



February 23, 2005

SENATE BILL No. 620

DIGEST OF SB 620 (Updated February 21, 2005 12:34 pm - DI 52)

Citations Affected: IC 13-14; IC 13-18; noncode.

Synopsis: Combined sewer overflows. Amends the permissible terms of certain variances from water quality standards and of variance renewals. Requires a variance application to include a pollutant minimization plan. Establishes a combined sewer overflow (CSO) wet weather limited use designation for waters directly affected by receiving CSO's. Provides that where appropriate, environmental permits must contain a schedule of compliance. Requires the department of environmental management (IDEM), upon request of an NPDES permittee, to establish a schedule of compliance to meet water quality based requirements during development, approval, and implementation of a long term control plan. Requires IDEM to review and revise the guidance developed for CSO communities.

Effective: Upon passage.

Gard, Broden, Riegsecker

January 24, 2005, read first time and referred to Committee on Energy and Environmental Affairs.
February 22, 2005, amended, reported favorably — Do Pass.

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February 23, 2005

First Regular Session 114th General Assembly (2005)

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 2004 Regular Session of the General Assembly.

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SENATE BILL No. 620

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 13-14-8-9 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) A variance
3 from a water quality standard that is at least in part the basis of a
4 National Pollutant Discharge Elimination System (NPDES) permit
5 issued under this title must meet the conditions specified in:
6 (1) 40 CFR Part 132, Appendix F, Procedure 2.C; and
7 (2) rules adopted by the board.
8 (b) ~~Except as provided in subsection (c), a variance from a water~~
9 ~~quality standard of the water pollution control board under section 8 of~~
10 ~~this chapter or IC 13-7-7-6 (before its repeal) may be:~~
11 (1) ~~granted for not more than five (5) years; and~~
12 (2) ~~renewed for not more than five (5) years.~~
13 (b) **A variance application must contain a pollutant**
14 **minimization plan specific to the pollutant for which the variance**
15 **is requested. With respect to a variance relating to an NPDES**
16 **permit for a combined sewer overflow discharge, this subsection is**
17 **satisfied if the NPDES permit holder has prepared a long term**

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control plan and is implementing the nine (9) minimum controls pursuant to:

- (1) 33 U.S.C. 1342(q); and**
- (2) 59 FR 18688.**

~~(c) A variance granted under section 8 of this chapter or IC 13-7-7-6 (before its repeal) from a water quality standard that is at least in part the basis of a National Pollutant Discharge Elimination System permit~~

- ~~(1) issued under this title; and~~
- ~~(2) extended under IC 13-15-3-6 or IC 13-7-10-2(c) (before its repeal);~~

~~remains in effect until the National Pollutant Discharge Elimination System permit expires.~~

(c) Subject to subsection (d), a variance described in subsection (a) may be granted for a period not to exceed the term of the NPDES permit affected by the variance.

(d) If an NPDES permit remains in effect beyond its stated term under IC 13-15-3-6, a variance described in subsection (a) remains in effect for as long as the NPDES permit requirements affected by the variance are in effect.

(e) A variance described in subsection (a) may be renewed each time the NPDES permit affected by the variance is renewed if the conditions of subsections (a) and (b) continue to be met.

SECTION 2. IC 13-18-3-2.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2.3. ~~(a) A long term control plan, upon implementation, fulfills the water quality goals of the state with respect to wet weather discharges that are a result of overflows from the combined sewer system addressed by the plan if:~~

- ~~(1) the plan provides for the implementation of cost effective control alternatives that will attain water quality standards or maximize the extent to which water quality standards will be attained if they are not otherwise attainable;~~
- ~~(2) the plan provides, at a minimum, for the capture for treatment of first flush;~~
- ~~(3) the plan is reviewed periodically; and~~
- ~~(4) additional controls are implemented as provided in section 2.4 of this chapter.~~

~~Cost effectiveness may be determined, at the option of the permit holder, by using a knee of the curve analysis.~~

~~(b) (a) When If a use attainability analysis is required for a suspension of designated uses under this chapter, the department must, to the maximum extent permitted under state or federal law: performed and approved to change the designated use of a water~~

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1 body receiving wet weather discharges from combined sewer
2 overflows from full body contact recreation under 327 IAC 2-1-3
3 and 327 IAC 2-1.5-5 (both as in effect on January 1, 2005) to the
4 CSO wet weather subcategory established in section 2.5 of this
5 chapter, upon implementation of the approved long term control
6 plan, the plan fulfills the water quality goals of the state with
7 respect to wet weather discharges that are a result of overflows
8 from the combined sewer system addressed by the plan.

9 (b) A long term control plan must meet the requirements of:
10 (1) Section 402(q) of the federal Clean Water Act (33 U.S.C.
11 1342(q)); and
12 (2) 59 FR 18688.

13 (c) If a use attainability analysis is performed, the department
14 shall:
15 (1) review a use attainability analysis submitted under this chapter
16 concurrently with a long term control plan submitted under this
17 chapter; and
18 (2) use the approved long term control plan to satisfy the
19 requirements of the use attainability analysis.

20 SECTION 3. IC 13-18-3-2.4 IS AMENDED TO READ AS
21 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2.4. ~~An NPDES~~
22 permit holder shall review the feasibility of implementing additional or
23 new control alternatives to attain water quality standards. ~~including~~
24 ~~standards suspended under section 2.5 of this chapter.~~ The NPDES
25 permit holder shall conduct such a review periodically, but not less
26 than every five (5) years after approval of the long term control plan by
27 the department. The NPDES permit holder shall:

28 (1) document to the department that the long term control plan
29 has been reviewed;
30 (2) update the long term control plan as necessary;
31 (3) submit any amendments to the long term control plan to the
32 department for approval; and
33 (4) implement control alternatives determined to be cost effective
34 and affordable.

35 Cost effectiveness may be determined, at the option of the NPDES
36 permit holder, by using a knee of the curve analysis **in accordance**
37 **with section 402(q) of the federal Clean Water Act (33 U.S.C.**
38 **1342(q)) and 59 FR 18688.**

39 SECTION 4. IC 13-18-3-2.5 IS AMENDED TO READ AS
40 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2.5. (a) ~~Subject to~~
41 ~~the limitations of subsection (d), designated uses and associated water~~
42 ~~quality criteria are temporarily suspended on a site specific basis; A~~

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1 **CSO wet weather limited use subcategory is established** for waters
 2 **directly** affected by discharges from receiving combined sewer
 3 overflow points listed in the National Pollutant Discharge Elimination
 4 System (NPDES) permit due to overflows. The CSO wet weather
 5 events; ~~if~~ **limited use subcategory applies to a specific water body**
 6 **after implementation of an approved long term control plan for the**
 7 **combined sewer system whose overflow discharges affect those**
 8 **waters is implemented and the conditions of subsection (b) are**
 9 **satisfied. The following requirements apply to the CSO wet**
 10 **weather limited use subcategory:**

11 (1) the department has approved a long term control plan for the
 12 NPDES permit holder for the combined sewer system;

13 (2) the approved long term control plan is incorporated into the
 14 permit holder's NPDES permit;

15 (3) the approved long term control plan:

16 (A) satisfies the requirements of section 2.3 of this chapter;
 17 and

18 (B) specifies the designated uses and water quality standards
 19 to be suspended under this section;

20 (4) the permit holder:

21 (A) has implemented the approved long term control plan; or

22 (B) is implementing the approved long term control plan in
 23 accordance with the schedule approved in the long term
 24 control plan;

25 (5) the permit holder is in compliance with the requirements for
 26 the operation and maintenance of its wastewater treatment
 27 facilities and combined sewer system, including its combined
 28 sewer operational plan approved by the department; and

29 (6) the provisions of 40 CFR 131.10, 40 CFR 131.20, and 40 CFR
 30 131.21 are satisfied.

31 The provisions of 40 CFR 131.10 may be satisfied by including
 32 appropriate data and information in the long term control plan.

33 (b) Existing uses as defined in 40 CFR 131.3(e) and associated
 34 water quality criteria may be suspended only in accordance with federal
 35 law.

36 (c) To the extent permitted under federal law, the department shall
 37 provide a compliance schedule for attainment of water quality based
 38 limitations for discharges from combined sewer overflow points in the
 39 NPDES permit during the period when the long term control plan is
 40 being developed.

41 (d) A temporary suspension applies only:

42 (1) to the NPDES permit holder for discharges from the permit

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1 holder's listed combined sewer overflow points; and
 2 ~~(2)~~ **(1) The water quality based requirements associated with**
 3 **the CSO wet weather limited use subcategory that apply to**
 4 **waters affected by wet weather combined sewer overflows are**
 5 **determined by an approved long term control plan for the**
 6 **combined sewer system. The water quality based**
 7 **requirements remain in effect** during the time and to the
 8 physical extent that the designated uses and water quality
 9 standards are not attained due to the discharges from the listed
 10 combined sewer overflow points; **use designation under**
 11 **327 IAC 2-1-3 and 327 IAC 2-1.5-5 (both as in effect on**
 12 **January 1, 2005) is not attained, but not for not more than four**
 13 **(4) days after the date the overflow discharge ends.**

14 ~~(e)~~ **The board may adopt rules in accordance with IC 13-14-8 and**
 15 **IC 13-14-9 to amend the water quality standards to include the terms**
 16 **of the temporary suspension allowed by this section:**

17 **(2) At all times other than those described in subdivision (1),**
 18 **the water quality criteria associated with the appropriate**
 19 **recreational use designation under 327 IAC 2-1-3 and 327**
 20 **IAC 2-1.5-5 (both as in effect on January 1, 2005) apply unless**
 21 **there is a change in the use designation as a result of a use**
 22 **attainability analysis.**

23 **(b) The CSO wet weather limited use subcategory applies if:**

24 **(1) the department has approved a long term control plan for**
 25 **the NPDES permit holder for the combined sewer system;**

26 **(2) the approved long term control plan:**

27 **(A) is incorporated into:**

28 **(i) the NPDES permit holder's NPDES permit; or**

29 **(ii) an order under IC 13-14-2-6;**

30 **(B) satisfies the requirements of section 2.3 of this chapter;**
 31 **and**

32 **(C) specifies the water quality based requirements that**
 33 **apply to combined sewer overflows during and**
 34 **immediately following wet weather events, as provided in**
 35 **subsection (a)(1);**

36 **(3) the NPDES permit holder has implemented the approved**
 37 **long term control plan; and**

38 **(4) subject to subsection (c), 40 CFR 131.10, 40 CFR 131.20,**
 39 **and 40 CFR 131.21 are satisfied.**

40 **(c) For purposes of subsection (b)(4), 40 CFR 131.10 may be**
 41 **satisfied by including appropriate data and information in the long**
 42 **term control plan.**

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1 (d) The department shall implement the CSO wet weather
2 limited use subcategory and associated water quality based
3 requirements under this section when the subcategory and
4 requirements are approved by the United States Environmental
5 Protection Agency. The department shall seek approval of the
6 United States Environmental Protection Agency in a timely
7 manner.

8 (ff) (e) The NPDES permit holder shall monitor its discharges and
9 the water quality in the affected receiving stream periodically ~~but at~~
10 ~~least every three (3) years: as provided in the long term control plan.~~
11 The NPDES permit holder shall provide all such information to the
12 department.

13 (gg) (f) In conjunction with a review of its long term control plan
14 under section 2.4 of this chapter, the NPDES permit holder shall
15 review information generated after the use attainability analysis was
16 approved by the department to determine whether the conclusion of the
17 use attainability analysis is still valid. The NPDES permit holder shall
18 provide the results of the review to the department.

19 (hh) ~~A temporary suspension under this section may be authorized~~
20 ~~only to the extent allowed under federal law. If the department~~
21 ~~determines that information provided under this section demonstrates~~
22 ~~that uses being suspended are attainable, the department shall promptly~~
23 ~~notify the permit holder of its determination. A permit holder may~~
24 ~~appeal the department's determination under this section in accordance~~
25 ~~with IC 4-21.5.~~

26 (ii) ~~After the effective date of the determination under subsection (h);~~
27 ~~the long term control plan may be modified to achieve attainment of the~~
28 ~~previously suspended uses and associated water quality criteria. The~~
29 ~~compliance schedule and other provisions of the NPDES permit shall~~
30 ~~also be modified as necessary.~~

31 (g) **The board shall adopt rules under IC 13-14-8 and IC 13-14-9**
32 **to implement this section before October 1, 2006.**

33 SECTION 5. IC 13-18-3-2.6 IS ADDED TO THE INDIANA CODE
34 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
35 UPON PASSAGE]: **Sec. 2.6. (a) Where appropriate, permits shall**
36 **contain schedules of compliance requiring the permittee to take**
37 **specific steps to achieve expeditious compliance with applicable**
38 **standards, limitations, and other requirements.**

39 (b) **The schedule of compliance shall require compliance as soon**
40 **as reasonably possible, but may remain in effect as long as the**
41 **National Pollutant Discharge Elimination System (NPDES) permit**
42 **requirements are in effect.**

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1 (c) The department shall, at the request of the NPDES permit
2 holder, incorporate in the permit a schedule of compliance for
3 meeting the water quality based requirements associated with
4 combined sewer overflows during the period of development,
5 approval, and implementation of the long term control plan. The
6 schedules of compliance:

- 7 (1) may exceed time frames authorized under 327 IAC; and
8 (2) may not exceed the period specified for implementation in
9 an approved long term control plan.

10 (d) If the term of a schedule of compliance exceeds the term of
11 an NPDES permit, the department shall continue to implement the
12 schedule of compliance continuously before and during each
13 successive permit term, to the maximum duration as provided in
14 subsection (c). The permit shall specify that the schedule of
15 compliance lasts beyond the term of the permit.

16 (e) Upon request of the permittee, the department shall modify
17 NPDES permits containing water quality based requirements
18 associated with combined sewer overflows to provide schedules of
19 compliance as provided in subsection (c).

20 (f) The board shall adopt rules under IC 13-14-8 and IC 13-14-9
21 to implement this section before October 1, 2006.

22 SECTION 6. [EFFECTIVE UPON PASSAGE] (a) Before
23 September 1, 2005, the department of environmental management
24 shall review and revise the guidance developed for combined sewer
25 overflow communities to incorporate and reflect the law as in
26 effect on July 1, 2005.

27 (b) This SECTION expires September 1, 2005.

28 SECTION 7. An emergency is declared for this act.

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SENATE MOTION

Madam President: I move that Senator Broden be added as second author of Senate Bill 620.

GARD

SENATE MOTION

Madam President: I move that Senator Riegsecker be added as coauthor of Senate Bill 620.

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COMMITTEE REPORT

Madam President: The Senate Committee on Energy and Environmental Affairs, to which was referred Senate Bill No. 620, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Replace the effective dates in SECTIONS 1 through 5 with "[EFFECTIVE UPON PASSAGE]".

Page 1, line 4, after "System" insert "(NPDES)".

Page 1, line 4, delete ":".

Page 1, line 5, delete "(1)".

Page 1, run in lines 4 through 5.

Page 1, line 6, reset in roman "(1)".

Page 1, line 6, delete "(A)".

Page 1, line 7, reset in roman "(2)".

Page 1, line 7, delete "(B)".

Page 1, line 7, delete "; and" and insert ".".

Page 1, delete line 13, begin a new paragraph and insert:

"(b) A variance application must contain a pollutant minimization plan specific to the pollutant for which the variance is requested. With respect to a variance relating to an NPDES permit for a combined sewer overflow discharge, this subsection is satisfied if the NPDES permit holder has prepared a long term control plan and is implementing the nine (9) minimum controls pursuant to:

(1) 33 U.S.C. 1342(q); and

(2) 59 FR 18688."

Page 1, line 14, delete "(b)".

Page 1, line 14, strike "A variance granted under section 8 of this chapter or".

Page 1, strike lines 15 through 17.

Page 2, line 4, strike "remains in effect".

Page 2, line 4, delete "for as long as".

Page 2, line 4, strike "the National Pollutant Discharge"

Page 2, line 5, strike "Elimination System permit".

Page 2, line 5, delete "is in effect."

Page 2, between lines 5 and 6, begin a new paragraph and insert:

"(c) Subject to subsection (d), a variance described in subsection (a) may be granted for a period not to exceed the term of the NPDES permit affected by the variance.

(d) If an NPDES permit remains in effect beyond its stated term under IC 13-15-3-6, a variance described in subsection (a) remains

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in effect for as long as the NPDES permit requirements affected by the variance are in effect.

(e) A variance described in subsection (a) may be renewed each time the NPDES permit affected by the variance is renewed if the conditions of subsections (a) and (b) continue to be met."

Page 2, line 25, after "performed" insert **"and approved"**.

Page 2, line 27, delete "2-1-6 (as" and insert **"2-1-3 and 327 IAC 2-1.5-5 (both as"**.

Page 2, line 34, delete "the Consolidated Appropriations Act (P.L. 106-554);" and insert **"Section 402(q) of the federal Clean Water Act (33 U.S.C. 1342(q));"**.

Page 3, line 14, delete "." and insert **"and affordable."**

Page 3, line 17, delete "the Consolidated Appropriations Act (P.L. 106-554)" and insert **"section 402(q) of the federal Clean Water Act (33 U.S.C. 1342(q))"**.

Page 3, line 23, after "weather" insert **"limited"**.

Page 3, line 23, after "waters" insert **"directly"**.

Page 3, line 26, after "if:" insert **"limited"**.

Page 3, line 27, after "applies" insert **"to a specific water body"**.

Page 3, line 27, delete "full".

Page 3, line 28, delete "." and insert **"for the combined sewer system whose overflow discharges affect those waters is implemented and the conditions of subsection (b) are satisfied."**

Page 3, line 29, after "weather" insert **"limited"**.

Page 4, line 21, delete "conditions" and insert **"quality based requirements associated with the CSO wet weather limited use subcategory"**.

Page 4, line 21, after "to" insert **"waters affected by wet weather"**.

Page 4, line 22, delete "that result from wet weather events consistent with" and insert **"are determined by"**.

Page 4, line 23, delete "are determined in" and insert **"for the combined sewer system. The water quality based requirements remain"**.

Page 4, delete line 24.

Page 4, line 25, delete "determination remains".

Page 4, line 28, delete "full body contact recreation".

Page 4, line 29, delete "2-1-6 (as" and insert **"2-1-3 and 327 IAC 2-1.5-5 (both as"**.

Page 4, line 37, delete "recreation" and insert **"recreational"**.

Page 4, line 37, delete "2-1-6 (as" and insert **"2-1-3 and 327 IAC 2-1.5-5 (both as"**.

Page 4, line 40, after "weather" insert **"limited"**.

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Page 5, line 7, delete "conditions" and insert "**quality based requirements**".

Page 5, line 10, delete "or is".

Page 5, line 11, delete "implementing".

Page 5, line 17, after "weather" insert "**limited**".

Page 5, line 20, after "." insert "**The department shall seek approval of the United States Environmental Protection Agency in a timely manner.**".

Page 6, line 3, delete "." and insert "**before October 1, 2006.**".

Page 6, line 6, delete "The department shall, at the request of the" and insert "**Where appropriate, permits shall contain schedules of compliance requiring the permittee to take specific steps to achieve expeditious compliance with applicable standards, limitations, and other requirements.**

(b) The schedule of compliance shall require compliance as soon as reasonably possible, but may remain in effect as long as the National Pollutant Discharge Elimination System (NPDES) permit requirements are in effect.

(c) The department shall, at the request of the.

Page 6, line 15, delete "(b)" and insert "**(d)**".

Page 6, line 19, delete "(a)." and insert "**(c)**".

Page 6, line 21, delete "(c)" and insert "**(e)**".

Page 6, line 24, delete "(a)." and insert "**(c)**".

Page 6, line 25, delete "(d)" and insert "**(f)**".

Page 6, line 26, delete "." and insert "**before October 1, 2006.**".

Page 6, after line 26, begin a new paragraph and insert:

"SECTION 6. [EFFECTIVE UPON PASSAGE] (a) Before September 1, 2005, the department of environmental management shall review and revise the guidance developed for combined sewer overflow communities to incorporate and reflect the law as in effect on July 1, 2005.

(b) This SECTION expires September 1, 2005.

SECTION 7. An emergency is declared for this act.".

and when so amended that said bill do pass.

(Reference is to SB 620 as introduced.)

GARD, Chairperson

Committee Vote: Yeas 9, Nays 1.

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