

ANTIDegradation Stakeholders' Subgroup
Meeting Summary

Date: August 12, 2008
Time: 10:00 A.M. – 4:00 P.M.
Location: IDEM's Shadeland Avenue Offices, Conference Room C

Present at the meeting:

Brett Barber (Greeley & Hansen), Patrick Bennett (Indiana Manufacturer's Association (IMA)), Bill Beranek (Indiana Environmental Institute), Douglas Bley (Arcelor Mittal), Albert Ettinger (Environmental Law Policy Center (ELPC)), Kari Evans (Barnes & Thornburg), Joel Fishkin (Indiana Utility Regulatory Commission), Lori Gates (Christopher Burke Engineering), Jeff Hyman (Conservation Law Center, Alliance for the Great Lakes), Barton Jones (Strand Associates, Inc.), Brad Klein (Environmental Law Policy Center (ELPC)), Tim Lohner (American Electric Power (AEP)), Kay Nelson (Northwest Indiana Forum), Dan Olson (City of Michigan City), Neil Parke (Eli Lilly), Bowden Quinn (Sierra Club Hoosier Chapter), Rae Schnapp (Hoosier Environmental Council and Wabash Riverkeepers), Dave Wagner (WPCB).

Representing IDEM: Bruno Pigott, Martha Clark Mettler, Steve Roush, Shivi Selvaratnam, John Nixon, and MaryAnn Stevens.

Introductions and Review of Summary

After an introduction by each person in attendance, Martha Clark Mettler, IDEM, Office of Water Quality, Deputy Assistant Commissioner, asked if anyone had comment on the draft summary of the July 15th subgroup meeting. There were no comments on the summary content, but Douglas Bley asked that the summary's concluding items of subgroup consensus achieved at the meeting be shown in bold.

DISCUSSION TOPIC #1:

Response to the July 15th subgroup meeting

Martha asked the representatives of each of the three represented categories (municipalities, industrials, environmentalist) what kind of feed back they had received from the members of the larger workgroup represented by their category.

Dan Olson, speaking for the municipalities and the Indiana Association of Cities and Towns (IACT), said his group has serious reservation on the change to the draft rule's applicability from applying to a new or increased permit limit, as in the existing antidegradation (GLI) rules, to applying to a new or increased pollutant loading. His group wants the antideg trigger to be based on a control document, the discharge permit, as a bright line determinant.

Kari Evans, speaking for the industrial constituents, said her group has similar concerns as the municipalities and wants the antideg trigger to be a permit limit change, a deliberate action, as it currently is in the GLI rules. From the hand out Kari prepared and presented to the subgroup, the industrial proposal is the following:

For BCCs, the (antidegradation) trigger is a deliberate action.

For non-BCCs, the trigger is the need for a new or increased permit limit above the de minimis allowance.

Albert Ettinger, speaking for the environmental community, said he acknowledges the munis'/industrials' concern and is willing to capture their interest in rule language, but the

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language proposed by Kari is too broad and much of Albert's concession is dependant on wording as used in a discharge permit. He reiterated a point that was agreed upon at the July 15th subgroup meeting, that a municipality growing into the full treatment plant capacity for which limits exist in the existing discharge permit does not constitute an increase loading requiring an antidegradation demonstration. (Example: a 4 MGD permitted WWTP discharging only 3 MGD at time of permit issuance, but, through increase of community population, eventually discharging at plant capacity does not constitute an increased loading because the permit already was established for a 4 MGD discharge. However, for a treatment plant with no permit limit for a pollutant that then needs a limit due to a change in the discharge, an antidegradation demonstration may be needed.)

Dan said he tends to agree with Albert but is worried about changes due to day to day operations. This led to restating the discussion from the July 15th subgroup meeting about the antidegradation exemption found in the draft rule at 327 IAC 2-1.3-4(b)(1).

Albert is okay with using a change in a permit limit as the antideg trigger as long as all parameters are under consideration for an antideg demonstration. Tim Lohner isn't comfortable with that concept because he says utilities often have slight increases in parameter discharges due to day to day operational fluxuation. Tim said the reasonable potential to exceed the WQBEL provides a bright line and the utilities design their systems so as not to exceed that bright line. He says not making the RPE the antideg trigger removes an incentive to improve discharges.

Kari asked if an antideg demonstration would be required for a discharger doing a different activity that would not require a permit modification. Albert thought not but added he thinks each discharger needs to do an antideg demonstration at least once. Albert finds Tim's request unacceptable for the antideg trigger to be based on the RPE.

Steve Roush suggested the trigger could be the reasonable potential to exceed the de minimis. Kari rejected that idea.

Jeff Hyman stated that, of the other states' rules he has investigated, no other GLI state uses the permit limit as an antideg trigger. He mentioned Ohio and Michigan.

Douglas Bley voiced his concern about loading, which can change at any time in his industry, being used as the antideg trigger. Albert stated he thought we had agreed on the issue of loading being the antideg trigger, but, if the industries think the wording from the July 15th subgroup meeting isn't clear enough to satisfy the industries, then Albert asked for them to provide their suggested rule language.

DISCUSSION TOPIC #2:

Mass/Concentration Permit Limits

All Great Lakes System dischargers have both mass and concentration limits in discharge permits, but not all dischargers outside of the Great Lakes System have both mass and concentration limits.

DISCUSSION TOPIC #3:

Definition of "Pollutant of concern"

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Douglas Bley stated he thinks the definition agreed upon at the July 15th subgroup meeting is too broad. Kari thinks it is too vague.

Martha restated from the discussion of the previous meeting that IDEM would not make a discharger look for the universe of all pollutants but just those reasonably expected to be in its discharge. She said this is true also for a new discharger. Steve contributed that the existing permitting process has always had a method for determining which pollutants should be expected to be in a discharge.

Kari admitted to industry paranoia over IDEM telling the discharger to look for a pollutant that exists in such small quantities as pharmaceuticals and endocrine disruptors. Tim offered that the CERCLA and related risk assessment programs have ways to limit the universe of parameters thought to be present in the discharge. Kay Nelson said this aspect of permitting affects area economic development because potential dischargers don't understand the process.

Bruno said outreach can be improved, but IDEM's process exists for determining which pollutants are reasonably expected to be in a discharge and will continue to be used.

DISCUSSION TOPIC #4:

Antidegradation Demonstration Exemptions (draft rule section 4)

Martha brought the subgroup meeting back to the point where it left off at the end of the July 15th subgroup meeting with a continuation of discussing the antideg demonstration exemptions listed in section 4 of the draft rule.

Exemptions, Draft rule section 4(a) regarding ONRWs

As a result of the July 15th subgroup meeting, the exemption at 327 IAC 2-1.3-4(a) and 327 IAC 2-1.3-4(b)(6) regarding short term, temporary increased loadings have been made consistent regarding time duration and the duration of the lowering of water quality. Jeff Hyman expanded this discussion by suggesting that "temporary" shouldn't mean the loading can be as much as the level of the standard. He reviewed other states' rules and suggested Indiana's rule should borrow from the Iowa and Missouri rules and include a limit on the magnitude of the degradation caused by the short term, temporary discharge.

Kari said the industrial group wants time to consider the Iowa and Missouri rule languages.

Exemptions, Draft rule section 4(b) regarding HWQs, except ONRWs, exemptions limited to non-BCCs

Dan Olson is concerned that normal operational change isn't an agency decision such as a permit issuance or modification and wondered if the discharger would have to submit a letter of justification each time it experienced an operational change, for example, a bypass.

Kari thinks some of the exemptions in 4(b) should also apply to BCCs.

Jeff stated that the 2005 antideg draft rule allowed four exemptions for BCCs: for normal, operational changes; bypasses, trucked in sewage, and taking in failing septic.

The subgroup began assessing the listed exemptions in section 4(b) as to whether they are applicable to BCCs and whether the discharger must provide a notice of justification for the increased loading to IDEM (for reasons of antidegradation rule compliance).

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Exemption citation	Applicable to BCC	Notice of justification needed
327 IAC 2-1.3-4(b)(1)	Yes	No
327 IAC 2-1.3-4(b)(2)	Yes	No (bypass notice req'd per permit)
327 IAC 2-1.3-4(b)(3)	Yes	No
327 IAC 2-1.3-4(b)(4)	Yes	Yes
327 IAC 2-1.3-4(b)(5)	Yes	No (notice req'd per LTCP)
327 IAC 2-1.3-4(b)(6)	Yes	Yes
327 IAC 2-1.3-4(b)(7)	Yes	Limited Justification
327 IAC 2-1.3-4(b)(8)	Yes	No
327 IAC 2-1.3-4(b)(9)*	Yes	Some Justification Needed
327 IAC 2-1.3-4(b)(10)*	No	Some Justification Needed
327 IAC 2-1.3-4(b)(11)#	Yes	Yes
327 IAC 2-1.3-4(b)(12)	No	Yes

*Enviros want more public notice activity concerning pollutant trading beyond the information provided in a permit fact sheet.

#Exemption 11 (noncontact cooling water) will likely apply to general permits.

DISCUSSION TOPIC #5:

Request for additional exemptions

The industrial representatives want to include exemptions in section 4(b) for variances and 316(b) thermal discharges.

Tim Lohner and Albert Ettinger debated whether new discharges created as a result of new air pollution control technologies would pass the necessary test. Tim suggested that some language revisions were needed to the draft rules to make this clearer. The current draft rule contains a comment in the margin about considering whether to allow new discharges resulting from air pollution control technologies to be covered under section 6(c), as an alternative antideg demonstration, or under section 4, as an exemption. The industrial representatives prefer an exemption.

Martha asked Kari to provide information and the industrial position to the next subgroup meeting and IDEM will be prepared to explain variances in regard to antidegradation.

DISCUSSION TOPIC #6:

Initial discussion on de minimis

As introduction to next meeting's discussion of de minimis, Albert asked about the draft rule language at 327 IAC 2-1.3-4(b)(13)(i)(BB) that reads in part: "When the WQBEL calculated using ten percent (10%) of the unused loading capacity is greater than the WQBEL based on the FAV, the WQBEL based on the FAV shall be used as the water quality based de minimis lowering of water quality."

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Steve Roush gave an explanation, including:

FAV (final acute value) = 2 X AAC (acute aquatic value)

No permit will ever have a limit higher than the FAV.

Most Ohio River dischargers have limits that are based on technology-based limits.

The federal de minimis is usually stated as 10% of the assimilative capacity.

A problem occurs with zero flow streams where the discharge will be the WQBEL calculated without any dilution which is the same as the proposed de minimis for OSRWs and EUWs and there is not any assimilative capacity in the receiving stream.

Albert stated he will oppose any rule that allows more than a 10% de minimis.

NEXT STEPS

The next subgroup meeting will be on Tuesday, September 16, 2008, from 10 am to 4 pm, at IDEM's Shadeland Avenue office, Conference Room C.

The agenda topics will include:

De minimis

Variances

Discussion on section 6(c) regarding antideg demonstration application substitute information to demonstrate minimizing the proposed significant lowering of water quality and use of the most cost-effective pollution prevention and treatment techniques available.

Summary of Subgroup Consensus from this Meeting

A companion guidance document needs to accompany the rule at the time it is presented to the Water Pollution Control Board for adoption.

Subgroup is willing to consider including a limit on the magnitude of degradation from a short term, temporary loading.

Presentation of the industrial position regarding additional exemptions for variances and 316(b) thermal discharges at the next subgroup meeting.

IDEM will explain variances in regard to antidegradation at the next subgroup meeting.