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**TITLE 327 WATER POLLUTION CONTROL DIVISION**

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**FIRST NOTICE OF COMMENT PERIOD**

LSA Document #18-271

**GREAT LAKES BASIN COMBINED SEWER OVERFLOW ENHANCED PUBLIC NOTIFICATION****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on a new rule in [327 IAC 5](#) to incorporate the new federal rule regarding public notification requirements for authorized combined sewer overflow (CSO) discharges to the Great Lakes Basin and amendments to NPDES rules in [327 IAC 5](#) to include changes required by the new rule. 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 5-2-3](#); [327 IAC 5-2-8](#); [327 IAC 5-2.1](#).

**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**

The new final rule from the United States Environmental Protection Agency (U.S. EPA) implements Section 425 of the Consolidated Appropriations Act of 2016, which requires U.S. EPA to work with the Great Lakes States to establish public notification requirements for combined sewer overflow discharges to the Great Lakes Basin. The new rule at 40 CFR 122.38 will be incorporated by reference into [327 IAC 5](#). The requirements of this rule apply to NPDES permittees authorized to discharge a CSO to the Great Lakes Basin. Requirements related to the Great Lakes Basin CSO Enhanced Public Notification rule that affect NPDES permit rules will be included in existing rules at [327 IAC 5-2](#) through amendments.

The purpose of this rule is to protect public health by ensuring timely notification to the public, public health departments, public drinking water facilities, and other potentially affected public entities. Timely notice of a CSO discharge may allow the public and affected public entities to take steps to reduce the public's potential exposure to pathogens associated with human sewage, which can cause a wide variety of health effects, including gastrointestinal, skin, ear, respiratory, eye, neurologic, and wound infections.

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. Include the federal requirements for public notification for Great Lakes Basin CSO dischargers into state rules.

- 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.

Alternative 2. Do not include the federal requirements for public notification for Great Lakes Basin CSO dischargers into state rules.

- 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? Not applicable.
- If it is different, describe the differences. Not applicable.

**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 123, "State Program Requirements".

**Potential Fiscal Impact**

Potential Fiscal Impact of Alternative 1. There is no fiscal impact from the Great Lakes Basin CSO Enhanced Public Notification rule beyond what is federally required. The CSO Public Notification rule at [327 IAC 5-2.1](#) has been in effect since 2003 for all CSO dischargers throughout the state, and Great Lakes Basin CSO dischargers, having complied with the statewide rule requirements, will be familiar with many of the federal requirements. Once initial implementation has occurred to shift from meeting state to federal rule requirements, costs will be limited

mostly to staff time spent in posting electronic messages by text, e-mail, or social media in order to fulfill the notification requirements within four hours of becoming aware that a CSO discharge has occurred.

Potential Fiscal Impact of Alternative 2. If the Great Lakes Basin CSO Enhanced Public Notification rule is not included in state rules, there will be no fiscal impact on Great Lakes Basin CSO dischargers, but Indiana could lose its authority to conduct the NPDES and other water quality related programs delegated to the state from the 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 #18-271 Great Lakes Basin CSO Notification  
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 August 13, 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.