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**TITLE 327 WATER POLLUTION CONTROL DIVISION****FIRST NOTICE OF COMMENT PERIOD**

LSA Document #18-238

**NPDES GENERAL PERMITS****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on new rules and amendments to rules in [327 IAC 5](#) and [327 IAC 15](#) concerning National Pollutant Discharge Elimination System (NPDES) general permits governed by 40 CFR 122 and general permits administered by the United States Environmental Protection Agency (U.S. EPA). 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 5](#); [327 IAC 15](#).

**AUTHORITY:** [IC 13-14-8](#); [IC 13-15-1-2](#); [IC 13-15-2](#); [IC 13-18-3](#); [IC 13-18-4](#).

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

In 1992, 1994, and 2003, the Water Pollution Control Board (WPCB), predecessor to the Environmental Rules Board (ERB), adopted [327 IAC 15](#), "NPDES General Permit Rule Program", to provide general permits for selected discharge activities that were accepted as being so similar that a general permit could be issued instead of an individual permit for each discharger. The general permit establishes the requirements for the category of discharge activity, and those dischargers who believe their discharge fits within that category are required to request coverage under the general permit by submitting a notice of intent to IDEM. Article 15 was based on programs and procedures in place at the time of its adoption, and the state's General Permit Rule Program provided for a permit-by-rule process for dischargers to acquire coverage under a general permit.

U.S. EPA, Region 5, notified IDEM of its objection to the permit-by-rule process of general permit coverage in a letter dated March 9, 2010, and provided two causes of objection. One cause of objection was U.S. EPA's finding that "... the Indiana statute conflicts with EPA regulations governing state NPDES programs at 40 CFR 123.25(c), which provides:

(c) State NPDES programs shall ensure that any board or body which approves all or portions of permits shall not include as a member any person who receives, or has during the previous 2 years received, a significant portion of income directly or indirectly from permit holders or applicants for a permit.

EPA promulgated this regulation consistent with nearly identical language at CWA (Clean Water Act) Section 304(i)(2)(D), 33 U.S.C. 1314(i)(2)(D). Under the CWA and its implementing regulations, an NPDES permit cannot be issued by a board, a member of which is employed by an entity holding an NPDES permit, as mandated by [IC 13-18-1-2\(a\)\(2\)\(B\)](#)." (U.S. EPA Region 5 letter dated March 9, 2010.)

The previous WPCB, under now-repealed [IC 13-18-1-2](#), included a member who was required to be a representative of a manufacturing entity that held an NPDES permit. The ERB, under the current statute at [IC 13-18-8-4](#), must also have a manufacturing representative as a member although there is no requirement to hold an NPDES permit. However, the current ERB includes a representative of a manufacturing entity that does hold an NPDES permit. This creates a conflict of interest because the approval of a permit-by-rule general permit makes the ERB the issuer of the general permit since the rules that allow a permit-by-rule process are rules adopted by the ERB. U.S. EPA recommended and IDEM agreed that the best solution for eliminating this conflict of interest is to transfer the authority to issue general permits from the rule approving board to the commissioner of IDEM. This transition was accomplished for the five general permits-by-rule repealed in a previous rulemaking, LSA Document #10-659(F). This rulemaking will make the same transition of authority for the remaining five general permits-by-rule that were not repealed under LSA Document #10-659(F).

The second cause of objection by U.S. EPA in its March 9, 2010, letter was the lack of a timely renewal process for the NPDES general permits under the permit-by-rule process. The NPDES program of the CWA requires all permits, including general permits, to have an expiration date not later than five years from issuance. The transition of authority for the remaining five categories of general permits will allow a more efficient process and ensure timely renewal of the administratively issued general permits.

In July 2015, the ERB adopted LSA Document #10-659(F) concerning amendments to the NPDES General Permit Rule Program that made some of the changes requested by U.S. EPA. That rulemaking started with the intention to repeal all ten of the then existing general permits-by-rule included in [327 IAC 15](#) and replace them with rules allowing for administrative issuance by the commissioner of IDEM. The intent of repealing the ten general permits-by-rule was not achieved in that rulemaking because IDEM had developed only five of the replacement general permits for administrative issuance. The associated five permits-by-rule were repealed by

LSA Document #10-659(F), but the other five were maintained in Article 15 with the understanding that they would be repealed in a future rulemaking once the agency developed replacement general permits for administrative issuance. This rulemaking will address the remaining five general permits-by-rule, which include the following:

- Rule 5. Storm Water Run-Off Associated with Construction Activity
- Rule 6. Storm Water Discharges Exposed to Industrial Activity
- Rule 7. Facilities Engaged in Mining of Coal, Coal Processing, and Reclamation Activities
- Rule 13. Storm Water Run-Off Associated with Municipal Separate Storm Sewer System Conveyances
- Rule 14. On-Site Residential Sewage Discharging Disposal Systems within the Allen County On-Site Waste Management District

The conversion from permit-by-rule general permits to administratively issued general permits is intended to resolve the issues raised by U.S. EPA and, except where new federal requirements have been put in place since the state's permit-by-rule general permit rules were adopted, changes to the regulatory requirements on affected permit holders should be minimal. All changes to the requirements will be included in the draft administrative permits when they are made available for public comment as required under the CWA.

IDEM is in communication with U.S. EPA about IDEM's development of drafts of the five administrative general permits. The draft permits must be approved by U.S. EPA. If all five are not approved by U.S. EPA when this rulemaking is ready to proceed for one or more of the remaining five, then the general permits for the discharge categories not yet approved by U.S. EPA will be removed from this rulemaking and addressed in a later rulemaking. IDEM must initiate rulemaking to progress with the general permit conversion in order to remove the conflict of interest concern and timely renewal of general permits in the future.

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. Repeal the remaining five permit-by-rule general permits that were not repealed under the final rule LSA Document #10-659(F).

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No, but it is necessary to accomplish the transfer of authority to issue general permits from the ERB to the commissioner of IDEM.
- Is this alternative imposed by federal law or is there a comparable federal law? For states that choose to have a general permits program, there are CWA requirements under the NPDES rules that must be complied with in the general permits program.
- If it is a federal requirement, is it different from federal law? No.
- If it is different, describe the differences. Not applicable.

Alternative 2. Do not repeal or amend existing rules or add new rules to transfer the authority to write NPDES general permits to the commissioner, add expiration dates, and provide for public comment.

- 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? For states that choose to have a general permits program, there are CWA requirements under the NPDES rules that must be complied with in the general permits program.
- If it is a federal requirement, is it different from federal law? Yes.
- If it is different, describe the differences. This alternative would leave Indiana with the deficiencies identified by U.S. EPA, and Indiana's NPDES program would not be in compliance with the CWA.

#### **Applicable Federal Law**

Clean Water Act Section 304(i) (33 U.S.C. 1314(i)), "Guidelines for monitoring, reporting, enforcement, funding, personnel, and manpower".

Clean Water Act Section 402(b) (33 U.S.C. 1342(b)), "National Pollutant Discharge Elimination System: State permit programs".

40 CFR 122, "EPA Administered Permit Programs: The National Pollutant Discharge Elimination System".

40 CFR 124, Subpart D, "Specific Procedures Applicable to NPDES Permits".

#### **Potential Fiscal Impact**

Potential Fiscal Impact of Alternative 1. Eliminating the rules for the remaining five categories of permit-by-rule general permits will create no fiscal impact to the entities that could be regulated under the rules.

Potential Fiscal Impact of Alternative 2. This alternative will have no direct cost to regulated entities.

However, it may result in withdrawal of U.S. EPA approval of Indiana's NPDES general permit program, imposing significant new costs on regulated entities as they are required to obtain individual NPDES permits from U.S. EPA.

#### **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 and other resources available can be found at:

[www.in.gov/idem/ctap](http://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:

Angela Taylor  
IDEM Small Business Regulatory Coordinator/CTAP Small Business Liaison  
IGCN 1316  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 233-0572 or (800) 988-7901  
[ctap@idem.in.gov](mailto:ctap@idem.in.gov)

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-6](#) is:

Katelyn Colclazier  
Small Business Ombudsman  
Indiana Economic Development Corporation  
One North Capitol, Suite 700  
Indianapolis, IN 46204  
(317) 431-1560  
[kcolclazier@iedc.in.gov](mailto:kcolclazier@iedc.in.gov)

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-6](#), specifically [IC 5-28-17-6\(9\)](#), 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:

Erin Moorhous  
IDEM Small Business Assistance Program Ombudsman/Business, Agricultural, and Legislative Liaison  
IGCN 1301  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 232-8921 or (800) 451-6027  
[emoorhou@idem.in.gov](mailto:emoorhou@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 #18-238 NPDES General Permits  
MaryAnn Stevens  
Rules Development Branch  
Office of Legal Counsel  
Indiana Department of Environmental Management  
Indiana Government Center North  
100 North Senate Avenue  
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) 232-8922.

- (3) By electronic mail to [mstevens@idem.in.gov](mailto: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 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 July 9, 2018. 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).

Christine Pedersen, Section Chief  
Rules Development Branch  
Office of Legal Counsel

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An [html](#) version of this document.