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TITLE 327 WATER POLLUTION CONTROL BOARD

FIRST NOTICE OF COMMENT PERIOD #05-218(WPCB)

DEVELOPMENT OF AMENDMENTS TO RULES AND NEW RULES CONCERNING THE ESTABLISHMENT OF A CSO WET WEATHER LIMITED USE SUBCATEGORY AND THE USE OF PERMIT COMPLIANCE SCHEDULES FOR COMBINED SEWER OVERFLOW COMMUNITIES

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules and new rules at 327 IAC 2-1, 327 IAC 2-1.5, and 327 IAC 5-2 and 327 IAC 5-3 concerning establishment of a CSO wet weather limited use subcategory and permit compliance schedules for qualifying communities affected by combined sewer overflows (CSO).

IDEM seeks comment on the affected citations listed and any other provisions of Title 327 that may be affected by this rulemaking. Additionally, IDEM seeks comments on any other provisions of Senate Enrolled Act 620 that should be incorporated into this rulemaking.

CITATIONS AFFECTED: 327 IAC 2-1; 327 IAC 2-1.5; 327 IAC 5-1; 327 IAC 5-1.5; 327 IAC 5-2; 327 IAC 5-3.

AUTHORITY: IC 13-14-8-7; IC 13-18-3-2; IC 13-18-3-2.5; IC 13-18-3-2.6.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

Senate Enrolled Act (SEA) 620, passed in the 2005 legislative session, established the CSO wet weather limited use subcategory of the recreational use designation for waters receiving combined sewer overflows. SEA 620 requires the water pollution control board to adopt rules to implement the establishment of the subcategory. The subcategory is available to CSO communities that perform a use attainability analysis to change the designated use of waters receiving CSOs and have implemented an approved long term control plan. The long term control plan must be approved by IDEM and be incorporated into the NPDES permit or an order of the commissioner under IC 13-14-2-6. The long term control plan must also specify the water quality based requirements that apply to combined sewer overflows during and immediately following wet weather events. SEA 620 also provides authority to include compliance schedules within NPDES permits, where appropriate. The compliance schedules will require the permittee to take specific steps and meet specific milestones to achieve compliance with all applicable standards. A compliance schedule may be included in the NPDES permit for a CSO community during the period of development, approval and implementation of the long term control plan. The compliance schedule may not exceed the length of time required to implement an approved long term control plan. This rulemaking primarily affects CSO communities within the state. However, the overall effect will be to allow these communities to make progress in reducing and eliminating CSOs, which will positively affect all waters of the state.

SEA 620 also made amendments to IC 13-14-8-9, the NPDES variance statute. The amendments included the requirement to submit a pollutant minimization plan for the term for which a variance is sought, as well as amendments to the duration and renewal of variances. IDEM believes that a separate rulemaking to update both GLI and non-GLI variance regulations to conform to SEA 620 amendments and address other concerns with existing variance regulations is more appropriate than including the variance amendments within this rulemaking. Therefore, IDEM is preparing a separate first notice of rulemaking on that subject. However, if you believe this rulemaking to be the more appropriate forum for those amendments, please provide comments to this notice expressing your preference.

Alternatives To Be Considered Within the Rulemaking

Because SEA 620 mandates that the board adopt rules to implement the CSO wet weather limited use subcategory and allow for the use of compliance schedules in NPDES permits of qualifying CSO communities, there are no other alternatives being considered for those issues at this time. SEA 620 specifically outlines who qualifies for the subcategory designation and how the designation is to be obtained. Therefore, the implementing rules must be adopted in accordance with SEA 620. Similarly, SEA 620 defines who may seek a compliance schedule and the duration of the schedule. Therefore, the rules will implement the requirements of SEA 620 and, in accordance with SEA 620, assure that the rules comply with federal law.

One possible alternative to consider in this rulemaking is the consolidation of the issues of the subcategory and compliance schedules with amendments to the variance regulations. Currently, a separate rulemaking to address updating the variance regulations is being contemplated and a notice being prepared. However, if it is the general consensus of interested and affected parties that these rulemakings should be consolidated, IDEM would consider doing so.

Applicable Federal Law

40 CFR 122.47 Schedules of Compliance; 40 CFR 123.25 Requirements for Permitting; 40 CFR 131.10 Designation of Uses; 40 CFR 131.20 State Review and Revision of Water Quality Standards; 40 CFR 131.21 EPA Review and Approval of Water Quality Standards.

Potential Fiscal Impact

Because this rulemaking does not impose additional regulatory requirements on affected parties, no additional fiscal impact beyond those already incurred by communities developing and implementing use attainability analyses and long term control plans is anticipated. As the rule language is developed with the input of affected parties, potential fiscal impacts not currently anticipated will be discussed and any fiscal impact information provided to both the board and interested parties.

Small Business Assistance Information

IDEM established a compliance and technical assistance (CTAP) program under IC 13-28-3. The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with IC 13-28-3 and IC 13-28-5, there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at www.in.gov/idem/ctap/.

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Sandra El-Yusuf
IDEM Compliance and Technical Assistance Program
OPPTA - MC 60-04
100 N. Senate Avenue, W-041
Indianapolis, IN 46204-2251
317-232-8578
selyusuf@idem.IN.gov

The Small Business Assistance Program Ombudsman is:

Eric Levenhagen
IDEM Small Business Assistance Program Ombudsman
External Affairs - MC 50-01
100 N. Senate Avenue, IGCN 1301
Indianapolis, IN 46204-2251
317-234-3386
elevenha@idem.IN.gov

Public Participation and Workgroup Information

A workgroup will be established for this rulemaking. All persons interested in participating in the workgroup are encouraged to do so. No meetings have been scheduled at this time but information on workgroup meetings will be posted on IDEM's Web site at www.in.gov/idem/rules/progress/. Click on the specific rule for workgroup times and dates and additional information. If you wish to provide comments to the workgroup on the rulemaking, attend meetings, or have suggestions related to the workgroup process, please contact Kiran Verma, Rules Section, Office of Water Quality at (317) 234-0986 or (800) 451-6027 (in Indiana). Please provide your name, phone number, and e-mail address, if applicable, where you can be contacted. The public is also encouraged to submit comments and questions to members of the workgroup who represent their particular interests in the rulemaking.

STATUTORY AND REGULATORY REQUIREMENTS

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

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

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

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

Mailed comments should be addressed to:

#05-218(WPCB) CSO Rules

Kiran Verma

Rules Section

Office of Water Quality - MC 65-40

Indiana Department of Environmental Management

100 North Senate Avenue

IGCN 1255

Indianapolis, Indiana 46204-2251.

Hand delivered comments will be accepted by the IDEM receptionist on duty at the twelfth floor reception desk, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana.

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

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by September 30, 2005.

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).

Bruno Pigott

Assistant Commissioner

Office of Water Quality