
TITLE 327 WATER POLLUTION CONTROL DIVISION

FIRST NOTICE OF COMMENT PERIOD

LSA Document #13-290

"EXCEPTIONAL USE WATERS" AND OTHER REQUIREMENTS UNDER [IC 13-18-3-2](#)**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules in Title 327 as required by [IC 13-18-3-2](#) (Public Law 78-2009). IDEM seeks comment on the affected citations listed and any other provisions of Title 327 that may be affected by this rulemaking.

CITATIONS AFFECTED: [327 IAC 2-1-3](#); [327 IAC 2-1-6](#); [327 IAC 2-1-9](#); [327 IAC 2-1-10](#); [327 IAC 2-1-11](#); [327 IAC 2-1.5-5](#); [327 IAC 2-1.5-18](#); [327 IAC 2-1.5-19](#); [327 IAC 2-6.1-5](#); [327 IAC 15-2-6](#); [327 IAC 15-13-5](#); [327 IAC 15-13-7](#); [327 IAC 17-2-4](#).

AUTHORITY: [IC 13-14-9](#); [IC 13-18-3-2](#).

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

In the early 1980s, Indiana adopted rules that established, as part of the state's water quality standards, surface water use classifications. The Great Lakes Initiative (GLI) rulemaking completed in 1996 included [327 IAC 2-1.5-18\(e\)](#) that required IDEM to initiate a special designations rulemaking to do the following:

- (1) Determine whether any other designations in addition to outstanding state resource waters (OSRWs), high quality waters, limited use waters, and outstanding national resource waters (ONRWs) should be established.
- (2) Determine the appropriate factors to consider in designating a waterbody.
- (3) Identify a list of waterbodies for each special designation.
- (4) Specify antidegradation implementation procedures for OSRWs, ONRWs, and any other newly established designation.

The special designations rulemaking was initiated as a part of the Triennial Review of Water Quality Standards rulemaking that was published at first notice, LSA Document #97-1(WPCB), 20 IR 1231 (February 1, 1997), and second notice, LSA Document #97-1(WPCB), 22 IR 1659 (February 1, 1999). The Triennial Review rulemaking was withdrawn in 2001. The special designations issues were addressed by the 2000 General Assembly with the passage of Public Law 140-2000, which provided the factors and process for considering and designating waterbodies as OSRWs or ONRWs. This law was codified at [IC 13-18-3-2](#). It established that waterbodies already designated as OSRWs would retain that designation and that any additional designations could not be made until antidegradation implementation procedures were established by rule. This law also established essential antidegradation requirements for OSRWs to be included in a future rulemaking.

The 2009 General Assembly passed Public Law 78-2009, which included the following language:

"Each exceptional use water (as defined in [IC 13-11-2-72.5](#), before its repeal) designated by the board before June 1, 2009, becomes an outstanding state resource water on June 1, 2009, by operation of law."

This law also recognized the following four classifications of waters: ONRWs, OSRWs, high quality waters, and impaired waters. These classifications of waters are in relation to the antidegradation standards. This law was also codified at [IC 13-18-3-2](#). Limited use waters were not included as a classification. Limited use water designations establish a designated use and are not equivalent to the classification of waters that are impaired. The recent adoption of the Antidegradation Standards and Implementation Procedures rule at [327 IAC 2-1.3](#) specified antidegradation standards and implementation procedures for ONRWs, OSRWs, high quality waters, and impaired waters.

IDEM believes the requirements of [327 IAC 2-1.5-18\(e\)](#) have now been fulfilled through the statute additions at [IC 13-18-3-2](#) and through the antidegradation standards and implementation procedures under [327 IAC 2-1.3](#). Therefore, one purpose of this rulemaking is to delete [327 IAC 2-1.5-18\(e\)](#) because it is no longer necessary. A second purpose is to apply the language of Public Law 78-2009 that makes exceptional use waters OSRWs to the affected administrative rules. In addition, since OSRW is a classification of waters established at [IC 13-18-3-2\(v\)](#) with respect to the antidegradation standards, a third purpose of this rulemaking is to remove OSRW from the list of designated uses in [327 IAC 2-1-3](#) and [327 IAC 2-1.5-5](#).

Alternatives to Be Considered Within the Rulemaking

This rulemaking is necessary to amend administrative rules in Title 327 for compliance with [IC 13-18-3-2](#). If IDEM were to do the following alternatives, Title 327 would be in conflict with statute:

Alternative 1. Retain exceptional use waters as a classification of waters.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.

- Is this alternative imposed by federal law or is there a comparable federal law? This alternative is not imposed by federal law and there is no comparable federal law. It is a "state-only" requirement.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Alternative 2. Retain the requirement at [327 IAC 2-1.5-18](#)(e) to conduct a special designation rulemaking.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? This alternative is not imposed by federal law and there is no comparable federal law. It is a "state-only" requirement.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Alternative 3. Keep OSRW on the list of designated uses at [327 IAC 2-1-3](#) and [327 IAC 2-1.5-5](#).

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? This alternative is not imposed by federal law and there is no comparable federal law. It is a "state-only" requirement.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Applicable Federal Law

The specific revisions to Title 327 under this rule are in response to state statutory requirements, but, since the revisions are to water quality standards as required under the Clean Water Act (CWA) according to 40 CFR 131.4, they must be reviewed by the United States Environmental Protection Agency and approved or disapproved according to 40 CFR 131.5.

Potential Fiscal Impact

This rulemaking adds no fiscal impact to any entity, NPDES permit holders or potential permit holders, IDEM, or any governmental unit, because it is a rulemaking to modify administrative rules according to the requirements of [IC 13-18-3-2](#). The modifications eliminate the requirement for a special designations rulemaking because that requirement has been satisfied by the statutory changes of Public Law 140-2000 and the completion of the antidegradation standards and implementation procedures rulemaking. The elimination of exceptional use waters and renaming them as OSRWs is required by Public Law 78-2009 and has no fiscal impact.

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

For purposes of [IC 4-22-2-28.1](#), small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Jessica Faust-Hamblin
IDEM Small Business Regulatory Coordinator
MC 60-04 IGCS W041
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 232-8172 or (800) 988-7901
ctap@idem.in.gov

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-5](#) is:

Eric P. Shields
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204
(317) 234-3997
smallbizombudsman@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-5](#), specifically [IC 5-28-17-5\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Brad Baughn
IDEM Small Business Assistance Program Ombudsman
MC 50-01 IGCN 1301
100 North Senate Avenue
Indianapolis, IN 46204-2251

(317) 234-3386 or (800) 451-6027

bbaughn@idem.in.gov

Public Participation and Work Group Information

At this time, no work group is planned for the rulemaking. If you feel that a work group or other informal discussion on the rule is appropriate, please contact MaryAnn Stevens, Rule Development Branch, Office of Legal Counsel at (317) 232-8635 or (800) 451-6027 (in Indiana).

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.

Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:

LSA Document #13-290 (Spec. Desig/EUW Amendments)

MaryAnn Stevens

Rule Development Branch

Office of Legal Counsel

Indiana Department of Environmental Management

100 North Senate Avenue

MC 65-41

Indianapolis, IN 46204-2251

- (2) By facsimile to (317) 233-5970. Please confirm the timely receipt of your faxed comments by calling the Rule Development Branch at (317) 233-8903.

- (3) By electronic mail to mstevens@idem.in.gov. To confirm timely delivery of your comments, please request a document receipt when you send the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the e-mail address indicated in this notice.**

- (4) Hand delivered to the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, in order to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

COMMENT PERIOD DEADLINE

All comments must be postmarked, faxed, or time stamped not later than August 2, 2013. Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from MaryAnn Stevens, Rule Development Branch, Office of Legal Counsel, (317) 232-8635 or (800) 451-6027 (in Indiana).

Nancy King, Chief
Rule Development Branch
Office of Legal Counsel

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