

SECTION 1. 327 IAC 2-1.3 IS ADDED TO READ AS FOLLOWS:

**Rule 1.3. Antidegradation Standards and Implementation Procedures**

**327 IAC 2-1.3-1 Applicability of antidegradation standards and implementation procedures**

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3;  
IC 13-18-4-1; IC 13-18-4-3

Affected: IC 13-18-3; IC 13-18-4

Sec. 1. (a) ~~Notwithstanding the requirements of 327 IAC 2-1.5-4~~ **The antidegradation standards established by this rule apply to all surface waters of the state.**

(b) Except as provided under section 4 of this rule, the antidegradation implementation procedures established by this rule apply to a proposed new or increased loading of a pollutant of concern to a surface water of the state.

**(c) For activities covered by an NPDES general permit authorized by rule, the following apply:**

**(1) The department shall complete an antidegradation review of the rules of the board that authorize NPDES general permits.**

**(2) The board may modify those rules for purposes of antidegradation compliance.**

**(3) After an antidegradation review of a rule is conducted, activities covered by an NPDES general permit authorized by that rule are not required to undergo an additional antidegradation review.**

*(Water Pollution Control Board; 327 IAC 2-1.3-1)*

Comment [MCM1]: Added to address direction given in HEA 1162 signed 5/6/09

**327 IAC 2-1.3-2 Definitions**

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3;  
IC 13-18-4-1; IC 13-18-4-3

Affected: IC 13-11-2-265; IC 13-13-1-1; IC 13-18-1; IC 13-18-4; IC 14-8-2-310;  
IC 14-22-34; IC 36-2-3.5; IC 36-3-1

Sec. 2. The following definitions apply throughout this rule and 327 IAC 2-1 through 327 IAC 2-1.5:

(1) “Antidegradation demonstration application” means an application for a proposed new or increased loading of a pollutant of concern, except as provided under section 4 of this rule, to a surface water of the state that will result in a significant lowering of water quality.

(2) “Application” means an application for either of the following:

(A) A permit.

(B) A determination related to a permit.

(3) “Best available demonstrated control technology” or “BADCT” means a wastewater treatment capable of meeting the following effluent limitations or design criteria:

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- (A) For the discharge of sanitary wastewater from a facility using conventional treatment technologies, the effluent limitations are as follows:
- (i) CBOD of ten (10.0) mg/l monthly average and fifteen (15.0) mg/l weekly average.
  - (ii) Total suspended solids of twelve (12.0) mg/l monthly average and eighteen (18.0) mg/l weekly average.
  - (iii) Ammonia as N, in summer, of one and one-tenth (1.1) mg/l monthly average and one and six-tenths (1.6) mg/l weekly average.
  - (iv) Ammonia as N, in winter, of one and six-tenths (1.6) mg/l monthly average and two and four-tenths (2.4) mg/l weekly average.
  - (v) E. coli of one hundred twenty-five (125.0) colonies per one hundred (100) ml monthly geometric mean when a minimum of five samples are taken and two hundred thirty-five (235.0) colonies per one hundred (100) ml daily maximum or not more than ten percent (10%) of all samples in a calendar month exceed two hundred thirty-five (235.0) colonies per one hundred (100) ml daily maximum when a minimum of ten (10) samples are taken.
  - (vi) Dissolved oxygen not less than six (6.0) mg/l.
  - (vii) Total residual chlorine not greater than two-hundredths (0.02) mg/l.
- (B) For the discharge of sanitary wastewater from an alternative treatment technology, such as a:
- (i) lagoon system;
  - (ii) land application and controlled discharge system;
  - (iii) constructed wetland system; or
  - (iv) combined sewer overflow control system;
- effluent limitations shall be developed by the department on a case-by-case basis.
- (C) For an industrial direct discharge subject to federal effluent guidelines, the facility shall be designed to meet the most stringent of the:
- (i) new source performance standards;
  - (ii) best conventional pollutant control technology;
  - (iii) best available technology economically achievable; and
  - (iv) best practicable control technology currently available;
- for the appropriate categorical guidelines of 40 C.F.R. 400 through 40 C.F.R. 471.
- (D) For a categorical industrial indirect discharger, the facility shall be designed to meet the following:
- (i) Categorical pretreatment standards for existing sources.
  - (ii) Categorical pretreatment standards for new sources.
- (E) For a non-categorical industrial direct or indirect discharger, effluent limitations will be developed based upon best engineering and professional judgment in accordance with 327 IAC 5-5-2.
- (F) For a wastewater discharge resulting from the clean-up of a response action site contaminated with volatile organic compounds, the facility shall include:
- (i) airstripping;
  - (ii) carbon columns;
  - (iii) both items (i) and (ii); or
  - (iv) equivalent treatment;

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capable of achieving final thirty-day average effluent limits of five (5) micrograms per liter or less for each individually regulated volatile organic compound.

(4) “Best management practices” or “BMPs” means the following measures to prevent or reduce the pollution of surface waters of the state:

- (A) Schedules of activities.
- (B) Prohibitions of practice.
- (C) Treatment requirements.
- (D) Operation and maintenance procedures.
- (E) Use of containment facilities.
- (F) Other management practices.

BMPs may be employed, for example, to control plant site run-off, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage resulting from manufacturing, commercial, mining, or silvicultural activities.

(5) “Bioaccumulation” means the net accumulation of a substance by an organism as a result of uptake from all environmental sources.

(6) “Bioaccumulation factor” or “BAF” means the ratio (in liters per kilogram) of a substance’s concentration in tissue of an aquatic organism to its concentration in the ambient water in situations where:

- (A) both the organism and its food are exposed; and
- (B) the ratio does not change substantially over time.

(7) “Bioaccumulative chemical of concern” or “BCC” has the meaning set forth in 327 IAC 2-1.5-6.

(8) “Board” means the water pollution control board established under IC 13-18-1.

(9) “CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 through 42 U.S.C. 9675, as amended on October 11, 1996.

(10) “Clean Water Act” or “CWA” means the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., as amended on December 16, 1996.

(11) “Combined sewer” means a sewer designed and employed to receive both of the following:

- (A) Water-carried or liquid wastes.
- (B) Storm or surface water.

(12) “Commissioner” means the commissioner of the department of environmental management.

(13) “Community” means a general collective term to describe the varieties of aquatic species and associated organisms living together in a waterbody.

(14) “Criterion” means a definite numerical value or narrative statement promulgated by the board to maintain or enhance water quality to provide for and fully protect designated uses of the surface waters of the state.

(15) “Degradation” means, with respect to an NPDES permit for purposes of an antidegradation demonstration, the following:

- (A) For an outstanding national resource water (ONRW), any new or increased discharge of a pollutant of concern, except for a short term, temporary increase as described under section 4(a) of this rule.
- (B) For a high quality water (HQW), including an outstanding state resource water (OSRW), ~~or an exceptional use water (EUW), any new or increased~~

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loading of a pollutant of concern, except as provided under section 4 of this rule, to a surface water of the state that results in a significant lowering of water quality for that pollutant of concern.

(16) “Department” means the department of environmental management established under IC 13-13-1-1.

(17) “Designated uses” means those uses specified in these water quality standards for each waterbody whether or not they are being attained. Waste:

- (A) transport;
- (B) treatment; and
- (C) assimilation;

shall not be designated uses.

(18) “Discharge” or “direct discharge”, when used without qualification, means a discharge of a pollutant of concern.

(19) “Draft permit” means a document prepared by the commissioner under 327 IAC 5-3-6 before the public comment period indicating the commissioner’s tentative decision to:

- (A) issue or deny;
- (B) modify;
- (C) revoke and reissue;
- (D) terminate; or
- (E) reissue;

a permit. A notice of intent to terminate a permit and a notice of intent to deny a permit are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination is not a draft permit. A proposed permit is not a draft permit.

(20) “Effluent” means a wastewater discharge from a point source to the surface waters of the state.

(21) “Effluent limitation” means any restriction established by the commissioner on:

- (A) quantities;
- (B) discharge rates; and
- (C) concentrations;

of pollutants that are discharged, or will be discharged, from point sources into surface waters of the state.

~~(22) “Exceptional use water” or “EUW” means any water designated as an exceptional use water by the board, regardless of when the designation occurred.~~

(22) “Existing uses” means those uses actually attained in the waterbody on or after November 28, 1975, whether or not they are included under 327 IAC 2-1-3 or 327 IAC 2-1.5-5.

(23) “Final Acute Value” or FAV means:

- (A) a calculated estimate of the concentration of a test material such that ninety-five percent (95%) of the genera (with which acceptable acute toxicity tests have been conducted on the material) have higher genus mean acute values (GMAVs); or
- (B) the species mean acute value (SMAV) of an important or critical species, if the SMAV is lower than the calculated estimate.

(24) “Governmental entity” means the state or a political subdivision.

(25) “Great Lakes” means”, in Indiana, the following:

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Comment [MCM2]: HEA 1162 reclassified all existing EUW s to OSRWs

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Comment [MCM3]: Added to address definition in HEA 1162 signed 5/6/09

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- (A) Lake Erie.  
(B) Lake Michigan.
- (26) “Great Lakes states” means the following:  
(A) Illinois.  
(B) Indiana.  
(C) Michigan.  
(D) Minnesota.  
(E) New York.  
(F) Ohio.  
(G) Pennsylvania.  
(H) Wisconsin.

- (27) “Great Lakes system” means all the:  
(A) streams;  
(B) rivers;  
(C) lakes; and  
(D) other surface waters;

of the state within the drainage basins of the Great Lakes within Indiana.

(28) “High quality water” or “HQW” means a waterbody, including an Outstanding National Resource Water or Outstanding State Resource Water, ~~or EUW~~, in which, on a pollutant by pollutant basis, the quality of the surface water exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water. The term includes any waterbody for which the pollutant has not been detected in:

- (A) the water column; or  
(B) nontransient aquatic organisms;

at levels that would indicate that a water quality criterion or value is not being met.

(29) “Indirect discharger” means a nondomestic discharger introducing pollutants into a publicly owned treatment works (POTW).

(30) “Legislative body” means any of the following:

- (A) For a county not subject to IC 36-2-3.5 or IC 36-3-1, a board of county commissioners.  
(B) For a county subject to IC 36-2-3.5, a county council.  
(C) For a consolidated city or a county having a consolidated city, a city council.  
(D) For a city other than a consolidated city, a common council.  
(E) For a town, a town council.  
(F) For a township, a township board.

~~(32) “Limit of Detection” or “LOD” means the minimum concentration of a substance that can be measured and reported with ninety-nine percent (99%) confidence that the analyte concentration is greater than zero (0) for a particular analytical method and sample matrix.~~

(31) “Mixing zone”, for the purposes of this rule, means an area contiguous to a discharge where:

- (A) the discharged wastewater mixes with the receiving water or waters; and  
(B) numeric water quality criteria or values may be exceeded.

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Comment [MCM4]: Term not used in this rule

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Where the quality of the effluent is lower than that of the receiving water, it may not be possible to attain within the mixing zone all designated uses attained outside the zone.

(32) “National Pollutant Discharge Elimination System” or “NPDES” means the national program for:

- (A) issuing;
- (B) modifying;
- (C) revoking and reissuing;
- (D) terminating;
- (E) denying;
- (F) monitoring; and
- (G) enforcing;

permits for the discharge of pollutants from point sources and imposing and enforcing pretreatment requirements by the U. S. EPA or an authorized state under Sections 307, 318, 402, and 405 of the Clean Water Act. The term includes a state program approved by the U. S. EPA under 40 CFR 123.

(33) “New Great Lakes discharger” means any:

- (A) building;
- (B) structure;
- (C) facility; or
- (D) installation;

the construction of which commenced after March 23, 1997, and from which there is or may be a discharge of a pollutant to the Great Lakes system.

(34) “Open waters of Lake Michigan” means the following:

- (A) The surface waters within Lake Michigan lakeward from a line drawn across the mouth of tributaries to the lake, including all surface waters enclosed by constructed breakwaters.
- (B) For the Indiana Harbor Ship Canal, the boundary of the open waters of Lake Michigan is delineated by a line drawn across the mouth of the harbor from the East Breakwater Light (1995 United States Coast Guard Light List No. 19675) to the northernmost point of the shore line along the west side of the harbor.

(35) “Outstanding national resource water” or “ONRW” means a water designated as such by the general assembly after recommendations by the board and the environmental quality service council under IC 13-18-3-2(o) and IC 13-18-3-2(p). The designation must describe the quality of the ONRW to serve as the benchmark of the water quality that shall be maintained and protected. Waters that may be considered for designation as ONRWs include waterbodies that are recognized as any of the following:

- (A) Important because of protection through official action, such as any of the following:
  - (i) Federal or state law.
  - (ii) Presidential or secretarial action.
  - (iii) International treaty.
  - (iv) Interstate compact.
- (B) Having:
  - (i) exceptional:

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(AA) recreational; or  
(BB) ecological;  
significance; or  
(ii) other special:

(AA) environmental;  
(BB) recreational; or  
(CC) ecological

attributes.

(C) Waters with respect to which designation as an ONRW is reasonably necessary for protection of other waterbodies designated as ONRWs.

(36) "Outstanding state resource water" or "OSRW" means any water designated as such by the board regardless of when the designation occurred or occurs. Waters that may be considered for designation as OSRWs include waterbodies that have unique or special:

(A) ecological;  
(B) recreational; or  
(C) aesthetic;

significance.

(37) "Parameter" means a quantitative or characteristic element that describes:

(A) physical;  
(B) chemical; or  
(C) biological;

conditions of water.

(38) "Permit" means:

(A) a permit;  
(B) a license;  
(C) a registration;  
(D) a certificate; or  
(E) any other type of authorization required before construction or operation;

that may be issued by the commissioner under pollution control laws or environmental management laws.

(39) "Permittee" means the holder of a permit.

(40) "Person" means any of the following:

(A) An individual.  
(B) A partnership.  
(C) A copartnership.  
(D) A firm.  
(E) A company.  
(F) A corporation.  
(G) An association.  
(H) A joint stock company.  
(I) A trust.  
(J) An estate.  
(K) A municipal corporation.  
(L) A city.  
(M) A school city.

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- (N) A town.
  - (O) A school town.
  - (P) A school district.
  - (Q) A school corporation.
  - (R) A county.
  - (S) Any consolidated unit of government.
  - (T) A political subdivision.
  - (U) A state agency.
  - (V) A contractor.
  - (W) Any other legal entity.

(41) "Point source" means any discernible, confined, and discrete conveyance, including, but not limited to, any of the following from which pollutants are or may be discharged:

- (A) A pipe.
- (B) A ditch.
- (C) A channel.
- (D) A tunnel.
- (E) A conduit.
- (F) A well.
- (G) A discrete fissure.
- (H) A container.
- (I) Rolling stock.
- (J) A concentrated animal feeding operation.
- (K) A landfill leachate collection system.
- (L) A vessel.
- (M) Any other floating craft.

The term does not include return flows from irrigated agriculture or agricultural storm run-off. See 327 IAC 5-2-4 for other exclusions.

(42) "Pollutant" means any of the following when discharged into water:

- (A) Dredged spoil.
- (B) Solid waste.
- (C) Incinerator residue.
- (D) Filter backwash.
- (E) Sewage.
- (F) Garbage.
- (G) Sewage sludge.
- (H) Munitions.
- (I) Chemical wastes.
- (J) Biological materials.
- (K) Radioactive materials.
- (L) Heat.
- (M) Wrecked or discarded equipment.
- (N) Rock.
- (O) Sand.
- (P) Cellar dirt.
- (Q) Industrial, municipal, or agricultural waste.

(43) “Pollutant of concern” means a pollutant that is reasonably expected to be present in:

- (A) a discharge based on the source and nature of the discharge; and
- (B) ~~adversely affect the designated uses of the receiving water~~ the receiving water in sufficient amounts to have a potentially detrimental affect on the designated or existing uses of the receiving water.

(44) “Pollution prevention” means the term as defined by the U. S. EPA under the following:

- (A) The federal Pollution Prevention Act, 42 U.S.C. 13101 et seq.
- (B) The U. S. EPA pollution prevention policy statement (June 15, 1993).

(45) “Privately owned treatment works” means any device or system, including recycling and reclamation, used in the treatment of:

- (A) municipal sewage; or
- (B) industrial wastes;

that is as not a POTW.

(47) “Publicly owned treatment works” or “POTW” means any device or system, including recycling and reclamation, used in the treatment of:

- (A) municipal sewage; or
- (B) industrial wastes;

that is owned by a state or municipality. The term includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

(47) “RCRA” means the Resource Conservation and Recovery Act, 42 U.S.C. 6901 through 42 U.S.C. 6992k, as amended on October 19, 1996.

(48) “Recommencing discharger” means a source that begins to discharge after having ceased operations.

(49) “Representative background concentration” means a value based upon a data set and determined according to 327 IAC 5-2-11.4(a)(8).

(50) “Risk” means the probability that a pollutant ~~of concern~~ or pollutant parameter, when released into the environment, will cause an adverse effect in exposed humans or other living organisms.

(51) “Sanitary sewer” means a sewer, to which storm, surface, and ground waters are not intentionally allowed to enter, that conveys liquid and water-carried wastes from the following:

- (A) Residences.
- (B) Commercial buildings.
- (C) Industrial plants.
- (D) Institutions.

(52) “Sanitary wastewater” means the liquid and water-carried waste from:

- (A) residences;
- (B) commercial buildings;
- (C) industrial plants;
- (D) institutions; and
- (E) other places of human occupancy;

that is transported by sewers and is primarily composed of human and household waste. Sanitary wastewater, as received by a POTW, may contain a component of industrial waste.

Comment [MCM5]: IDEM will continue to identify POCs as they do now when establishing parameters to be included in NPDES permits. Companion guidance is advised.

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(53) "Sewage" means all refuse, human excreta, garbage, waste, or waste products or any combination of these substances that:

- (A) is potentially capable of contaminating the environment; and
- (B) may be collected and carried off in a:
  - (i) pipe;
  - (ii) ditch; or
  - (iii) channel.

(54) "Sewer" means a pipe or conduit that carries wastewater or drainage water.

(55) "Significant lowering of water quality" means the following:

- (A) There is a new or increased loading of a pollutant of concern to a surface water of the state that results in an increase in the ambient concentration of the pollutant of concern and the increased loading is greater than a de minimis lowering of water quality; and
- (B) None of the provisions of section 4 of this rule applies.

(56) "Stream design flow" means the stream flow that represents critical conditions, upstream from the source as defined in 327 IAC 5-2-11.4(b)(3), for protection of:

- (A) aquatic life;
- (B) human health; or
- (C) wildlife.

(57) "Threatened or endangered species" means the following:

- (A) Species listed under Section 4 of the ESA\*.
- (B) Species listed as state threatened or endangered by the Indiana department of natural resources under IC 14-22-34.
- (C) Species designated as state threatened or endangered species in the January 22, 1997, database for endangered, threatened, rare, and special concern species maintained by the Indiana natural heritage data center, division of nature preserves, department of natural resources\*\*.

(58) "Tier I criteria" means numeric criteria derived by use of the Tier I procedures in 327 IAC 2-1-8.2 through 327 IAC 2-1-8.7 and 327 IAC 2-1.5-11 through 327 IAC 2-1.5-16 that either have been adopted as numeric criteria into a water quality standard or are used to implement narrative water quality criteria.

(59) "Tier II values" means numerical values derived by use of the Tier II procedures in 327 IAC 2-1.5-12 through 327 IAC 2-1.5-16 that are used to implement narrative water quality criteria.

(60) "Toxic substances" means substances that are or may become harmful to:

- (A) aquatic life;
- (B) humans;
- (C) other animals;
- (D) plants; or
- (E) food chains;

when present in sufficient concentrations or combinations. The term includes those substances identified as toxic under Section 307(a)(1) of the CWA.

(61) "Tributaries of the Great Lakes system" means all surface waters of the Great Lakes system that are not open waters of Lake Michigan or connecting channels.

**(62) "Tributary of an OSRW" means the upstream segments of a receiving waterbody when some or all of the downstream segments of the receiving waterbody are designated as an OSRW.**

Comment [MCM6]: Mirrors definition in existing rule at 327 IAC 5-2-11.7

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(63) "Total loading capacity" expressed as a mass loading rate for the waterbody in the area where the water quality is proposed to be lowered means the product of the applicable water quality criterion multiplied by the:

(A) ~~product of the applicable water quality criterion multiplied by the sum of the existing effluent flow, plus the proposed new or increased effluent flow,~~ and the stream design flow used in the calculation of the WOBELs; or

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(B) alternate mixing zone volume approved for a discharge.

(64) "Unused loading capacity" means the amount of the total loading capacity not utilized by point source and nonpoint source discharges. The unused loading capacity is established at the time the request to lower water quality is considered. The used loading capacity shall be based upon the representative background concentration determined by the department according to 327 IAC 5-2-11.4(a)(8) at the time of each request to lower water quality.

(65) "Unit of government" means a:

- (A) county;
- (B) municipality;
- (C) township;
- (D) state.

(66) "Variance" means a deviation from a:

- (A) water quality criterion or value; or
- (B) narrative water quality standard;

granted by the commissioner under 327 IAC 2-1-8.8 or 327 IAC 2-1.5-17.

(67) "Wastewater" means the following:

- (A) Human excreta, water, scum, sludge, and sewage from:
  - (i) sewage disposal systems;
  - (ii) retained contents of wastewater holding tanks; or
  - (iii) portable sanitary units.
- (B) Grease, fats, and retained wastes from grease traps or interceptors.
- (C) Wastes carried in liquid from ordinary living processes.
- (D) Incidental or accidental seepage from sewage disposal systems.

(68) "Waters" or "waters of the state" has the meaning set forth in IC 13-11-2-265.

(69) "Watershed" has the meaning set forth in IC 14-8-2-310.

(70) "Water use designations" means a use of the waters of the state as established by 327 IAC 2, including the following:

- (A) Industrial water supply.
- (B) Agricultural use.
- (C) Public water supply.
- (D) Full body contact.
- (E) Aquatic life.
- (F) Limited use.
- (G) Exceptional use.

(71) "Whole effluent toxicity" or "WET" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

\*Section 4 of the ESA is incorporated by reference and may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Quality,

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Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46206.

**\*\*The database for endangered, threatened, rare, and special concern species is incorporated by reference and may be obtained from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana 46206. (Water Pollution Control Board; 327 IAC 2-1.3-2)**

**327 IAC 2-1.3-3 Antidegradation standards**

**Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-1; IC 13-18-4-3**

**Affected: IC 13-18-3; IC 13-18-4**

**Sec. 3. (a) The Tier 1 antidegradation standard is as follows:**

**(1) For all surface waters of the state, existing uses and the level of water quality necessary to protect existing uses shall be maintained and protected. To ensure this standard is met, the commissioner shall do the following:**

**(A) Ensure that the level of water quality necessary to protect existing uses is maintained. In order to achieve this requirement, water quality standards use designations must include all existing uses.**

**(B) Establish controls as necessary on nonpoint sources, where authority exists, and point sources of pollutants of concern to ensure the following:**

**(i) The criteria or values, or both, applicable to the designated use are achieved in the water.**

**(ii) Any designated use of a downstream water is maintained and protected.**

**(2) Where designated uses of waters are impaired, there shall be no additional lowering of the water quality with respect to the pollutants of concern that are causing the impairment. To ensure this standard is met, the commissioner shall not allow a lowering of water quality for the pollutants of concern that prevent the attainment of the designated use or the water quality criterion or value.**

**(b) The Tier 2 antidegradation standard for HQWs that are not ONRWs ~~or~~ OSRWs ~~or~~ EUWs, is as follows:**

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**(1) The surface waters of the state where existing quality for any parameter is better than the water quality criteria or value for that parameter established in 327 IAC 2-1-6 or 327 IAC 2-1.5-8 shall be considered high quality for that parameter consistent with the definition of high quality water.**

**(2) This high quality of water shall be maintained and protected unless the commissioner finds, after full satisfaction of intergovernmental coordination and public participation and the provisions in section 6 of this rule, that allowing a significant lowering of water quality is necessary to accommodate important economic or social development in the area in which the surface waters are located. In allowing a significant lowering of water quality, the commissioner shall assure the following:**

**(A) Water quality adequate to fully protect designated uses is maintained.**

(B) The highest statutory and regulatory requirements for all new and existing point sources are applied.

(C) Where authority exists, all cost-effective and reasonable best management practices for nonpoint source control are employed.

(c) The Tier 2.9 antidegradation standard for HQWs that are OSRWs ~~or EUWs~~ is as follows:

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(1) For OSRWs ~~and EUWs~~ inside the Great Lakes basin, as well as the portions of waters upstream of an OSRW ~~or EUW~~ that impact the water quality of the OSRW ~~or EUW~~ inside the Great Lakes basin, no new or increased loading of a BCC shall be allowed that causes a significant lowering of water quality of the OSRW.

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(2) For BCCs in OSRWs ~~and EUWs~~ outside the Great Lakes basin, as well as the portions of waters upstream of an OSRW ~~or EUW~~ that impact the water quality of the OSRW ~~or EUW~~ outside the Great Lakes basin, these waters shall be maintained and protected in their present high quality unless the commissioner finds, after full satisfaction of intergovernmental coordination and public participation and the provisions in sections 6 and 8 of this rule, that allowing a significant lowering of water quality is necessary to accommodate important economic or social development in the area in which the surface waters are located. In allowing a significant lowering of water quality, the commissioner shall assure the following:

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(A) Water quality adequate to fully protect designated uses is maintained.

(B) The highest statutory and regulatory requirements for all new and existing point sources are applied.

(C) Where authority exists, all cost-effective and reasonable best management practices for nonpoint source control are employed.

(3) For non-BCCs in OSRWs ~~and EUWs~~, as well as the portions of waters upstream of an OSRW ~~or EUW~~ that impact the water quality of the OSRW ~~or EUW~~, these waters shall be maintained and protected in their present high quality unless the commissioner finds, after full satisfaction of intergovernmental coordination and public participation and the provisions in sections 6 and 8 of this rule, that allowing a significant lowering of water quality is necessary to accommodate important economic or social development in the area in which the surface waters are located. In allowing a significant lowering of water quality, the commissioner shall assure the following:

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(A) Water quality adequate to fully protect designated uses is maintained.

(B) The highest statutory and regulatory requirements for all new and existing point sources are applied.

(C) Where authority exists, all cost-effective and reasonable best management practices for nonpoint source control are employed.

(4) For OSRWs ~~and EUWs~~, as well as the portions of waters upstream of an OSRW ~~or EUW~~ that impact the water quality of the OSRW ~~or EUW~~, any new or increased loading of a pollutant of concern that results in a significant lowering of water quality for that pollutant of concern shall be prohibited, unless:

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(A) the activity causing the increased loading:

(i) results in an overall improvement in water quality in the OSRW; ~~or EUW;~~ and

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(ii) meets the applicable requirements of 327 IAC 2-1-2(1), 327 IAC 2-1-2(2), 327 IAC 2-1.5-4(a), and 327 IAC 2-1.5-4(b); or  
(B) the person proposing the increased loading implements or funds a water quality improvement project in accordance with IC 13-18-3-2 in the watershed of the OSRW ~~or EUW~~ that:

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(i) results in an overall improvement in water quality in the OSRW; ~~or EUW~~; and

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(ii) meets the applicable requirements of 327 IAC 2-1-2(1), 327 IAC 2-1-2(2), 327 IAC 2-1.5-4(a), and 327 IAC 2-1.5-4(b).

(d) The Tier 3 antidegradation standard for HQWs that are ONRWs and their tributaries is that they shall be maintained and protected in their present high quality without degradation except for short term, temporary discharges as described in section 4(a)(1) of this rule. To ensure this antidegradation standard is met, the following requirements apply:

(1) All deliberate actions that result in a new or increased loading from an existing or new discharger are prohibited.

(2) Discharging to a tributary of an ONRW shall not be allowed if it would cause an increase in the ambient concentration of that pollutant in the ONRW.

(e) Except for ONRWs, any determination made by the commissioner in accordance with Section 316 of the CWA concerning alternative thermal effluent limitations shall be considered to be consistent with the antidegradation standards contained in this section. (*Water Pollution Control Board; 327 IAC 2-1.3-3*)

#### 327 IAC 2-1.3-4 Exemptions from the antidegradation demonstration requirements

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-1; IC 13-18-4-3

Affected: IC 13-11-2-24; IC 13-18-3; IC 13-18-4; IC 13-18-7; IC 13-23-13; IC 13-24-1; IC 13-25-5

Sec. 4. (a) For an ONRW, an exemption from the antidegradation demonstration requirements included in section 6 of this rule shall be allowed only for short term, temporary, new, or increased discharges of non-BCCs if the following conditions are met:

(1) All reasonable methods for minimizing or preventing the new or increased loading have been taken.

(2) The discharge will last less than twelve (12) months or three hundred sixty five (365) days.

(3) A proposed new or existing discharger applies for and receives authorization from the commissioner.

(4) The discharge will result only in a short term, temporary (not to exceed twelve (12) months) lowering of water quality.

(5) The discharge complies with the antidegradation standard outlined in section 3(d) of this rule.

(b) For a HQW except an ONRW, a new or increased loading of a pollutant of concern resulting from the following is exempt from the antidegradation demonstration requirements included in section 6 of this rule:

Comment [MCM7]: The specific exemptions address BCCs when they are an issue

(1) A new or increased loading of a non-BCC that is a de minimis lowering of water quality determined according to the following:

(A) For a HQW that is not an ONRW ~~or OSRW, or EUW~~, the following apply:

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(i) Calculation considerations according to the following:

(AA) The proposed net increase in the loading of a pollutant of concern is less than or equal to ten percent (10%) of the existing unused loading capacity determined at the time of the specific proposed new or increased loading of the pollutant of concern. The existing unused loading capacity shall be established at the time of each request for a new or increased loading of a pollutant of concern.

(BB) For discharges to waters outside of the Great Lakes basin of a non-BCC toxic substance, as identified under Section 307(a) of the Clean Water Act, that does not have a water quality criterion identified in 327 IAC 2-1-6, Table 1 or 2 or sufficient data to calculate a water quality criterion according to Method 1 in 327 IAC 2-1-8.2 and Method 1 in 327 IAC 2-1-8.3, the de minimis shall be based on the value calculated according to 327 IAC 2-1-8.1, Method 2 of 327 IAC 2-1-8.2, Methods 2 and 3 of 327 IAC 2-1-8.3, or 327 IAC 2-1-8.4 through 327 IAC 2-1-8.6, and the proposed net increase in the loading shall be less than or equal to twenty percent (20%) of the existing unused loading capacity.

(CC) For discharges to waters inside of the Great Lakes basin of a non-BCC toxic substance, as identified under Section 307(a) of the Clean Water Act, that does not have a water quality criterion identified in 327 IAC 2-1.5-8, Table 8-1, 8-2, 8-3, or 8-4 or sufficient data to calculate a Tier 1 criterion according to 327 IAC 2-1.5-11, the de minimis shall be based on the Tier 2 value calculated according to 327 IAC 2-1.5-12 through 327 IAC 2-1.5-16, and the proposed net increase in the loading shall be less than or equal to twenty percent (20%) of the existing unused loading capacity.

(DD) The benchmark unused loading capacity is equal to ~~seventy-five percent (75%) of the unused loading capacity~~ established at the time of the permit issuance for the initial increase in the loading of a pollutant of concern.

Comment [MCM8]: Equates to allowing the cumulative maximum use of 25% of the benchmark unused loading capacity for the discharge to be considered de minimis

(EE) For every request after the time of the permit issuance for the initial increase in the loading of a pollutant of concern, the unused loading capacity remaining after the net increase in the loading of a pollutant of concern must be greater than or equal to the benchmark unused loading capacity.

(ii) For heat, the following conditions must be satisfied:

(AA) The new or increased discharge will not result in an increase in temperature in a stream or an inland lake, outside of the designated mixing zone, where applicable.

(BB) The new or increased discharge will not result in an increase in waste heat of an amount in a stream greater than the amount determined by calculating the number of British thermal units (BTUs) required to raise the temperature of the stream design flow of the receiving stream by one (1) degree Fahrenheit.

(B) For a HQW that is an OSRW, ~~or EUW~~, the following apply:

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(i) Calculation considerations according to the following:

(AA) The proposed net increase in the loading of a pollutant of concern is less than or equal to one percent (1%) of the existing unused loading capacity determined at the time of the specific proposed new or increased loading of the pollutant of concern. The existing unused loading capacity shall be established at the time of each request for a new or increased loading of a pollutant of concern.

(BB) For discharges to waters outside of the Great Lakes basin of a non-BCC toxic substance, as identified under Section 307(a) of the Clean Water Act, that does not have a water quality criterion identified in 327 IAC 2-1-6, Table 1 or 2 or sufficient data to calculate a water quality criterion according to Method 1 in 327 IAC 2-1-8.2 and Method 1 in 327 IAC 2-1-8.3, the de minimis shall be based on the value calculated according to 327 IAC 2-1-8.1, Method 2 of 327 IAC 2-1-8.2, Methods 2 and 3 of 327 IAC 2-1-8.3, or 327 IAC 2-1-8.4 through 327 IAC 2-1-8.6, and the proposed net increase in the loading shall be less than or equal to two percent (2%) of the existing unused loading capacity.

(CC) For discharges to waters inside of the Great Lakes basin of a non-BCC toxic substance, as identified under Section 307(a) of the Clean Water Act, that does not have a water quality criterion identified in 327 IAC 2-1.5-8, Table 8-1, 8-2, 8-3, or 8-4 or sufficient data to calculate a Tier 1 criterion according to 327 IAC 2-1.5-11, the de minimis shall be based on the Tier 2 value calculated according to 327 IAC 2-1.5-12 through 327 IAC 2-1.5-16, and the proposed net increase in the loading shall be less than or equal to two percent (2%) of the existing unused loading capacity.

(DD) The benchmark unused loading capacity is equal to ninety-seven and five-tenths percent (97.5%) of the unused loading capacity established at the time of the permit issuance for the initial increase in the loading of a pollutant of concern.

Comment [MCM9]: Equates to allowing the cumulative maximum use of 2.5% of the benchmark unused loading capacity for the discharge to be considered de minimis

(EE) For every request after the time of the permit issuance for the initial increase in the loading of a pollutant of concern, the unused loading capacity remaining after the net increase in

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the loading of a pollutant of concern must be greater than or equal to the benchmark unused loading capacity.

(ii) Relative to temperature, the new or increased discharge will not result in an increase in temperature:

(AA) in a stream or an inland lake, outside of the designated mixing zone, where applicable; or

(BB) in Lake Michigan, as allowed in 327 IAC 2-1.5-8(c)(4)(D)(iv), at the edge of a one thousand (1,000) foot arc inscribed from a fixed point adjacent to the discharge.

(iii) Relative to heat, the new or increased discharge will not result in an increase in waste heat in an amount:

(AA) in a stream greater than the amount determined by calculating the number of BTUs required to raise the temperature of the stream design flow of the receiving stream by one (1) degree Fahrenheit; or

(BB) in Lake Michigan, greater than five-tenths (0.5) billion BTUs per hour.

(2) The following exemptions from the antidegradation demonstration requirements included in section 6 of this rule do not require the submission of information beyond what is required to comply with the discharger's existing applicable permit:

(A) A change in loading of a pollutant of concern within the existing capacity and processes that are covered by an existing applicable permit, including, but not limited to, the following:

(i) Normal operational variability, including, but not limited to, intermittent increased loadings due to wet weather conditions.

(ii) A change in intake water pollutants not caused by the discharger.

(iii) Increasing the production hours of the facility, for example, adding a second shift.

(iv) Increasing the rate of production.

(v) A change at an internal outfall that does not directly discharge to a surface water of the state.

(vi) A change in the applicable effluent limitation guideline based on a change in production.

(B) A bypass not prohibited by 327 IAC 5-2-8(11).

(C) A new limit for a pollutant of concern for an existing permitted discharger that will not allow an increase in either the mass or concentration of the pollutant of concern discharged, including a new limit that is a result of the following:

(i) New or improved:

(AA) monitoring data; or

(BB) analytical methods.

(ii) New or modified:

(AA) water quality criteria or values; or

(BB) effluent limitation guidelines, pretreatment standards, or control requirements for POTWs.

(D) A new or increased loading of a pollutant of concern at an outfall discharging to a water of the state due to increasing the sewered area,

connection of new sewers and users, or acceptance of trucked-in wastes, such as septage and holding tank wastes, by a POTW, provided that there is no:

- (i) increase in the existing NPDES permit limits;
- (ii) increase beyond the treatment capacity of the facility; or
- (iii) significant change expected in the characteristics of the wastewater discharged.

(3) The following exemptions from the antidegradation demonstration requirements included in section 6 of this rule require the submission of information that sufficiently demonstrates that the proposed discharge satisfies the exemption description along with the application for an NPDES permit:

- (A) A new or increased loading of a pollutant of concern when the:
  - (i) facility withdraws intake water containing the pollutant of concern from the same body of water, as determined under 327 IAC 5-2-11.5(b)(4)(B)(i); and
  - (ii) new or increased loading of the pollutant of concern is due solely to the presence of the pollutant of concern in the intake.
- (B) A change in loading of a pollutant of concern due solely to implementation of enforceable:
  - (i) municipal or industrial controls on wet weather flows, including combined sewer overflows; or
  - (ii) an individual NPDES permit for storm water associated with industrial activity;

when there is no net increase in the quantity and concentration of the pollutant of concern discharged to the same ten (10) digit watershed and all reasonable methods for minimizing or preventing the new or increased loading have been taken.

~~(C) A new or increased loading of a pollutant of concern that will result only in a short term, temporary (not to exceed twelve (12) months) lowering of water quality.~~ for short term, temporary, new, or increased discharges if the following conditions are met:

- (i) All reasonable methods for minimizing or preventing the new or increased loading have been taken.
- (ii) The discharge will last less than twelve (12) months or three hundred sixty five (365) days.
- (iii) The discharge will result only in a short term, temporary (not to exceed twelve (12) months) lowering of water quality.
- (iv) The discharge complies with the antidegradation standards outlined in section 3 of this rule.

(D) When all reasonable methods for minimizing or preventing the new or increased loading have been taken, a new or increased loading of a pollutant of concern due to:

- (i) a response action under CERCLA, as defined in IC 13-11-2-24, as amended;
- (ii) a corrective action under RCRA, as amended; or
- (iii) an action utilizing federal or state authorities with regulations to alleviate a release into the environment of hazardous substances, pollutants, or contaminants that may pose an imminent or existing

Comment [MCM10]: Changed to be consistent with short term temp language of ONRW

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and substantial danger to public health or welfare, including one (1) or more of the following:

- (AA) An underground storage tank (UST) corrective action under IC 13-23-13.
- (BB) A remediation of petroleum releases under IC 13-24-1.
- (CC) A voluntary remediation under IC 13-25-5.
- (DD) An abatement or correction of any polluted condition under IC 13-18-7.

(E) When all reasonable methods for minimizing or preventing the new or increased loading have been taken, a new or increased discharge of noncontact cooling water that will not do the following:

- (i) Increase the temperature of the receiving water or waters outside of the designated mixing zone, where applicable.
- (ii) Increase the loading of BCCs.
- (iii) Require numeric water quality-based effluent limitations (WQBELs) for toxic substances or WET as determined under 327 IAC 5-2-11.5.

(F) A new or increased loading of an approved non-BCC water treatment additive.

(4) The following exemptions from the antidegradation demonstration requirements included in section 6 of this rule require the submission of an exemption justification according to section 5 of this rule:

(A) A change in loading of a pollutant of concern:

- (i) where there is a voluntary, simultaneous, enforceable decrease in the actual loading of the pollutant of concern from sources contributing to the same ten (10) digit watershed; and
- (ii) with the result that there is a net decrease in the loading of the pollutant of concern to the same ten (10) digit watershed.

(B) A new or increased loading of a pollutant of concern if the discharger demonstrates the following:

- (i) The new or increased loading is necessary to accomplish a reduction in the loading of another pollutant of concern.
- (ii) ~~All reasonable and cost-effective methods for minimizing or preventing the new or increased loading have been taken.~~
- (iii) There will be an improvement in water quality in the receiving water or waters. An improvement in water quality will occur if the impact from the new or increased loading of the pollutant of concern is:

- (AA) less bioaccumulative; and
- (BB) less toxic than the reduced pollutant or pollutant parameter.

In making these determinations regarding bioaccumulation, the bioaccumulation factor methodology under 327 IAC 2-1.5-13 will be used.

(C) A new or increased loading of a pollutant of concern that demonstrates:

- (i) the new or increased loading is necessary to accomplish a reduction in the release of one (1) or more air pollutants;

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(ii) all reasonable ~~and cost-effective~~ methods for minimizing or preventing the new or increased loading have been taken; and  
(iii) there will be an environmental improvement, which will occur when the applicant demonstrates that the reduction in the loading of the air pollutant:

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(AA) is necessary to meet a state or federal air quality standard or emission requirement; or

(BB) will substantially reduce human exposure to hazardous air pollutants or other air pollutants that are subject to state or federal air quality standards.

(D) A new or increased loading of a pollutant of concern from a sanitary wastewater treatment plant constructed or expanded to alleviate a public health concern, for example, a connection of existing residences currently on septic systems when all reasonable methods for minimizing or preventing the new or increased loading have been taken.

(Water Pollution Control Board; 327 IAC 2-1.3-4)

### 327 IAC 2-1.3-5 Exemption justification

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3;  
IC 13-18-4-1; IC 13-18-4-3

Affected: IC 13-18-3-14; IC 13-18-4; IC 13-18-7; IC 13-23-13; IC 13-24-1;  
IC 13-25-5

Sec. 5. (a) An exemption justification is required as follows:

- (1) Any existing or proposed discharger claiming an exemption for a new or increased discharge that may qualify as an exemption under section 4(b)(4) of this rule must submit an exemption justification for consideration by the commissioner.
- (2) The exemption justification shall be submitted concurrently with the application for a new, renewed, or modified NPDES permit.

(b) Upon receipt of an exemption justification, the commissioner shall provide notice and request comment according to 327 IAC 5-2-11.2. The commissioner shall hold a public meeting on the exemption justification in accordance with 327 IAC 5-2-11.2 if:

- (1) the proposed discharge is to an OSRW; ~~or an EUW; or~~
- (2) a public meeting is requested by at least twenty-five (25) persons living or working within the same ten (10) digit watershed or within fifteen (15) miles of the proposed discharge.

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The commissioner may hold a public meeting in accordance 327 IAC 5-2-11.2 if the commissioner otherwise deems such a meeting necessary or appropriate.

(c) An exemption justification shall include the following:

- (1) An identification of all pollutants of concern for which the exemption justification is required.
- (2) An estimate of the concentration of all pollutants of concern proposed to be discharged.
- (3) An explanation of how the proposed new or increased discharge of pollutants of concern qualifies for an exemption that includes:

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- (A) the provision or provisions listed in section 4(b)(4) of this rule that applies to the proposed new or increased discharge;
  - (B) substantiation that the proposed new or increased discharge qualifies for the provision identified in clause (A); and
  - (C) a demonstration that:
    - (i) the proposed action will minimize the proposed lowering of water quality; and
    - (ii) the discharger will use appropriate cost-effective pollution prevention and treatment techniques.

(d) The commissioner shall review the submitted information and determine whether the:

(1) information provided in the exemption justification is administratively complete; and

(2) proposed new or increased discharge qualifies for the exemption.

If the commissioner determines that the application is complete and the proposed new or increased discharge qualifies for the exemption, the commissioner shall public notice the exemption justification determination as required under 327 IAC 5-2-11.2. (*Water Pollution Control Board; 327 IAC 2-1.3-5*)

#### 327 IAC 2-1.3-6 Antidegradation demonstration application

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-1; IC 13-18-4-3

Affected: IC 13-18-3-14; IC 13-18-4; IC 13-18-7; IC 13-23-13; IC 13-24-1; IC 13-25-5

Sec. 6. (a) Any existing or proposed discharger seeking a new or increased discharge that constitutes a significant lowering of water quality that is not exempt under section 4(b)(4) of this rule, must submit for consideration by the commissioner an antidegradation demonstration application that justifies that the proposed new or increased discharge is necessary for providing a social or economic benefit in the area of the discharge.

(b) An antidegradation demonstration application shall include the following information:

(1) The pollutants of concern for which the antidegradation application is required.

(2) The estimated mass and concentration of all pollutants of concern proposed to be discharged.

(3) The receiving water or waters that would be affected by the new or increased discharge.

(4) The physical, biological, and chemical conditions of the receiving water or waters as determined by:

(A) available information; or

(B) additional information, including the results of additional water quality:

(i) chemical;

(ii) biological; or

(iii) both items (i) and (ii);

analysis, if requested by the department.

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- (5) The estimated magnitude of the proposed lowering of water quality.
- (6) The anticipated impact of the proposed lowering of water quality on aquatic life and wildlife, considering the following:
- (A) Threatened and endangered species.
  - (B) Important commercial or recreational sport fish species.
  - (C) Other individual species.
  - (D) The overall aquatic community structure and function.
- (7) The anticipated impact of the proposed lowering of water quality considering the following:
- (A) Human health.
  - (B) The overall quality and value of the water resource.
- (8) The degree to which water quality may be lowered in waters located within the following:
- (A) National, state, or local parks.
  - (B) Preserves or wildlife areas.
  - (C) ~~EUWs, OSRWs or ONRWs.~~
- (9) The effects of lower water quality on the social and economic value of the receiving water or waters considering the following:
- (A) Recreation, tourism, and other commercial activities.
  - (B) Aesthetics.
  - (C) Other use and enjoyment by humans.
- (10) The extent to which the resources or characteristics adversely impacted by the lowered water quality are unique or rare within the locality or state.
- (11) The cost of the water pollution controls associated with the proposed activity.
- (12) The availability, reliability, cost-effectiveness, and technical feasibility of:
- (A) nondegradation;
  - (B) minimal degradation; or
  - (C) degradation mitigation techniques or alternatives.
- (13) An analysis of the effluent reduction benefits and water quality benefits associated with the degradation mitigation techniques or alternatives required to be assessed under subdivision (12)(C), including the following:
- (A) A review of pollution prevention alternatives and techniques that includes the following:
    - (i) A listing of alternatives and techniques, including new and innovative technologies.
    - (ii) A description of how the alternatives and techniques available to the applicant would minimize or prevent the proposed significant lowering of water quality.
    - (iii) The effluent concentrations attainable by employing the alternatives and techniques.
    - (iv) The costs associated with employing the alternatives and techniques.
    - (v) An identification of the pollution prevention alternatives and techniques selected to be employed and an explanation of why those selections were made.

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(B) An evaluation of the feasibility and costs of connecting to an existing POTW or privately owned treatment works, within the vicinity of the proposed new or increased discharge, that

- (i) will effectively treat the proposed discharge; and
- (ii) is willing to accept wastewater from other entities.

(C) For POTWs, if the proposed significant lowering of water quality is a result of a proposed new or increased discharge from one (1) or more indirect dischargers, the analysis shall also include the following:

(i) The requirements of clause (A) shall be completed for the indirect discharger or dischargers as well as for the POTW. The POTW may require the indirect dischargers to prepare this information.

(ii) If one (1) or more of the indirect dischargers proposes or does discharge to a:

(AA) combined sewer; or

(BB) sanitary sewer that is connected to a combined sewer; all combined sewer overflows (CSOs) between the point of discharge to the sewer and the POTW shall be identified.

(14) The availability, cost-effectiveness, and technical feasibility of central or regional sewage collection and treatment facilities, including long range plans outlined in:

(A) state or local water quality management planning documents; and

(B) applicable facility planning documents.

(15) The evaluation of the anticipated impact of the proposed lowering of water quality on economic and social factors, including the following:

~~(A) Applicable positive and negative social or economic development impacts that will occur to the area in which the receiving water or waters are located if the significant lowering of water quality is allowed. Social or economic development impacts include the following:~~

~~(i) Creating, expanding, or maintaining employment.~~

~~(ii) Reducing the unemployment rate.~~

~~(iii) Increasing median household income.~~

~~(iv) Reducing the number of households below the poverty level.~~

~~(v) Increasing needed housing supply.~~

~~(vi) Increasing the community tax base.~~

~~(vii) Providing necessary public services (for example, fire department, school, infrastructure).~~

~~(viii) Correcting a public health, safety, or environmental problem.~~

~~(ix) Creating, expanding, or maintaining the production of goods and services and related research and development that protects, enhances, or improves the overall quality of life.~~

~~(x) Improving or reducing quality of life for residents in the area.~~

~~(xi) Promoting or harming:~~

~~(AA) fishing;~~

~~(BB) recreation; or~~

~~(CC) tourism~~

~~industry.~~

~~(xii) Enhancing or harming threatened and endangered species.~~

Comment [MCM11]: Changed to reflect direction given in HEA 1162 signed 5/6/09

~~(xiii) Maintaining economic competitiveness.~~

~~(xiv) Increasing or reducing population.~~

~~(B) Demonstration by the applicant that the positive and negative social or economic development impacts identified and reviewed under clause (A) are necessary to accommodate important social or economic development despite the proposed significant lowering of water quality.~~

~~(C) Inclusion by the applicant of additional factors, if applicable, that may enhance the social or economic benefits associated with the new or increased pollutant discharge such as the approval to build a new facility given to the applicant by:~~

~~(i) a legislative body;~~

~~(ii) the local planning commission; or~~

~~(iii) other government officials;~~

~~that represent the surrounding community.~~

~~(16) Any other action or recommendation relevant to the antidegradation demonstration made by a:~~

~~(A) state~~

~~(B) county;~~

~~(C) township; or~~

~~(D) municipality;~~

~~potentially affected by the new or increased loading.~~

~~(A) Creation, expansion, or maintenance of employment.~~

~~(B) The unemployment rate.~~

~~(C) The median household income.~~

~~(D) The number of households below the poverty level.~~

~~(E) Community housing needs.~~

~~(F) Change in population.~~

~~(G) The impact on the community tax base.~~

~~(H) Provision of fire departments, schools, infrastructure, and other necessary public services.~~

~~(I) Correction of a public health, safety, or environmental problem.~~

~~(J) Production of goods and services that protect, enhance, or improve the overall quality of life and related research and development.~~

~~(K) The impact on the quality of life for residents in the area.~~

~~(L) The impact on the fishing, recreation, and tourism industries.~~

~~(M) The impact on threatened and endangered species.~~

~~(N) The impact on economic competitiveness.~~

~~(O) Demonstration by the permit applicant that the factors identified and reviewed under subdivisions (A) through (O) are necessary to accommodate important social or economic development despite the proposed significant lowering of water quality.~~

~~(P) Inclusion by the applicant of additional factors that may enhance the social or economic importance associated with the proposed discharge, such as an approval that:~~

~~(i) recognizes social or economic importance; and~~

~~(ii) is given to the applicant by a legislative body or other government officials.~~

**(Q) Any other action or recommendation relevant to the antidegradation demonstration made by a:**

**(i) state;**

**(ii) county;**

**(iii) township; or**

**(iv) municipality;**

**potentially affected by the proposed discharge.**

**(R) Any other action or recommendation relevant to the antidegradation demonstration received during the public participation process.**

**(S) Any other factors that the commissioner:**

**(i) finds relevant; or**

**(ii) is required to consider under the Clean Water Act.**

**(c) In determining whether a proposed discharge is necessary to accommodate important economic or social development in the area in which the waters are located under antidegradation standards and implementation procedures, the commissioner:**

**(1) must give substantial weight to any applicable determinations by governmental entities; and**

**(2) may rely on consideration of any one (1) or a combination of the factors listed in subsection (b)(15).**

Comment [MCM12]: Changed to reflect direction given in HEA 1162 signed 5/6/09

**(d) The discharger may either:**

**(1) accept effluent limits for mass and concentration based on the BADCT, when available, as established by the department; or**

**(2) include as part of its antidegradation demonstration application a request for the commissioner's review and approval of an alternative treatment technique analysis that includes submission of the following information:**

**(A) The available alternative or enhanced treatment techniques, including new and innovative technologies.**

**(B) A review of how the alternative or enhanced treatment techniques available to the applicant would minimize or prevent the proposed significant lowering of water quality.**

**(C) The effluent concentrations attainable by employing the alternative or enhanced treatment techniques.**

**(D) The costs associated with employing the alternative or enhanced treatment techniques relative to the cost of treatment necessary to achieve effluent limitations based on the de minimis lowering of water quality.**

**(E) The alternative or enhanced treatment techniques selected to be employed and an explanation of why those selections were made.**

**(F) The reliability of the selected treatment alternative or alternatives, including, but not limited to, the possibility of recurring operational and maintenance difficulties that would lead to increased degradation.**

**(e) Upon the commissioner's approval of an alternative treatment technique analysis, the discharger shall accept effluent limits for mass and concentration based on the alternative treatment techniques analysis. (Water Pollution Control Board; 327 IAC 2-1.3-6)**

**327 IAC 2-1.3-7 Commissioner's determination on antidegradation demonstration application**

**Authority:** IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-1; IC 13-18-4-3

**Affected:** IC 13-18-3-14; IC 13-18-4; IC 13-18-7; IC 13-23-13; IC 13-24-1; IC 13-25-5

**Sec. 7. (a)** Upon receipt of an antidegradation demonstration application, the commissioner shall provide notice and request comment according to 327 IAC 5-2-11.2. The commissioner shall hold a public meeting on the antidegradation demonstration application in accordance with 327 IAC 5-2-11.2 if:

- (1) the proposed discharge is to an OSRW; ~~or an EUW; or~~
- (2) a public meeting is requested by at least twenty-five (25) persons living or working within the same ten (10) digit watershed or within fifteen (15) miles of the proposed discharge.

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The commissioner may hold a public meeting in accordance 327 IAC 5-2-11.2 if the commissioner otherwise deems such a meeting necessary or appropriate.

**(b)** Once the commissioner determines that the information provided in the antidegradation demonstration application is administratively complete with the inclusion of:

- (1) the applicable factors listed in section 6(b) and (d) of this rule, as appropriate, for the new or increased discharge;
- (2) any other information regarding the proposed activities and the affected receiving water or waters that the commissioner deems appropriate; and
- (3) evidence that the applicant held a public meeting that allowed interested parties the opportunity to hear the applicant's rationale supporting the elements of the applicant's antidegradation demonstration;

the commissioner shall make a determination based on the complete application.

Comment [MCM13]: Language to capture the concept discussed by the subgroup that the applicant must hold a public meeting before submission of an application

**(c)** The commissioner shall deny some or all of the request to significantly lower water quality if one (1) or more of the following applies:

- (1) Cost-effective measures that would prevent or minimize the proposed lowering of water quality are reasonably available but the discharger has chosen not to implement these measures.
- (2) The action that would cause the lowering of water quality is not necessary to accommodate important economic or social development in the area.
- (3) The action would jeopardize state listed endangered or federally listed threatened and endangered species.

**(d)** The commissioner may approve some or all of the request to significantly lower water quality only if the following have occurred:

- (1) An examination of nondegradation, minimal degradation, and degradation mitigation techniques or alternatives.
- (2) A review of the social and economic issues related to the activity.
- (3) A public participation process.
- (4) Appropriate intergovernmental coordination.

(5) A determination by the commissioner that the lower water quality is necessary to accommodate important social or economic development in the area in which the receiving water or waters is located.

~~(e) The commissioner, in making a determination on the antidegradation demonstration, shall give substantial weight to any applicable determinations by a governmental entity.~~

Comment [MCM14]: Moved to 6(c) to reflect direction given in HEA 1162 signed 5/6/09

(e) In no event may a permit be granted that would not meet the requirements of section 3 of this rule.

(f) When the commissioner makes a determination on an antidegradation demonstration application, the commissioner shall public notice the antidegradation demonstration determination according to 327 IAC 5-2-11.2 and the final determination shall be:

- (1) summarized in the public notice form prepared by the commissioner; and
- (2) incorporated into the draft permit and the fact sheet that is made available for public comment under 327 IAC 5-3-9.

(g) In addition to the information provided in the antidegradation demonstration application according to subsection (b)(1) and (b)(2), a discharger proposing to cause a significant lowering of water quality in an OSRW ~~or EUW~~ shall:

- (1) implement a water quality improvement project in the watershed of the affected OSRW; ~~or EUW; or~~
- (2) fund a water quality improvement project in the watershed of the affected OSRW ~~or EUW~~ by payment of a fee into the OSRW improvement fund established under IC 13-18-3-14;

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for each activity undertaken that will result in a significant lowering of water quality in an OSRW ~~or EUW~~. A discharger proposing to implement or fund a water quality improvement project shall submit an application as required under section 8 of this rule. (*Water Pollution Control Board; 327 IAC 2-1.3-7*)

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327 IAC 2-1.3-8 Water quality improvement project application or payment to the OSRW improvement fund

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-1; IC 13-18-4-3  
Affected: IC 13-18-3-14; IC 13-18-4; IC 13-18-7; IC 13-23-13; IC 13-24-1; IC 13-25-5

Sec. 8. The following requirements apply to an application for a water quality improvement project: ~~or the payment to the OSRW improvement fund:~~

- (1) For a water quality improvement project application, the following apply:
  - (A) A discharger proposing, according to section 7(g) of this rule, to implement a water quality improvement project in the watershed of the OSRW ~~or EUW~~ that will result in an overall improvement of the water quality of the OSRW ~~or EUW~~ shall submit a water quality improvement project application to the commissioner simultaneously with the submission

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of the antidegradation demonstration application, required under section 6 of this rule. The water quality improvement project application must include the following information:

- (i) A detailed description of the project, including:
  - (AA) the type and quantity of pollutants that will be reduced or eliminated as a result of the project; and
  - (BB) a project implementation timeline.
- (ii) Sufficient information to clearly demonstrate that the project will result in an overall improvement in water quality in the OSRW ~~or EUW~~.
- (iii) Any data used to assess overall water quality improvement must be less than seven (7) years old and specific to the OSRW ~~or EUW~~.

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(B) Upon receipt of a water quality improvement project application, the commissioner shall provide notice and request comment according to 327 IAC 5-2-11.2. The commissioner shall, in accordance with 327 IAC 5-2-11.2, hold a public meeting on the water quality improvement project application concurrently with the public meeting held on the antidegradation demonstration application.

(C) Once the commissioner determines that the information provided by the discharger submitting a water quality improvement project application is administratively complete, the commissioner shall make a determination as to whether the project, based on the information submitted by the applicant, will result in an overall improvement in water quality in the OSRW ~~or EUW~~.

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**(D) The commissioner shall approve or deny a water quality improvement project application considering the following factors:**

- (i) Whether the project can be successfully implemented.**
- (ii) Whether the project will offset the lowering of water quality caused by new or increased loadings of pollutants of concern.**

Comment [MCM15]: Specifics may be worked out in guidance.

(2) For payment to the OSRW improvement fund, the following apply:

(A) Prior to issuance of a permit, a discharger proposing to fund a water quality improvement project in the watershed of the affected OSRW ~~or EUW~~ by payment of a fee into the OSRW improvement fund established under IC 13-18-3-14 shall pay an amount, not to exceed five hundred thousand dollars (\$500,000), that is determined by the department, using the information submitted to the department by the discharger, based on the type and quantity of increased pollutant loadings. The department shall determine the fee based on the:

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- (i) estimated initial capital cost; and
- (ii) costs of operation and maintenance;

for the treatment system or other alternative that would be necessary to offset the proposed significant lowering of water quality caused by the increased pollutant loadings to the OSRW ~~or EUW~~ or its tributaries.

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(B) The commissioner, prior to utilizing the funds in the OSRW improvement fund, shall solicit input from interested parties on the identification and selection of the water quality improvement projects to be funded with the funds in the OSRW improvement fund.

(C) The commissioner shall utilize the funds in the OSRW improvement fund to implement water quality improvement projects considering the following factors:

(i) Whether the project can be successfully implemented.

(ii) Whether the project will offset the lowering of water quality caused by new or increased loadings of pollutants of concern.

(iii) Cost effectiveness of the project.

(Water Pollution Control Board; 327 IAC 2-1.3-8)

SECTION 2. 327 IAC 5-2-11.2 IS AMENDED TO READ AS FOLLOWS:

**327 IAC 5-2-11.2 Public notice of comment period and public meetings for site-specific modification of water quality criteria and values; an antidegradation exemption justification; an antidegradation demonstration; an alternate mixing zone demonstration; a variance**

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

**Affected: IC 13-11-2; IC 13-15-4-1; IC 13-15-5-1; IC 13-18-4; IC 13-18-7;**

**IC 13-23-13; IC 13-24-1; IC 13-25-5**

Sec. 11.2. (a) This section is applicable to an application for the following:

(1) Site-specific modification to water quality criteria under 327 IAC 2-1-8.9 and Tier I water quality criteria and Tier II water quality values under 327 IAC 2-1.5-16.

(2) An antidegradation demonstration **application** under ~~section 11.3(b)(4) of this rule~~ **327 IAC 2-1.3-6.**

(3) An antidegradation ~~exception~~ **exemption justification** under ~~section 11.7(c) of this rule.~~ **327 IAC 2-1.3-5.**

(4) An alternate mixing zone under section 11.4(b)(4)(F) of this rule.

(5) A variance under 327 IAC 5-3-4.1(c).

(b) Upon receipt of an application listed in subsection (a), the commissioner shall provide notice, request comment, and, if requested, schedule and hold a public meeting on the application in accordance with the following conditions:

(1) The commissioner shall provide notice of receipt of an application in the following manner:

(A) Publication of a notice in a daily or weekly newspaper in general circulation throughout the area affected by the discharge for which the demonstration was submitted.

(B) Send the notice to **the following using electronic media whenever possible:**

(i) Interested persons on either mailing list identified under the following:

~~(i)~~ **(AA)** 327 IAC 5-3-8(a).

~~(ii)~~ **(BB)** 327 IAC 5-3-12(b)(1).

~~(C)~~ **(ii)** Send the notice to The applicant.

(2) The notice under subdivision (1) shall contain the following:

(A) The name and address of the department.

(B) The name and address of the applicant.

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(C) An identification of the type of application submitted, such as an **antidegradation exemption justification, antidegradation demonstration, alternate mixing zone, or variance.**

(D) A brief description of the **following:**

(i) Location of any existing or proposed discharge point subject to the application, including an identification of the receiving water or waters.

~~(E) (ii) A brief description of~~ The applicant's activities or operations that result in the discharge identified in the application.

**(iii) The comment procedures and the procedures to request a public meeting.**

~~(F) (E) An identification of the substance for which the application was submitted~~ **pollutant of concern or pollutant parameter proposed to be discharged.**

~~(G) (F) The name of an agency-~~ **Information on how to contact person and an address and telephone number where the department so** interested persons may obtain further information, including a copy of the application.

~~(H) A brief description of the comment procedures and the procedures to request a public meeting.~~

(3) If requested by **at least twenty-five (25) persons living or working within the same ten (10) digit watershed or within fifteen (15) miles of the proposed discharge,** the commissioner shall hold a public meeting on the application in accordance with the following provisions:

(A) The commissioner shall provide notice of the public meeting as follows:

(i) Publication of a notice in a daily or weekly newspaper in general circulation throughout the area affected by the discharge for which the application was submitted.

(ii) Send the notice, **using electronic media whenever possible,** to the following interested persons:

(AA) Persons on the mailing list identified under 327 IAC 5-3-8(a).

(BB) Persons on the mailing list identified under 327 IAC 5-3-12(b)(1).

(CC) Those persons that commented on the notice of receipt of the application.

(iii) Send the notice to the applicant.

(B) The notice required by clause (A) shall contain the **following:**

**(i) The date, time, and place of the public meeting. and**

**(ii) The information required under subdivision (2).**

(C) The meeting shall be held at least ten (10) days after the later of the following:

(i) The notice in accordance with under clause (A)(i) appears in the newspaper.

(ii) The ~~postmark~~ date of the ~~written~~ notice sent to interested parties and to the applicant in accordance with under clause (A)(ii) and (A)(iii).

(D) The meeting shall be recorded by any ~~of the following:~~

~~(i) Audiotape.~~

~~(ii) Videotape.~~

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(iii) ~~Any other~~ method of accurately and completely recording the details of the meeting.

(E) The commissioner shall request the applicant to provide **at the meeting** a summary and rationale for the application. ~~at the meeting.~~

(F) At the commissioner's discretion, a public meeting may be noticed and held without having first received a request for a public meeting. In these instances, the notice for the public meeting may be ~~contained~~ **included** in the notice of receipt of the application.

(4) The time period under IC 13-15-4-1 is hereby changed to increase the period by thirty (30) days for any permit application subject to the time period that is affected by the application. If a public meeting is requested, the time period under IC 13-15-4-1 is hereby changed to increase the period by an additional thirty (30) days.

*(Water Pollution Control Board; 327 IAC 5-2-11.2; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1435; errata filed Aug 11, 1997, 4:15p.m.: 20 IR 3378; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2101)*

SECTION 3. THE FOLLOWING ARE REPEALED: 327 IAC 5-2-11.3; 327 IAC 5-2-11.7.