
TITLE 327 WATER POLLUTION CONTROL BOARD

FIRST NOTICE OF COMMENT PERIOD

LSA Document #07-185

DEVELOPMENT OF AMENDMENTS TO [327 IAC 2-1-6](#) CONCERNING SULFATE CRITERION IN WATERS OF THE STATE**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to the sulfate criterion contained in [327 IAC 2-1-6](#). IDEM seeks comment on the affected citation listed and any other provisions of Title 327 that may be affected by this rulemaking.

CITATIONS AFFECTED: [327 IAC 2-1-6](#).

AUTHORITY: [IC 13-14-9](#); [IC 13-18-3](#).

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING**Basic Purpose and Background**

The Water Pollution Control Board final adopted water quality standards revisions done under the rulemaking of LSA Document #03-129 (28 IR 2046), Fast Track Water Quality Standards Revisions, on October 13, 2004. Under that rulemaking, the sulfate criterion contained in [327 IAC 2-1-6](#) was revised from 250 mg/l to 1,000 mg/l in waters not used for drinking water supply. IDEM and external parties who were members of the Fast Track rulemaking workgroup understood that the sulfate criterion of 1,000 mg/l that was put into the water quality standards through that rulemaking was an interim standard awaiting the final results of sulfate toxicity studies being conducted by the Illinois Natural History Survey (Illinois studies). IDEM expected to revise the sulfate standard based on the conclusions of the Illinois studies.

In an October 3, 2005, approval letter to IDEM regarding the final adopted water quality standards revisions done under the rulemaking of LSA Document #03-129, Fast Track Water Quality Standards Revisions, U.S. Environmental Protection Agency (U.S. EPA) took no action on the revised sulfate criterion submitted for EPA approval. U.S. EPA has now determined that Indiana's revised sulfate criterion is not protective of aquatic life in waters with an ambient hardness value of less than 109 mg/l based on the final results of the Illinois studies. Therefore, U.S. EPA is requiring IDEM to revise and readopt a sulfate criterion that is protective of aquatic life in all surface waters, including those with an ambient hardness value of less than 109 mg/l.

Alternatives To Be Considered Within the Rulemaking**Alternative 1.**

The only option for revising a water quality standard contained in Title 327 is through rulemaking. The current 1,000 mg/l sulfate criterion in [327 IAC 2-1-6\(a\)\(3\)](#), Table 6-1, is a concentration that shall not be exceeded outside of the mixing zone. IDEM is proposing to replace this single value criterion with equations developed by the Illinois Environmental Protection Agency based on the Illinois studies. The equations will allow the sulfate criterion to vary depending on the hardness and chloride concentrations in a waterbody. Sulfate criteria calculated using the equations will vary from 500 mg/l for soft or low chloride waters to over 2,500 mg/l in hard waters of average chloride concentration. IDEM is also proposing to apply the sulfate criteria calculated using the equations as concentrations that shall not be exceeded outside of the mixing zone.

Alternative 2.

If Indiana takes the no action option and does not revise the sulfate criterion in [327 IAC 2-1-6](#), then U.S. EPA will be required to over-promulgate Indiana's sulfate criterion with its own criterion. U.S. EPA would probably, although not necessarily, promulgate the equations developed by the Illinois Environmental Protection Agency. U.S. EPA also could promulgate something other than these equations. A criterion promulgated by U.S. EPA may not be acceptable to Indiana. For example, U.S. EPA could suggest that the original sulfate criterion of 250 mg/l be reinstated in Indiana's rule at [327 IAC 2-1-6](#).

Applicable Federal Law

Indiana must submit water quality standards revisions to U.S. EPA for review and approval according to 40 CFR 131.20. Therefore, the alternative of doing a rulemaking to revise the sulfate criterion in [327 IAC 2-1-6](#) is federally required.

Indiana's NPDES permit issuance program is a delegated program under the federal authority and to maintain delegation requires federal approval.

Potential Fiscal Impact

Cost associated with a revision to the sulfate criterion contained in [327 IAC 2-1-6](#) may be limited to the few dischargers with sulfate limits and those possibly to receive sulfate limits in their discharge permits. In most instances, sulfate criteria calculated using the proposed equations will be less stringent than the 1,000 mg/l

criterion currently in [327 IAC 2-1-6](#). There are very few Indiana waters that have ambient hardness values less than 109 mg/l. For those waters, the results of the Illinois studies indicate that a sulfate criterion of 500 mg/l is protective of aquatic life. A criterion of 500 mg/l is less stringent than the sulfate criterion of 250 mg/l that was in [327 IAC 2-1-6](#) prior to the revision done under the rulemaking of LSA Document #03-129, Fast Track Water Quality Standards Revisions.

Small Business Assistance Information

IDEM established a compliance and technical assistance (CTAP) program under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at www.in.gov/idem/ctap.

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Sandra El-Yusuf
IDEM Compliance and Technical Assistance Program
OPPTA - MC60-04
100 N. Senate Avenue
W-041
Indianapolis, IN 46204-2251
(317) 232-8578
selyusuf@idem.in.gov

The Small Business Assistance Program Ombudsman is:

Megan Tretter
IDEM Small Business Assistance Program Ombudsman
MC 50-01-IGCN 1307
100 N. Senate Avenue
Indianapolis, IN 46204-2251
(317) 234-3386
mtretter@idem.in.gov

Public Participation and Workgroup Information

At this time, no workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact MaryAnn Stevens, Rules Section, Office of Water Quality at (317) 232-8635 or (800) 451-6027 (in Indiana).

STATUTORY AND REGULATORY REQUIREMENTS

[IC 13-14-8-4](#) requires the board to consider the following factors in promulgating rules:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as the case may be.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.

Mailed comments should be addressed to:

LSA Document #07-185 [Sulfate WQS Revision]
MaryAnn Stevens Mail Code 65-40
Rules Section
Office of Water Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204-2251.

Hand delivered comments will be accepted by the receptionist on duty at the twelfth floor reception desk, Office of Water Quality, Indiana Government Center-North, Room N1255, 100 North Senate Avenue, Indianapolis, Indiana. Comments also may be submitted by facsimile to (317) 232-8406, Monday through Friday, between 8:15 a.m.

and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Office of Water Quality, Rules Section at (317) 233-8903. Please note it is not necessary to follow a faxed comment letter with a copy of the letter submitted through the postal system.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by April 27, 2007.

Additional information regarding the NPDES program and discharge permit limits for sulfates may be obtained from John Elliott, Permits Branch, Office of Water Quality, (317) 233-0703 or (800) 451-6027. Information regarding the sulfate toxicity studies carried out by the Illinois Natural History Survey may be obtained from Ms. Shivi Selvaratnam, PhD., Water Quality Standards Program Coordinator, Assessment Branch, Office of Water Quality, (317) 308-3088. Additional information regarding this rulemaking action may be obtained from MaryAnn Stevens, Rules Section, Office of Water Quality, (317) 232-8635 or (800) 451-6027 (in Indiana).

Bruno Pigott
Assistant Commissioner
Office of Water Quality

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