREVENTION AND BUILDING SAFETY COMMISSION

675 IAC 13-2.4-3		02-115		*ERR (28 IR 1695)
675 IAC 13-2.4-10	A	04-216	28 IR 1529	
675 IAC 13-2.4-15		02-115		*ERR (28 IR 1695)
675 IAC 13-2.4-19	A	04-216	28 IR 1529	
675 IAC 13-2.4-20	A	04-216	28 IR 1530	
675 IAC 13-2.4-22	A	04-216	28 IR 1530	
675 IAC 13-2.4-24.3	N	04-216	28 IR 1530	
675 IAC 13-2.4-32.5	N	04-216	28 IR 1530	
675 IAC 13-2.4-40.5	N	04-216	28 IR 1531	
675 IAC 13-2.4-40.6	N	04-216	28 IR 1531	
675 IAC 13-2.4-41.5	N	04-216	28 IR 1531	
675 IAC 13-2.4-42.7	N	04-216	28 IR 1531	
675 IAC 13-2.4-43.2	N	04-216	28 IR 1531	
675 IAC 13-2.4-43.6	N	04-216	28 IR 1531	
675 IAC 13-2.4-47	A	04-216	28 IR 1531	
675 IAC 13-2.4-55	A	04-216	28 IR 1533	
675 IAC 13-2.4-55.5	N	04-216	28 IR 1533	
675 IAC 13-2.4-56.5	N	04-216	28 IR 1533	
675 IAC 13-2.4-68		02-115		*ERR (28 IR 1695)
675 IAC 13-2.4-96.5	N	04-216	28 IR 1533	
675 IAC 13-2.4-105.6	N	04-216	28 IR 1533	
675 IAC 13-2.4-107.3	N	04-216	28 IR 1534	
675 IAC 13-2.4-107.5	N	04-216	28 IR 1534	
675 IAC 13-2.4-107.6	N	04-216	28 IR 1534	
675 IAC 13-2.4-118	A	04-216	28 IR 1534	
675 IAC 13-2.4-118.4	N	04-216	28 IR 1534	
675 IAC 13-2.4-121.5	N	04-216	28 IR 1534	
675 IAC 13-2.4-122	A	04-216	28 IR 1534	
675 IAC 13-2.4-122.5	N	04-216	28 IR 1535	
675 IAC 13-2.4-131		02-115		*ERR (28 IR 1695)
675 IAC 13-2.4-132	A	04-216	28 IR 1535	
675 IAC 13-2.4-132.3	N	04-216	28 IR 1535	
675 IAC 13-2.4-132.5	N	04-216	28 IR 1535	
675 IAC 13-2.4-133.5	N	04-216	28 IR 1535	
675 IAC 13-2.4-134.5	N	04-216	28 IR 1535	
675 IAC 13-2.4-143	A	04-216	28 IR 1535	
675 IAC 13-2.4-174		02-115		*ERR (28 IR 1695)
675 IAC 13-2.4-180.5	N	04-216	28 IR 1536	
675 IAC 13-2.4-201.5	N	04-216	28 IR 1536	
675 IAC 13-2.4-201.7	N	04-216	28 IR 1536	
675 IAC 13-2.4-210.3	N	04-216	28 IR 1536	
675 IAC 13-2.4-210.5	N	04-216	28 IR 1536	
675 IAC 13-2.4-213.3	N	04-216	28 IR 1536	
675 IAC 13-2.4-213.5	N	04-216	28 IR 1536	
675 IAC 13-2.4-213.7	N	04-216	28 IR 1536	
675 IAC 13-2.4-214.2	N	04-216	28 IR 1537	
675 IAC 13-2.4-214.4	N	04-216	28 IR 1537	
675 IAC 13-2.4-214.6	N	04-216	28 IR 1537	
675 IAC 13-2.4-214.7	N	04-216	28 IR 1537	
675 IAC 13-2.4-222		02-115		*ERR (28 IR 1695)
675 IAC 13-2.4-228.5	N	04-216	28 IR 1538	

675 IAC 14-4.2	R	04-194	28 IR 312	
675 IAC 14-4.2-3				*ERR (28 IR 970)
675 IAC 14-4.2-19.5				*ERR (28 IR 970)
675 IAC 14-4.2-20.5				*ERR (28 IR 970)
675 IAC 14-4.2-21				*ERR (28 IR 970)
675 IAC 14-4.2-26.5				*ERR (28 IR 970)
675 IAC 14-4.2-29				*ERR (28 IR 970)
675 IAC 14-4.2-30	A	04-8	27 IR 2333	**28 IR 562**
675 IAC 14-4.2-53.7				*ERR (28 IR 970)
675 IAC 14-4.2-69.5				*ERR (28 IR 970)
675 IAC 14-4.2-69.6				*ERR (28 IR 970)
675 IAC 14-4.2-73.5				*ERR (28 IR 970)
675 IAC 14-4.2-81.2				*ERR (28 IR 970)
675 IAC 14-4.2-89.2	A	04-8	27 IR 2333	**28 IR 562**
675 IAC 14-4.2-89.6				*ERR (28 IR 970)
675 IAC 14-4.2-89.8				*ERR (28 IR 970)
675 IAC 14-4.2-107				*ERR (28 IR 970)
675 IAC 14-4.3	N	04-194	28 IR 268	
675 IAC 14-4.3-136.5	N	04-273	28 IR 1850	
675 IAC 14-4.3-155.5	N	04-273	28 IR 1850	
675 IAC 14-4.3-212	A	04-273	28 IR 1850	
675 IAC 14-4.3-213	R	04-273	28 IR 1859	
675 IAC 14-4.3-213.5	N	04-273	28 IR 1850	
675 IAC 14-4.3-214	A	04-273	28 IR 1850	
675 IAC 14-4.3-215	A	04-273	28 IR 1851	
675 IAC 14-4.3-216	R	04-273	28 IR 1859	
675 IAC 14-4.3-219.3	N	04-273	28 IR 1851	
675 IAC 14-4.3-219.5	N	04-273	28 IR 1851	
675 IAC 14-4.3-219.6	N	04-273	28 IR 1851	
675 IAC 14-4.3-219.7	N	04-273	28 IR 1851	
675 IAC 14-4.3-219.8	N	04-273	28 IR 1852	
675 IAC 14-4.3-225.2	N	04-273	28 IR 1852	
675 IAC 14-4.3-226.1	N	04-273	28 IR 1852	
675 IAC 14-4.3-226.5	N	04-273	28 IR 1852	
675 IAC 14-4.3-226.6	N	04-273	28 IR 1852	
675 IAC 14-4.3-227	A	04-273	28 IR 1852	
675 IAC 14-4.3-228.5	N	04-273	28 IR 1852	
675 IAC 14-4.3-230	A	04-273	28 IR 1853	
675 IAC 14-4.3-232	A	04-273	28 IR 1853	
675 IAC 14-4.3-232.5	N	04-273	28 IR 1853	
675 IAC 14-4.3-233	A	04-273	28 IR 1853	
675 IAC 14-4.3-234	A	04-273	28 IR 1854	
675 IAC 14-4.3-238.5	N	04-273	28 IR 1854	
675 IAC 14-4.3-240	A	04-273	28 IR 1854	
675 IAC 14-4.3-240.5	N	04-273	28 IR 1854	
675 IAC 14-4.3-241	A	04-273	28 IR 1854	
675 IAC 14-4.3-243.5	N	04-273	28 IR 1854	
675 IAC 14-4.3-244	R	04-273	28 IR 1859	
675 IAC 14-4.3-246	A	04-273	28 IR 1855	
675 IAC 14-4.3-246.5	N	04-273	28 IR 1855	
675 IAC 14-4.3-247.5	N	04-273	28 IR 1855	
675 IAC 14-4.3-248.5	N	04-273	28 IR 1855	
675 IAC 14-4.3-250	R	04-273	28 IR 1859	
675 IAC 14-4.3-251	R	04-273	28 IR 1859	
675 IAC 14-4.3-252	R	04-273	28 IR 1859	
675 IAC 14-4.3-253.5	N	04-273	28 IR 1855	
675 IAC 14-4.3-253.7	N	04-273	28 IR 1855	
675 IAC 15-1-1	R	04-227	28 IR 1053	
675 IAC 15-1-2	R	04-227	28 IR 1053	
675 IAC 15-1-3	R	04-227	28 IR 1053	
675 IAC 15-1-5	R	04-227	28 IR 1053	
675 IAC 15-1-6	R	04-227	28 IR 1054	
675 IAC 15-1-7	R	04-227	28 IR 1054	
675 IAC 15-1-8.1	R	04-227	28 IR 1054	
675 IAC 15-1-10	R	04-227	28 IR 1054	
675 IAC 15-1-11	R	04-227	28 IR 1054	
675 IAC 15-1-12	R	04-227	28 IR 1054	
675 IAC 15-1-13	R	04-227	28 IR 1054	
675 IAC 15-1-14	R	04-227	28 IR 1054	
675 IAC 15-1-16	R	04-227	28 IR 1054	
675 IAC 15-1-17	R	04-227	28 IR 1054	
675 IAC 15-1-19	R	04-227	28 IR 1054	
675 IAC 15-1-20	R	04-227	28 IR 1054	
675 IAC 15-1-21	R	04-227	28 IR 1054	
675 IAC 15-1-22	R	04-227	28 IR 1054	
675 IAC 15-1.1	N	04-227	28 IR 1037	
675 IAC 15-1.2	N	04-227	28 IR 1039	
675 IAC 15-1.3	N	04-227	28 IR 1046	
675 IAC 15-1.4	N	04-227	28 IR 1048	
675 IAC 15-1.5	N	04-227	28 IR 1049	
675 IAC 15-1.6	N	04-227	28 IR 1051	
675 IAC 15-1.7	N	04-227	28 IR 1052	
675 IAC 17-1.6	R	04-273	28 IR 1859	
675 IAC 17-1.7	N	04-273	28 IR 1855	
675 IAC 18-1.4-3		02-116		*ERR (28 IR 1696)
675 IAC 18-1.4-10.5	N	04-217	28 IR 1309	
675 IAC 18-1.4-11.5	N	04-217	28 IR 1309	
675 IAC 18-1.4-12		02-116		*ERR (28 IR 1696)
675 IAC 18-1.4-27		02-116		*ERR (28 IR 1696)
675 IAC 18-1.4-32.3	N	04-217	28 IR 1309	
675 IAC 18-1.4-32.5	N	04-217	28 IR 1309	
675 IAC 18-1.4-49.5	N	04-217	28 IR 1309	
675 IAC 22-2.2-3	RA	04-19	27 IR 2339	**28 IR 324**
675 IAC 22-2.2-4	RA	04-19	27 IR 2339	**28 IR 324**
675 IAC 22-2.2-5	RA	04-19	27 IR 2339	**28 IR 324**
675 IAC 22-2.2-6	RA	04-19	27 IR 2339	**28 IR 324**
675 IAC 22-2.2-7	RA	04-19	27 IR 2339	**28 IR 324**
675 IAC 22-2.2-8	RA	04-19	27 IR 2339	**28 IR 324**
675 IAC 22-2.2-9	RA	04-19	27 IR 2339	**28 IR 324**
675 IAC 22-2.2-10	RA	04-19	27 IR 2339	**28 IR 324**
675 IAC 22-2.2-11	RA	04-19	27 IR 2339	**28 IR 324**
675 IAC 22-2.2-12	RA	04-19	27 IR 2339	**28 IR 324**
675 IAC 22-2.2-13	RA	04-19	27 IR 2339	**28 IR 324**
675 IAC 22-2.2-15	RA	04-19	27 IR 2340	**28 IR 324**
675 IAC 22-2.2-16	RA	04-19	27 IR 2340	**28 IR 324**
675 IAC 22-2.2-17	RA	04-19	27 IR 2340	**28 IR 324**
675 IAC 22-2.2-18	RA	04-19	27 IR 2340	**28 IR 324**
675 IAC 22-2.2-21	RA	04-19	27 IR 2340	**28 IR 324**
675 IAC 22-2.2-22	RA	04-19	27 IR 2340	**28 IR 324**
675 IAC 22-2.2-23	RA	04-19	27 IR 2340	**28 IR 324**
675 IAC 22-2.2-24	RA	04-19	27 IR 2340	**28 IR 324**
675 IAC 22-2.2-25	RA	04-19	27 IR 2340	**28 IR 324**
675 IAC 22-2.2-26	N	04-196	28 IR 1029	*CPH (28 IR 1498)
675 IAC 22-2.2-49.5	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-107.1	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-134.5	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-183	RA	04-19	27 IR 2340	**28 IR 324**
	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-221.5	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-240.1	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-241.1	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-243.1	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-245.2	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-245.5	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-365.2	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-365.5	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-368.1	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-369.5	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-378.5	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-412.5	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-437.5	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-437.7	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-443.5	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-511.1	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-515.1	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.2-540	R	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.3-29.5	N	04-56	27 IR 2860	*CPH (28 IR 982)
675 IAC 22-2.3-35.5	N	04-56	27 IR 2860	*CPH (28 IR 982)

675 IAC 22-2.3-36	A	04-56	27 IR 2860	*CPH (28 IR 982)
675 IAC 22-2.3-36.3	N	04-56	27 IR 2861	*CPH (28 IR 982)
675 IAC 22-2.3-36.4	N	04-56	27 IR 2861	*CPH (28 IR 982)
675 IAC 22-2.3-36.6	N	04-56	27 IR 2863	*CPH (28 IR 982)
675 IAC 22-2.3-36.8	N	04-56	27 IR 2863	*CPH (28 IR 982)
675 IAC 22-2.3-140.5	N	04-56	27 IR 2863	*CPH (28 IR 982)
675 IAC 22-2.3-147.5	N	04-56	27 IR 2863	*CPH (28 IR 982)
675 IAC 22-2.3-147.6	N	04-56	27 IR 2863	*CPH (28 IR 982)
675 IAC 22-2.3-148	A	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.3-148.5	N	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.3-237.5	N	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.3-298.5	N	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 22-2.3-304.5	N	04-56	27 IR 2864	*CPH (28 IR 982)
675 IAC 25-1-3		02-118		*ERR (28 IR 1696)
675 IAC 25-1-7.2	N	04-218	28 IR 1310	
675 IAC 25-1-7.4	N	04-218	28 IR 1310	
675 IAC 25-1-7.6	N	04-218	28 IR 1310	
675 IAC 25-1-9.1	N	04-218	28 IR 1310	
675 IAC 25-1-9.3	N	04-218	28 IR 1310	
675 IAC 25-1-9.5	N	04-218	28 IR 1310	
675 IAC 25-1-9.7	N	04-218	28 IR 1310	
675 IAC 25-1-9.9	N	04-218	28 IR 1310	
675 IAC 26	N	04-196	28 IR 1031	*CPH (28 IR 1498)
675 IAC 27	N	04-275	28 IR 1538	

TITLE 685 REGULATED AMUSEMENT DEVICE SAFETY BOARD

685 IAC 1	RA	04-124	27 IR 3343	**28 IR 1072**

TITLE 760 DEPARTMENT OF INSURANCE

760 IAC 1-21-2	A	04-140	28 IR 1311	
760 IAC 1-21-3	A	04-140	28 IR 1311	
760 IAC 1-21-4	A	04-140	28 IR 1311	
760 IAC 1-21-5	A	04-140	28 IR 1311	
760 IAC 1-21-8	A	04-140	28 IR 1312	
760 IAC 1-21-10	N	04-140	28 IR 1313	
760 IAC 1-21-11	N	04-140	28 IR 1313	
760 IAC 1-50-3	A	04-139	27 IR 4136	**28 IR 1482**
760 IAC 1-50-4	A	04-139	27 IR 4136	**28 IR 1482**
760 IAC 1-50-5	A	04-139	27 IR 4137	**28 IR 1483**
760 IAC 1-60-1	RA	04-143	27 IR 3706	**28 IR 1072**
760 IAC 1-60-2	RA	04-143	27 IR 3706	**28 IR 1072**
760 IAC 1-60-4	RA	04-143	27 IR 3706	**28 IR 1072**
760 IAC 1-70	N	04-39	27 IR 2560	
			28 IR 314	**28 IR 1480**
760 IAC 2-1-1	A	03-303	27 IR 3306	**28 IR 563**
760 IAC 2-2-1.5	N	03-303	27 IR 3306	**28 IR 563**
760 IAC 2-2-3.1	N	03-303	27 IR 3307	**28 IR 563**
760 IAC 2-2-3.2	N	03-303	27 IR 3307	**28 IR 563**
760 IAC 2-2-3.3	N	03-303	27 IR 3307	**28 IR 564**
760 IAC 2-2-3.4	N	03-303	27 IR 3307	**28 IR 564**
760 IAC 2-2-3.5	N	03-303	27 IR 3307	**28 IR 564**
760 IAC 2-2-3.6	N	03-303	27 IR 3307	**28 IR 564**
760 IAC 2-2-3.7	N	03-303	27 IR 3307	**28 IR 564**
760 IAC 2-2-3.8	N	03-303	27 IR 3308	**28 IR 565**
760 IAC 2-2-8	A	03-303	27 IR 3308	**28 IR 565**
760 IAC 2-3-1	A	03-303	27 IR 3308	**28 IR 565**
760 IAC 2-3-2	A	03-303	27 IR 3308	**28 IR 565**
760 IAC 2-3-4	A	03-303	27 IR 3309	**28 IR 566**
760 IAC 2-3-6	A	03-303	27 IR 3310	**28 IR 567**
760 IAC 2-3-7	N	03-303	27 IR 3310	**28 IR 567**
760 IAC 2-3-8	N	03-303	27 IR 3311	**28 IR 567**
760 IAC 2-4-1	A	03-303	27 IR 3311	**28 IR 568**
760 IAC 2-4-2	N	03-303	27 IR 3312	**28 IR 569**
				*ERR (28 IR 609)
760 IAC 2-7-1	A	03-303	27 IR 3313	**28 IR 570**
760 IAC 2-8-1	A	03-303	27 IR 3314	**28 IR 570**
760 IAC 2-8-2	A	03-303	27 IR 3314	**28 IR 571**
760 IAC 2-8-3	A	03-303	27 IR 3314	**28 IR 571**
760 IAC 2-8-4	A	03-303	27 IR 3315	**28 IR 572**
760 IAC 2-8-6	N	03-303	27 IR 3316	**28 IR 572**
760 IAC 2-9-1	A	03-303	27 IR 3316	**28 IR 572**
760 IAC 2-10-1	A	03-303	27 IR 3316	**28 IR 573**
760 IAC 2-13-1	A	03-303	27 IR 3317	**28 IR 573**
760 IAC 2-15-1	A	03-303	27 IR 3317	**28 IR 574**
				*ERR (28 IR 609)
760 IAC 2-15.5	N	03-303	27 IR 3319	**28 IR 575**
760 IAC 2-16-1	A	03-303	27 IR 3320	**28 IR 576**
760 IAC 2-16.1	N	03-303	27 IR 3320	**28 IR 576**
760 IAC 2-17-1	A	03-303	27 IR 3323	**28 IR 580**
760 IAC 2-18-1	A	03-303	27 IR 3325	**28 IR 582**
760 IAC 2-19-2	A	03-303	27 IR 3325	**28 IR 582**
760 IAC 2-19.5	N	03-303	27 IR 3325	**28 IR 582**
760 IAC 2-20-10	A	03-303	27 IR 3329	**28 IR 585**
760 IAC 2-20-31.1	A	03-303	27 IR 3329	**28 IR 586**
760 IAC 2-20-34	A	03-303	27 IR 3329	**28 IR 586**
760 IAC 2-20-35	A	03-303	27 IR 3332	**28 IR 589**
760 IAC 2-20-36.1	A	03-303	27 IR 3332	**28 IR 589**
760 IAC 2-20-36.2	A	03-303	27 IR 3333	**28 IR 590**
760 IAC 2-20-37.2	A	03-303	27 IR 3334	**28 IR 590**
760 IAC 2-20-37.3	N	03-303	27 IR 3334	**28 IR 590**
760 IAC 2-20-38.1	A	03-303	27 IR 3334	**28 IR 590**
760 IAC 2-20-42	A	03-303	27 IR 3335	**28 IR 591**

TITLE 804 BOARD OF REGISTRATION FOR ARCHITECTS AND LANDSCAPE ARCHITECTS

804 IAC 1.1-1-1	A	04-156	28 IR 1054	
804 IAC 1.1-8	N	04-156	28 IR 1055	

TITLE 808 STATE BOXING COMMISSION

808 IAC 1-3-6	A	03-226	27 IR 2563	**28 IR 198**
808 IAC 1-5-1	A	03-226	27 IR 2563	**28 IR 198**
808 IAC 1-5-2	A	03-226	27 IR 2563	**28 IR 198**
808 IAC 2-1-5	A	03-226	27 IR 2564	**28 IR 198**
808 IAC 2-1-12	A	03-226	27 IR 2564	**28 IR 199**
808 IAC 2-7-14	A	03-226	27 IR 2564	**28 IR 199**
808 IAC 2-8-7	R	03-226	27 IR 2566	**28 IR 200**
808 IAC 2-9-5	A	03-226	27 IR 2564	**28 IR 199**
808 IAC 2-12-0.5	N	03-227	27 IR 2566	*ARR (28 IR 215)
				28 IR 201
808 IAC 2-12-2	N	03-227	27 IR 2567	*ARR (28 IR 215)
				28 IR 201
808 IAC 2-12-3	N	03-227	27 IR 2567	*ARR (28 IR 215)
				28 IR 201
808 IAC 2-12-4	N	03-227	27 IR 2567	*ARR (28 IR 215)
				28 IR 202
808 IAC 2-12-5	N	03-227	27 IR 2567	*ARR (28 IR 215)
				28 IR 202
808 IAC 2-12-6	N	03-227	27 IR 2567	*ARR (28 IR 215)
				28 IR 202
808 IAC 2-12-7	N	03-227	27 IR 2568	*ARR (28 IR 215)
				28 IR 202
808 IAC 2-12-8	N	03-227	27 IR 2568	*ARR (28 IR 215)
808 IAC 2-18-1	A	03-226	27 IR 2565	**28 IR 199**
808 IAC 2-22-1	A	03-226	27 IR 2565	**28 IR 199**

TITLE 820 STATE BOARD OF COSMETOLOGY EXAMINERS

820 IAC 4-3-1	A	04-254	28 IR 1059	

TITLE 828 STATE BOARD OF DENTISTRY

828 IAC 0.5-2-3	A	04-233	28 IR 670	*AROC (28 IR 1073)
828 IAC 1-5-6	N	04-189	28 IR 669	
828 IAC 5	N	04-233	28 IR 671	*AROC (28 IR 1073)

TITLE 830 INDIANA DIETITIANS CERTIFICATION BOARD

830 IAC 1-1	RA	04-6	27 IR 2340	**28 IR 325**

TITLE 844 MEDICAL LICENSING BOARD OF INDIANA

844 IAC 6-1-2	A	03-262	27 IR 1284	**28 IR 209**

844 IAC 6-1-4	A	03-261	27 IR 1635	*CPH (27 IR 2300)
				28 IR 203
844 IAC 6-3-1	A	03-261	27 IR 1636	*CPH (27 IR 2300)
				28 IR 203
844 IAC 6-3-2	A	03-261	27 IR 1636	*CPH (27 IR 2300)
				28 IR 204
844 IAC 6-3-4	A	03-261	27 IR 1637	*CPH (27 IR 2300)
				28 IR 204
844 IAC 6-3-5	A	03-261	27 IR 1637	*CPH (27 IR 2300)
				28 IR 205
844 IAC 6-3-6	N	03-261	27 IR 1638	*CPH (27 IR 2300)
				28 IR 205
844 IAC 6-4-3	A	03-261	27 IR 1638	*CPH (27 IR 2300)
				28 IR 206
844 IAC 6-6-1	R	03-261	27 IR 1642	*CPH (27 IR 2300)
				28 IR 209
844 IAC 6-6-2	R	03-261	27 IR 1642	*CPH (27 IR 2300)
				28 IR 209
844 IAC 6-6-3	A	03-261	27 IR 1638	*CPH (27 IR 2300)
				28 IR 206
844 IAC 6-6-4	A	03-261	27 IR 1639	*CPH (27 IR 2300)
				28 IR 206
844 IAC 6-7-2	A	03-261	27 IR 1639	*CPH (27 IR 2300)
				28 IR 207
844 IAC 10-4-1	A	03-329	27 IR 2568	**28 IR 211**
844 IAC 12-5-4	A	04-17	28 IR 316	**28 IR 1693**

TITLE 845 BOARD OF PODIATRIC MEDICINE

845 IAC 1-5-3	A	04-134	28 IR 317	

TITLE 848 INDIANA STATE BOARD OF NURSING

848 IAC 1-1-6	A	04-97	28 IR 674	
848 IAC 1-1-7	A	04-97	28 IR 675	
848 IAC 1-1-2.1	A	04-65	27 IR 2865	**28 IR 593**
848 IAC 1-2-1	A	04-65	27 IR 2866	**28 IR 594**
848 IAC 1-2-5	A	04-65	27 IR 2866	**28 IR 594**
848 IAC 1-2-6	A	04-65	27 IR 2867	**28 IR 595**
848 IAC 1-2-7	A	04-65	27 IR 2868	**28 IR 596**
848 IAC 1-2-8	A	04-65	27 IR 2868	**28 IR 596**
848 IAC 1-2-8.5	N	04-65	27 IR 2868	**28 IR 596**
848 IAC 1-2-9	A	04-65	27 IR 2869	**28 IR 597**
848 IAC 1-2-10	A	04-65	27 IR 2869	**28 IR 597**
848 IAC 1-2-12	A	04-65	27 IR 2870	**28 IR 598**
848 IAC 1-2-13	A	04-65	27 IR 2870	**28 IR 598**
848 IAC 1-2-14	A	04-65	27 IR 2870	**28 IR 599**
848 IAC 1-2-16	A	04-65	27 IR 2871	**28 IR 599**
848 IAC 1-2-17	A	04-65	27 IR 2872	**28 IR 600**
848 IAC 1-2-18	A	04-65	27 IR 2872	**28 IR 600**
848 IAC 1-2-19	A	04-65	27 IR 2873	**28 IR 601**
848 IAC 1-2-20	A	04-65	27 IR 2873	**28 IR 601**
848 IAC 1-2-21	A	04-65	27 IR 2873	**28 IR 602**
848 IAC 1-2-22	A	04-65	27 IR 2874	**28 IR 602**
848 IAC 1-2-23	A	04-65	27 IR 2874	**28 IR 602**
848 IAC 1-2-24	A	04-65	27 IR 2874	**28 IR 603**
848 IAC 6	R	04-97	28 IR 675	

TITLE 856 INDIANA BOARD OF PHARMACY

856 IAC 1-30-2	A	04-173	28 IR 317	
856 IAC 1-30-3	A	04-173	28 IR 318	
856 IAC 1-30-4.1	N	04-173	28 IR 318	
856 IAC 1-30-4.2	N	04-173	28 IR 318	
856 IAC 1-30-4.3	N	04-173	28 IR 318	
856 IAC 1-30-4.4	N	04-173	28 IR 318	
856 IAC 1-30-4.5	N	04-173	28 IR 318	
856 IAC 1-30-4.6	N	04-173	28 IR 318	
856 IAC 1-30-6	A	04-173	28 IR 319	
856 IAC 1-30-7	A	04-173	28 IR 319	
856 IAC 1-30-8	A	04-173	28 IR 319	
856 IAC 1-30-9	A	04-173	28 IR 320	
856 IAC 1-30-14	A	04-173	28 IR 320	
856 IAC 1-30-17	A	04-173	28 IR 321	
856 IAC 1-30-18	A	04-173	28 IR 321	
856 IAC 1-33-1	A	03-326	27 IR 2073	**27 IR 3073**

TITLE 864 STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

864 IAC 1.1-2-4	A	03-301	27 IR 2569	**28 IR 603**
864 IAC 1.1-4.1-9	A	03-301		**††28 IR 603**
864 IAC 1.1-12-1	A	03-301	27 IR 2569	**28 IR 604**
864 IAC 1.1-12-2	N	03-301	27 IR 2570	**28 IR 604**

TITLE 865 STATE BOARD OF REGISTRATION FOR LAND SURVEYORS

865 IAC 1-11-1	A	03-300	27 IR 2570	**28 IR 605**
	A	04-175	28 IR 1059	

TITLE 872 INDIANA BOARD OF ACCOUNTANCY

872 IAC 1-1-6.1	A	04-41	27 IR 2574	**28 IR 212**
	A	04-171	27 IR 4138	**28 IR 1182**
872 IAC 1-3-3.3	A	04-98	27 IR 3336	**28 IR 605**
872 IAC 1-3-16	A	04-5	27 IR 2335	**28 IR 211**
872 IAC 1-6	N	03-270	27 IR 2571	*AROC (27 IR 4141)
				28 IR 966

TITLE 876 INDIANA REAL ESTATE COMMISSION

876 IAC 2-18	N	03-256	27 IR 2575	**28 IR 213**
876 IAC 3-2-7	A	03-255	27 IR 2574	**28 IR 212**
876 IAC 3-6-2	A	04-225	28 IR 1547	
876 IAC 3-6-3	A	04-225	28 IR 1548	

TITLE 878 HOME INSPECTORS LICENSING BOARD

878 IAC	N	04-191	28 IR 1060	*CPH (28 IR 1197)
				*AROC (28 IR 1560)

TITLE 879 MANUFACTURED HOME INSTALLER LICENSING BOARD

879 IAC	N	04-272	28 IR 1549	

TITLE 888 INDIANA BOARD OF VETERINARY MEDICAL EXAMINERS

888 IAC 1.1-6-1	A	04-74	27 IR 2875	**28 IR 606**
	A	04-137	27 IR 3704	**28 IR 607**
888 IAC 1.1-8-3	A	04-295	28 IR 1859	

TITLE 905 ALCOHOL AND TOBACCO COMMISSION

905 IAC 1-5.2-9.2	A	04-111	27 IR 3337	*AROC (28 IR 1561)
905 IAC 1-15.2-3	A	04-110	27 IR 3337	*AWR (28 IR 1486)
905 IAC 1-26-3	N	04-112	27 IR 3338	*AROC (28 IR 1562)
905 IAC 1-43	RA	04-14	27 IR 2579	*CPH (27 IR 3096)
				28 IR 1316
905 IAC 1-44	RA	04-109	27 IR 3343	**28 IR 1316**
905 IAC 1-45-2	A	03-319	27 IR 2576	*CPH (27 IR 3096)
				*AROC (28 IR 1317)
				28 IR 1484
905 IAC 1-45-3	A	03-319	27 IR 2576	*CPH (27 IR 3096)
				*AROC (28 IR 1317)
				28 IR 1484
905 IAC 1-46	N	03-279	27 IR 1291	*ARR (27 IR 4024)
				*AROC (27 IR 4141)
				28 IR 969
905 IAC 1-48	N	04-115	27 IR 3339	*AROC (28 IR 1562)

NONCODE RULES

Family and Social Services, Office of the Secretary of			
	A	04-246	*ETR (28 IR 230)
Lottery Commission, State			
	N	04-238	*ETR (28 IR 217)
	N	04-239	*ETR (28 IR 218)
	N	04-240	*ETR (28 IR 219)
	N	04-242	*ETR (28 IR 223)

	N	04-243	*ETR (28 IR 224)
	N	04-244	*ETR (28 IR 226)
	R	04-249	*ETR (28 IR 227)
	N	04-250	*ETR (28 IR 227)
	N	04-251	*ETR (28 IR 228)
	N	04-265	*ETR (28 IR 613)
	N	04-266	*ETR (28 IR 614)
	N	04-280	*ETR (28 IR 972)
	N	04-281	*ETR (28 IR 973)
	N	04-282	*ETR (28 IR 974)
	N	04-301	*ETR (28 IR 1186)
	N	04-302	*ETR (28 IR 1187)
	N	04-303	*ETR (28 IR 1188)
	N	04-304	*ETR (28 IR 1189)
	N	04-305	*ETR (28 IR 1191)
	N	04-306	*ETR (28 IR 1192)
	N	04-326	*ETR (28 IR 1488)
	N	04-327	*ETR (28 IR 1489)
	N	04-328	*ETR (28 IR 1491)
	N	04-331	*ETR (28 IR 1495)
	N	04-332	*ETR (28 IR 1496)
	N	05-6	*ETR (28 IR 1698)
	N	05-7	*ETR (28 IR 1701)
	N	05-8	*ETR (28 IR 1702)
	N	05-9	*ETR (28 IR 1704)
	N	05-10	*ETR (28 IR 1704)
	N	05-16	*ETR (28 IR 1708)
	N	05-17	*ETR (28 IR 1709)
	N	05-29	*ETR (28 IR 2143)
	N	05-30	*ETR (28 IR 2144)
	N	05-31	*ETR (28 IR 2145)
	N	05-33	*ETR (28 IR 2150)
	N	05-34	*ETR (28 IR 2152)
Natural Resources Commission			
	N	04-205	*ERR (28 IR 214)
	R	04-245	*ETR (28 IR 230)
			*ERR (28 IR 214)
	R	04-247	*ETR (28 IR 230)
	R	04-257	*ETR (28 IR 615)
	N	04-258	*ETR (28 IR 615)
	N	04-259	*ETR (28 IR 615)
	N	04-260	*ETR (28 IR 616)
	N	04-262	*ETR (28 IR 616)
	N	04-264	*ETR (28 IR 616)
	N	04-285	*ETR (28 IR 981)
	N	04-307	*ETR (28 IR 1192)
	N	04-308	*ETR (28 IR 1194)
	N	04-314	*ETR (28 IR 1194)
	N	04-315	*ETR (28 IR 1195)
Tax Review, Indiana Board of			
	N	04-261	*ETR (28 IR 612)
	N	04-330	*ETR (28 IR 1487)

*Key:

A:	Amended Text
AGA:	Attorney General's Action
AROC:	Administrative Rules Oversight Committee Notice
ARR:	Agency Recalls Rule
AWR:	Agency Withdrew Rule
CPH:	Change in Public Hearing
DAG:	Disapproved by Attorney General
DG:	Disapproved by Governor
ER:	Emergency Rule
ERR:	Errata
ETR:	Emergency Temporary Rule
ETS:	Emergency Temporary Standard
GRAT:	Governor Requires Additional Time
N:	New Text
NRA:	Notice of Rule Adoption
OAC:	Objection to Errata
ON:	Other Notices of Administrative Action
R:	Repealed Text
RA:	Readopted Rule
SAC:	Solicitation of Advance Comment
SPE:	Statutory Period for Promulgation Expired
SPE-SE:	Statutory Period for Promulgation Expired; Signed After Expiration
††:	Renumbered or Added in Final Rule

Index

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