

# SENATE BILL No. 431

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 13-11-2; IC 13-18-3; IC 13-18-19-2.

**Synopsis:** Water quality standards and combined sewers. Provides that a long term control plan for a combined sewer system contributes to the fulfillment of the water quality goals of the state. Provides that a long term control plan must provide for the capture for treatment of the percentage of the combined sewage that occurs during wet weather events in the combined sewer system that corresponds to the point where the increment of pollution reduction achieved in the receiving water diminishes when compared to the increased costs as determined for each control alternative. Requires water quality standards to be suspended from a designated use on a site specific basis when wet weather events cause discharges from combined sewer overflows if the NPDES permit holder has fulfilled certain requirements. Specifies that, before the department approves a municipality's long term control plan, the department must presume that civil penalties are not appropriate in any enforcement action brought against the NPDES permit holder for a violation of a water quality standard if: (1) the violation occurred due to a wet weather event; and (2) the permit holder satisfies certain other requirements. Allows the department to issue NPDES permits that contain conditions that include alternate water quality based effluent limits that: (1) are based on certain receiving water flows; or (2) provide increased mass limitations, concentration limitations, or mass and concentration limitations for publicly owned treatment works.

**Effective:** Upon passage.

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January 10, 2000, read first time and referred to Committee on Environmental Affairs.

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Second Regular Session 111th General Assembly (2000)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1999 General Assembly.

## SENATE BILL No. 431



A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 13-11-2-31.3 IS ADDED TO THE INDIANA  
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
3 [EFFECTIVE UPON PASSAGE]: **Sec. 31.3. "Combined sewage",**  
4 **for purposes of IC 13-18, refers to a combination of wastewater**  
5 **and stormwater transported in a combined sewer or combined**  
6 **sewer system.**

7 SECTION 2. IC 13-11-2-31.4 IS ADDED TO THE INDIANA  
8 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
9 [EFFECTIVE UPON PASSAGE]: **Sec. 31.4. "Combined sewer",** for  
10 **purposes of sections 31.3 and 120.5 of this chapter and IC 13-18,**  
11 **means a wastewater collection sewer owned by the state or a**  
12 **municipality (as defined in Section 502(4) of the federal Clean**  
13 **Water Act (33 U.S.C. 1251 et seq.)) that has been designed and**  
14 **constructed to convey:**

- 15 (1) **sanitary wastewaters, including domestic, commercial, or**
- 16 **industrial wastewaters; and**
- 17 (2) **stormwater;**



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1 through a single pipe system to a publicly owned treatment works  
2 (POTW) treatment plant.

3 SECTION 3. IC 13-11-2-31.5 IS ADDED TO THE INDIANA  
4 CODE AS A NEW SECTION TO READ AS FOLLOWS  
5 [EFFECTIVE UPON PASSAGE]: **Sec. 31.5. "Combined sewer  
6 operational plan"**, for purposes of IC 13-18, means a plan that  
7 contains the minimum technology controls applicable to, and  
8 requirements for operation and maintenance of, a combined sewer  
9 system:

- 10 (1) before;  
11 (2) during; and  
12 (3) upon the completion of;

13 **the implementation of a long term control plan.**

14 SECTION 4. IC 13-11-2-31.6 IS ADDED TO THE INDIANA  
15 CODE AS A NEW SECTION TO READ AS FOLLOWS  
16 [EFFECTIVE UPON PASSAGE]: **Sec. 31.6. "Combined sewer  
17 system"**, for purposes of sections 31.3, 31.5, and 120.5 of this  
18 chapter and IC 13-18, means a wastewater collection system owned  
19 by the state or a municipality (as defined in Section 502(4) of the  
20 federal Clean Water Act (33 U.S.C. 1251 et seq.)) that conveys  
21 sanitary wastewater and stormwater through a single pipe system  
22 to a publicly owned treatment works (POTW) treatment plant.

23 SECTION 5. IC 13-11-2-120.5 IS ADDED TO THE INDIANA  
24 CODE AS A NEW SECTION TO READ AS FOLLOWS  
25 [EFFECTIVE UPON PASSAGE]: **Sec. 120.5. "Long term control  
26 plan"**, for purposes of section 31.5 of this chapter and IC 13-18,  
27 means a plan that:

- 28 (1) describes changes and improvements to be made to a  
29 combined sewer system for the purpose of meeting the  
30 requirements of the federal Clean Water Act and state law;  
31 (2) is developed with public participation;  
32 (3) is submitted to the department for approval; and  
33 (4) does the following:  
34 (A) Contains characterization, monitoring, and modeling  
35 of the combined sewer system to determine the response of  
36 the combined sewer system to:  
37 (i) various precipitation events;  
38 (ii) the characteristics of overflows; and  
39 (iii) the water quality impacts that result from an  
40 overflow.  
41 (B) Considers the impact of combined sewer overflows on  
42 sensitive areas and gives highest priority to controlling



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- 1                    **overflows in the areas.**  
 2                    **(C) Contains an evaluation of a reasonable range of control**  
 3                    **alternatives.**  
 4                    **(D) Contains cost and performance evaluations for the**  
 5                    **control alternatives evaluated.**  
 6                    **(E) Maximizes treatment at a publicly owned treatment**  
 7                    **works (POTW) treatment plant.**  
 8                    **(F) Contains an implementation schedule.**  
 9                    **(G) Contains a post-construction compliance monitoring**  
 10                   **program.**

11                    SECTION 6. IC 13-11-2-242.5 IS ADDED TO THE INDIANA  
 12                    CODE AS A NEW SECTION TO READ AS FOLLOWS  
 13                    [EFFECTIVE UPON PASSAGE]: **Sec. 242.5. "Use attainability**  
 14                    **analysis", for purposes of IC 13-18, refers to a use attainability**  
 15                    **analysis as provided in 40 CFR 131.**

16                    SECTION 7. IC 13-11-2-265.3 IS ADDED TO THE INDIANA  
 17                    CODE AS A NEW SECTION TO READ AS FOLLOWS  
 18                    [EFFECTIVE UPON PASSAGE]: **Sec. 265.3. "Wet weather event",**  
 19                    **for purposes of IC 13-18, means a precipitation event that results**  
 20                    **in a total measured precipitation accumulation of at least one-tenth**  
 21                    **(0.1) inch of rainfall, ice melt, or snow melt.**

22                    SECTION 8. IC 13-18-3-2.3 IS ADDED TO THE INDIANA CODE  
 23                    AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
 24                    UPON PASSAGE]: **Sec. 2.3. (a) A long term control plan submitted**  
 25                    **to the department by a permit holder and approved by the**  
 26                    **department contributes to the fulfillment of the water quality goals**  
 27                    **of the state.**

28                    **(b) A long term control plan must provide for the capture for**  
 29                    **treatment of the percentage, as determined by volume on an**  
 30                    **annual basis, of the combined sewage that occurs during wet**  
 31                    **weather events in the combined sewer system that corresponds to**  
 32                    **the point where the increment of pollution reduction achieved in**  
 33                    **the receiving water diminishes when compared to the increased**  
 34                    **costs as determined for each control alternative.**

35                    **(c) An approved long term control plan that meets the**  
 36                    **requirements described in subsection (b) satisfies any requirements**  
 37                    **for a use attainability analysis that is a condition for the suspension**  
 38                    **of a designated use:**

- 39                    **(1) due to a wet weather event; and**  
 40                    **(2) under this chapter.**

41                    SECTION 9. IC 13-18-3-2.4 IS ADDED TO THE INDIANA CODE  
 42                    AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE

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1 UPON PASSAGE]: Sec. 2.4. A water quality standard established  
 2 under this article must be suspended from a designated use on a  
 3 site specific basis when a wet weather event causes or contributes  
 4 to discharges from combined sewer overflows if:

5 (1) the National Pollutant Discharge Elimination System  
 6 (NPDES) permit holder:

7 (A) has developed a long term control plan that satisfies  
 8 the requirements of section 2.3(a) of this chapter; and

9 (B) has either:

10 (i) completed the implementation of the long term  
 11 control plan; or

12 (ii) is implementing the long term control plan, in  
 13 substantial compliance with the permit holder's NPDES  
 14 permit or another legally enforceable document;

15 (2) the permit holder is otherwise in substantial compliance  
 16 with all other requirements for the operation and  
 17 maintenance of the permit holder's wastewater treatment  
 18 facilities and combined sewer system, including an approved  
 19 combined sewer operational plan; and

20 (3) if applicable, the provisions of 40 CFR 131.10 are satisfied.

21 SECTION 10. IC 13-18-3-6 IS AMENDED TO READ AS  
 22 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) The water  
 23 pollution control laws may be enforced under IC 13-30-3 or  
 24 IC 13-14-2-6.

25 (b) Notwithstanding subsection (a), before the department  
 26 approves a municipality's long term control plan, the department  
 27 shall presume that civil penalties are not appropriate in any  
 28 enforcement action brought by the department against the NPDES  
 29 permit holder for a violation of a water quality standard adopted  
 30 under this title if:

31 (1) the violation occurred as a result of combined sewer  
 32 overflows due to a wet weather event;

33 (2) the permit holder:

34 (A) is developing in good faith a long term control plan  
 35 that will satisfy the requirements of section 2.3(a) of this  
 36 chapter;

37 (B) is fully implementing the minimum control  
 38 requirements contained in the permit holder's approved  
 39 combined sewer operational plan; and

40 (C) is in substantial compliance with all other  
 41 requirements:

42 (i) of the permit holder's NPDES permit; or

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- 1 (ii) set forth in any other legally enforceable document;
- 2 including any requirements for the operation and
- 3 maintenance of the wastewater treatment facilities and
- 4 collection systems owned or operated by the permit holder;
- 5 and
- 6 (3) unless the date set forth in the permit holder's NPDES
- 7 permit or other legally enforceable document for submission
- 8 of a long term control plan has not yet occurred, the permit
- 9 holder timely submitted the permit holder's long term control
- 10 plan to the department for approval.

11 SECTION 11. IC 13-18-19-2 IS ADDED TO THE INDIANA  
 12 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 13 [EFFECTIVE UPON PASSAGE]: **Sec. 2. (a) The department may**  
 14 **issue National Pollutant Discharge Elimination System (NPDES)**  
 15 **permits containing conditions that include alternate water quality**  
 16 **based effluent limits that:**

17 (1) are based on receiving water flows associated with, or  
 18 characteristic of:

19 (A) wet weather events of various degrees of duration and  
 20 intensity; or

21 (B) low flow stream conditions derived on a monthly,  
 22 quarterly, or annual basis;

23 (2) provide increased mass limitations, concentration  
 24 limitations, or mass and concentration limitations, for  
 25 publicly owned treatment works (POTW) that:

26 (A) are capable of treating wastewater flows that exceed  
 27 the design flow used to calculate normal water quality  
 28 based effluent limitations; and

29 (B) reduce the volume of discharge of wastewater from  
 30 plant bypasses or combined sewer overflows; or

31 (3) include any factor described in subdivisions (1) and (2).

32 (b) The department may require an applicant for an NPDES  
 33 permit containing at least one (1) of the conditions described in  
 34 subsection (a) to document, in a reasonable manner, stream  
 35 conditions and local controls that are germane to a condition  
 36 described in subsection (a) before the department issues the  
 37 NPDES permit.

38 SECTION 12. An emergency is declared for this act.

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