

Document: IC 13-14-9 Notice, **Register Page Number:** 29 IR 3434

Source: July 1, 2006, Indiana Register, Volume 29, Number 10

Disclaimer: This document was created from the files used to produce the official CD-ROM Indiana Register.

TITLE 327 WATER POLLUTION CONTROL BOARD

FINDINGS AND DETERMINATION OF THE COMMISSIONER PURSUANT TO IC 13-14-9-8 AND DRAFT RULE LSA Document #06-181(WPCB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING SITE-SPECIFIC WATER QUALITY CRITERIA

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for an amendment to 327 IAC 2-1-8.9 and has scheduled a public hearing/meeting before the Water Pollution Control Board (board) for consideration of preliminary adoption of this rule amendment.

CITATIONS AFFECTED: 327 IAC 2-1-8.9.

AUTHORITY: IC 13-14-9-8.

STATUTORY REQUIREMENTS

IC 13-14-9-8 recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that there is no anticipated benefit from the first and second public comment periods, IDEM may forgo these comment periods and proceed directly to the public hearing and board meeting at which the draft rule is considered for preliminary adoption. Two (2) opportunities for public comment (at the public hearings prior to preliminary and final adoption of the rule) remain under this procedure.

If the commissioner makes the determination of no anticipated benefit required by IC 13-14-9-8, the commissioner shall prepare written findings and publish those findings in the Indiana Register prior to the board meeting at which the draft rule is to be considered for preliminary adoption and include them in the board packet prepared for that meeting. This document constitutes the commissioner's written findings pursuant to IC 13-14-9-8.

The statute provides for this shortened rulemaking process if the commissioner determines that:

(1) the rule constitutes:

(A) an adoption or incorporation by reference of a federal law, regulation, or rule that:

(i) is or will be applicable to Indiana; and

(ii) contains no amendments that have a substantive effect on the scope or intended application of the federal law or rule;

(B) a technical amendment with no substantive effect on an existing Indiana rule; or

(C) a substantive amendment to an existing Indiana rule, the primary and intended purpose of which is to clarify the existing rule; and

(2) the rule is of such nature and scope that there is no reasonably anticipated benefit to the environment or the persons referred to in IC 13-14-9-7(a)(2) from:

(A) exposing the rule to diverse public comment under section IC 13-14-9-3 or IC 13-14-9-4;

(B) affording interested or affected parties the opportunity to be heard under IC 13-14-9-3 or IC 13-14-9-4; and

(C) affording interested or affected parties the opportunity to develop evidence in the record collected under IC 13-14-9-3 and IC 13-14-9-4.

BACKGROUND

At 327 IAC 2-1-8.9(g) in Table 8.9-1, the site-specific water quality criteria for cadmium applicable to the West Fork of the White River from the Indianapolis Belmont Wastewater Treatment Plant outfall to the Marion-Johnson County line were calculated without incorporating recent aquatic toxicity data for cadmium published by U.S. EPA. For this reason, U.S. EPA has informed IDEM that it will not accept these site-specific criteria for cadmium. If these site-specific criteria for cadmium applicable to the West Fork of the White River from the Indianapolis Belmont Wastewater Treatment Plant outfall to the Marion-Johnson County line are not changed, then EPA will over-promulgate the state rule by initiating a rulemaking to place in Federal regulation cadmium criteria that

the EPA determines to be acceptable. The criteria in Federal regulation would then be the applicable cadmium criteria for the portion of the West Fork of the White River from the Indianapolis Belmont Wastewater Treatment Plant outfall to the Marion-Johnson County line.

Site-specific water quality criteria typically are requested by a discharger and apply to a specific portion of the waterbody that receives the discharger's wastewater. In this case, the City of Indianapolis had requested site-specific criteria for cadmium because of an industry that discharged to one of the Indianapolis POTWs. This industry has significantly reduced its discharge so cadmium is no longer at issue in the Indianapolis discharge. Since the site-specific criteria are no longer needed by Indianapolis, they could be deleted from 327 IAC 2-1-8.9. If the City of Indianapolis needs site-specific criteria for cadmium in the future, it could apply for them under 327 IAC 2-1-8.9. The City of Indianapolis believes that it no longer needs effluent limits for cadmium and that the next renewal of the NPDES permit should require only monitoring for cadmium.

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 - MC60-04
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 - MC50-01
100 N. Senate Avenue
IGCN 1301
Indianapolis, IN 46204-2251
(317) 234-3386
elevenha@idem.in.gov

FINDINGS

The commissioner of IDEM has prepared findings regarding rulemaking on an amendment to 327 IAC 2-1-8.9 regarding the site-specific water quality criteria for cadmium applicable to the West Fork of the White River from the Indianapolis Belmont Wastewater Treatment Plant outfall to the Marion-Johnson County line. These findings are prepared under IC 13-14-9-8 and are as follows:

- (1) This rule is a technical amendment with no substantive effect on an existing Indiana rule.
- (2) The public will benefit from prompt adoption of this rule because, without this amendment to 327 IAC 2-1-8.9 regarding the site-specific water quality criteria for cadmium applicable to the West Fork of the White River from the Indianapolis Belmont Wastewater Treatment Plant outfall to the Marion-Johnson County line, the U.S. EPA will not accept the changes previously adopted into 327 IAC 2-1-8.9 by the Water Pollution Control Board regarding these site-specific water quality criteria for cadmium. Without this amendment to the cadmium criteria in the West Fork of the White River from the Indianapolis Belmont Wastewater Treatment Plant outfall to the Marion-Johnson County line, U. S. EPA will over-promulgate the site-specific criteria, which is unnecessary since the Indianapolis discharge no longer contains significant cadmium for which it formerly requested these site-specific water quality criteria.
- (3) I have determined that under the specific circumstances pertaining to this rule, there would be no benefit to the environment or to persons to be regulated or otherwise affected by this rule from the first and second public comment periods.
- (4) The draft rule is hereby incorporated into these findings.

Thomas W. Easterly
Commissioner
Indiana Department of Environmental Management

ADDITIONAL INFORMATION

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) or technical information regarding site-specific criteria may be obtained from John Elliott, Permits Branch, Office of Water Quality, 317-233-0703 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 327 IAC 2-1-8.9, AS AMENDED AT 28 IR 2058, SECTION 10, IS AMENDED 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 the following:

- (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 do the following:

(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)	$WER_{[ln(hardness)]}^{[2]}(e^{(0.9422 \cdot 1.4076)})$	0.960	$WER_{[ln(hardness)]}^{[2]}(e^{(0.8545 \cdot 1.4097)})$	0.960
			Cyanide (Free)	45.8		10.7	

				$WER^{[2]}(e^{(1.273)}_{[\ln(\text{hardness})]-1.2554})$	$1.46203-[(\ln \text{hardness}) (0.145712)]$	$WER^{[2]}(e^{(1.273)}_{[\ln(\text{hardness})]-3.7561})$	$1.46203-[(\ln \text{hardness}) (0.145712)]$
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)	$WER^{[2]}(e^{(0.9422)}_{[\ln(\text{hardness})]-1.4076})$	0.960	$WER^{[2]}(e^{(0.8545)}_{[\ln(\text{hardness})]-1.4097})$	0.960
Wabash River	The outfall of Eli-Lilly and Company (river mile 236)	A point two (2) miles downstream	Lead (Dissolved)	$WER^{[2]}(e^{(1.273)}_{[\ln(\text{hardness})]-1.2554})$	$1.46203-[(\ln \text{hardness}) (0.145712)]$	$WER^{[2]}(e^{(1.273)}_{[\ln(\text{hardness})]-3.7561})$	$1.46203-[(\ln \text{hardness}) (0.145712)]$
West Fork White River	The outfall of the Belmont POTW (river mile 227)	The Marion-Johnson County line (river mile 220)	Cadmium (Dissolved)	$WER^{[2]}(e^{(1.128)}_{[\ln(\text{hardness})]-1.708})$	$1.136672-[(\ln \text{hardness}) (0.041838)]$	$WER^{[2]}(e^{(0.7852)}_{[\ln(\text{hardness})]-2.9232})$	$1.101672-[(\ln \text{hardness}) (0.041838)]$
			Copper (Dissolved)	$WER^{[2]}(e^{(0.9422)}_{[\ln(\text{hardness})]-1.4076})$	0.960	$WER^{[2]}(e^{(0.8545)}_{[\ln(\text{hardness})]-1.4097})$	0.960
			Cyanide (Free)	45.8		10.7	
			Lead (Dissolved)	$WER^{[2]}(e^{(1.273)}_{[\ln(\text{hardness})]-1.2554})$	$1.46203-[(\ln \text{hardness}) (0.145712)]$	$WER^{[2]}(e^{(1.273)}_{[\ln(\text{hardness})]-3.7561})$	$1.46203-[(\ln \text{hardness}) (0.145712)]$

^[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; errata filed Jul 6, 2005, 3:12 p.m.: 28 IR 3582)

Notice of First Meeting/Hearing

Under IC 4-22-2-24, IC 13-14-8-1, IC 13-14-8-2, and IC 13-14-9, notice is hereby given that on September 13, 2006, at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, the Water Pollution Control Board will hold a public hearing on an amendment to 327 IAC 2-1-8.9 regarding deletion of the site-specific criteria for cadmium applicable to the West Fork of the White River from the Indianapolis Belmont Wastewater Treatment Plant outfall to the Marion-Johnson County line.

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 rule amendment. 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 46204-2251

or call (317) 232-3077(V) or (317) 232-6565 (TDD). Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service at 711 or 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, Indianapolis, Indiana and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.