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## **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 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