TITLE 327 WATER POLLUTION CONTROL DIVISION

FIRST NOTICE OF COMMENT PERIOD
LSA Document #14-58

AQUATIC LIFE AND HUMAN HEALTH AMBIENT WATER QUALITY CRITERIA (WQC) FOR METALS

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on its intent to revise Indiana's Aquatic Life and Human Health Ambient WQC for metals. Revisions to criteria reflect updates to National Recommended Water Quality Criteria (NRWQC) at Section 304(a) of the Clean Water Act (CWA). This review is being conducted to evaluate the need to update or revise these criteria in order to remain consistent with state and federal laws and to ensure that Indiana's WQC for metals continue to reflect the best available science and support sound water quality management policies to improve and protect the water resources of the state. Based on the latest scientific knowledge, updated aquatic life and human health ambient WQC for metals may become more or less stringent than current criteria. 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 2-1-6; 327 IAC 2-1.5-8.

AUTHORITY: IC 13-14-8; IC 13-18-3-2.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

The CWA requires the states to periodically review and update their water quality standards (WQS) as appropriate. The proposed revisions to these metal criteria reflect updates to NRWQC at Section 304(a) of the CWA. The criteria to be revised are located in 327 IAC 2-1-6 for waters not within the Great Lakes System and 327 IAC 2-1.5-8 for waters within the Great Lakes System.

Indiana has delegation from the federal government to conduct the state's water quality programs, including the National Pollutant Discharge Elimination Program (NPDES), that establishes wastewater discharge permit limitations based on the established water quality criteria for parameters in discharges. WQC form the basis for the maximum allowable concentrations of chemical pollutants and are used as the regulatory targets for permitting, compliance, enforcement, and monitoring and assessing the quality of the state's waters and the development of Total Maximum Daily Loads (TMDLs). This rulemaking will accomplish an update of metals criteria. Please refer to the IDEM web site at: http://in.gov/idem/cleanwater/2329.htm under the "Active Projects" heading for a document of tables containing the proposed revisions.

IDEM seeks comment on the affected citations listed, including suggestions for specific language, any other provisions of Title 327 that may be affected by this rulemaking, and alternative ways to achieve the purpose of the rulemaking.

Alternatives to Be Considered Within the Rulemaking

Alternative 1. The option to do rulemaking to amend the metals WQC currently in Title 327 in order to update the criteria to the NRWQC will keep Indiana's delegated water quality programs compliant with federal requirements that states periodically review and update their WQS as appropriate.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? Yes.
- Is this alternative imposed by federal law or is there a comparable federal law? Yes.
- If it is a federal requirement, is it different from federal law? No.
- If it is different, describe the differences. Not applicable (NA).

Alternative 2. Do not amend existing rules. The option to do no rulemaking would not satisfy the federal requirement for states to periodically review and update their WQS as appropriate and to amend the metals WQS currently in Title 327 in order to update the criteria to the NRWQC.

- 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? No.
- If it is a federal requirement, is it different from federal law? Yes.
- If it is different, describe the differences. Not applicable (NA).

Applicable Federal Law

The CWA requires states to adopt WQS and to review and revise the WQC based on best available science. Indiana is delegated to conduct the water quality programs required under the CWA.

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 1. The proposed revisions to the metals criteria are nationally recommended at Section 304(a) of the CWA. If the state does not make these metals criteria revisions, the United States Environmental Protection Agency (U.S. EPA) could over promulgate the state's rules to revise the state's

WQC or deny approval to NPDES permits with limits not based on updated criteria. This rulemaking to revise metals criteria has no potential fiscal impact beyond the federal requirement.

Potential Fiscal Impact of Alternative 2. If U.S. EPA were to over promulgate the state's rules to revise the state's WQC, there could be loss of federal funding to the state's water quality programs. If U.S. EPA were to deny approval to NPDES permits with limits not based on updated criteria, dischargers in need of permits would face delays and uncertainty.

Small Business Assistance Information

IDEM established a compliance and technical assistance program (CTAP) 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:

Jacob Schpok
Indiana Small Business Development Center
One North Capitol, Suite 600
Indianapolis, IN 46204
(317) 232-8805
ombudsman@osbe.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:

Steven N. Howell
IDEM Small Business Assistance Program Ombudsman
MC 50-01 IGCN 1301
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 232-8587 or (800) 451-6027
snhowell@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, Rules 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 #14-58 Metals Criteria Revisions
MaryAnn Stevens
Rules Development Branch
Office of Legal Counsel
Indiana Department of Environmental Management
Indiana Government Center North
100 North Senate Avenue
Mail Code 65-41
Indianapolis, IN 46204-2251

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

(3) By electronic mail to mstevens@idem.in.gov. To confirm timely delivery of submitted comments, please request a document receipt when sending 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 email 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 April 4, 2014. 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, Rules Development Branch, Office of Legal Counsel, (317) 232-8635 or (800) 451-6027 (in Indiana) or Shivi Selvaratnam, Ph.D., Technical Environmental Specialist, Office of Water Quality, (317) 234-7914 or (800) 451-6027 (in Indiana).

Nancy King, Chief
Rules Development Branch
Office of Legal Counsel

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