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TITLE 327 WATER POLLUTION CONTROL BOARD

SECOND NOTICE OF COMMENT PERIOD

LSA Document #05-218(WPCB)

DEVELOPMENT OF AMENDMENTS TO RULES AND A NEW RULE 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) has developed draft rule language for amendments to rules and a new rule at 327 IAC 2-1, 327 IAC 2-1.5, and 327 IAC 5-2 concerning establishment of a Combined Sewer Overflow (CSO) wet weather limited use subcategory and permit compliance schedules for qualifying communities affected by CSOs. 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: #05-218(WPCB) September 1, 2005, Indiana Register (28 IR 3685).

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

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 published 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.

IC 13-14-9-4 Identification of Restrictions and Requirements Not Imposed Under Federal Law

This statute requires IDEM to identify, as part of the second notice published in the Indiana Register, the estimated fiscal impact and expected benefits of any elements of the draft rule that are not imposed under federal law. IDEM seeks comments on these elements as well as specific fiscal impact information. The following elements of the draft rule are “not imposed under federal law” (NIFL elements) and have been identified as either having an estimated fiscal impact or providing an expected benefit to entities

regulated under the draft rule:

The concept of a CSO wet weather limited use subcategory of the recreational use designation is not explicitly identified in federal law; however, the long term control plan is a federal concept. CSO communities have largely been consistently in violation of NPDES permit limits during and for some time following a CSO discharge event. The wet weather limited use subcategory established through this rulemaking will alleviate compliance issues for CSO communities that comply with the requirements of this rule and will allow time to achieve the NPDES permit limits through a compliance schedule included in the CSO community's NPDES permit. A CSO community affected by this rulemaking will not incur any additional fiscal impact that it is not already subject to under state statute IC 13-18-3-2.5(a), SECTION 4, of SEA 620 created by the 2005 state legislature.

Potential Fiscal Impact

IDEM does not believe that this rulemaking creates a fiscal impact for the affected CSO communities because both the wet weather limited use subcategory designation and the compliance schedule requirements are imposed by the originating state statute. CSO communities will benefit under this rulemaking due to the establishment of a subcategory of the recreational use designation that lessens restrictions during and for a time period following CSO discharge events as long as the affected community is complying with the requirements of these amendments and new rule. IDEM requests public comment on the economic impact and benefit from this rule.

Public Participation and Workgroup Information

This rulemaking implements IC 13-18-3-2.5(a) SECTION 4, of Senate Enrolled Act 620, the statute written into law in the 2005 legislative session regarding the establishment of a CSO wet weather limited use subcategory of the recreational use designation for waters receiving CSOs. Therefore, no workgroup is planned for this rulemaking. If you feel that a workgroup or other informal discussion on the rule is necessary, please contact MaryAnn Stevens, Rules Section, Office of Water Quality at (317) 232-8635 or (800) 451-6021 (in Indiana).

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from September 1, 2005, through September 30, 2005, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received no comments in response to the first notice of public comment period.

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:

#05-218(WPCB) [CSO Wet Weather Subcategory]

MaryAnn Stevens

Rules Section

Office of Water Quality

Indiana Department of Environmental Management

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, 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 it is not necessary to follow a faxed comment letter with another sent through the postal system.

COMMENT PERIOD DEADLINE

Comments must be postmarked, hand delivered, or faxed by May 30, 2006.

Additional information regarding this rulemaking action may be obtained from MaryAnn Stevens, Rules Section, Office of Water Quality, (317) 232-8635, or technical information concerning the CSO wet weather limited use subcategory of the recreational use designation for waters receiving combined sewer overflows may be obtained from Cyndi Wagner, Wet Weather Section, Office of Water Quality, 317-233-0473 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 327 IAC 2-1-3 IS AMENDED TO READ AS FOLLOWS:

327 IAC 2-1-3 Surface water use designations; multiple uses

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

Affected: IC 13-18-4

Sec. 3. (a) The following water uses are designated by the water pollution control board:

(1) **Except as provided in subsection (c)**, surface waters of the state are designated for full body contact recreation as provided in section 6(d) of this rule.

(2) All waters, except as described in subdivision (5), will be capable of supporting:

(A) a well-balanced, warm water aquatic community; and

(B) where natural temperatures will permit, ~~will be capable of supporting~~ put-and-take trout fishing.

All waters capable of supporting the natural reproduction of trout as of February 17, 1977, shall be so maintained.

(3) All waters ~~which that~~ are used for public or industrial water supply must meet the standards for those uses at the points where the water is withdrawn. This use designation and its corresponding water quality standards are not to be construed as imposing a user restriction on those exercising or desiring to exercise the use.

(4) All waters ~~which that~~ are used for agricultural purposes must, as a minimum, meet the standards established in section 6(a) of this rule.

(5) All waters in which naturally poor physical characteristics (including lack of sufficient flow), naturally poor chemical quality, or irreversible man-induced conditions, which came into existence ~~prior to before~~ January 1, 1983, and having been established by use attainability analysis, public comment period, and hearing:

(A) may qualify to be classified for limited use; and

(B) must be evaluated for restoration and upgrading at each triennial review of this rule.

Specific waters of the state designated for limited use are listed in section 11(a) of this rule.

(6) All waters ~~which that~~:

(A) provide unusual aquatic habitat; ~~which~~

(B) are an integral feature of an area of exceptional natural beauty or character; or ~~which~~

(C) support unique assemblages of aquatic organisms;

may be classified for exceptional use. Specific waters of the state designated for exceptional use are listed in section 11(b) of this rule.

(b) Where multiple uses have been designated for a body of water, the most protective of all simultaneously applicable standards will apply.

(c) A CSO wet weather limited use designation is established as a subcategory of the recreational use designation established under subsection (a). This subcategory shall be applied in accordance with section 3.1 of this rule. (Water Pollution Control Board; 327 IAC 2-1-3; filed Sep 24, 1987, 3:00 p.m.: 11 IR 580; filed Feb 1, 1990, 4:30 p.m.: 13 IR 1019; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1348)

SECTION 2. 327 IAC 2-1-3.1 IS ADDED TO READ AS FOLLOWS:

327 IAC 2-1-3.1 CSO wet weather limited use designation

Authority: IC 13-14-8; IC 13-14-9; IC 13-18-3-2.5

Affected: IC 13-14-2-6; IC 13-14-9-14; IC 13-18-4

Sec. 3.1. (a) The CSO wet weather limited use subcategory established under section 3 of this rule shall be applied to waters receiving wet weather discharges from combined sewer overflows.

(b) To receive the CSO wet weather limited use subcategory designation, a CSO community must do the following:

(1) Perform a use attainability analysis (UAA) to change the designated use of the waterbody receiving the wet weather discharges from combined sewer overflows.

(2) Submit the UAA to the department for approval.

(3) Submit a long term control plan (LTCP) to the department for approval.

(4) Fully implement the approved LTCP.

(c) The LTCP submitted to the department must:

(1) specify the water quality-based requirements that apply to combined sewer overflows during and immediately following wet weather events; and

(2) meet the requirements of Section 402(q) of the Clean Water Act.

(d) Upon approval of a UAA and LTCP, the department shall do the following:

(1) Incorporate the approved LTCP into:

- (A) the NPDES permit holder's NPDES permit; or
- (B) an order of the commissioner under IC 13-14-2-6.

(2) Begin a rulemaking under IC 13-14-9-14 to amend the designated use to a CSO wet weather limited use designation.

(e) Upon completion of the rulemaking required under subsection (d), the department shall submit the amended recreational use designation to the U.S. EPA for approval.

(f) The water quality-based requirements for the CSO wet weather limited use designation shall:

(1) be determined by the approved LTCP for the combined sewer system; and

(2) remain in effect during the time and to the physical extent that the recreational use designation that applied to the waters immediately before the application to the waters of the CSO wet weather limited use subcategory is not attained but for not more than four (4) days after the date the overflow discharge ends.

(Water Pollution Control Board; 327 IAC 2-1-3.1)

SECTION 3. 327 IAC 2-1-10 IS AMENDED TO READ AS FOLLOWS:

327 IAC 2-1-10 Reclassification proposals for limited or exceptional use designation

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

Affected: IC 13-18-4

Sec. 10. (a) **Except as provided in subsection (c)**, a person who wishes to propose that a particular body of the waters of the state be considered by the commissioner for limited use or exceptional use classification must submit to the commissioner a written proposal identifying the waterbody and the proposed classification, stating the rationale for the proposal, and including any other supporting documentation. After receiving the commissioner's recommendation on a proposal, if the board determines that a waterbody is appropriate for reclassification for limited use or exceptional use, it will initiate a rulemaking for that purpose.

(b) The commissioner will consider factors such as the ~~following~~ **factors listed in subdivisions (1) and (2)** in making recommendations to the board with regard to proposals for the reclassification of a waterbody for limited use or exceptional use. These factors are listed as guidelines to provide some insight into the way the commissioner's recommendations may be made, but are not intended to be all encompassing. Irrespective of these factors, the commissioner's recommendations generally will be case-by-case determinations based on professional judgment after on-site evaluations. **The commissioner will consider factors relating to the following:**

(1) ~~Factors relating to~~ Limited use designations **such as any of the following:**

(A) The waterway has a Q(7),(10) low flow upstream of any existing or proposed discharge of **one-tenth** (0.1) cubic feet per second or less.

(B) Suitable habitat to support a well-balanced fish community is severely limited or absent.

(C) The waterway is affected by irreversible conditions, natural or man-induced, ~~which that:~~

(i) came into existence ~~prior to before~~ January 1, 1983; ~~which~~

(ii) are not practicably controllable; and

(iii) prevent establishment of a well-balanced fish community.

(D) The waterbody has no unique or exceptional features. ~~and/or~~

(E) Potential or existing uses made of the waterbody by people in the immediate area would not be adversely affected by a limited use designation.

(2) ~~Factors relating to~~ Exceptional use designations **such as any of the following:**

(A) The presence of **any of the following:**

(i) A unique or exceptional habitat or species in the waterbody.

~~(B) the presence of~~ (ii) A rare or endangered species in the waterbody.

~~(C) the presence of~~ (iii) Exceptional aesthetic quality in the immediate environs of the waterbody.

~~(D) (B)~~ The waterbody:

(i) is within the boundaries of or flows through a designated natural area, nature preserve, or state or national park or forest;

~~(E) the water body~~ (ii) supports an excellent sports fishery; **or**

~~(F) the water body~~ (iii) possesses exceptional quality. **or**

~~(G) (C)~~ Intensive recreational use is made of the waterbody.

(c) A person seeking to obtain a CSO wet weather limited use subcategory designation shall do so in accordance with section 3.1 of this rule. (*Water Pollution Control Board; 327 IAC 2-1-10; filed Sep 24, 1987, 3:00 p.m.: 11 IR 585*)

SECTION 4. 327 IAC 2-1.5-5 IS AMENDED TO READ AS FOLLOWS:

327 IAC 2-1.5-5 Surface water use designations; multiple uses

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

Affected: IC 13-18-4; IC 13-30-2-1

Sec. 5. (a) The following water uses are designated by the board:

(1) ~~All~~ **Except as provided in subsection (c)**, surface waters of the state within the Great Lakes system are designated for full body contact recreation.

(2) All surface waters, except as described in subdivision (7), shall be capable of supporting a well-balanced, warm water aquatic community.

(3) Where natural temperatures will permit, surface waters shall be capable of supporting put-and-take trout fishing. All waters capable of supporting the natural reproduction of trout shall be so maintained. The following waters are designated as salmonid waters and shall be capable of supporting a salmonid fishery:

(A) Trail Creek and its tributaries downstream to Lake Michigan.

(B) East Branch of the Little Calumet River and its tributaries downstream to Lake Michigan via Burns Ditch.

(C) Salt Creek above its confluence with the Little Calumet River.

(D) Kintzele Ditch (Black Ditch) from Beverly Drive downstream to Lake Michigan.

(E) The Galena River and its tributaries in LaPorte County.

(F) The St. Joseph River and its tributaries in St. Joseph County from the Twin Branch Dam in Mishawaka downstream to the Indiana/Michigan state line.

(G) The Indiana portion of the open waters of Lake Michigan.

(H) Those waters designated by the Indiana department of natural resources for put-and-take trout fishing.

(4) All surface waters used for public water supply are designated as a public water supply. This use designation and its corresponding water quality criteria are not to be construed as imposing a user restriction on those exercising or desiring to exercise the use.

(5) All surface waters used for industrial water supply are designated as an industrial water supply. This use designation and its corresponding water quality criteria are not to be construed as imposing a user restriction on those exercising or desiring to exercise the use.

(6) All surface waters used for agricultural purposes are designated as an agricultural use water.

(7) Limited use waters are designated under section 19(a) of this rule pursuant to section 18 of this rule. 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.

(8) Outstanding state resource waters are designated under section 19(b) of this rule pursuant to section 18 of this rule.

(b) Where multiple uses have been designated for a body of water, the most protective of all simultaneously applicable standards will apply.

(c) A CSO wet weather limited use designation is established as a subcategory of the recreational use designation established under subsection (a). This subcategory shall be applied in accordance with 327 IAC 2-1-3.1. (*Water Pollution Control Board; 327 IAC 2-1.5-5; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1369*)

SECTION 5. 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 or an outstanding state resource water

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

Affected: IC 13-18-4

Sec. 18. (a) **Except as provided in subsection (f)**, 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 stating the rationale for the proposal; and

(2) including any other supporting documentation.

(b) The commissioner shall evaluate the proposal considering the following:

(1) Waters that meet the following conditions may be considered for designation as a limited use water:

(A) Waters that have:

- (i) 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) naturally poor chemical quality;
- (iii) irreversible man-induced conditions that came into existence ~~prior to~~ before January 1, 1983; and
- (iv) no unique or exceptional features.

(B) 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) 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 **any of the following**:

~~(i)~~ A unique or exceptional habitat or species in the waterbody.

~~(B)~~ The presence of ~~(ii)~~ A rare or endangered species in the waterbody.

~~(C)~~ The presence of ~~(iii)~~ Exceptional aesthetic quality in the immediate environs of the waterbody.

~~(D)~~ (B) The waterbody:

~~(i)~~ is within the boundaries of or flows through a designated natural area, nature preserve, or state or national park or forest;

~~(E)~~ The waterbody ~~(ii)~~ supports an excellent sports fishery; **or**

~~(F)~~ The waterbody ~~(iii)~~ possesses exceptional quality.

~~(G)~~ (C) Intensive recreational use is made of the waterbody.

~~(H)~~ (D) 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 **following** purposes: ~~of~~

(A) Determining **the following**:

~~(i)~~ Whether any other designations in addition to:

~~(AA)~~ outstanding state resource waters;

~~(BB)~~ high quality waters;

~~(CC)~~ limited use waters; and

~~(DD)~~ outstanding national resource waters;

should be established.

~~(B)~~ determining ~~(ii)~~ The appropriate factors to consider in designating a waterbody.

~~(C)~~ (B) Identifying a list of waterbodies for each special designation. **and**

~~(D)~~ (C) Specifying antidegradation implementation procedures for **the following**:

~~(i)~~ Outstanding state resource waters.

~~(ii)~~ Outstanding national resource waters. **and for**

~~(iii)~~ 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 **the following**:

(A) Adding waterbodies to the list of outstanding national resource waters. ~~on~~

(B) The specific interim antidegradation implementation procedures included in 327 IAC 5-2-11.7 for outstanding state resource waters. ~~and on~~

(C) 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 before** the expiration of 327 IAC 5-2-11.7.

(f) A person seeking to obtain a CSO wet weather limited use subcategory designation shall do so in accordance with 327 IAC 2-1-3.1. (*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 6. 327 IAC 5-2-10 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-2-10 Applicable limitations, standards, and conditions

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-18-3; IC 13-18-3-2.6

Affected: IC 13-11-2; IC 13-18-4

Sec. 10. (a) Each NPDES permit shall provide for and ensure compliance with all applicable requirements of the Clean Water Act (CWA), regulations promulgated under the CWA, and state law. For the purposes of this section, an applicable requirement is a statutory or regulatory requirement that takes effect under state law ~~prior to before~~ final administrative disposition of a permit. In addition to the requirements of sections 6, 8, 9, and 12 of this rule, permits shall contain terms and conditions that ensure compliance with the following requirements as applicable:

(1) Effluent limitations and standards under Sections 301, 304, 307(a), 318, and 405 of the CWA.

(2) Standards of performance for new sources under Section 306 of the CWA and 40 CFR 122.44(a).

(3) In the case of a POTW, which primarily is designed and utilized for the treatment of wastewater from an industry of a particular class or category, the effluent limitations or standards that would apply under Section 301, 304, 306, 307, 318, or 405 of the CWA to the industry if it were a direct discharger. If the POTW receives sewage from domestic sources as well as industrial wastewater, the permit shall include composite (or hybrid) effluent limitations comprising the effluent:

(A) limitations or standards applicable to the industrial wastewater, as specified in this subdivision; and ~~effluent~~

(B) limitations applicable to the domestic sewage under Sections 301 and 304 of the CWA.

Such composite limitations will be cumulative for mass limitations and weighted in proportion to respective flows for concentration limitations.

(4) Water quality standard based and other more stringent requirements. Any effluent limitations or other requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under Sections 301, 304, 306, 307, 318, and 405 of the CWA where necessary to do the following:

(A) Achieve water quality standards established by the water pollution control board or by EPA in accordance with Sections 118 and 303 of the CWA. Numeric water quality-based effluent limitations shall be established in accordance with sections 11.1 and 11.3 through 11.6 of this rule.

(B) Attain or maintain a specified water quality through water quality related effluent limits established under Section 302 of the CWA.

(C) Incorporate, in accordance with Section 301(b)(1)(C) of the CWA, any more stringent limitations, treatment standards, or schedules of compliance requirements established under federal or state law or regulations (including those adopted under interstate agreements or compacts such as the Ohio River Valley Water Sanitation Commission (ORSANCO)).

(D) Ensure consistency with the requirements of a water quality management plan approved by EPA under Section 208(b) of the CWA.

(E) Incorporate alternative effluent limitations or standards where warranted by fundamentally different factors under 327 IAC 5-6.

(5) The following requirements for toxic pollutant limitations:

(A) Limitations established under subdivision (1), (2), (3), or (4) to control pollutants meeting the criteria listed in clause (B). Such limitations shall be established in accordance with clause (C).

(B) Limitations must control all toxic pollutants that ~~the~~:

(i) ~~the~~ commissioner determines (based on information reported in a permit application or in a notification under section 9 of this rule or on other information) are or may be discharged at a level greater than the level that is allowed under the technology-based effluent limitations applicable to the permittee under the CWA (see 327 IAC 5-5-2(c)); or

(ii) ~~the~~ discharger does or may use or manufacture as an intermediate or final product or byproduct; however, limitations are not required under this subdivision merely because the discharger does or may use or manufacture a toxic pollutant under research or laboratory conditions.

(C) The requirement that the limitations control the pollutants meeting the criteria of clause (B) shall be satisfied by **limitations on**:

(i) ~~limitations on~~ those pollutants; or

(ii) ~~limitations on~~ other pollutants that, in the judgment of the commissioner, will ensure treatment of the pollutants specified under clause (B) to the levels required by the CWA.

(D) As used in this subdivision, "toxic pollutant" means:

(i) a pollutant listed as toxic under Section 307(a)(1) of the CWA; or

(ii) a pollutant or a combination of pollutants determined by the commissioner to have significant toxic characteristics when discharged into the waters of the state for organisms reasonably expected to be exposed to ~~such the~~ pollutant or pollutants.

(6) Permits issued ~~prior to before the~~ promulgation by the administrator of applicable effluent limitations and standards (including best management practices) under Sections 301, 304, 307, 318, and 405 of the CWA shall contain such limitations and other conditions as the commissioner determines to be necessary to carry out those provisions of the CWA under 327 IAC 5-5-2(b) and Section 402(a)(1) of the CWA.

(7) Best management practices to control or abate the discharge of pollutants where:

(A) required under Section 304(e) of the CWA for the control of toxic and hazardous pollutants from ancillary industrial activities;

(B) numeric effluent limitations are infeasible; or

(C) the practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA.

Examples of best management practices that may be appropriate under clause (B) include proper operation and maintenance criteria and sludge-handling requirements. Examples of best management practices that may be appropriate under clause (C) include the construction of sheds over material storage piles to prevent rainfall from leaching materials from these piles and creating a source of pollution, ditching and diversion of rainfall run-off to minimize or prevent contamination from a discharger's manufacturing operations, and the use of solid, absorbent materials for cleaning up leaks and drips as opposed to washing these materials down a floor drain creating additional sources of pollution.

(8) Twenty-four (24) hour reporting. Pollutants for which the permittee must report violations of maximum daily discharge limitations under section 8(10)(C)(iii) of this rule (twenty-four (24) hour reporting) shall be listed as such in the permit. This list shall include any:

(A) toxic pollutant or hazardous substance; or ~~any~~

(B) pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

(9) Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired in accordance with 327 IAC 5-3-10(a).

(10) Additional conditions applicable to POTWs shall be as follows:

(A) Any conditions imposed in grants made by the administrator to POTWs under Sections 201 and 204 of the CWA that are reasonably necessary for the achievement of effluent limitations required under Section 301 of the CWA.

(B) Requirements under Section 405 of the CWA governing the disposal of sewage sludge from POTWs or any other treatment works treating domestic sewage for any use for which rules have been established in accordance with any applicable rules.

(C) All POTWs shall identify, in terms of character and volume of pollutants, any significant indirect discharges into the POTW ~~which that~~ are subject to pretreatment standards under Section 307(b) and 307(c) of the CWA.

(D) All POTWs must provide adequate notice to the commissioner of the following:

(i) Any new introduction of pollutants into the POTW from an indirect discharger that would be subject to Section 301 or 306 of the CWA if it were directly discharging those pollutants.

(ii) Any substantial change in the volume or character of pollutants being introduced into that POTW by any source where ~~such the~~ change would:

(AA) render the source subject to pretreatment standards under Section 307(b) or 307(c) of the CWA; or ~~would~~

(BB) result in a modified application of ~~such the~~ standards.

As used in this clause, “adequate notice” includes information on the quality and quantity of effluent introduced into the POTW and any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

(E) POTWs must develop and submit to the commissioner a POTW pretreatment program when required by 40 CFR 403 and 327 IAC 5-13-1 in order to assure compliance by industrial users of the POTW with applicable pretreatment standards established under Sections 307(b) and 307(c) of the CWA. The pretreatment program shall:

(i) meet the criteria of 327 IAC 5-13-2(f); and

(ii) once approved, ~~shall~~ be incorporated into the POTW’s permit.

(11) Antibacksliding requirements shall be as follows:

(A) In the case of effluent limitations established on the basis of Section 402(a)(1)(B) of the CWA, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under Section 304(b) of the CWA subsequent to the original issuance of ~~such the~~ permit to contain effluent limitations ~~which that~~ are less stringent than the comparable effluent limitations in the previous permit. In the case of effluent limitations established on the basis of Section 301(b)(1)(C), 303(d), or 303(e) of the CWA, a permit may not be renewed, reissued, or modified to contain effluent limitations ~~which that~~ are less stringent than the comparable effluent limitations in the previous permit except in compliance with Section 303(d)(4) of the CWA.

(B) A permit, with respect to which clause (A) applies, may be renewed, reissued, or modified to contain less stringent effluent limitations applicable to a pollutant if:

(i) material and substantial alterations or additions to the permitted facility occurred after permit issuance that justify the application of a less stringent effluent limitation;

(ii) information is available that:

(AA) was not available at the time of permit issuance (other than revised regulations, guidance, or test methods); and ~~that~~

(BB) would have justified the application of a less stringent effluent limitation at the time of permit issuance;

or the commissioner determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under Section 402(a)(1)(B) of the CWA;

(iii) a less stringent effluent limitation is necessary because of events:

(AA) over which the permittee has no control; and

(BB) for which there is no reasonably available remedy;

(iv) the permittee has received a permit modification under Section 301(c), 301(g) through 301(i), 301(k), 301(n), or 316(a) of the CWA; or

(v) the permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities, but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

Item (ii) shall not apply to any revised waste load allocations or any alternative grounds for translating water quality standards into effluent limitations, except where the cumulative effect of ~~such the~~ revised allocations results in a decrease in the amount of pollutants discharged into the concerned waters, and ~~such the~~ revised allocations are not the result of a discharger eliminating or substantially reducing its discharge of pollutants due to complying with the requirements of the CWA or for reasons otherwise unrelated to water quality.

(C) In no event may a permit with respect to which clause (A) applies be renewed, reissued, or modified to contain an effluent limitation that is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, reissued, or modified to contain a less stringent effluent limitation if the implementation of ~~such the~~ limitation would result in a violation of a water quality standard under Section 303 of the CWA, 327 IAC 2-1, or 327 IAC 2-1.5 applicable to ~~such the~~ waters.

(12) For a POTW, any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this subdivision. Alternatively, the commissioner may issue separate permits to the treatment works and to its users or may require a separate permit application from any user. The commissioner’s decision to:

(A) issue a permit with no conditions applicable to any user; ~~to~~

(B) impose conditions on one (1) or more users; ~~to~~

(C) issue separate permits; or ~~to~~

(D) require separate applications;

and the basis for that decision shall be stated in the fact sheet for the draft permit for the treatment works.

(b) Notwithstanding the requirements of this section, where appropriate, NPDES permits for communities with wet weather discharges from combined sewer overflows (CSO) shall contain schedules of compliance requiring the permittee to take

specific steps to achieve compliance with applicable standards, limitations, and other requirements.

(c) The schedule of compliance provided for in subsection (b) shall require compliance with applicable standards and limitations as soon as reasonably possible but may remain in effect as long as the NPDES permit requirements are in effect.

(d) The department shall, at the request of the permittee, incorporate into the NPDES permit a schedule of compliance for meeting the water quality-based requirements associated with CSOs during the period of development, approval, and implementation of a long term control plan (LTCP). The schedule of compliance may:

- (1) exceed the time frames specified in this title; and
- (2) not exceed the period specified in an approved LTCP for implementation of the LTCP.

(e) If the term of a schedule of compliance exceeds the term of the NPDES permit, as specified in an approved LTCP, the department shall continue the schedule of compliance through each successive permit term, not to exceed the time allowed under subsection (d). The permit shall specify the following:

- (1) That the schedule of compliance lasts beyond the term of the permit.
- (2) The maximum time of the compliance schedule in accordance with subsection (d).

(f) Upon request of the permittee, the department shall modify an existing NPDES permit that contains water quality-based requirements associated with CSOs to provide for a schedule of compliance. (*Water Pollution Control Board; 327 IAC 5-2-10; filed Sep 24, 1987, 3:00 p.m.: 11 IR 623; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1743; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1426; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3378*)

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 July 12, 2006, 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 (board) will hold a public hearing on amendments to rules concerning water quality.

The purpose of this hearing is to receive comments from the public prior to preliminary adoption of this rule by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the drafted 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 Mary Ann 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 46204-2251

or call (317) 233-1785 or (317) 233-6565 (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.

Bruno Pigott
Assistant Commissioner
Office of Water Quality
Indiana Department of Environmental Management