TITLE 327 WATER POLLUTION CONTROL BOARD

Proposed Rule
LSA Document #06-96

DIGEST

Amends 327 IAC 4-1-1 through 327 IAC 4-1-4, 327 IAC 4-1-6, and 327 IAC 4-1-7 concerning sewer bans. Effective 30 days after filing with the Publisher.

HISTORY

First Notice of Comment Period: May 1, 2006, Indiana Register (29 IR 2686).
Second Notice of Comment Period: December 20, 2006, Indiana Register (DIN: 20061220-IR-327060096SNA).
Notice of Public Hearing: December 20, 2006, Indiana Register (DIN: 20061220-IR-327060096PHA).
Change in Notice of Hearing: March 28, 2007, Indiana Register (DIN: 20070328-IR-327060096CHA).
Date of First Hearing: April 11, 2007.

PUBLIC COMMENTS UNDER IC 13-14-9-4.5

IC 13-14-9-4.5 states that a board may not adopt a rule under IC 13-14-9 that is substantially different from the draft rule published under IC 13-14-9-4 until the board has conducted a third comment period that is at least 21 days long. Because this proposed rule is not substantively different from the draft rule published on December 20, 2006, at DIN: 20061220-IR-327060096SNA, the Indiana Department of Environmental Management (IDEM) is not requesting additional comment on this proposed rule.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

IDEM requested public comment from December 20, 2006, through, January 19, 2007, on IDEM's draft rule language. No comments were received during the second comment period.

SUMMARY/RESPONSE TO COMMENTS RECEIVED FROM THE FIRST PUBLIC HEARING

On April 11, 2007, the Water Pollution Control Board conducted the first public hearing/board meeting concerning the development of amendments to 327 IAC 4-1-1, 327 IAC 4-1-2, 327 IAC 4-1-3, 327 IAC 4-1-4, 327 IAC 4-1-6, and 327 IAC 4-1-7. No comments were made at the first hearing.

327 IAC 4-1-1; 327 IAC 4-1-2; 327 IAC 4-1-3; 327 IAC 4-1-4; 327 IAC 4-1-6; 327 IAC 4-1-7

SECTION 1. 327 IAC 4-1-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 4-1-1 Purpose

Authority: IC 13-14-8-7; IC 13-18-4-3
Affected: IC 13-18-3-1

Sec. 1. This article is promulgated in order to prevent the excessive hydraulic ~~and/or~~ **or** organic, **or both,** overloading of POTWs or semipublic facilities resulting in the subsequent discharge or bypassing of insufficiently treated ~~sewage~~ **wastewater** due to:

(1) new sewer connections to; ~~such overloaded POTWs or semipublic~~ **or**

(2) poor operation and maintenance of;

the facilities.

(Water Pollution Control Board; 327 IAC 4-1-1; filed Sep 24, 1987, 3:00 p.m.: 11 IR 611; filed Mar 2, 1994, 5:00 p.m.: 17 IR 1615; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 2. 327 IAC 4-1-2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 4-1-2 Definitions

Authority: IC 13-14-8-7; IC 13-18-4-3
Affected: IC 8-1-2-89; IC 13-11-2-265

Sec. 2. In addition to the definitions ~~contained~~ in ~~IC 13-7-1~~, ~~IC 13-1-3-1.5~~, **IC 8-1-2-89**, **IC 13-11-2**, and ~~327 IAC 1~~, **327 IAC 2**, the following definitions apply throughout this article:

~~(1) "Combined sewer" means a sewer designed and employed to receive both water-carried and/or liquid wastes and storm and/or surface water.~~

~~(2)~~ **(1)** "Discharge" or "direct discharge", when used without qualification, means a discharge of a pollutant.

~~(3)~~ **(2)** "Discharge of a pollutant" means any addition of any pollutant, or combination of pollutants, into any waters of the state of Indiana from a point source in Indiana. The term includes, without limitation, additions of pollutants into waters of the state from the following:

(A) Surface run-off ~~which~~ **that** is collected or channeled by man.

(B) Discharges through pipes, sewers, or other conveyances ~~which~~ **that** do not lead to treatment works.

~~(4) "Effluent limitation" means any restriction established by the commissioner on quantities, discharge rates, and concentrations of pollutants that are discharged or will be discharged from point sources into waters of the state of Indiana.~~

~~(5)~~ **(3)** "Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.

~~(6)~~ **(4)** "Hazardous substance" means any substance designated under 40 CFR 116 ~~pursuant to~~ **under** Section 311 of the Clean Water Act (CWA), **33 U.S.C. 1321.**

~~(7)~~ **(5)** "NPDES permit" means a written authorization issued by the commissioner or the EPA to regulate the discharge of pollutants ~~pursuant to~~ **under** Section 402 of the CWA, **33 U.S.C. 1342,** or corresponding state law (327 IAC 5).

~~(8)~~ **(6)** "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.
(N) A town.
(O) A school town.
(P) A school district.
(Q) A school corporation.
(R) A county.
(S) A consolidated unit of government.
(T) A political subdivision.
(U) A state agency. ~~or~~
(V) Any other legal entity.

~~(9) "Point source" means any discernible, confined, and discrete conveyance, including, but not limited to, any:~~

~~(A) pipe;~~
~~(B) ditch;~~
~~(C) channel;~~
~~(D) tunnel;~~
~~(E) conduit;~~
~~(F) well discrete fissure;~~
~~(G) container;~~
~~(H) rolling stock;~~
~~(I) vessel; or~~
~~(J) other floating craft;~~

~~from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.~~

~~(10)~~ **(7)** "Pollutant" means, but ~~the definition~~ is not ~~necessarily~~ limited to:

(A) dredged spoil;
(B) incinerator residue;

(C) filter backwash;
(D) sewage;
(E) garbage;
(F) sewage sludge;
(G) munitions;
(H) chemical wastes;
(I) solid wastes;
(J) toxic wastes;
(K) hazardous substances;
(L) biological materials;
(M) radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended; 42 U.S.C. 2011, et seq.);
(N) heat;
(O) wrecked or discarded equipment;
~~(O)~~ **(P)** rock;
~~(P)~~ **(Q)** sand;
~~(Q)~~ **(R)** cellar dirt; and
~~(R)~~ **(S)** other industrial, municipal, and agricultural waste;

discharged into water.

~~(11)~~ **(8)** "Publicly owned treatment works" or "POTW" means a treatment works as defined by Section 212(2) of the CWA, ~~which~~ **33 U.S.C. 1292(2), that** is owned by the state or a municipality (as defined by Section 502(4) of the CWA, **33 U.S.C. 1362(4)),** except that it does not include pipes, sewers, or other conveyances not connected to a facility providing treatment. The ~~definition~~ **term** includes any devices and systems used in the:

(A) storage;
(B) treatment;
(C) recycling; and
(D) reclamation;

of municipal sewage or compatible industrial wastes. ~~"POTW"~~ **The term** also means the municipality, as defined by Section 502(4) of the CWA, including, without limitation, a city, town, county, or other public body created by or ~~pursuant to~~ **under** state law ~~which~~ **that** has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

~~(12)~~ **(9)** "Sanitary sewer" means a sewer that:

(A) conveys liquid and water-carried wastes from:
(i) residences;
(ii) commercial buildings;
(iii) industrial plants; and
(iv) institutions; and ~~to which~~

(B) storm, surface, and ground waters are not intentionally allowed to enter.

~~(13)~~ **(10)** "Semipublic facilities" means a treatment works as defined by Section 212(2) (33 U.S.C. 1292(2)) of the CWA, 33 U.S.C. 1251, et seq., in effect on November 13, 1991, that is not a POTW, is not state or federally owned, or is not an industrial wastewater treatment plant as defined by ~~327 IAC 8-12-2(b). Semipublic facilities include,~~ **327 IAC 5. The term includes,** but ~~are~~ **is** not limited to, the following:

(A) Rural sewage disposal services provided by sewage disposal companies as defined by IC 8-1-2-89(a)(2).
(B) Trailer or mobile home parks.
(C) Commercial or shopping centers.
(D) Housing developments.
(E) Truck stops.
(F) Restaurants.
(G) Schools.
(H) Campgrounds.

~~(14)~~ **(11)** "Sewer" means a pipe or conduit that carries wastewater or drainage water.

~~(15)~~ **(12)** "Source" means any:

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

from which there is or may be a discharge of domestic sewage or other wastewater into a semipublic facility or POTW.

~~(16)~~ **(13)** "Wastewater" means liquid or water-carried wastes from:

(A) industrial;
(B) municipal;
(C) agricultural; or
(D) other;
sources.

~~(17)~~ **(14)** "Water pollution treatment/control facility" means any equipment, device, unit, **or** structure ~~etc.,~~ that is used to control, prevent, pretreat, or treat any discharge or threatened discharge of pollutants into any waters of the state of Indiana, including surface and subsurface waters and public or private sewerage systems. The term includes, but is not limited to, the following:
(A) Treatment facilities.
(B) Combined sewers.
(C) Sanitary sewers.
(D) Lift (pumping) stations.

~~(18)~~ **(15)** "Waters of the state of Indiana" or "waters of the state" ~~means such accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this state, but the term does not include any private pond or any off-stream pond, reservoir, or facility built for reduction or control of pollution or cooling of water prior to the discharge unless the discharge therefrom causes or threatens to cause water pollution.~~ **has the meaning set forth at IC 13-11-2-265.**

(Water Pollution Control Board; 327 IAC 4-1-2; filed Sep 24, 1987, 3:00 p.m.: 11 IR 611; filed Mar 2, 1994, 5:00 p.m.: 17 IR 1615; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 3. 327 IAC 4-1-3 IS AMENDED TO READ AS FOLLOWS:

327 IAC 4-1-3 Early warning system

Authority: IC 13-14-8-7; IC 13-18-4-3
Affected: IC 13-18-3-1

Sec. 3. Whenever, in the determination of the commissioner, a semipublic facility or POTW has reached or is approaching ninety percent (90%) of its ~~maximum~~ hydraulic or organic design capacity, the commissioner shall notify the semipublic facility or POTW that it may be necessary, because of such condition, to impose a sewer connection ban if action is not taken by the semipublic facility or POTW to accommodate additional flow or loading. ~~Such~~ **The** notification shall be:
(1) by certified mail, return receipt requested; and ~~shall be~~
(2) directed to the:
(A) principal executive officer;
(B) ranking elected official; ~~and/or the~~ **or**
(C) authorized agent;
of the semipublic facility or POTW.
Failure of the commissioner to provide ~~such~~ **the** notification to the semipublic facility or POTW shall not preclude the imposition of a sewer connection ban as authorized by this article.

(Water Pollution Control Board; 327 IAC 4-1-3; filed Sep 24, 1987, 3:00 p.m.: 11 IR 613; filed Mar 2, 1994, 5:00 p.m.: 17 IR 1616; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 4. 327 IAC 4-1-4 IS AMENDED TO READ AS FOLLOWS:

327 IAC 4-1-4 Imposition of sewer connection bans

Authority: IC 13-14-8-7; IC 13-18-4-3
Affected: IC 13-18-3-1

Sec. 4. (a) **The commissioner may impose a ban on further sewer connections to the semipublic facility or POTW** whenever, in the determination of the commissioner:
(1) hydraulic or organic overloading of a semipublic facility or POTW exists or is impending and the introduction into the semipublic facility or POTW of additional wastewater from new or existing sources is likely to result in the discharge or bypassing of insufficiently treated ~~sewage, the commissioner may impose a ban~~

~~on further sewer connections to the semipublic facility~~ **wastewater;** or ~~POTW.~~
(2) poor operation and maintenance practices have, or are likely to, result in the discharge or bypassing of insufficiently treated wastewater.

(b) ~~Such~~ **The** sewer connection ban shall prohibit the connection or introduction of additional wastewater ~~or sewage~~ into the semipublic facility or POTW, except as otherwise provided under this article.

(Water Pollution Control Board; 327 IAC 4-1-4; filed Sep 24, 1987, 3:00 p.m.: 11 IR 613; filed Mar 2, 1994, 5:00 p.m.: 17 IR 1617; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 5. 327 IAC 4-1-6 IS AMENDED TO READ AS FOLLOWS:

327 IAC 4-1-6 Grounds and procedures for obtaining waivers of sewer connection bans

Authority: IC 13-14-8-7; IC 13-18-4-3
Affected: IC 13-18-3-1

Sec. 6. (a) Requests for connections from new or existing sources to a semipublic facility or POTW where a sewer connection ban is in effect may be approved if it is determined by the commissioner that any of the following conditions exist:
(1) The:
(A) connection will eliminate an existing health hazard; and ~~the~~
(B) resulting public health benefit is considered to outweigh the adverse impact of any reduction in the effluent quality from the semipublic facility or POTW.
(2) A semipublic facility or POTW expansion project:
(A) is under construction; and
(B) will be completed in such time as to accommodate ~~such~~ **the** new connections.
(3) An equivalent amount of infiltration or wastewater is removed from the ~~sewage~~ system, thus assuring that the additional wastewater will receive treatment.
(4) The commissioner is assured that additional water pollution treatment/control facilities, such as chemical feed equipment, will be provided such that the effluent from the semipublic facility or POTW will not deteriorate beyond its present quality.
(5) Other assurances are provided that the additional ~~sewage~~ **wastewater** to be discharged into the semipublic facility or POTW shall receive adequate treatment.

(b) Requests by POTWs for the waiver of a sewer connection ban for new or existing sources should be submitted by the principal executive officer or ranking elected official of the POTW to the commissioner. Requests by semipublic facilities for the waiver of a sewer connection ban for new or existing sources should be submitted by the owner, chief executive officer, or authorized agent or representative of the semipublic facility to the commissioner. The request for waiver of a sewer ban should contain, at a minimum, the projected:
(1) flow and pollutant loadings from the proposed **connection or** connections; and ~~the projected~~
(2) impact upon the semipublic facility or POTW.

(Water Pollution Control Board; 327 IAC 4-1-6; filed Sep 24, 1987, 3:00 p.m.: 11 IR 613; filed Mar 2, 1994, 5:00 p.m.: 17 IR 1617; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 6. 327 IAC 4-1-7 IS AMENDED TO READ AS FOLLOWS:

327 IAC 4-1-7 Grounds for termination of sewer connection ban

Authority: IC 13-14-8-7; IC 13-18-4-3
Affected: IC 13-18-3-1

Sec. 7. A sewer connection ban may be terminated by the commissioner when ~~any~~ **either** of the following exist:
(1) A demonstrated ~~sewage~~ **wastewater** treatment facility improvement to meet applicable NPDES permit limitations has been completed. ~~or~~
(2) It is demonstrated to the satisfaction of the commissioner that an existing hydraulic/organic overloaded

condition has been or will be discontinued for a continuous period of twelve (12) months from the date additional connections will be made.

(Water Pollution Control Board; 327 IAC 4-1-7; filed Sep 24, 1987, 3:00 p.m.: 11 IR 613; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

Notice of Public Hearing

Posted: 05/16/2007 by Legislative Services Agency
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