

Document: Proposed Rule, **Register Page Number:** 26 IR 829

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**TITLE 327 WATER POLLUTION CONTROL
BOARD**

Proposed Rule
LSA Document #01-96

DIGEST

Amends rules concerning storm water discharges under 327 IAC 5 NPDES and pretreatment programs. Adds new rules under 327 IAC 15 NPDES general permit rule program related to municipal separate storm sewer systems. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: April 1, 2001, Indiana Register (24 IR 2244).
Second Notice of Comment Period and Notice of First Hearing: January 1, 2002 (25 IR 1353).
Preliminary Adoption Hearing: May 8, 2002. Hearing opened and continued to June 12, 2002.
Preliminary Adoption Hearing: June 12, 2002. Hearing opened and continued to July 10, 2002.
July 10, 2002, Water Pollution Control Board meeting was cancelled.
Notice of Preliminary Adoption Hearing: August 1, 2002, Indiana Register (25 IR 3805).
Date of First Hearing: August 14, 2002.

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 substantively 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 twenty-one (21) days long.

REQUEST FOR PUBLIC COMMENTS

Portions of this proposed rule are substantively different from the draft rule published on January 1, 2002, at 25 IR 1353. The Indiana Department of Environmental Management (IDEM) is requesting comment on the following portions of the proposed (preliminarily adopted) rule that are substantively different from the language contained in the draft rule.

The following sections of the proposed rule are substantively different from the draft rule:

327 IAC 5-4-6
327 IAC 15-13-2
327 IAC 15-13-3
327 IAC 15-13-5
327 IAC 15-13-6
327 IAC 15-13-7
327 IAC 15-13-8
327 IAC 15-13-9
327 IAC 15-13-10
327 IAC 15-13-14
327 IAC 15-13-15
327 IAC 15-13-16
327 IAC 15-13-17
327 IAC 15-13-20

This notice requests the submission of comments on the sections of the rule listed above, including suggestions for specific amendments to those sections. These comments and the department's responses thereto will be presented to the board for its consideration at final adoption under IC 13-14-9-6. Comments on additional sections of the proposed rule that the commentator believes are substantively different from the draft rule may also be submitted for the consideration of the board. Mailed comments should be addressed to:

#01-96 General Permits-MS4 Storm Water Rules
Larry Wu
Rules Section Chief
Office of Water Quality

Indiana Department of Environmental Management
P.O. Box 6015
Indianapolis, Indiana 46206-6015.

Hand delivered comments will be accepted by the receptionist on duty at the twelfth floor reception desk, Office of Water Quality, 100 North Senate Avenue, Indianapolis, Indiana. Comments may also be submitted by facsimile to (317) 232-8406, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Section at (317) 233-8903.

COMMENT PERIOD DEADLINE

Comments in any form must be postmarked, hand delivered, or faxed by December 21, 2002.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from January 1, 2002, through January 31, 2002, on IDEM's draft rule language. IDEM received comments from the following parties:

American Consulting, Inc. (ACI)
Area Plan Commission Evansville-Vanderburgh County (APC)
City of Elkhart (COE)
City of Evansville (CE)
City of Fort Wayne (COFW)
City of Kendallville (COK)
City of Valparaiso (COV)
Commonwealth Engineers, Inc. (CEI)
Hamilton County Surveyor's Office (HC)
Hancock County Board of Commissioners (HBC)
Indiana Association of Cities and Towns (IACT)
Indiana Department of Natural Resources (DNR)
Indiana Department of Transportation (INDOT)
Indiana Manufacturers Association (IMA)
Monroe County Highway Department (MCHD)
Purdue University (PU)
Sanitary District of Michigan City (SDMC)
Save the Dunes Council (STDC)
Town of Brownsburg (TOB)
University MS4 Workgroup (UW)
Vanderburgh County Board of Commissioners (VBC)
Vanderburgh County Engineering Department (VCED)
Warrick County (WC)

Following is a summary of the comments received and IDEM's responses thereto. The summarized comments are being divided into categories so as to focus on issues.

327 IAC 5-4-6 Comments

Comment: In former subsections (a)(2), (a)(3), (a)(5), (a)(6), and (e), the applicability of this rule to regulated municipal separate storm sewer system (MS4) entities under 327 IAC 15-13 is unclear. Apparent confusion exists over the MS4 operator's authority in regulating industrial facilities, land disturbing activities outside of urbanized areas, and administering individual NPDES permits for industrial facilities. Since there is no definition in this rule, the definition of United States Census Bureau urbanized area map, in relation to a density stipulation of one thousand (1,000) or five hundred (500), is unclear. (MCHD)

Response: This rule sets the authority for IDEM to issue individual and general NPDES permits for regulating storm water discharges. The rule is not intended to contain the requirements for MS4 operators regulated under 327 IAC 15-13. As for defining urbanized area, subsection (g) of the rule references 327 IAC 15-13 for the meaning of the term.

Comment: In former subsection (a)(8), discharges associated with departments of transportation (DOTs) and county highway departments are subject to the NPDES program. The regulation is confusing as to county roads being regulated outside of urbanized areas. If the same requirements as 327 IAC 15-13 are applicable to Indiana DOT conveyances on a statewide basis, the cost incurred for compliance would be burdensome. If IDEM considers roadside drainage ditches to be waters of the state, Indiana DOT is requesting that points where storm water run-off enters a waterbody from these ditches be identified as the outfall for purposes of assessment and illicit detection. (MCHD, INDOT)

Response: Subsection (a) was revised to clarify that subdivision (3) applies only to the Indiana DOT. References to municipal street department and county highway department MS4 conveyances and operational areas were moved into subsection (b)(3), (4), and (5). Indiana DOT will not be regulated by 327 IAC 15-13, and the specific requirements, including the identification of outfall points, will be developed during the discussions for writing an individual NPDES permit under this referenced subsection.

Comment: In former subsection (g), the reference to 327 IAC 2-1-6(a)(1) should be expanded to include a reference to 327 IAC

2-1.5-8 for discharges to Indiana's Great Lakes Basin waters. Immediate compliance with this referenced requirement is unrealistic and some time period should be allowed to reach compliance. It is unclear if this reference imposes water quality-based effluent limitations (WQBELs) pursuant to 327 IAC 5-2-11.1 or 5-2-11.3 through 11.6 or some other permit condition. If WQBELs are not the intended reference, the rule language does not contain any ascertainable standards for imposed conditions, is mandatory and likely inconsistent with existing rule language, and should reference WQBELs in place of inadequate technology-based effluent limitations. Based on interpretation of Article 5, it is felt that standards should not apply until they are translated into effluent limitations. (STDC, IMA, ACI)

Response: Specific citation references to water quality standards have been removed. The narrative water quality standards are applicable to all NPDES-permitted discharges, and numeric effluent limitations are not necessary to have these standards become effective. Due to the high variability of pollutant concentrations in storm water discharges, setting numeric effluent limitations for all regulated MS4 areas is difficult and not appropriate at this time. If warranted in specific instances, individual NPDES storm water permits could be issued with numeric effluent limitations.

Comment: In former subsection (h), discharges of storm water run-off combined with municipal sewage are not subject to this section. Under Phase I federal storm water requirements, there was an allowance for municipalities that have a significant percentage of their total storm water conveyance system classified as combined to "drop out" of the storm water permitting requirements. Only the population served by the separated portion of the total conveyance system should be used in the threshold calculations for designation. This rule and the designation requirements in 327 IAC 15-13-3 should be revised to reflect the percentage of combined sewer system allowance. (IACT)

Response: Subsection (e) states that storm water discharged into combined sewer systems (CSS) are not subject to this section of the rule. CSS are not regulated by 327 IAC 5-4-6 or 327 IAC 15-13. For designation purposes in 327 IAC 15-13-3, the CSS percentage petition allowed in 40 CFR 122.26(f)(3) was deemed inappropriate for Indiana. The petition allowance is based, in part, on CSS municipalities having to implement nine (9) minimum control measures, which are similar to storm water measures, for their wastewater NPDES permit. However, two (2) of the storm water measures, control of construction site and postconstruction run-off, are not covered by the nine measures. Because of the difference, it was felt that CSS requirements were insufficient to adequately address all of the storm water program requirements.

327 IAC 15-13 Comments

General Comments

Comment: The public comment period should be extended, and examples should be provided on ways regulated MS4 entities can meet the compliance schedule deadlines, while developing intra-jurisdictional agreements. (TOB)

Response: The second public comment period ended on January 31, 2002. The public has opportunities to provide public comments during the hearings for preliminary and final adoption to the Water Pollution Control Board. In 2001, IDEM began notifying and informing potentially regulated MS4 entities of the rule requirements and the need to initiate discussions to develop intra-jurisdictional agreements. If new MS4 entities are subject to this rule, revised timetable language for compliance related to the department's notification date was added.

Comment: The Rule 13 program promises verifiable improvement in water quality from municipal separate storm sewers. However, it is unclear the amount of direct assistance (if any), and oversight IDEM or Indiana department of natural resources will provide based on the apparent state inadequacy of resources. (STDC)

Response: The desired outcome of this program is to improve the quality of municipal storm water discharges. Similar to all NPDES permits, IDEM is seeking to establish permitting fees for the storm water program. Collected fees will, in part, be used to adequately staff the program.

Comment: The new rule seems to be more of an oppression than a positive factor for cities and utilities. Cities are not aware of any environmental disasters due to storm water contamination that would warrant such sweeping and costly change. As an example of this cost, combined sewer system communities have spent monies to separate their systems to prevent noncompliance, only to have additional funding needs arise when storm water requirements take effect. Industries and builders/developers are also burdened by the new requirements. Existing storm water requirements are already known to the regulated community and generally complied with, and do not need added stipulations. (COK)

Response: Phase II of the federal storm water regulations, which affects municipalities, industries and builders/developers, was mandated by the United States Environmental Protection Agency. Revisions to Indiana's existing rules are necessary to comply with the mandated changes, and a new rule to regulate municipalities was required. According to the December 1999 NPDES Final Rule covering 40 CFR Parts 9, 122, 123, and 124 in the Federal Register, and the 1996 National Water Quality Inventory Report to Congress, storm water pollution has been documented as a significant cause of impact to various types of waters in the United States. Combining the mandate with the documented impact from storm water run-off, Indiana's storm water program is attempting to achieve federal compliance and improve overall water quality in the state.

Comment: County government has enough of a negative image without unnecessarily adding to it. There appears to be a disconnect between the people who are writing the rules and the people who will have to enforce them. The people writing the rules should be the same ones to face the public when they raise concerns or opposition. It is not good when programs, based on a good idea, are forced on the regulated community when the requirements are not agreed upon. There are financial issues (for example, cutbacks, recession, tax reassessment, ongoing war) throughout the country, and, if imposed measures require questionable expenses, there will be a backlash against storm water quality programs that will have long-term consequences. Rule 13 seems to say that municipalities should spend money to improve storm water quality, but the improvement expenditures are indefinite. Since the rule does not address all existing land uses, there is no ultimate water quality goal. Storm water quality is an important issue, but so are other issues that

require resources. The rule should be implemented, but without the “bells and whistles.” The relationship between IDEM and MS4 operators should be a partnership, and not a dictatorship. (MCHD)

Response: Rule 13 was developed by an external workgroup, comprised of many regulated entities, who reached a consensus regarding the draft rule language. The rule version published in the January 2002 Indiana Register was the output of this workgroup effort. The Indiana Register version, and the subsequent revised version based on public comments, reflect input and concerns of the public. One of the end results of this public input has been to write a flexible goal-oriented storm water program that requires programmatic indicators in place of mandatory biological or chemical water quality monitoring.

Comment: Standard state-wide water quality requirements need to be reviewed and changed. The triennial review of water quality standards is late, and there has been no justification for this delay. (HC)

Response: Triennial review may address the requirements of 327 IAC 2-1-6(a)(1) and 327 IAC 2-1.5-8 pertaining to all NPDES-permitted discharges. However, the timetable for this review is not under consideration as part of this rulemaking. External meetings with stakeholder groups on the triennial review rulemaking(s) have been initiated and key issues are being discussed.

Comment: The rule should add clear language to describe the differences between a general permit and an individual permit. (IACT)

Response: 327 IAC 15-13 establishes the requirements for a general MS4 permit. 327 IAC 5-4-6 provides the authority for IDEM to issue an individual MS4 permit. Unlike the “general” conditions required by Rule 13, individual MS4 permits will be written, with input from the permittee, to reflect the specific conditions of a permittee’s MS4 area. As such, it is not feasible to describe the differences until an individual permit is actually written.

Comment: Many of the IDEM requirements far exceed federal requirements. This adherence to stronger, stricter regulations is overly burdensome, and without justification. Any requirements that are more stringent than federal regulations should be reconsidered, and possibly added at a later date to allow time for regulated entities to develop an appropriately funded and staffed program first. Also, prior to placing more stringent and costly regulations on citizens and government agencies, a review of the effectiveness of Phase I storm water regulations should be conducted. (WC, TOB)

Response: Indiana’s version of the Phase II MS4 rule, seeks to clarify ambiguities with the federal requirement. The external Rule 13 development workgroup reached consensus that the rule should detail specific requirements, where possible, to maintain consistency for compliance and to portray state expectations for an adequate program. Many of the regulation requirements have been suggested to remove some of the subjectivity of the federal rule and to add specific requirements deemed important for Indiana by the external workgroup.

Comment: It is confusing that IDEM is willing to force a costly program into effect that will likely make a small difference in water quality, while storm water discharges from rural areas remain unregulated. There should be some regulatory consideration of other sources of storm water quality impact, such as nonpoint sources in rural areas. (TOB)

Response: Included in the December 1999 NPDES final rule covering 40 CFR Parts 9, 122, 123, and 124 in the federal register, the U.S. EPA justified the regulation of urbanized areas. In that document, storm water run-off from urbanized areas was documented as a significant contributor of pollutants to waters of the United States. IDEM’s proposed rule is addressing the same urbanized areas as those in the federal regulations. The omission of rural areas from storm water requirements is consistent with federal language.

Comment: In relation to local associations and state-maintained roadways, MS4 entity responsibilities under the rule are unclear. The rule needs to clarify which entities are covered by the rule within a given designated MS4 area. (TOB)

Response: MS4 entities are only responsible for areas in which they have jurisdiction, unless an agreement between affected parties is created to legally allow the jurisdictional area to be extended. The Indiana department of transportation will have an individual MS4 permit covering their jurisdictional conveyances, and home owner association MS4 conveyances may be covered by a regulated MS4 entity with the appropriate agreement, or, if the discharge is impacting a regulated MS4 conveyance without an agreement, can be permitted separately. Any entity, as defined in the rule, within a regulated MS4 area can be potentially permitted by this rule.

Comment: Since the guidance document that accompanies this rule could have a significant impact on the scope of a storm water quality program, it is suggested to have draft versions of this document available for public comment as early as possible. (MCHD)

Response: A guidance document cannot affect the scope of the rule. The scope is established by the rule itself. The guidance document can, however, help all regulated parties understand the scope and effect of the rule. Draft versions of the guidance document created with input from an external workgroup are public documents, and will be available to interested individuals. The timetable for development of the guidance document will coincide with final adoption of the rule.

Comment: It is unclear what the fees are associated with Rule 13. (TOB)

Response: Fees associated with Rule 13 are not part of this rulemaking. Proposed fees have not been created, but will be presented to either the Water Pollution Control Board during a separate rulemaking, or the Indiana legislature as part of a statutory revision.

Designation

Comment: In section 3(a) and (b), federal regulations seem to require designation consideration for communities with populations greater than one hundred thousand (100,000), and the state designation requirements should be consistent with this federal requirement. (COK)

Response: IDEM’s designation criteria is consistent with federal requirements. Under 40 CFR 122.32, “small” MS4 entities (those entities with a population served by a MS4 less than one hundred thousand (100,000) people) are regulated if they are located within an urbanized area or designated by the NPDES permitting authority. Outside of mapped urbanized areas, IDEM, as the permitting authority, has chosen to potentially designate MS4 municipalities with populations seven thousand (7,000) and above.

Comment: In section 3(a), the designation requirement for smaller institutions should be revised to allow small MS4 entities comprised of one (1) to three (3) buildings to not be designated for permit coverage under this rule. This allowance is consistent with

federal storm water language, as these entity types are not different from office buildings or commercial malls which are not designated by this rule. MS4 entities that are currently paying storm water utility fees to another MS4 entity should not be designated, as the maintenance and operation of the MS4 conveyance is assumed to be borne by the entity receiving the fee payment. Full-time equivalent enrollment is an equitable way to determine designation for colleges and universities. (PU, UW)

Response: Under 40 CFR 122.26(b)(16)(iii), the small MS4 definition does not include sewers in very discrete areas, such as individual buildings. Because the number of people is more reflective of considerations for potential storm water impacts than number of buildings, this allowance was not appropriate for colleges and universities meeting the full-time equivalent enrollment threshold. For designation purposes, the issue of MS4 entities paying another regulated MS4 entity for storm water fees is most appropriately handled by the two (2) affected MS4 entities. To seek this designation removal, both the entity paying and the entity receiving the fees must reach some agreement to ensure that the total area is being addressed under one MS4 permit. To be more reflective of on-site conditions, full-time equivalent enrollment is a more useful designation tool than total enrollment for colleges and universities.

Comment: In section 3(a)(1), the reference to 1990 United States Census Bureau urbanized area maps should be deleted, since 2000 maps should be available in 2002. (STDC)

Response: Because 2000 urbanized area maps were unavailable and IDEM wanted to notify as many potentially impacted MS4 entities as possible with sufficient time to start developing the framework for their storm water program, notifications, in part, have been based on 1990 maps. The designation criteria in the rule should be reflective of the data used for notification purposes, and the 1990 map reference will remain at this time. When additional information becomes available from the United States Census Bureau, Rule 13 will be modified accordingly.

Comment: In former section 3(a)(2)(A), the language should read, “county that has a designated UA; or...” to avoid the interpretation that every county is required to obtain a permit. (IACT)

Response: The rule already limits designated counties to those containing a mapped urbanized area. The language “a county...that contains a mapped UA” was revised to remove separate clauses (A) and (B) for clarification and the subsection was revised for clarity.

Comment: In section 3(b), the former term “sensitive water” may be confused with the term “sensitive areas” used in long term control plans. (STDC)

Response: To add consistency with other department programs, “sensitive water” was removed from rule language, and replaced with “sensitive area”. The definition for sensitive area, as added to the rule definitions, is the same as the one used in combined sewer overflow policy.

Comment: In section 3(b), entities may be designated if other environmental or water quality programs are ineffective in protecting water quality concerns. The total maximum daily load process, which is implemented by IDEM, should address this issue, and the language should be deleted from this rule. If the language remains, the terms “ineffective” and “water quality concerns” are unclear and should be defined. (IACT)

Response: As developed and approved, total maximum daily loads (TMDLs) will likely be a principal process in the regulation of storm water discharges. However, most water bodies are several years away from having an approved TMDL, and the existing rule language will allow permit coverage during this transition period. The terms “ineffective” and “water quality concerns” have been deleted.

Comment: In former section 3(c), an entity remains designated unless the commissioner determines that the pollutant contribution from the entity is minimal. The term “minimal” is unclear and should be defined. The mandatory designation duration is unacceptable. If an entity loses population under the threshold designation criteria, the entity should be allowed to “drop out” of the storm water permit program. (IACT)

Response: In section 3(c), an entity remains designated until it’s permit expires unless the termination requirements of section 20 are applicable. Section 20(a)(3) has been added to the rule language. It allows designated entities to request permit termination as threshold conditions change. The term “minimal” has been removed.

Definitions

Comment: In section 5(1), the definition should be changed to read, “improve the quality and/or reduce the quantity....” A best management practice may not always achieve both objectives. The term should include land-use planning and policy techniques. (COV, ACI)

Response: The definition has been revised to “and, as appropriate, reduce....” The terms “land-use planning” and “policy techniques” have been added.

Comment: In section 5(3), the definition should be clarified to address kennels and local laws that restrict canine access to public areas. (SDMC)

Response: The definition has been clarified to exclude kennels.

Comment: In section 5(4), the definition should include the listing of septic tanks as a type of Class V injection well. (STDC)

Response: The definition has been revised to include septic tank systems.

Comment: In section 5(6) and (37), the former reference to the May 1996 Indiana combined sewer overflow (CSO) strategy should be changed to the updated 2001 CSO strategy, which was required under Senate Enrolled Act 431. Since it is widely used and accepted, combined sanitary sewer operational plan or CSSOP should be added to the listing of definitions. (STDC, COV)

Response: All references in the rule to Indiana CSO policy were deleted, and the definitions were revised to reflect existing state regulatory language for consistency. In discussions with IDEM’s CSO program staff, the term combined sanitary sewer operational plan, or CSSOP, is not used and it will not be added to the definitions.

Comment: In section 5(13), “Indiana department of environmental management” should be capitalized. (ACI)

Response: The term will remain as written as it conforms to Legislative Services Agency style.

Comment: In section 5(18) and (28), the definitions should exclude “naturally occurring” materials like leaves, grass clippings, or tree limbs. (VBC, WC, MCHD)

Response: The definitions have been revised to exclude naturally occurring floatables, such as leaves and tree limbs.

Comment: In section 5(38), the term may be confused with the nine (9) minimum control measures of the long term control plan. Because the implication of the current definition is unattainable for most urbanized areas, the former definition should be changed from ensuring “that storm water quality meets the minimum water quality standards”, to “reducing the discharge of pollutants to the maximum extent practicable”. (STDC, COFW, IACT)

Response: The definition states that the measures are required by this rule, and the six (6) applicable measures are listed. No further clarification is needed. The reference to water quality standards in this definition has been deleted.

Comment: In section 5(39), the definition should include reference to storm water utility territories. (ACI)

Response: The current definition is adequate to allow utility territories to be considered MS4 areas. The definition of MS4 in section 5(42) has been revised to include utilities.

Comment: In section 5(40), the definition should clarify the qualifications, if any, for being an MS4 operator, and the operator’s intended role (that is, is the operator an individual or an entity?). (ACI)

Response: The MS4 operator is an individual who is responsible for an MS4 area. Because a qualified professional signs the application and parts of the storm water quality management plan, the MS4 operator does not need to have specific qualifications reflective of storm water management. The operator is a coordinator for implementing a storm water program, and ensuring that responsible individuals for each regulated MS4 entity within the operator’s MS4 area are developing and implementing the appropriate control measures.

Comment: In section 5(42), the language “owned or operated” is unclear. Numerous drainage systems are owned and operated by homeowners associations or individual lot owners. Under this scenario, it appears that homeowners associations may be regulated. The term “operate” should be defined for clarity, so that the extent of regulated MS4 conveyance types (for example, private drains maintained by a regulated MS4 entity) can be determined. (CEI, VCED, WC)

Response: MS4 conveyances owned or operated by homeowners associations within a regulated MS4 area are potentially subject to this rule. MS4 conveyances owned or operated by individual lot owners are considered private drains and not regulated by this rule.

Comment: In section 5(56), the application of this definition appears to contradict situations where private drains (for example, swale and drainage way easements) are maintained by a regulated MS4 entity and should be clarified. Despite the easement, the regulated community regards backyard swales as being privately maintained. (WC, MCHD)

Response: Easement conveyances which are not maintained by a regulated MS4 entity are not required to be addressed under this rule unless the conveyance is an identified source of pollutants. Any conveyance that is actively maintained by a regulated MS4 entity would be regulated by this rule. The guidance document accompanying this rule will clarify issues related to operating MS4 conveyances.

Comment: In section 5(58), the definition should include demonstrated experience. Suggested revised text, “state registration, professional certification, completion of coursework, or experience that...” The term differs from the same term defined under 327 IAC 15-5 and 15-6, and should be consistent. The term is vague, and inappropriately could be interpreted that the rule requires a “professional engineer” or similar registration/certification. (ACI, CEI, IACT)

Response: The phrase, “or experience...” has been added to the definition. The definition for “qualified professional” was edited to have the terms be consistent in 327 IAC 15-13 and 15-6. The term is written to allow for a broad range of individuals, including, but not limited to, professional engineers, to potentially meet the qualification requirements.

Comment: In former section 5(70)(C), the term “relevant community value” is unclear. (STDC)

Response: The term “sensitive water” was deleted from rule language and replaced with “sensitive area.” The definition for “sensitive area” does not reference “relevant community value.”

Comment: In section 5(71), the definition should be changed to read, “means a public or private body or activity that contributes pollutants into an MS4...” A number of bodies could be considered significant contributors of pollutants, but, based on the definition for entity in the rule, would be unregulated. For designation clarification, the definition should be based on qualitative criteria, rather than an all-encompassing term. (COV, ACI)

Response: Because there has been no precedent in establishing qualitative criteria for defining a significant contributor of pollutants, none is being written. Criteria for this definition may be addressed in the guidance document accompanying this rule. MS4 entities, and not IDEM, are responsible for regulating individual businesses or homeowners. Therefore, changing the definition to reflect private bodies or activities is not appropriate. The definition was revised to include industrial facilities, which can be regulated at the state level.

Comment: In section 5(74), the term “objectionable substances” is unclear. (STDC)

Response: Language in this definition was taken from existing state regulations. Using the term “objectionable substances” is consistent with other rules.

Comment: In section 5(81), the word “daily” must be inserted before the word “individual” every time the definition of total maximum daily load is fully stated, and after the phrase “a water body” to reinforce the concept of setting a daily load. (STDC)

Response: Where appropriate, the word “daily” has been inserted for clarity.

Notice of Intent Letter and SWQMP–“Part A” Requirements

Comment: In section 6(b), concerns were raised over the type of qualifications needed to be an MS4 operator and the apparent need

to develop a state-issued registration or certification training process. (WC)

Response: Because a qualified professional signs the application and portions of the storm water quality management plan, the MS4 operator does not need to have specific qualifications reflective of storm water management. The operator is a coordinator for implementing a storm water program and ensuring that responsible individuals for each regulated MS4 entity within the operator's MS4 area are developing and implementing the appropriate control measures. IDEM does not foresee a registration or certification process.

Comment: In section 6(a)(2), the extent of "all known receiving waters" is unclear, related to streams and ditches. (MCHD)

Response: The intent of this requirement is to provide a listing of all known "named" waters that receive storm water discharges from an MS4 area. Receiving waters would include lakes, ponds, reservoirs, rivers, creeks, streams and ditches that are "named" and considered waters of the state.

Comment: In former section 6(a)(4), the appeal procedure should be rewritten and made a separate subsection. Suggestion to change language to read "an aggrieved person must appeal within fifteen (15) days of the second public notice date," and to state specific procedural requirements in the new subsection. To avoid unintended drainage issue conflicts, the rule language "wishes to discharge" should be changed to, "intends to discharge" The intent of the statement "should not be available to the discharger" in clause (F) needs to be clarified. (STDC, COV)

Response: Because it was deemed inappropriate for a general storm water permit, the rule language concerning appeals has been removed.

Comment: In section 6(b)(1), the differences between the MS4 operator, primary contact individual, and responsible individual are unclear. (MCHD)

Response: The MS4 operator is a coordinator for implementing a storm water program, and ensuring that responsible individuals for each regulated MS4 entity within the operator's MS4 area are developing and implementing the appropriate control measures. The primary contact individual is the person who will maintain the records pertaining to an MS4 permit for an MS4 area. This person will act as the primary contact for compliance information, and could be the same individual as the MS4 operator. The responsible individual is a person that is responsible for a regulated MS4 entity's storm water program. This third term would be applicable to co-permittee situations, when each regulated MS4 entity needs to designate a responsible individual.

Comment: In sections 6(c)(3) and 8(a)(9), the requirements for an itemized budget are inappropriate, unrealistic, burdensome, and should be deleted, partly because the budgetary information may not be available by the proposed March 2003 deadline. It is more appropriate to submit budgetary information with the SWQMP—"Part C." Multiple municipal departments and nonsegregated storm water activities make this estimate difficult to obtain. It appears that IDEM is requiring MS4 entities to provide cost estimates for developing and implementing a storm water program, but IDEM should be providing this information as part of the fiscal impact analyses. (HBC, MCHD, ACI, VCED, COE, WC, TOB)

Response: The required budget information is only an initial estimate of monies and sources, and not intended to reflect actual spending. Included in the December 1999 NPDES final rule covering 40 CFR Parts 9, 122, 123, and 124 in the federal register, U.S. EPA conducted a fiscal impact analysis for implementing Phase II storm water requirements. Submittal of budgets with permit applications is consistent with the individual permit requirements of 40 CFR 122.26(d)(1)(vi). Submittal of an annual fiscal analysis is consistent with the individual permit requirements of 40 CFR 122.26(d)(2)(vi). The purposes of providing an estimated budget with the application and annually are to ensure adequate funding is being allocated to development and implementation of a storm water program and to determine funding source alternatives for regulated entities. The various sources of funding information will be compiled by IDEM and accessible to regulated entities.

Comment: In section 6(k), the public should be informed that a notice of deficiency has been issued for an inadequate notice of intent letter or SWQMP—"Part A." This section should also describe the effect of a notice of deficiency on the appeal procedure. (STDC)

Response: The purpose of a general NPDES permit is to decrease the amount of time needed to write and process permit information. Public notification of every notice of deficiency letter could be a time-consuming process, and, depending on the severity of the deficiency, could be overly burdensome. When a permittee receives a notice of deficiency, notice of sufficiency, or notice of termination letter, the information will be stored in IDEM's storm water database, where data will be readily accessible for public inquiries. The appeal procedure language has been removed from the rule.

Comment: In section 6(l), the date on the notice of deficiency letter should be the same date it is mailed, not when it is written, or the thirty (30) day response time should start on the date the notice of deficiency letter was received by the MS4 entity. In some instances, the thirty (30) day response time may not be sufficient, and a provision for extending the time to forty-five (45) days should be added to the rule language. (ACI, SDMC)

Response: Because a notice of deficiency letter should be mailed on the same day it is written, the thirty (30) day response time should start from the date on the notice of deficiency letter. The thirty (30) day response time is sufficient, and extension language will not be added to the rule.

SWQMP—"Part B" Requirements

Comment: In section 7, the intent is unclear, and needs clarification. The section appeared to have two (2) intents, a one-time, baseline characterization to assist in the developing of the Part C of the SWQMP and an on-going monitoring program with submitted data in each annual report. More innovative and creative methodologies, such as using stream water quality stations, for indicating water quality improvements should be provided and encouraged. (CE, MCHD)

Response: Section 7 has been revised to clarify the intent. A baseline characterization is required by the Part B of the SWQMP. Through external workgroup discussions, it was determined that the most appropriate approach would be to allow flexibility in the

characterization. The rule does not discourage innovative and creative means for characterizing water quality, but does not require them. There are minimum requirements for a sufficient the Part B to create more uniformity and consistency in the plan review process, but each regulated MS4 entity can assess the MS4 area water quality in any fashion most suitable to that area. The Part C of the SWQMP will address any on-going characterization planning.

Comment: In section 7(a), the subsection language referring to identification of pollutant problem areas should be deleted. If the language remains, the term “pollutant problems” is unclear and should be defined. The assessment requirement may be difficult, especially for parameters such as E.coli bacteria, without monitoring for segments on the receiving water that contains multiple storm water outfalls. Clarification is needed, as it appears that monitoring must take place in order to fulfill this requirement. The specific requirements and intent for investigating land usage and assessing best management practice locations are unclear. Depending on the types of conveyances regulated under this rule, monitoring, and eventually mapping, all outfalls would be virtually impossible. (IACT, SDMC, WC, MCHD)

Response: One of the primary purposes of the baseline characterization is to identify substantial pollutant sources impacting storm water run-off quality, so that appropriate best management practices can be developed and implemented. This characterization should identify obvious pollutant sources, or, if exact sources can not be determined, problem areas where best management practices should be targeted and utilized. If a regulated MS4 entity feels that E.coli bacteria, or some other specific parameter, is a concern for the MS4 area, then biological or chemical monitoring would likely be necessary. However, unless it is identified as a means of assessment by the MS4 entity, specific parameter monitoring is not required by this rule. Rule language has been revised to clarify the minimum requirements and intent of specific items. By researching information required by this section, it is assumed that some acceptable assessment of the water quality can be performed without physical sampling of each receiving water and storm water outfall discharge. Under one (1) of the six (6) minimum control measures, all storm water outfalls under the jurisdiction of the MS4 operator will eventually be assessed for illicit discharges. The illicit discharge assessment is not part of the Part B submittal.

Comment: In section 7(c), the public should be informed that a notice of deficiency has been issued for an inadequate SWQMP-“Part B.” It was suggested that a notice of deficiency response timetable consistent with section 6(l) be included in this section. (STDC, SDMC)

Response: Public notification of every notice of deficiency letter could be a time-consuming process, and, depending on the severity of the deficiency, could be overly burdensome. When a permittee receives a notice of deficiency, notice of sufficiency, or notice of termination letter, the information will be stored in IDEM’s storm water database, where data will be readily accessible for public inquiries. A thirty (30) day response time to respond to a notice of deficiency letter was added to the rule.

SWQMP-“Part C” Requirements

Comment: In section 8(a)(2), “MCM” should be defined. (ACI)

Response: The rule language has been revised to state, “minimum control measure (MCM)....”

Comment: In section 8(a)(3), a schedule of implementation milestones is required. Yet, a compliance schedule is presented in section 11 of the rule. The difference is unclear. The overall implementation schedule should be more flexible than the one described in section 11 to allow sufficient time for local approval processes. (TOB)

Response: The timetable referenced in section 8 addresses implementation of specific controls identified by the MS4 entity and can be very flexible. Some of the compliance schedule deadlines in section 11, such as mapping, will need to be addressed in the Part C of the SWQMP, but the majority of the section 11 schedule must be implemented prior to the submittal of the Part C. The current rule language allows for one (1) year to develop programs for five (5) of the six (6) minimum control measures, and up to two (2) years to develop a program for the measure related to postconstruction run-off control. The rule language establishes the minimum control measure programs early in the five (5) year permit term, which is consistent with federal requirements, and also allows for program modification and improvement throughout the permit term.

Comment: In section 8(a)(5), the narrative and mapped description of the MS4 area boundaries must be submitted. Since IDEM is defining the regulated areas, it appears that IDEM should provide this description. (VCED, WC)

Response: IDEM has designated entities based on urbanized area maps, but the exact boundaries of the regulated areas are not necessarily known. Instances may occur where the regulated MS4 area boundary does not correspond to an urbanized area boundary, such as counties wishing permit coverage for the entire county or MS4 entities designated outside of mapped urbanized areas. The boundaries of smaller MS4 entities, such as colleges or correctional facilities, may not be listed on corresponding urbanized area maps, and need to be defined for distinguishing areas of permit coverage.

Comment: In section 8(a)(6), the estimated linear footage of MS4 conveyances will not be completely available until the storm water drainage system map is completed. Therefore, the accuracy requirements for data submitted with the Part C documentation is unclear. In reference to including curb and gutters, the extent of MS4 conveyance types is unclear. (VBC, WC, MCHD)

Response: IDEM acknowledges potential accuracy problems with the data, but the purpose of requesting an estimated footage is to obtain a general idea of the total conveyance system. For one of the control measures, twenty-five percent (25%) of the total system must be mapped each year after the first year. To estimate the twenty-five percent (25%) criteria, some estimate of the total conveyance system footage must be provided. For mapping purposes, the rule language has been revised to clarify conveyance types. Curbs and gutters would not be required, as the mapping should address the point from inlets to outfalls in piped conveyance systems.

Comment: In section 8(a)(7), allowed structural best management practice types must be provided. If a new technology is available and desired, the process for allowing the new practice, if any, is unclear. (MCHD)

Response: The allowance of specific best management practices is determined by the MS4 entity. If a new technology is allowed by the entity, the relevant Part C language must be revised and submitted to IDEM in accordance with section 8(f) of the rule.

Comment: In section 8(a)(8), the structural best management practice performance standard requirement is unclear, in reference

to types of practices (for example, applying stone for construction site access, using mulched seed) that require a standard. Implementation of a practice is more important than a manufacturer's performance standard. (MCHD)

Response: Performance standards should only be established for long-term structural best management practices, and those practices that deal with temporary construction site run-off control do not need to be addressed.

Comment: In section 8(a)(10), it is unknown how certain minimum control measure implementation items (for example, storm drain marking) will demonstrate an environmental benefit. The term "demonstrate results" needs more definition. To assign a specific degree of water quality improvement to a minimum control measure is difficult and may not be a wise expenditure of resources. (VCED, MCHD)

Response: Certain control measures, like storm drain marking, have implied environmental benefits when combined with an appropriate educational campaign. It is very important to correspond control measure implementation to a demonstrated environmental benefit. These benefits will be clarified in the guidance document accompanying this rule.

Comment: In section 8(a)(12) and 8(b), a good guidance document is needed to provide more programmatic indicator detail (for example, how to determine the percentage of citizens who have an awareness of storm water quality issues) and definition (for example, awareness of storm water quality issues, appropriately sized vegetated filter strip, acceptable stabilization of roadside shoulders or ditches). Indicators, such as the one related to constituent awareness, seem unrelated to water quality improvements, and, if necessary, should be related to something less difficult to obtain, like the number of citizens receiving information. Because of the burden to collect the mandatory indicator data, it was suggested to list these indicators as "may" be used to allow more public involvement and planning to determine which indicators are most useful and applicable to a specific MS4 entity. If the indicator list is optional, it would be better suited in the guidance document accompanying this rule. If certain indicator operations (for example, street sweeping) are not currently conducted and are mandatory, initial expenses could be overly burdensome. Since some of the indicators require data that will not be completely available until the storm water drainage system map is completed, the accuracy requirements for data submitted with the Part C documentation is unclear. The proposed language specifies activities, and will limit future best management practice development, innovation, and flexibility. (STDC, VBC, COFW, COE, SDMC, WC, CE, MCHD, TOB)

Response: As necessary, the guidance document accompanying this rule will clarify requirements. As a compromise to requiring biological or chemical monitoring, IDEM, with extensive input from external workgroup members, feels that utilization of required programmatic indicators is necessary for program consistency. Rule language for this subsection was revised to clarify unclear terms and appropriateness of specific indicators. For the specific comment related to constituent awareness, the goal is to assess and change behavior, and not to count distribution numbers. As for submittal timing and accuracy of the data, rule language states that data do not need to be obtained for each indicator for the Part C submittal. The Part C submittal should include a listing of which indicators will be used, and, as appropriate, justification for unused ones. Based on local conditions, certain indicators may not be appropriate. These inappropriate indicators are not mandated.

Comment: In section 8(b)(5), clarification is needed on the types of MS4 conveyances used to estimate linear feet or percent mapped. (WC)

Response: Mapping should include open ditches and, for piping conveyances, point of inlets to the point of outlet into a receiving water. Mapping is not required for curbs, gutters, and roadways.

Comment: In section 8(b), the term "public information request" in subsection (b)(16) is unclear, as it relates to types or requests and storm water quality. The referenced terms "business" and "commercial" facilities need to be defined. The reference to a storm water run-off permit in subsection (b)(13) is unclear. In subsection (b)(26), the placement of a vegetated filter strip and the meaning of unvegetated swale is unclear. In subsection (b)(28), the application of stabilization requirements is unclear. (SDMC, MCHD, TOB)

Response: Public informational requests for construction sites can be any request related to the site, not just requests dealing with run-off pollution problems. The term "businesses" has been deleted from section 12(a) in rule language, and, based on this deletion, a definition for "commercial facility" is not necessary. The storm water run-off permit in subsection (b)(13) pertains to the permits issued for land disturbing activities associated with the construction site run-off control minimum control measure. The placement of a vegetated filter strip would be in an appropriate, feasible, and cost-effective location. The filter strip indicator deals with new construction and may not be an appropriate option for all locations. Unvegetated swales and ditches are swales and ditches that lack sufficient filtering of pollutants, and potentially increase downstream conveyance sedimentation. The roadside shoulder and ditch stabilization refers to municipal operations and maintenance, and does not relate directly to construction site storm water run-off controls.

Comment: In section 8(b)(10), reporting household hazardous waste collection data appears burdensome and unrelated to improving water quality, especially if the program is run privately and the data are not readily available to regulated MS4 entities. (TOB)

Response: Household hazardous waste programs are federally encouraged as a means to reduce illicit discharges into MS4 conveyances. By providing a collection and education program for used oil and toxic chemicals, potentially harmful materials can be diverted from improper disposal into an MS4 conveyance. If the program is implemented privately, those data should be available to a regulated MS4 entity. Recycling collection data are not an indicator requirement for this rule.

Comment: In section 8(b)(21), (22), (32) and (33), the open space acreage indicator is unclear (for example, space preserved by government agencies only, space that is not impervious, minimum requirement for the amount of open space preserved, mapping open spaces), and, if open space mapping is required, it should be clearly written into the rule. Since mapping the acreage of pervious and impervious surfaces is not required by this rule and gathering such data could be a very expensive and time-consuming task, it is suggested that the programmatic indicator dealing with pervious and impervious surfaces estimates be deleted. The indicators dealing

with open space, pervious and impervious surface, and collected solid waste material amounts should be estimated and not actual calculations. Due to operational difficulties in tracking, the solid waste material amounts should not be segregated by structure type, and the references to unit type (that is, “by weight”) should be deleted from rule language. (VBC, SDMC, WC, MCHD, TOB)

Response: Open space is any area that can improve storm water run-off quality by vegetative filtering and infiltration. The rule does not require mapping open space or pervious and impervious surfaces, but, if this information is gathered by a regulated MS4 entity for better planning and assessment, the information should be provided as indicator data. If this indicator data are not collected, the MS4 entity simply has to justify the omission. The amounts and other relevant indicator data are estimated, and the rule was revised to reflect this allowance. The reference to segregation by structure type has been deleted from rule language. The reference to unit type will remain in the rule to provide reporting consistency. The guidance document accompanying this rule will include a conversion equation from volume to weight.

Comment: In section 8(b)(25), clarification is needed on the types of operations (for example, municipal, commercial, or homeowner) to account for in the area determinations of pesticide and fertilizer applications. The indicator dealing with pesticide and fertilizer application areas should be estimated and not actual calculations. Due to its relative impact compared to unregulated agricultural operations, tracking pesticide and fertilizer applications should be deleted from the rule language. (SDMC, WC, TOB)

Response: Pesticide and fertilizer applications relate to municipal operations. Although educational outreach efforts should target them, commercial and homeowner application tracking is not required. Rule language has been changed to reflect estimates for acreage, square footage, and amount applied. Under the individual permit requirements of 40 CFR 122.26(d)(2)(iv)(A)(6), federal language requires MS4 entities to develop and implement a program dealing with the application of pesticides, herbicides and fertilizer. The application of these materials should be tracked under general permits.

Comment: In section 8(b)(34), the regulation of canine parks is not important, when compared to problems caused by geese on ponds. (TOB)

Response: Animal waste can be considered an illicit discharge source. The regulation of canine park locations is a starting point to address the animal waste contribution to a regulated MS4 conveyance. The listed indicators and rule requirements are minimum conditions, and MS4 entities are encouraged to go beyond these requirements to address any locally significant pollutant contributing sources.

Comment: In section 8(e), the thirty (30) day response time to a notice of deficiency is insufficient, and should be extended to forty-five (45) days. (SDMC)

Response: IDEM believes the thirty (30) day response time is sufficient, and extension language will not be added to the rule. The thirty (30) day response time has been utilized successfully in other areas of the storm water program, and is consistent with those program compliance requirements.

Comment: In section 8(g), the Part C of the SWQMP must be certified by a qualified professional. Concerns were raised over the type of documentation needed to demonstrate experience in storm water control and water quality issues, and the apparent need to develop a state-issued registration or certification process. (VBC, WC, TOB)

Response: The term is written to allow for a broad range of individuals to potentially meet the qualification requirements. Demonstrated experience can consist of any combination of schooling and training, professional certifications, and relevant employment experience. It is assumed that this combination should total five or more years. There is no formal documentation submittal requirement for qualifications, and the state will not be developing a registration or certification process.

General Implementation Requirements

Comment: In section 9(c), it is unclear what effect an issued notice of deficiency or appeal under section 6 of this rule would have on the compliance schedule. (STDC)

Response: Based on the time frames for review and response and the type of submittal items in the compliance schedule, a notice of deficiency letter should not effect the stated deadlines. Language referring to appeals has been removed from this rule.

Comment: In former section 9(f), the term “punishment” should be changed to the more commonly used term “penalty”. (STDC)

Response: The term “punishment” has been removed, and the subsection was revised to state, “subject to 327 IAC 15-4-3(i).”

Comment: In former section 10(d)(1), the statement should read, “storm water run-off from MS4 areas.” The requirement is too vague, in reference to specific methodologies for conducting an adequate pollutant identification (for example, basing the identification on maintained designated and existing uses and requiring reasonable potential to exceed analysis for water quality criteria). (COV, SDMC)

Response: The former identification process required by this subsection referring back to the Parts B and C of the SWQMP was repetitive and has been deleted from this section. In the Part B document, there is a baseline characterization requirement to identify pollutant problem areas, and, in the Part C document, to develop appropriate implementation schedules for installing or initiating best management practices to improve storm water quality from the identified problem areas.

Comment: In former section 10(d)(2), the requirement is too vague, in reference to assessing the water quality without requiring monitoring, and for discharges outside of jurisdictional control. Some of the existing data are questionable and inapplicable. The assessment frequency and type of parameters are unclear. (SDMC, MCHD)

Response: The characterization process required by this subdivision is referring back to the Part B and, as appropriate for on-going characterization, the Part C of the SWQMP was repetitive and has been deleted from this section. In the Part B document, the specific means to conduct the water quality characterization is flexible and determined by the MS4 entity, based, in part, on local conditions and available information. Unless it is identified as a means of characterization by the MS4 entity, specific parameter monitoring is not required by this rule.

Comment: In former section 10(d)(3), compliance with the minimum water quality standards described in 327 IAC 2-1-6(a)(1) is

referenced. The referenced language is too subjective and ambiguous, and needs to be rewritten to eliminate vague language like “objectionable,” “unsightly,” “extent of their authority,” and “create a nuisance.” The intent (that is, discharges total “free” of pollutants, or reduction in pollutants to a point where the pollutants no longer pose a concern) of this requirement is unclear, and it is suggested to place a timetable in the rule language to meet this requirement. Received comments stated that these standards are too restrictive and unattainable for storm water discharges, and this compliance condition does not provide the same degree of flexibility (that is, to the maximum extent practicable) as promoted by federal storm water regulations. Federal storm water language states that stringent, numeric water quality limitations should not be required for regulated MS4 entities. All MS4 entities will be out of compliance when the notice of intent letter is submitted. The referenced standard should be reviewed and changed to something more reasonable for Indiana’s storm water discharges. (VBC, COV, COFW, ACI, HC, IACT, WC)

Response: The rule language referring to water quality standards was repetitive and has been deleted from this section.

Comment: In former section 10(d)(3), the regulation appears to address the quality of storm water discharges attributable to agricultural land use practices. Implied regulation of agricultural operations by storm water rules is not consistent with federal intent. Concerns were raised over the liabilities of an MS4 operator to ensure compliance with this rule when unregulated agricultural pollutant sources are identified as the primary receiving water impairment in a regulated MS4 conveyance. There are many other potential pollutant contribution examples that could prevent an MS4 operator from ensuring compliance to the “extent of their authority.” An MS4 operator may never reach compliance with the referenced standards. Suggested language change to read “Make every reasonable effort to ensure compliance with...” (VBC, COV, HC)

Response: The rule language referring to water quality standards was repetitive and has been deleted from this section. In general, IDEM does not intend to have MS4 entities regulate agricultural land use practices within the MS4 area. When agricultural practices are identified as pollutant sources, IDEM is recommending that the source information be provided to appropriate staff at the local soil and water conservation district or natural resource conservation service office. Given their operational responsibilities, staff at these offices should provide technical assistance to the agricultural community on voluntary practices to reduce impacts on receiving water.

Comment: In former section 10(d)(3) and appropriate subsections, the reference to 327 IAC 2-1-6(a)(1) should be expanded to include a reference to 327 IAC 2-1.5-8 for discharges to Indiana’s Great Lakes Basin waters. (STDC, SDMC)

Response: Subsection (d)(3) was deleted. Specific citation references to water quality standards have been removed.

Comment: In former section 10(e), a schedule and process for reviewing and modifying the SWQMP after an applicable total maximum daily load is approved should be included. Language should reflect instances when plan modification is not required, such as upstream water quality violations. This rule does not adequately explain the impact an approved total maximum daily load will potentially have on a regulated MS4 entity. (ACI, IACT, TOB)

Response: An approved total maximum daily load (TMDL) will identify sources of impairment. As applicable, the TMDL program will provide the requirements of an approved TMDL to a regulated MS4 entity. Upstream pollutant sources will be identified, and, if upstream sources are the only ones contributing to the impairment, a regulated MS4 entity’s SWQMP will not need to be revised. If the Parts B or C of the SWQMP need to be revised, the changes must be described and submitted to IDEM in the corresponding annual report in accordance with 327 IAC 15-13-7(e) and 327 IAC 15-13-8(f).

Compliance Schedule

Comment: In section 11, a compliance deadline extension duration limit should be set. (STDC)

Response: The extension request should state a revised deadline date. Depending on the situation causing the extension request, the duration could be highly variable, and setting a limit on the extension would reduce permittee flexibility. IDEM will retain the authority to deny the request, or reduce the extension duration.

Comment: In section 11 and other relevant sections of the rule, the compliance schedule related to submittal of the parts of the SWQMP should be revised to allow additional time for development of more comprehensive plans. The suggested timetable is to submit the Part A with the notice of intent (NOI) letter, the Part B within one hundred eighty (180) days of the NOI letter submittal, a baseline water quality characterization report based on the one hundred eighty (180) day protocol submittal within one (1) year of the NOI letter submittal, and the Part C within two (2) years of the NOI letter submittal. (CE)

Response: Based, in part, on the shorter federal submittal timetable, IDEM feels that the current rule submittal requirements are appropriate. IDEM feels that submittal of a total SWQMP within one (1) year is reasonable, and, based on similar proposed programs in other states that the U.S. EPA has reviewed, will be allowed by U.S. EPA.

Comment: In section 11 and other relevant sections of the rule, the compliance schedule is clearly more aggressive than the flexible implementation schedule envisioned by federal language. If, after implementing the six (6) minimum control measures, there is still water quality impairment associated with discharges from the MS4 conveyance, federal language allows for program refinement over a period of two (2) to three (3) five (5) year permit cycles. The proposed schedule should reflect federal language. (IACT)

Response: The compliance schedule is not overly burdensome, and actually allows more time than federal requirements. Under 40 CFR 122.33(a)(1), selection of best management practices and measurable goals are required with the submittal of a notice of intent. Indiana’s compliance schedule allows more flexibility by phasing in various parts of the SWQMP. Indiana’s rule, as stated in the compliance schedule and in various sections, also allows for continual program refinement. This refinement, as inferred in section 19(e), could continue indefinitely.

SWQMP Minimum Control Measures

Comment: In sections 12 through 17, structural and nonstructural best management practices are required. The guidance document that accompanies this rule should define acceptable best management practices. (VCED)

Response: Acceptable best management practices are site and condition dependent. Therefore, determining acceptable practices

will likely be the responsibility of the MS4 entity. If a need is expressed, IDEM can provide a listing of known best management practices in the accompanying guidance document to this rule.

Comment: In sections 12 through 17, specific reduction percentage goals are identified. There is no current local data for some of the required goals, and it is very difficult to determine a reduction percentage based on limited information. Some of these goal reductions may be intentionally very minimal, so that unrealistically large goals are not draining limited resources to maintain compliance. The methodology for identifying specific goal reduction percentages should be provided. (COV)

Response: Based on differences in current storm water programs, goal reduction percentages are unique to a regulated MS4 entity. Prior to this rule, an MS4 entity may have already implemented some, or all, of the minimum control measures. Because of this implementation, the corresponding reduction percentages may be lower than percentages for an MS4 entity that is only beginning to implement the minimum control measures. The percentages should be estimated through an assessment of current practices, and revised as data are collected.

Comment: In sections 12 through 17, certification forms are required, and this requirement seems redundant. Because the SWQMP and annual reports are already certifying progress and compliance, the certification form requirements should be deleted. (CE)

Response: To determine when control measure programs are implemented, IDEM believes that some type of compliance documentation needs to be submitted for each of the minimum control measures. The certification forms serve this purpose, and ultimately require an MS4 operator, by signature, to ensure the proposed control measure programs are adequate for compliance with this rule.

Comment: In sections 12(d), 13(d), and 14(k), the requirements to review and modify, if necessary, the stream reach characterization and evaluation report (SRCER) and combined sewer overflow operational plan (CSOOP) are inappropriate, and these subsections should be deleted. Proposed rule 327 IAC 15-13-3(h) excludes discharges from combined sewer systems. There is no current requirement in the federal combined sewer overflow (CSO) control policy, Indiana's final CSO strategy, or Senate Enrolled Act 431 that requires public education and outreach. The long term control plan (LTCP) should be coordinated with MS4 activities. (SDMC)

Response: The SRCER and CSOOP do not have public education and outreach or public involvement and participation components. The rule language has been revised to delete references to these documents in sections 12 and 13. However, there is potential overlap for all three (3) documents in section 14. While the LTCP does not have a public education component, an LTCP will not be approved without appropriate public education, and the reference to LTCPs will remain in sections 12(d), 13(d), and 14(k).

Comment: In sections 14 through 16, ordinances or other regulatory means are required to satisfy permit requirements. To assist colleges and universities without ordinance authorities, IDEM should provide specific types of alternative policies that could be considered equivalent to an ordinance. (PU, UW)

Response: Due to the large number of possible forms such regulatory means could take, IDEM will not provide specific alternatives in the rule. However, IDEM is willing to assist in the development of such a document for inclusion in the guidance document accompanying this rule.

Comment: In section 12, IDEM should provide guidance and assistance in locating existing programs and already prepared outreach materials. As it pertains to former subsection (a), the difference between "business" and "commercial" facilities should be specified. (STDC, SDMC)

Response: IDEM, when possible, will provide guidance and assistance in locating existing programs and outreach materials. IDEM's outreach efforts will include the development of "template" outreach materials. The term "businesses" was deleted from this subsection. Based on this deletion, a definition for "commercial facility" is not necessary.

Comment: In section 12(c), language implies that the given examples are requirements. By requiring specific goals, IDEM is imposing strategies that may not fit the local strategy for educating the public. These examples should be options, and the language should be reflective of this flexibility. (IACT, CE)

Response: Specific goals were required to reduce subjectivity and improve consistency during review of an MS4 entity's program. These specific goals must be addressed, but are not mandatory.

Comment: In section 13(c), IDEM should provide supporting documentation that proves storm drain marking or Web site development results in measurable improvements to water quality. Programs, such as storm drain marking, may not be necessary. By requiring specific goals, IDEM is imposing strategies that may not fit the local strategy for involving the public. The goals should be options. (VBC, VCED, WC, CE)

Response: Improvements to water quality are implied for many of the public education and participation components. The implication for storm drain marking and Web site development is that, when combined with a sufficient public educational campaign, some portion of the MS4 area constituency will be more aware of the impact they are having on water quality, and, as a result, they will be less likely to have illicit connections or improperly dump materials in identified storm drains. These specific goals must be addressed, but are not mandatory.

Comment: In section 14, IDEM should provide guidance and assistance in locating existing programs and already prepared outreach materials. The term "illicit" should be changed to "illegal" or "unpermitted" for clarification. In unsewered areas that are designated, septic system discharges may be a significant illicit discharge source. To correct these sources, expensive sanitary sewer construction may be the only available corrective action. It is recommended to change the rule language to state that the illicit discharge will be eliminated if it can be done within the budgetary constraints of the MS4 operator. Prohibiting illicit discharges is unrealistic, because anything other than pure rain water may be considered an illicit discharge. In cases of spot dumping, the requirement to have an ordinance that eliminates, via tracking and homeowner fines, illicit discharges is unrealistic. IDEM, and not the local MS4 entity, should have the primary role of eliminating and permitting discovered illicit discharges. (STDC, VBC, WC, MCHD)

Response: The term “illicit” is consistent with federal language and will remain. Since this rule is not intended to correct all septic system problems, rule language has been revised to allow for budgetary considerations in addressing septic system discharge sources. The prohibition of illicit discharges is consistent with federal language, and will remain in the rule. In addition to pure rain water, naturally-occurring materials and the items listed in 327 IAC 15-13-14(d) will not typically be considered illicit discharges. IDEM realizes that tracking all spot dumping is not easy, but, through appropriate ordinances, alternative disposal options (that is, household hazardous waste and “white goods” collections) and educational campaigns, spot dumping should be reduced. This rule, based on federal language, requires each regulated MS4 entity to develop, implement, and enforce an illicit discharge detection and elimination program. IDEM can assist in enforcement of this control measure, but the appropriate authorities must be obtained on a local MS4 entity level.

Comment: In section 14(b), the language should be amended to, “in the particular MS4 area under the operator’s control” after the word “outfalls”. The mapping requirements, in reference to map scales and format (for example, hand drawn or digital), need to be clarified in the guidance document accompanying this rule. There appears to be an inconsistency between the mapping requirements (that is, the entire conveyance system or only outfalls) of this section and the requirements of section 8(b)(5) of this rule. Because of the presence for potential illicit discharges, private drain mapping and monitoring should be required. (STDC, COV, VCED)

Response: The rule language has been revised to include the suggested language pertaining to an MS4 operator’s control. The mapping format requirement is written to allow all MS4 entities to comply, regardless of technical capabilities. IDEM feels that the more accurate the mapping, the more beneficial the map will be to the regulated MS4 entity in determining potential or actual pollutant problem areas, identifying discharges near sensitive water areas, and tracing pollutant sources. The mapping requirement is applicable to the outfall conveyance system, not just the outfalls. For sewer pipe conveyances, the mapping should be from inlet structures to the point of outfall. In consultation with potentially affected entities, IDEM determined that private drain system mapping would not be required. For a regulated MS4 entity wishing to address private drains, IDEM would highly encourage efforts that exceed the minimum requirements of this rule.

Comment: In former section 14(c), clarification is needed on the intent and operator authority for “regulating the rate at which water flows through the drainage system.” Federal storm water language does not address regulating flow rate, and this requirement should be deleted from rule language. There are local cases in which detention is not effective or feasible, so the regulation of flow rates should not be a requirement. If the intent is to reduce the volume of storm water, the rule should be revised and the recommended methods for retaining storm water should be described. The rule language needs to be strengthened to ensure that the appropriate authority is given to an MS4 operator to create and enforce the rule requirements. (STDC, MCHD, ACI, CEI, SDMC, CE)

Response: The flow rate requirement has been moved to section 16(c). By slowing the rate at which storm water flows, more infiltration and settling can occur, outfall scouring and stream bank erosion can be reduced, and the overall storm water quality should improve. This practice is not required in all situations, and should only be used where it is technically feasible, beneficial to water quality and cost-effective.

Comment: In former section 14(e), regulating swimming pool discharges are unrealistic and unjustified, and the referencing rule language should be deleted. This requirement is unenforceable, and will give Rule 13 a bad name. (HBC, WC, MCHD)

Response: In 327 IAC 15-13-14(d), dechlorinated swimming pool discharges are allowed unless they are deemed a pollutant contributor to the MS4 conveyance. In this rule language, there is no allowance for chlorinated pool discharges. A definition for “dechlorinated swimming pool discharge” was added in section 5(12), and the reference to swimming pool discharges in subsection (e) was deleted.

Comment: In section 14(e), the acceptable field screening protocol is unclear, in reference to the parameter and testing kit types, and testing “by other means”. The MS4 operator should not be mandated to use a particular type of equipment for testing (for example, nitrate-nitrogen analysis may not be included in a test kit, but may be a cause of algae bloom) or analyze for unnecessary data (for example, analyzing for a parameter not listed as an impairment parameter for a receiving water). Language should be revised to address only suspected problem discharge parameters. Substantial costs could be incurred for tracing sources (for example, televising) and screening. In reference to potential contact with environmental and health hazards, the training requirements for a person conducting the screening are unclear. (STDC, VCED, SDMC, MCHD)

Response: The purpose of dry weather screening is to observe non-storm water flows, identify the presence and, where possible, the type of pollutant, trace, if possible, the source of the pollutant, and correct or eliminate, if feasible, the pollutant source. To accomplish this screening, a field test kit, or some similar testing equipment and procedures, will be required. IDEM is not mandating a particular type of test kit or specific parameters, but recommends, based on a U.S. EPA guidance document for investigating inappropriate pollutant entries into storm drain systems, that certain field screening parameters be addressed in the determination of pollutant type. This screening protocol (which includes standard operating procedures and an implementation schedule) is determined by the regulated MS4 entity, and must be submitted in the Part C of the SWQMP. A summary of screening implementation activities is expected with each corresponding annual report submitted to IDEM. In comparison to the alternative of sampling and laboratory analysis, the costs for screening are relatively minimal. IDEM does not anticipate any formal training requirements for people conducting the screening, but accessing locations and actual sampling of the outfalls should be done safely, and in a manner that minimizes exposure to outfall effluent.

Comment: In section 14(f), IDEM should provide an initial listing of all categories of regulated industrial facilities under 327 IAC 15-6 to the MS4 entity. Because municipalities do not want to become an inspection or enforcement arm of IDEM and expend resources in areas where they have no authority, this subsection should be deleted. (CEI, COE, CE, MCHD)

Response: Under the individual permit requirements of 40 CFR 122.26(d)(2)(ii), federal language requires MS4 entities to provide

an inventory of industrial facilities, with associated standard industrial classification codes, which may discharge to an MS4 conveyance. IDEM believes this informational request should also be applied to general permits. As a tool in identifying potential problem sources or areas, this listing is also a component of the land usage assessment required under the Part B of the SWQMP. IDEM does not expect an MS4 entity to take enforcement actions against an industrial source of pollutants to an MS4 conveyance without having the appropriate authority, but the identification and reporting of such facilities are important to the overall water quality improvement goal for the MS4 area.

Comment: In former section 14(k), the language should be changed to read, “(10,000) shall satisfy the MCM requirement....” (CE)

Response: The rule language was an example and has been deleted from this subsection.

Comment: In section 15, it appears that local governments will be delegated authority to issue permits for construction activities disturbing one acre or more of land under 327 IAC 15-5. If the cultural and natural resources review remains as part of the 327 IAC 15-5 requirements, projects could be delayed or halted, new environmental requirements could be imposed, and additional staffing burdens could be placed on limited state resources. Access to the applicable resource maps should be provided to local MS4 entities, but it would be preferred to delete the review requirement. (STDC, MCHD)

Response: To meet the requirements of section 15, a program, at a minimum, incorporating the requirements of 327 IAC 15-5 must be developed, implemented and enforced by a regulated MS4 entity. The cultural and natural resources review requirement in 327 IAC 15-5 was reevaluated, and has been removed from rule language.

Comment: In section 15(b), the rule language needs to be strengthened to ensure that the appropriate authority is given to an MS4 operator to create and enforce the rule requirements. The requirements for construction site permit duration and construction plan development for individual lots that are part of a bigger development project are unclear. (ACI, WC)

Response: It is the responsibility of the MS4 entity to obtain the appropriate authorities, via an ordinance or similar mechanism, to implement and regulate a construction site run-off control program. Regulated MS4 entities must adopt requirements at least as stringent as 327 IAC 15-5. In 327 IAC 15-5-12, the permit duration is five (5) years. If a project’s duration is more than five (5) years, the permittee must reapply. In 327 IAC 15-5-2(f), an individual within a site permitted under this rule, where land disturbance is expected to be one (1) acre or more, must obtain their own permit and submit their own construction plan. Areas of land disturbance less than one (1) acre in a permitted site will be regulated under the original operator. However, the permitting authority, as referenced in 327 IAC 15-5-10(c), may enforce violations of the rule by identifying individuals responsible for the action.

Comment: In section 15(c), the language regarding soil and water conservation district involvement should be strengthened. The language should be changed to, “shall provide an opportunity to....” (DNR)

Response: The rule language has been revised using the suggested language.

Comment: In section 15(e) and former 15(f), it appears that IDEM needs to approve any projects in the MS4 area that disturbs one (1) or more acre of land prior to the land-disturbing activity. There is no stated amount of time given for this review. (COV)

Response: Because the intent of subsection (e) is only to compare notice of intent letter form submittals with the monthly construction site summary reports required by 327 IAC 15-18(b), language in subsection (f) referring to notice of intent letter review by the department has been removed from rule language.

Comment: In section 15(f), tracking individual lot development for permit compliance, due to time lapses, is virtually impossible, and this process issue needs to be clarified and coordinated with local zoning codes. In subdivision (6), the term “recorded” is unclear and should be defined. (WC, COE)

Response: Regulated MS4 entities must adopt requirements at least as stringent as 327 IAC 15-5. In 327 IAC 15-5-2(f), an individual within a site permitted under this rule, where land disturbance is expected to be one (1) acre or more, must obtain their own permit. Tracking individual lot development in regulated MS4 areas is the responsibility of the MS4 entity, but, to make this tracking easier, notification of remaining undeveloped lots should be provided, in the case of lots which are part of a larger development, by the overall development operator with the notice of termination letter. The undeveloped lot notification could be verified by a field inspection, and the resulting paperwork filed. When the lots are ready for development, a local permitting procedure, perhaps in conjunction with obtaining building permits, that includes a comparative review of the filed paperwork, should require the submittal of construction permits and plans addressing storm water quality. The word “recorded” has been changed to “documented” in the rule.

Comment: In sections 15(g) and 16(d), annual training session attendance is required. Concerns were raised over sufficient local notification for state-approved training sessions, and the determination of appropriate training sessions that would meet the requirement. (VBC, WC)

Response: The Indiana department of natural resources, division of soil conservation, and IDEM will coordinate training of MS4 personnel for the construction site and post construction run-off control programs. The division of soil conservation will offer training sessions, and provide one-on-one training to MS4 entities. In addition, information concerning relevant courses offered both within, and outside, Indiana will be provided to regulated MS4 entities.

Comment: In section 15(i), the current language appears to give the MS4 operator an unintended choice for submittals of construction plans. There is also concern over adequate and timely review of the plans (that is, if the reviewing authority does not do its job), and the general need for an external entity reviewing the plans. The language should be changed to, “the local SWCD, department of natural resources, division of soil conservation, or other entity designated by the department.” There should be allowances in the rule language for emergency situations that are time-critical, such as collapsed piping or eroded levies. With the constant scrutiny of local contractors and the general public, it is unreasonable to assume that a regulated MS4 entity can not be trusted to review their own projects, and this subsection should be deleted. (DNR, HBC, COV, CE)

Response: The rule language was revised to reflect, “other entities designated by the department.” The plans should be submitted

to whichever entity is designated by IDEM. This submittal could be to the local county soil and water conservation district or the Indiana department of natural resources. IDEM, in consultation with Indiana department of natural resources staff, believes that the self-regulation of regulated MS4 entity construction projects is not appropriate until procedures have been established and consistently adhered to, and the associated rule language will remain.

Comment: In section 15(i), the former language could allow soil and water conservation districts and the Indiana department of natural resources to make authorization determinations independent of one another. The language should be changed to list only the department of natural resources, division of soil conservation, as the review authority. With the constant scrutiny of local contractors and the general public, it is unreasonable to assume that a regulated MS4 entity can not be trusted to review their own projects, and this subsection and related subsections should be deleted. (DNR, CE)

Response: The rule language has been moved into subsection (i), and revised to delete reference to the local soil and water conservation district in this subsection. IDEM, in consultation with Indiana department of natural resources staff, believes that the self-regulation of regulated MS4 entity construction projects is not appropriate until procedures have been established and consistently adhered to, and the associated rule language will remain.

Comment: In section 15(j), the type of projects referenced in this section appears to conflict with the definition for traffic phasing plan found in 327 IAC 15-5(82) [*sic.*, 327 IAC 15-13-5(81)]. As a case could be made for any project to alter vehicular traffic routes, this subsection needs more definition and clarification on intent and submittal requirements. (HBC, COV, CE)

Response: The intent of the traffic phasing plan is to address erosion and sedimentation concerns associated with rerouting traffic. For example, erosion and sediment control should be addressed for any temporary roads or bridges built to reroute traffic while construction takes place on the original structure. The definition in section 5(82) has been revised to read, “a written plan that addresses the installation of appropriate pollution prevention practices that is directly related to the land disturbance associated with infrastructure constructed to reroute vehicular traffic within an active construction zone.”

Comment: In section 15(k), the permitting and plan implementation requirements for the five (5) private areas associated with a construction project are unclear. (COV)

Response: For construction projects with one (1) acre or more of land disturbance area that are operated by either the MS4 operator or MS4 municipalities within the regulated MS4 area, the storm water pollution prevention plan submitted to the department of natural resources, division of soil conservation, for review must address the areas in subsection (k). These off-site operational areas do not require additional NPDES storm water permits, but should be addressed in the construction plan developed for the associated construction site.

Comment: In former section 16(b), the terms “sensitive areas”, “certain types of growth”, and “sound planning procedures” should be defined, and examples of “other regulatory means” should be provided. Because of the ambiguous terms, the requirement is very subjective and will be difficult to enforce. Restricting and guiding growth are sensitive legal and political issue, and more discussion on this section’s requirements is needed. Positive, economic development projects, like retaining wall “riverwalks”, may be impacted by the buffer strip, or similar best management practice, requirement. To make the requirements more flexible, the language should be revised to leave the items as options. The guidance document to accompany this rule should include an example of an ordinance that would meet the requirements of this subsection. (STDC, VBC, APC, IACT, CE)

Response: The requirements of this subsection relate to local planning efforts. The language has been revised to clarify the requirements.

Comment: In section 16(b), the reference to “327 IAC 15-5-7(8)” is incorrect, and should be changed to “327 IAC 15-5-6.5(b)(8)”. (DNR)

Response: The rule language has been corrected.

Comment: In section 16(c), the term “appropriate” should be clarified in subdivisions (5) and (6), in reference to filter strip width and installed practices at gasoline outlets and refueling areas. Filtering should be added to the listing of practices that an MS4 operator shall use. The phrase “where appropriate” should be added to the end of the first sentence. The term, “minimum vegetated filter strip...” is unclear, and some targeted width should be stated. In terms of potential added filter strip cost and liability, clarification is needed on jurisdictional issues from private drains that are maintained by a regulated MS4 entity. Since there are instances where shoulders would be difficult to install and infiltration is not possible, the filter strip requirement, if left in the rule, should only apply to new roads under specific circumstances. In subdivision (6), rule language is confusing, and language should be added to account for existing gasoline outlets and refueling areas that are upgrading their tank systems. In subdivision (2), the reference requirements to meet Indiana ground water quality standards is too vague. To uniformly prescribe the specific practices listed in this section is unnecessary, and contradicts the federal intent to allow for “a significant degree of flexibility.” If the language remains, it should be revised to leave the items as options. (STDC, COV, HC, WC, CE, MCHD)

Response: This section, and the associated subsection requirements, apply to new development and redevelopment. The requirements listed in subsections (c)(1) through (6) are practices that IDEM feels are necessary to improve overall water quality. This subsection, as written, is highly flexible by allowing each MS4 entity to choose which storage, infiltration, or vegetative practices will be best suited for local conditions. The restrictions in subsection (c)(1) through (6) only address specific locations for placement of practices and types of situations where specific controls are needed. As used in this subsection, the term “appropriate” is written to allow the regulated MS4 entity to have more implementation flexibility. The rule language has been revised to include the words “filtering” and “where appropriate” in the first sentence of this subsection, address the issue of requiring controls when tank systems are upgraded, and clarify references to Indiana ground water quality standards.

Comment: In section 16(d) and former 16(e), requiring annual, approved training sessions and creating “safety” plans for all structural best management practices (for example, buffer strips) are unnecessary and burdensome (IACT).

Response: IDEM, in consultation with Indiana department of natural resources staff, believes that annual training sessions are

needed. The intent of the training sessions is to inform appropriate regulated MS4 entity staff of the need to conduct periodic assessments of control structures to ensure proper long-term function and effectiveness, and to discuss the appropriateness of specific best management practices. Control technologies may change quickly, where previously used practices are no longer recommended. Annual training will allow MS4 entity staff to keep up with these changes. The requirement for safety plans for structural best management practices has been deleted from rule language.

Comment: In section 17(b), clarification of the rule language is needed. Municipalities have no authority to ensure that state or federal operations within the MS4 area are performed in ways that will reduce contamination of storm water discharges. (COE)

Response: Subsection (b) has been revised for clarity. The MS4 operator is only responsible for operations in which they have jurisdiction and authority.

Comment: In section 17(b)(1), the intent of the requirement for structure cleaning and street sweeping is unclear. If these items are mandatory, the necessary equipment purchases could be financial burdens. If these items are not mandatory, it is unclear who determines the appropriateness of the activities listed in clauses (A) through (F). Some of the activities listed in clauses (A) through (F) do not significantly improve water quality, and the intent and benefit of such requirements are unclear. If the items are not mandatory, the programmatic indicator in section 8(b)(32) referencing amount of material removed during maintenance operations should be deleted. (VBC, VCED, MCHD)

Response: Activities listed in clauses (A) through (F), including structure cleaning and street sweeping, are not mandatory, but, if these practices are already being conducted, the activities should be documented both in section 17 and the programmatic indicator data. As an example, IDEM will not require MS4 entities to purchase street sweepers or to sweep roads without curbs. However, IDEM does recommend the sharing of resources, like street sweepers, if possible, with neighboring MS4 entities. If an MS4 entity can document in the Part C of the SWQMP their efforts to address, and, where applicable, justification for not conducting, each of the maintenance activities, the appropriateness of the activities will be determined. All of the activities could potentially have a positive impact on water quality, by removing debris and solid materials before they enter waterbodies, preventing erosion and subsequent waterbody sedimentation, and improving aquatic habitat. Section 8(b) has been revised to clarify the issue of data collection when appropriate.

Comment: In section 17(b)(2), covering of sand storage piles is unnecessary, and the requirement should be deleted. Under former clause (F), pesticide and canine park requirements should be placed in separate subsections. Since various types of equipment used for municipal operations may have the potential to contribute pollutants, a listing of the types of equipment should be provided to improve the overall operational assessment. (HBC, CEI, SDMC)

Response: Improperly stored sand piles (for example, uncontained and adjacent to a waterbody) have the potential to increase the solids loadings to a waterbody from storm water run-off and should be addressed in the rule. Covering is not the only means of properly storing sand, and, for clarity, clause (A) has been revised. Clause (F) has been divided into two other clauses, (H) and (I) for clarity. IDEM does not plan to develop a listing of various types of equipment at operational areas that may contribute to polluted storm water run-off. This assessment of potentially polluting equipment is the responsibility of the MS4 entity responsible for the operational area, and will likely be different for every operational area.

Comment: In section 17(b)(3), the former requirement to dispose of all removed solid wastes in accordance with 329 IAC 10 and 329 IAC 11 is burdensome, and should be deleted. (HBC, VBC)

Response: The intent of this rule requirement is to ensure that all collected solid waste materials are transported to appropriate facilities for proper disposal, and not to sample and analyze each solid waste material. The reference to 329 IAC 10 and 11 was deleted, and the rule language was revised to reference reuse or recycling, or disposal (in accordance with applicable solid waste disposal regulations) of collected materials.

Comment: In section 17(b)(4), IDEM appears to have a bias against flood management projects. There should not be a justification in writing every time a detention pond is constructed. (MCHD)

Response: Prior to storm water regulations, flood management projects typically addressed water quantity. The purpose of this rule requirement is to also address water quality for these projects. New flood management projects should be required to utilize practices, like detention basins, in the design process to improve water quality. Existing flood management projects should be assessed for possible retrofitting to include water quality improvement controls. This subsection refers to implementing appropriate policies and assessing existing projects. The justification for each practice, like a detention pond, is not required.

Comment: In section 17(c), it can be implied that pesticide applications, and salt and sand usage are currently excessive. It is unreasonable to require a reduction, when the current usage protocols are unknown. It is also unrealistic to require reductions, when there could be negative consequences related to public safety. (MCHD)

Response: Each MS4 entity has its own pesticide application, and salt and sand usage practices. Prior to this rule, some of these MS4 entities probably never tracked these practices, and, based on data evaluation, there is the potential for reductions to occur. In other cases where these practices have been tracked, optimal usage has already been reached. The goals, including reduction percentages, must be addressed, but, depending on the situation, reductions may not be necessary. In these instances, the MS4 entity should address the goal by providing rationale for not setting a reduction percentage.

Reporting and Future Permits

Comment: In section 18(a), annual reports must be submitted. This requirement exceeds the intent of federal requirements for annual report submittals after the first year, with subsequent submittals every three (3) to four (4) years. (WC)

Response: In 40 CFR 122.34(g)(3), federal language requires submittal of annual reports for the first permit term, and, for subsequent permit terms, submittal of reports in years two (2) and four (4). The rule language has been revised to reflect the federal requirement.

Comment: In section 18(b), limited local resources should be used on reviewing plans and inspecting sites, rather than on generating large amounts of paperwork for the State. Monthly construction site summary reports are burdensome, if not impossible. The recommendation is to submit either quarterly or semi-annual construction site summary reports. (VBC, WC, TOB)

Response: Based on expected work load requirements for review and comparison of the data, IDEM believes monthly submittals are the most effective frequency. Quarterly or semi-annual submittals would cause an unreasonable amount of paperwork to be delivered at the same time. The information required in the monthly submittals is something that should be tracked by the MS4 entity already in order to process construction site permit requests. IDEM will develop a form for these submittals, and, depending on the technology of the MS4 entity, electronic format submittals will be encouraged.

Comment: In section 19(e), the MS4 operator shall maintain and improve their minimum control measure implementation performance. It appears that no level of performance is sufficient, and that water quality resources are deemed more important than education, health care, employment, or crime reduction. (MCHD)

Response: The rule language has been revised to state, “maintain and, where possible, improve...” If water quality can be improved through additional cost-effective best management practices, the practices should be implemented.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On August 14, 2002, the water pollution control board (board) conducted the first public hearing/board meeting concerning the development of amendments to 327 IAC 5, and new rule 327 IAC 15-13. Comments were made by the following parties:

Bethlehem Steel Burns Harbor (BSBH)
GRW Engineers (GRWE)
Indiana Association of Cities and Towns (IACT)
Indiana Manufacturers Association (IMA)
Indiana Water Quality Coalition (IWQC)
Monroe County Highway Department (MCHD)
Save the Dunes Council (SDC)

Following is a summary of the comments received and IDEM’s responses thereto:

Comment: MCHD supports the rule and recommends that it be adopted. They agree that the emphasis on erosion control for construction sites is much needed. Yet, they have some concerns about lawn fertilizers, pesticides, herbicides, and discharge of water from swimming pools since the rule does not require them to adopt a local ordinance for them. They suggested that some of these things are unenforceable, therefore, not much time and effort should be spent on them. (MCHD)

Response: The regulation of dechlorinated swimming pool discharges is conditionally required by the rule. If an MS4 entity does not determine swimming pool discharges to be a significant impact on storm water quality, swimming pool discharges do not need to be regulated. As it relates to former clause (H), pesticide and fertilizer usage must be addressed for municipal operations. The application of pesticides and fertilizers by individual homeowners and commercial businesses is not regulated under this rule. The rule simply requires education of homeowners and commercial businesses on ways they can reduce their impact on storm water quality, which includes the proper usage and disposal of pesticides and fertilizers.

Comment: They felt that the rules seem to be ahead of science and since nonpoint source is a big problem, do not agree with having a rule stating that nonpoint source pollution will be removed without knowing how to do it. They stated that due to geographical features of Monroe County having a lot of sinkholes that they could not comply with the specific language in section 16(c)(2) and groundwater quality standards. They support adoption of the rule by the board but would request some additional review regarding the issue of sinkholes (MCHD)

Response: Ground water quality standards are applicable to any discharger with the potential to impact the ground water. The rule means that direct flows of storm water into a sinkhole or other subsurface pathway must meet the applicable standards.

Comment: They felt that IDEM should be a facilitating agency for this rule as more education was needed on storm water quality issues. They also felt that the local, state, and federal government should work together on this. They emphasized that they would like to have ownership of these programs and would like to view the program in more positive light. They suggested that since this was a new program, a periodic review with the MS4 operators, a written summary of the review, and information exchange would be beneficial. (MCHD)

Response: With most new rules, the agency will be a facilitator to interpret and guide compliance. The agency has an existing Rule 13 web page, and, as information is obtained during the program’s implementation, relevant and useful information may be added to the web page. According to the federal “Economic Analysis of the Final Phase II Storm Water Rule” dated October 1999, many benefits will be realized by the new storm water rule, including reduced impacts to human health, aquatic life and wildlife, reduced sedimentation of receiving waters, reduced degradation and destruction of benthic habitat and organisms, increased photosynthetic activity, and increased attainment of designated uses for receiving waters.

Comment: BSBH was pleased with the new version of the rule which had been revised after taking their comments on section 5-4-6 into consideration. They credited the board and IDEM for working to improve the rule. BSBH still had some concerns with section 5-4-6 as they felt that it does not distinguish between general permits and individual permits. They believe that the new language would unintentionally force some facilities into a general permit by eliminating the current option of applying for an individual permit. They felt that IDEM would still have the authority to deny the application with justification so the option should be kept for the few who were able to take advantage of it. The other issue was that the current language appears to require a facility to obtain an individual permit as well as a general permit in some circumstances. They felt that this result was unintended, therefore, IDEM could easily change the language before final adoption, and they supported preliminary adoption of the rule. (BSBH)

IMA and IWQC thanked the agency for their hard work on the rule and indicated that they had sent in their comments and were hopeful that those changes could be realized before final adoption. They felt that the changes they had submitted on 5-4-6 had been looked upon with some favor and were hoping that after discussing with the larger group that they may be incorporated into the rule. On 5-4-6(b), they agree with BSBH, that general permit coverage could be required where all of them are subject to NPDES coverage. Another concern was that the agency might be limited to look at general permitting requirements for the issuance of general permits. Regarding Rule 13, they acknowledged that the rule was better than when it started out. They hope to get it further improved before it is brought back to the board. (IMA, IWQC)

Response: The rule language has been clarified to indicate differences between individual permits and general permits. The agency's process for obtaining NPDES permit coverage has always been to encourage the use of general permits. For storm water discharge permittees, a hierarchy of permitting has been established in 327 IAC 5-4-6. The simplest and most desired approach to permitting storm water discharges is via a general permit. If the general permit is not adequate to meet water quality standards or does not appropriately reflect a permittee's specific situations, an individual storm water permit is the next step. Because of the inadequacies of general permit conditions, an individual permit will be more specific, and typically more stringent, than a general permit. Because of additional agency workload considerations, the agency does not want permittees to apply for individual permits unless the agency has determined the need for such action.

Comment: IACT expressed their appreciation to IDEM staff for working with them on revisions to the rule language, and the board for delaying adoption of the rule. They stated that most of their concerns had been addressed, however, they still had a few concerns related to the urbanized area maps and the addition of new MS4 communities, when the census maps were released, which would not be until November. The definition of a UA would cause more municipalities to be added, therefore the rule should be further revised to give the additional municipalities a one-year extension from the availability of the 2000 census maps to submit their NOI. (IACT)

Response: In November 2002, the U.S. Census Bureau has updated maps available based on the 2000 data. Once this U.S. Census Bureau data is converted at the agency to a GIS layer, the agency will mail notification letters to newly designated MS4 entities by the end of December 2002. Most of the potential new designees have been verbally notified by the agency when the preliminary urbanized area maps became available in August 2002. The rule language has been changed to reflect a three hundred sixty-five (365) day timetable for newly designated applications. This timetable allows sufficient time for a newly designated MS4 entity to discuss cooperative efforts with adjacent MS4 entities, obtain legally-binding agreements, and submit a complete Notice of Intent letter.

Comment: IACT stated that the rule states that all known receiving waters including all water bodies with discharge must be listed on the NOI, which could be very cumbersome for the initial application since the definition of "water body" includes ditches, swales, and ponds. They suggested that such facilities should be included in the five (5) year inventory requirement. (IACT)

Regarding the baseline characterization report, the broad definition of "receiving waters" causes the analysis to be very cumbersome. (IACT)

Response: The rule has been revised to include the gradual listing and characterization of all receiving waters. A requirement to provide updated receiving water information was added to the annual reporting section.

Comments: IACT feels that the rule should incorporate waivers for small municipalities which is allowed by the federal regulation. Since IDEM has chosen not to include the waiver provision in the rule, many small communities will be forced to comply with the rule requirements at a high cost to them, which they might not be able to absorb. They hope that their remaining concerns will be addressed before final adoption of the rule. (IACT)

GRWE stated for clarification that they are aware of several communities in the state that have populations as low as one thousand (1,000), that are on the list. There are several that are under five thousand (5,000), too. The comment was in reference to the previous comment on specific instances where people would apply for waivers. (GRWE)

On the subject of waivers, they support the position of IACT. (IMA, IWQC)

Response: The agency has added language to section 3(f) of the rule referencing the two situations where federal waivers are allowed: (1) MS4 entities with populations under one thousand (1,000) people within mapped urbanized areas; and (2) MS4 entities with populations under ten thousand (10,000) people.

Comment: They are concerned with all the three (3) storm water rules— 5, 6, and 13. They have concerns with Rule 13 which is a municipal rule, yet would impact the industrial community. They believe that going beyond the federal requirements is understandable, if appropriate. They believe that the reason for going beyond federal regulations needs to be covered. As an example they stated that 15-13-14 requires screening of outfalls. However, there is no definition of the term "outfall" in the rule, though IDEM indicated that the definition would be included in a guidance. There is no federal definition of "outfall", therefore they are concerned that administrative law is being developed on unfinished federal documents. (IMA, IWQC)

Response: The rule language includes a definition of "outfall" for the sake of clarity. Some means of investigating storm water outfalls within the MS4 area is necessary for determining illicit discharges and connections. The rule does not limit the investigation to outfall screening, but allows for other means. The screening, as referenced in 40 CFR 122.34(b)(3)(i), (ii), and (iv), is federally recommended: "visually screening outfalls during dry weather and conducting field tests of selected pollutants as part of the procedures for locating priority areas."

Comment: As another example, 15-13-16 requires MS4s to implement planning measures that include maximization of open space and the direction of physical growth. They believe that in Indiana, this provision would be a matter of local decision. (IMA, IWQC)

Response: The rule language regarding requirements in 327 IAC 15-13-16(b) has been changed from "must also include...." to "may also include....". The rule requirements related to land use planning are important components of overall MS4 area storm water program planning. Federal language in 40 CFR 122.34(b)(5)(ii)(A) and (iii) references appropriate nonstructural BMPs and includes

directing growth to identified areas, protecting sensitive areas, and maintaining and/or increasing open space. Appropriate land use planning should provide more natural (or manmade) filtration and settling areas, thus improving storm water quality while protecting areas that can not handle the added storm water pollutants.

Comment: They do not believe the requirements should extend to picking up litter and dog parks, as that is more prescriptive than the federal requirements, including promotion of recycling to reduce litter, minimization of pesticide and fertilizer use, and requiring all canine parks to be located at least one hundred fifty (150) feet from a surface water body. They hope to work with the agency on these observations. They do encourage preliminary adoption and hope for a positive conclusion at final adoption. (IMA, IWQC)

Response: Rule language has been revised to remove litter pick-up, and provide canine parks as an example of recommended animal waste control. Because it was not directly related to reducing the amount of litter in storm water run-off, the reference to recycling in clause (G) was deleted. However, the reference to a minimum setback distance for canine parks has a potential effect of improving storm water quality. This setback distance may not be applicable to every regulated MS4 entity, and, where not applicable, does not need to be implemented. In applicable situations, the setback distance should improve overall water quality by reducing bacteria colonies in receiving waters.

Comment: SDC credited the department on giving the regulated community numerous opportunities to comment, including holding at least two video conferences. They urge the board to preliminarily adopt the proposed amendments to the rule. Regarding the statement of purpose for Rule 13, they recommend adding a sentence stating that these rules are a necessary next step in efforts to preserve, protect and improve our water resources. (SDC)

Response: The current rule language addresses what the rule is intended to accomplish (i.e., establish requirements for MS4 conveyance discharges so that public health, existing water uses, and aquatic biota are protected), and not the rule's role as one step in a process.

Comment: They are concerned that IDEM will lack the resources to implement or assist in carrying out this rule. They urged the board to start a separate rulemaking for adoption of fees to carry out the rule in a timely fashion. (SDC)

Response: IDEM has identified resources to implement this program and continues to pursue a variety of options to ensure resources are available.

Comment: Regarding public comment and review of some general permits issued under 327 IAC 15, IDEM has removed the appeal procedure in order to decrease the processing time. IDEM's response stated that the information would be stored in IDEM's storm water database which will be readily accessible for public inquiries. They urged the board to make sure the department carries out this commitment. (SDC)

Response: The agency has existing Rule 5 and Rule 6 storm water databases, and a federal grant has been obtained to create an overall storm water database for the two existing storm water rules and Rule 13. The implementation of the new database will likely occur with the effective dates of the storm water rules.

Comment: Definitions (42), (49), (52), (70), (73), and (86), need minor revisions for clarity. (SDC)

Response: Appropriate changes have been made to the definitions to provide clarity.

Comment: Since 327 IAC 15-13-8(f) appears to be the first mention of an annual report, consider referencing 327 IAC 15-13-18 here. (SDC)

Response: The rule language was revised to provide reference to the annual report in section 18 of this rule.

Comment: 327 IAC 15-13-14(c), 327 IAC 15-13-15(b) and 327 IAC 15-13-16(b) still use the term "ordinance".

Response: The term "ordinance" already exists in sections 14, 15, and 16.

327 IAC 5-4-6

327 IAC 15-13

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

327 IAC 5-4-6 Storm water discharges

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1

Affected: IC 13-18-4

Sec. 6. (a) The following discharges consisting entirely of storm water are subject to ~~the~~ **an individual NPDES program: permit:**

(1) ~~A discharge with respect to which a permit has been issued prior to February 4, 1987.~~

(2) ~~A discharge which the commissioner determines contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the state.~~

(1) A discharge which:

(A) the commissioner determines contributes to a violation of a water quality standard;

(B) is a significant contributor of pollutants to waters or to a regulated municipal separate storm sewer system (MS4) conveyance; or

(C) is subject to the requirements of 327 IAC 15 if one (1) of the six (6) cases listed in 327 IAC 15-2-9 occurs.

(b) Prior to October 1, 1992, a permit shall not be required for a discharge composed entirely of storm water, except the following:

- (1) A discharge with respect to which a permit has been issued prior to February 4, 1987.
 - (2) A discharge associated with **exposed to categories of industrial activity specified in 327 IAC 15-6-2 that is subject to federal storm water effluent limitation guidelines.**
 - (3) A discharge from a large municipal separate storm sewer system serving a population of two hundred fifty thousand (250,000) or more.
 - (4) A discharge from a medium municipal separate storm sewer system serving a population of one hundred thousand (100,000) or more but less than two hundred fifty thousand (250,000).
 - (5) A discharge which the commissioner determines contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the state.
- (3) **A discharge associated with the state department of transportation.**
- (4) **A discharge from an MS4 conveyance subject to regulation under 40 CFR 122.26(a)(iii).**

(c) The commissioner shall not, under this section, require a permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including, but not limited to, pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with, or do not come into contact with any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations.

(d) The following are requirements for large and medium municipal separate storm sewer:

- (1) Permits must be obtained for all discharges from large and medium municipal separate storm sewer systems.
- (2) The commissioner may either issue one (1) system wide permit covering all discharges from municipal separate storm sewers within a large or medium municipal storm sewer system or issue distinct permits for appropriate categories of discharges within a large or medium municipal separate storm sewer system including, but not limited to:
 - (A) all discharges owned or operated by the same municipality;
 - (B) located within the same jurisdiction;
 - (C) all discharges within a system that discharges to the same watershed;
 - (D) discharges within a system that are similar in nature; or
 - (E) individual discharges from municipal separate storm sewers within the system.
- (3) The operator of a discharge from a municipal separate storm sewer which is part of a large or medium municipal separate storm sewer system must do any of the following:
 - (A) Participate in a permit application (to be a permittee or a copermitee) with one (1) or more other operators of discharges from the large or medium municipal storm sewer system which covers all, or a portion of all, discharges from the municipal separate storm sewer system.
 - (B) Submit a distinct permit application which only covers discharges from the municipal separate storm sewers for which the operator is responsible.
 - (C) A regional authority may be responsible for submitting a permit application under the following guidelines:
 - (i) The regional authority together with coapplicants shall have authority over a storm water management program that is in existence, or shall be in existence at the time Part 1 of the application is due.
 - (ii) The permit applicant or coapplicants shall establish their ability to make a timely submission of Part 1 and Part 2 of the municipal application.
 - (iii) Each of the operators of large or medium municipal separate storm sewers shall comply with the application requirements of 40 CFR 122.26(d).
- (4) One (1) permit application may be submitted for all or a portion of all municipal separate storm sewers within adjacent or interconnected large or medium municipal separate storm sewer systems. The commissioner may issue one (1) system wide permit covering all or a portion of all municipal separate storm sewers in adjacent or interconnected large or medium municipal separate storm sewer systems.
- (5) Permits for all or a portion of all discharges from large or medium municipal separate storm sewer systems that are issued on a system wide, jurisdiction wide, watershed, or other basis may specify different conditions relating to different discharges covered by the permit, including different management programs for different drainage areas which contribute storm water to the system.

(6) Copermitees need only comply with permit conditions relating to discharges from the municipal separate storm sewers for which they are operators:

(e) (1) In addition to meeting the requirements of 40 CFR 122.26(e), an operator of a storm water discharge associated with industrial activity which discharges through a large or medium municipal separate storm sewer system shall submit, to the operator of the municipal separate storm sewer system receiving the discharge no later than May 15, 1991, or one hundred eighty (180) days prior to commencing such discharge, the following:

(A) The name of the facility:

(B) A contact person and phone number:

(C) The location of the discharge:

(D) A description, including Standard Industrial Classification, which best reflects the principal products or services provided by each facility:

(E) Any existing NPDES permit number:

(2) In cases where the industrial activity consists of construction activity which disturbs five (5) acres or more of ground, information equivalent to that required by subdivision (1) and 327 IAC 15-5-5 shall be submitted to the operator of the municipal separate storm sewer system receiving the discharge prior to the initiation of the land disturbing activities:

(f) The commissioner may issue permits for municipal separate storm sewers that are designated under subsection (b)(5) on a system wide basis, jurisdiction wide basis, watershed basis, or other appropriate basis, or may issue permits for individual discharges:

(g) For storm water discharges associated with industrial activity from point sources which discharge through a nonmunicipal or nonpublicly owned separate storm sewer system, the commissioner may issue a single NPDES permit, with each discharger a copermitee to a permit issued to the operator of the portion of the system that discharges into waters of the state, or individual permits to each discharger of storm water associated with industrial activity through the nonmunicipal conveyance system:

(1) All storm water discharges associated with industrial activity that discharge through a storm water discharge system that is not a municipal separate storm sewer must be covered by an individual permit, or a permit issued to the operator of the portion of the system that discharges to waters of the state, with each discharger to the nonmunicipal conveyance a copermitee to that permit:

(2) Where there is more than one (1) operator of a single system of such conveyances, all operators of storm water discharges associated with industrial activity must submit applications:

(3) Any permit covering more than one (1) operator shall identify the effluent limitations, or other permit conditions, if any, that apply to each operator:

(h) Conveyances that discharge storm water runoff combined with municipal sewage are point sources that must obtain NPDES permits in accordance with the procedures of 40 CFR 122.21 and are not subject to the provisions of this section:

(b) The following discharges consisting entirely of storm water are subject to a general NPDES permit:

(1) A discharge exposed to categories of industrial activity specified in 327 IAC 15-6-2.

(2) A discharge associated with construction activities, which disturb one (1) or more acres of land. Included in these activities are disturbances of less than one (1) acre of land that are part of a larger common plan of development or sale as defined in 327 IAC 15-5-4(20) if the larger common plan will ultimately disturb one (1) or more acres of land.

(3) A discharge from an MS4 conveyance serving a municipal population of seven thousand (7,000) or more, and meeting the designation criteria listed in 327 IAC 15-13-3(a)(5) and 327 IAC 15-13-3(a)(6). Discharges from public and private storm water utilities and municipal street department conveyances and operational areas within the designated area are included.

(4) A discharge from an MS4 conveyance that has been designated for storm water permit coverage by its location within an urbanized area as determined by the 1990 or 2000 Decennial Census map by the United States Census Bureau. Discharges from public and private storm water utilities and municipal street

department conveyances and operational areas within the designated area are included.

(5) A discharge from a county, or portion of a county, MS4 conveyance that has been designated for storm water permit coverage by its location within an urbanized area as determined by the 1990 or 2000 Decennial Census map by the United States Census Bureau. Discharges from county highway department conveyances and operational areas within the designated area are included.

(6) A discharge from an MS4 conveyance serving a university, college, military base, hospital, or correctional facility population of one thousand (1,000) or more, and located within a regulated municipality or county as determined by subdivision (4) or (5).

(c) The commissioner shall not, under this section, require a permit for discharges of storm water run-off from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows from conveyances or systems of conveyances (including, but not limited to, pipes, conduits, ditches, and channels) used for collecting and conveying precipitation run-off and which are not contaminated by contact with, or do not come into contact with any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations.

(d) For an individual NPDES permit required under subsection (a), the department shall consider the following in determining the requirements to be contained in the permit:

- (1) The provisions in 327 IAC 15-5, 327 IAC 15-6, and 327 IAC 15-13.
- (2) The nature of the discharges and activities occurring at the site or facility.
- (3) Other information relevant to the potential impact on water quality.

(e) Storm water run-off discharged into a combined sewer system is not subject to the provisions of this section.

(f) Whether a discharge from a municipal separate storm sewer or an MS4 conveyance is, not, subject to regulation under this section, shall have no bearing on whether the owner or operator of the discharge is eligible for funding under Title II, Title III, or Title VI of the CWA.

(g) Terms as used in this section have the same meaning as defined under 40 CFR 122.26(b), 327 IAC 15-5-4, 327 IAC 15-6-4, or 327 IAC 15-13-5. (*Water Pollution Control Board; 327 IAC 5-4-6; filed Sep 24, 1987, 3:00 p.m.: 11 IR 644; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1764*)

SECTION 2. 327 IAC 15-13 IS ADDED TO READ AS FOLLOWS:

Rule 13. Storm Water Run-Off Associated with Municipal Separate Storm Sewer System Conveyances

327 IAC 15-13-1 Purpose

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2
Affected: IC 13-18-4

Sec. 1. The purpose of this rule is to establish requirements for storm water discharges from municipal separate storm sewer system (MS4) conveyances so that public health, existing water uses, and aquatic biota are protected. (*Water Pollution Control Board; 327 IAC 15-13-1*)

327 IAC 15-13-2 Applicability

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2
Affected: IC 13-18-4

Sec. 2. This rule applies to an MS4 entity that:

- (1) is not required to obtain an individual NPDES permit under 327 IAC 5-4-6(a)(4) or 327 IAC 15-2-9(b);
 - (2) meets the general permit rule applicability requirements under 327 IAC 15-2-3;
 - (3) does not have coverage under an individual MS4 permit; and
 - (4) operates, maintains, or otherwise has responsibility for an MS4 conveyance within a designated MS4 area.
- (*Water Pollution Control Board; 327 IAC 15-13-2*)

327 IAC 15-13-3 MS4 area designation criteria

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2

Affected: IC 13-18-4

Sec. 3. (a) An MS4 entity that meets one (1) of the following is designated for permit coverage under this rule:

(1) Located within, or contiguous to, a mapped 1990 or 2000 United States Census Bureau urbanized area (UA) and is:

(A) a municipality, regardless of its United States Census Bureau population; or

(B) a university, college, military base, hospital, or correctional facility with a full-time equivalent enrollment, daily user population, or bed count occupancy (based on the most recent enrollment count, or population data) greater than or equal to one thousand (1,000).

(2) A county that contains a mapped UA. Only the portion of the county that contains the mapped UA, as delineated by political township or section, township, and range boundaries, must be regulated. If only a portion of the county contains a mapped UA, the MS4 entity may elect to regulate, to the extent of its authority, any additional portion of the county, as delineated by political township or section, township, and range boundaries, under this rule.

(3) A documented significant contributor of pollutants to waters or a regulated MS4 area.

(4) A municipality with a population density, according to 2000 United States Census Bureau data, of five hundred (500) people per square mile or greater and United States Census Bureau population of ten thousand (10,000) or more.

(5) A municipality with a population density, according to 2000 United States Census Bureau data, of five hundred (500) people per square mile or greater, United States Census Bureau population greater than seven thousand (7,000) and less than ten thousand (10,000) and having a positive, ten (10) year population growth percentage greater than or equal to ten percent (10%).

(6) A municipality with a population density, according to 2000 United States Census Bureau data, of five hundred (500) people per square mile or greater, United States Census Bureau population greater than seven thousand (7,000) and less than ten thousand (10,000) and having a university or college full-time equivalent enrollment, military base population, hospital bed count occupancy, or correctional facility daily user population (based on the most recent enrollment, count, or population data) that places the total population greater than or equal to ten thousand (10,000).

(7) A university, college, military base, hospital, or correctional facility with a full-time equivalent enrollment, daily user population, or bed count occupancy greater than or equal to one thousand (1,000), located within a designated municipality, and having responsibility for a storm water conveyance.

(8) A public or private storm water utility that serves one (1) or more of the MS4 entities designated under subdivisions (1) through (7).

(b) An MS4 entity outside of a mapped UA not already designated under subsection (a) may be designated for permit coverage if its discharge is to a sensitive area or if other environmental programs are not adequately protecting water quality.

(c) Once an MS4 entity is designated under this section, it remains designated until the expiration of its permit unless any of the conditions for termination in section 20 of this rule are applicable.

(d) The department shall notify MS4 entities meeting the designation criteria of this section in writing.

(e) A designated MS4 entity subject to this rule is also subject to the requirements of 327 IAC 15-2-9(b) and may be required to obtain an individual NPDES permit. (*Water Pollution Control Board; 327 IAC 15-13-3*)

327 IAC 15-13-4 General permit boundary

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2

Affected: IC 13-18-4

Sec. 4. (a) This general permit covers Indiana.

(b) For each MS4 entity, the permit covers all storm water discharges from conveyance systems for which it

has jurisdiction, or, in the case of designated counties, the portion of the county jurisdictional area depicted in a mapped UA, unless appropriate written, enforceable, legal documentation has been obtained to allow another entity to have permit responsibilities for systems and areas within another entity's jurisdiction. (*Water Pollution Control Board; 327 IAC 15-13-4*)

327 IAC 15-13-5 Definitions

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2

Affected: IC 13-11-2; IC 13-18-4; IC 13-20-10; IC 14-32

Sec. 5. For purposes of this rule, the following definitions apply:

(1) "Best management practice" or "BMP" means any structural or nonstructural control measure utilized to improve the quality and, as appropriate, reduce the quantity of storm water run-off. The term includes schedules of activities, prohibitions of practice, treatment requirements, operation and maintenance procedures, use of containment facilities, land-use planning, policy techniques, and other management practices.

(2) "Buffer strip" means an existing, variable width strip of vegetated land intended to protect water quality and terrestrial and aquatic habitat in an adjacent resource or area.

(3) "Canine park" means a designated public location where dogs are restricted and animal waste may accumulate. For the purposes of this rule, the term does not include kennels, municipal dog impoundments, or humane society buildings.

(4) "Class V injection well" means a type of well, which typically has a depth greater than its largest surface dimension, emplaces fluids into the subsurface, and does not meet the definitions of Class I through Class IV wells as defined under 40 CFR 146.5. While the term includes septic systems that serve more than one (1) single-family dwelling or provide service for nondomestic waste, dug wells, bored wells, improved sinkholes, french drains, infiltration sumps, and infiltration galleries, it does not include surface impoundments, trenches, or ditches that are wider than they are deep.

(5) "Combined sewer" means a sewer that is designed, constructed, and used to receive and transport combined sewage.

(6) "Combined sewer operational plan" or "CSOOP" means a plan that contains the minimum technology controls applicable to, and requirements for operation and maintenance of, a combined sewer system:

(A) before;

(B) during; and

(C) upon completion of;

the implementation of a long term control plan.

(7) "Commissioner" refers to the commissioner of the department of environmental management.

(8) "Constructed wetland" means a manmade shallow pool that creates growing conditions suitable for wetland vegetation and is designed to maximize pollutant removal.

(9) "Contiguity" means an entity's proximity to a designated MS4 area in such a way that it allows for direct discharges of storm water run-off into the regulated MS4 conveyance.

(10) "Conveyance" means any structural process for transferring storm water between at least two (2) points. The term includes piping, ditches, swales, curbs, gutters, catch basins, channels, storm drains, and roadways.

(11) "Daily user population" means a population for an entity that is present at that location on a daily basis.

(12) "Dechlorinated swimming pool discharge" means chlorinated water that has either sat idle for seven (7) days following chlorination prior to discharge to the MS4 conveyance, or, by analysis, does not contain detectable concentrations (less than five-hundredths (0.05) milligram per liter) of chlorinated residual.

(13) "Department" refers to the department of environmental management.

(14) "Detention basin" means a type of storage practice used to detain or slow storm water run-off and then release it through a positive outlet.

(15) "Disposal" means the:

(A) discharge;

(B) deposit;

(C) injection;

(D) spilling;

(E) leaking; or

- (F) placing;
of any solid waste or hazardous waste into or on any land or water so that the solid waste or hazardous waste, or any constituent of the waste, may enter the environment, be emitted into the air, or be discharged into any waters, including ground waters.
- (16) “Dry well” means a type of infiltration practice that allows storm water run-off to flow directly into the ground via a bored or otherwise excavated opening in the ground surface.
- (17) “Filter strip” means a type of vegetative practice used to filter storm water run-off through the use of planted, or existing vegetation near disturbed or impervious surfaces.
- (18) “Floatable” means any solid waste that, due to its physical characteristics, will float on the surface of water. For the purposes of this rule, the term does not include naturally occurring floatables, such as leaves or tree limbs.
- (19) “Flood plain” means the area adjoining a river, stream, or lake that is inundated by the base flood as determined by 312 IAC 10.
- (20) “Floodway” means the channel of a river or stream and those portions of the flood plain adjoining the channel that are reasonably required to efficiently carry and discharge the peak flow from the base flood as determined by 312 IAC 10.
- (21) “Full-time equivalent enrollment” means a college or university enrollment of undergraduate students currently taking fifteen (15) credit hours of course work and graduate or professional students currently taking twelve (12) credit hours of course work. Each respective fifteen (15) or twelve (12) credit hours of course work equals one (1) full-time equivalent.
- (22) “Garbage” means all putrescible animal solid, vegetable solid, and semisolid wastes resulting from the:
- (A) processing;
 - (B) handling;
 - (C) preparation;
 - (D) cooking;
 - (E) serving; or
 - (F) consumption of food or food materials.
- (23) “General permit rule boundary” means an area based upon existing geographic or political boundaries indicating the area within which an MS4 conveyance affected by this rule is located.
- (24) “Grass swale” means a type of vegetative practice used to filter storm water run-off via a vegetated, shallow-channel conveyance.
- (25) “Ground water” means such accumulations of underground water, natural or artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this state. The term does not include manmade underground storage or conveyance structures.
- (26) “Household hazardous waste” or “HHW” means solid waste generated by households that:
- (A) is ignitable, as defined under 40 CFR 261.21;
 - (B) is toxic, as defined under 40 CFR 261.24;
 - (C) is reactive, as defined under 40 CFR 261.23;
 - (D) is corrosive, as defined under 40 CFR 261.22; or
 - (E) otherwise poses a threat to human health or the environment.
- (27) “Hydrologic unit code” or “HUC” means a numeric United States Geological Survey code that corresponds to a watershed area. Each area also has a text description associated with the numeric code.
- (28) “Illicit discharge” means any discharge to an MS4 conveyance that is not composed entirely of storm water, except naturally occurring floatables, such as leaves or tree limbs. Sources of illicit discharges include sanitary wastewater, septic tank effluent, car wash wastewater, oil disposal, radiator flushing disposal, laundry wastewater, roadway accident spillage, and household hazardous wastes.
- (29) “Impervious surface” means any surface that prevents storm water to readily infiltrate into the soils.
- (30) “Individual NPDES permit” means an NPDES permit issued to one (1) MS4 operator that contains requirements specific to that MS4 conveyance.
- (31) “Infiltration basin or trench” means a type of infiltration practice used to filter storm water run-off into soils via the use of installed structures with porous material.
- (32) “Infiltration gallery” means a type of infiltration practice used to filter storm water run-off into soils that utilizes one (1) or more vertical pipes leading to a horizontal, perforated pipe laid within a trench, often backfilled with gravel or some other permeable material.

- (33) “Infiltration practices” means any structural BMP designed to facilitate the percolation of run-off through the soil to ground water. Examples include infiltration basins or trenches, dry wells, and porous pavement.
- (34) “Initial receiving water” means a water that is the direct recipient of a discharge from an MS4 area after the discharge passes through another MS4 conveyance.
- (35) “Legally binding agreement” means a written, enforceable legal document used to describe responsibilities between joint permittees or other entities.
- (36) “Load allocation” means the portion of a receiving waterbody’s loading capacity that is attributed either to one (1) of its existing or future nonpoint sources of pollution or to natural background sources.
- (37) “Long term control plan” or “LTCP” means a plan that is:
- (A) consistent with the federal Combined Sewer Overflow Control Policy (59 FR 18688); and
 - (B) developed in accordance with the recommendations set forth in Combined Sewer Overflows Guidance for Long-Term Control Plan (EPA 832B95002).
- (38) “Minimum control measure” or “MCM” refers to the following minimum measures required by this rule:
- (A) Public education and outreach.
 - (B) Public participation and involvement.
 - (C) Illicit discharge detection and elimination.
 - (D) Construction site run-off control.
 - (E) Postconstruction run-off control.
 - (F) Pollution prevention and good housekeeping.
- (39) “MS4 area” means a land area comprising one (1) or more places that receives coverage under one (1) NPDES storm water permit regulated by this rule or 327 IAC 5-4-6(a)(3) and 327 IAC 5-4-6(a)(4).
- (40) “MS4 entity” means a public or private body that owns, operates, or maintains a storm water conveyance system, including a transportation agency operated by that body. The term can also include federal, state, city, town, county, district, association, or township public bodies, and privately owned universities, colleges, or storm water utilities. For the purposes of this rule, the term does not include non-MS4 entity-owned shopping malls, office parks, apartment complexes, golf courses, churches, or hotels.
- (41) “MS4 operator” means the person responsible for development, implementation, or enforcement of the MCMs for a designated MS4 area.
- (42) “Municipal separate storm sewer system” or “MS4” means a conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains, that is:
- (A) owned or operated by a:
 - (i) federal, state, city, town, county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over storm water, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under Section 208 of the Clean Water Act (33 U.S.C. 1288) that discharges into waters of the state; or
 - (ii) privately owned storm water utility, hospital, university or college having jurisdiction over storm water that discharges into waters of the state;
 - (B) designed or used for collecting or conveying storm water;
 - (C) not a combined sewer; and
 - (D) not part of a publicly owned treatment works (POTW) as defined at 40 CFR 122.2.
- (43) “Municipal, state, federal, or institutional refueling area” means an operating gasoline or diesel fueling area whose primary function is to provide fuel to either municipal, state, federal, or institutional equipment or vehicles.
- (44) “Mutual drain” means a drainage system that:
- (A) is located on two (2) or more tracts of land that are under different ownership;
 - (B) was established by the mutual consent of all the owners; and
 - (C) was not established under or made subject to any drainage statute.
- (45) “Nonpoint source” means a source of water pollution that does not meet the definition of point source. The term includes in-place pollutants, direct wet and dry deposition, ground water inflow, and overland run-off.
- (46) “Notice of deficiency letter” or “NOD letter” means a written notification from the department indicating

an MS4 entity's deficiencies in their NOI letter or SWQMP submittals.

(47) "Notice of intent letter" or "NOI letter" means a written notification indicating an MS4 entity's intention to comply with the terms of this rule in lieu of applying for an individual NPDES permit and includes information as required under sections 6 and 9 of this rule. It is the application for obtaining permit coverage under this rule.

(48) "Notice of sufficiency letter" or "NOS letter" means a written notification from the department indicating that an MS4 entity has sufficiently provided the required information in their NOI letter or SWQMP submittals.

(49) "Notice of termination letter" or "NOT letter" means a written notification from the department indicating that an entity has met the conditions to terminate their permit coverage under this rule.

(50) "Open space" means any land area devoid of any disturbed or impervious surfaces created by industrial, commercial, residential, agricultural, or other manmade activities.

(51) "Outfall" means a point source discharge via a conveyance of storm water run-off into a water of the state.

(52) "Outfall scouring" means the deterioration of a streambed from an outfall discharge to an extent that the excessive settling of solid material results and suitable aquatic habitat is diminished.

(53) "Point source" means any discernible, confined, and discrete conveyance, including a pipe, ditch, channel, tunnel, conduit, well, or discrete fissure.

(54) "Pollutant of concern" means any pollutant that has been documented via analytical data as a cause of impairment in any waterbody, or to another MS4, to which the MS4 discharges.

(55) "Porous pavement" means a type of infiltration practice to improve the quality and reduce the quantity of storm water run-off via the use of manmade, pervious pavement which allows run-off to percolate through the pavement and into underlying soils.

(56) "Private drain" means a drainage system that:

(A) is located on land owned by one (1) person or by two (2) or more persons jointly; and

(B) was not established under or made subject to any drainage statute.

(57) "Programmatic indicator" means any data collected by an MS4 entity that is used to indicate implementation of one (1) or more minimum control measures.

(58) "Qualified professional" means an individual who is trained and experienced in storm water treatment techniques and related fields as may be demonstrated by state registration, professional certification, experience, or completion of coursework that enable the individual to make sound, professional judgments regarding storm water control or treatment and monitoring, pollutant fate and transport, and drainage planning.

(59) "Rain garden" means a vegetative practice used to alter impervious surfaces, such as roofs, into pervious surfaces for absorption and treatment of rainfall.

(60) "Receiving stream" or "receiving water" means a waterbody that receives a discharge from an outfall.

(61) "Redevelopment" means alterations of a property that change a site or building in such a way that there is disturbance of one (1) acre or more of land. The term does not include such activities as exterior remodeling.

(62) "Responsible individual" means the person responsible for development, implementation, or enforcement of the MCMs for a designated MS4 entity.

(63) "Retail gasoline outlet" means an operating gasoline or diesel fueling facility whose primary function is the resale of fuels. The term applies to facilities that create five thousand (5,000) or more square feet of impervious surfaces, or generate an average daily traffic count of one hundred (100) vehicles per one thousand (1,000) square feet of land area.

(64) "Retention basin" means a type of storage practice, that has no positive outlet, used to retain storm water run-off for an indefinite amount of time. Run-off from this type of basin is removed only by infiltration through a porous bottom or by evaporation.

(65) "Riparian habitat" means a land area adjacent to a waterbody that supports animal and plant life associated with that waterbody.

(66) "Riparian zone" means a land area adjacent to a waterbody that is directly associated with that waterbody.

(67) "Sand" means mineral material with a size range between two and one-sixteenth ($2^{1/16}$) millimeter diameter.

(68) "Sedimentation" means the settling and accumulation of unconsolidated material carried by storm water run-off.

- (69) “Sensitive area” means a water body identified as needing priority protection or remediation based on:
- (A) having threatened or endangered species or their habitat;
 - (B) usage as a public surface water supply intake;
 - (C) usage for full body contact recreation, such as bathing beaches; or
 - (D) exceptional use classification as found in 327 IAC 2-1-11(b), outstanding state resource water classification as found in 327 IAC 2-1-2(3) and 327 IAC 2-1.5-19(b).
- (70) “Significant contributor of pollutants” means an MS4 entity or industrial facility that contributes pollutants into an MS4 conveyance and negatively impacts the receiving MS4 operator’s capability to be consistent with applicable state or federal law.
- (71) “Soil and water conservation district” or “SWCD” means a political subdivision established under IC 14-32.
- (72) “Solid waste” means any garbage, refuse, sludge for a waste treatment plant, sludge from a water supply treatment plant, sludge from an air pollution control facility, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, or agricultural operations or from community activities. The term does not include:
- (A) solid or dissolved material in:
 - (i) domestic sewage; or
 - (ii) irrigation return flows or industrial discharges;that are point sources subject to permits under section 402 of the Federal Water Pollution Control Act Amendments (33 U.S.C. 1342);
 - (B) source, special nuclear, or byproduct material (as defined by the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.);
 - (C) manures, or crop residues returned to the soil at the point of generation as fertilizers or soil conditioners as part of a total farm operation; or
 - (D) vegetative matter at composting facilities registered under IC 13-20-10.
- (73) “Spill” means the unexpected, unintended, abnormal, or unapproved dumping, leakage, drainage, seepage, discharge, or other loss of petroleum, hazardous substances, extremely hazardous substances, or objectionable substances. The term does not include releases to impervious surfaces when the substance does not migrate off the surface or penetrate the surface and enter the soil.
- (74) “Standard Industrial Classification code” or “SIC code” means the four (4) digit code applicable to a particular industrial activity in accordance with the Standard Industrial Classification Manual published by the Office of Management and Budget of the Executive Office of the President of the United States.
- (75) “Storage practices” means any structural BMP intended to store or detain storm water and slowly release it to receiving waters or drainage systems. The term includes detention and retention basins.
- (76) “Storm drain marking” means any marking procedure that identifies a storm sewer inlet as draining directly to a receiving waterbody so as to avoid dumping pollutants. The procedures can include painted or cast messages and adhesive decals.
- (77) “Storm water” means water resulting from rain, melting or melted snow, hail, or sleet.
- (78) “Storm water quality management plan” or “SWQMP” means a comprehensive written document that addresses storm water run-off quality within an MS4 area. The SWQMP is divided into three (3) different submittal parts as follows:
- (A) Part A–Initial Application.
 - (B) Part B–Baseline Characterization and Report.
 - (C) Part C–Program Implementation.
- (79) “Stream reach characterization and evaluation report” or “SRCER” means a written report that characterizes and evaluates the pollutant sources on receiving waters from a combined sewer system discharge.
- (80) “Total maximum daily load” or “TMDL” means the sum of the daily individual wasteload allocations for point sources and load allocations for nonpoint sources and natural background minus the sum of a specified margin of safety and any capacity reserved for growth. A TMDL sets and allocates the maximum daily amount of a pollutant that may be introduced into a waterbody and still assure attainment and maintenance of water quality standards.
- (81) “Traffic phasing plan” means a written plan that addresses the installation of appropriate pollution prevention practices that is directly related to the land disturbance associated with infrastructure constructed

to reroute vehicular traffic within an active construction zone. The term does not include detours that are directed away from the active construction area.

(82) "Urbanized area" or "UA" means a land area comprising one (1) or more places that together have a residential population of at least fifty thousand (50,000) and an overall population density of at least five hundred (500) people per square mile.

(83) "Vegetative practices" means any nonstructural or structural BMP that, with optimal design and good soil conditions, utilizes various forms of vegetation to enhance pollutant removal, maintain and improve natural site hydrology, promote healthier habitats, and increase aesthetic appeal. Examples include grass swales, filter strips, buffer strips, constructed wetlands, and rain gardens.

(84) "Waste transfer station" means a place where solid wastes are segregated for additional off-site processing or disposal.

(85) "Wasteload allocation" means the portion of a receiving stream's loading capacity that is allocated to one (1) of its existing or future point sources or pollution.

(86) "Waterbody" means any accumulation of water, surface or underground, natural or artificial, including rivers, streams, creeks, ditches, swales, lakes, ponds, marshes, wetlands, and ground water. The term does not include any storage or treatment structures.

(87) "Watercourse" means the path taken by flowing surface water.

(88) "Waters" means:

(A) the accumulations of water, surface and underground, natural and artificial, public and private; or

(B) a part of the accumulations of water;

that are wholly or partially within, flow through, or border upon Indiana. The term does not include a private pond or an off-stream pond, reservoir, or facility built for reduction or control of pollution or cooling of water before discharge unless the discharge from the pond, reservoir, or facility causes or threatens to cause water pollution.

(89) "Watershed" means an area of land from which water drains to a common point.

(90) "Wellhead protection area" has the meaning set forth at 327 IAC 8-4.1-1(27).

(Water Pollution Control Board; 327 IAC 15-13-5)

327 IAC 15-13-6 Notice of intent letter requirements

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2

Affected: IC 13-18-4

Sec. 6. (a) Unless one (1) application is submitted for multiple MS4 entities, each MS4 entity shall submit an NOI letter with the following information, which will serve as the permit application:

(1) Contact information required under subsection (b).

(2) List of all known receiving waters or, if the discharge is to another MS4, the name of the MS4 entity and the initial receiving water.

(3) Copy of the completed SWQMP–Part A: Initial Application certification submittal and checklist form.

(4) Proof of publication in the newspaper with the greatest circulation in the affected MS4 area. The notice must provide a listing of all entities intended to be covered under the permit. This statement must be included in the public notice, "(MS4 entity name and address) intends to discharge storm water into the (text name and numeric code of all 14-digit Hydrologic Unit Code area) watershed(s), and is submitting a Notice of Intent letter to notify the Indiana Department of Environmental Management of our intent to comply with the requirements under 327 IAC 15-13 to discharge storm water run-off associated with municipal separate storm sewer systems."

(5) Certification, by completing and signing Appendix A of the NOI letter, that any applicable, legally binding agreements between MS4 area entities have been obtained concerning individual responsibilities for implementation of this rule.

(b) The contact information required under subsections (a)(1) and (c)(1) must include the following:

(1) Name of MS4 operator, primary contact individual (if different from the MS4 operator), or responsible individual for each MS4 entity.

(2) Title of the MS4 operator, primary contact individual (if different from the MS4 operator), or responsible individual or individuals.

(3) MS4 entity represented by the MS4 operator, primary contact individual (if different from the MS4

operator), or responsible individual or individuals.

(4) Mailing (and, if different, the physical) address of the MS4 operator, primary contact individual (if different from the MS4 operator), or responsible individual or individuals.

(5) Telephone and facsimile number of the MS4 operator, primary contact individual (if different from the MS4 operator), or responsible individual or individuals.

(6) E-mail address (if available) of MS4 operator, primary contact individual (if different from the MS4 operator), or responsible individual or individuals.

(c) The SWQMP–Part A: Initial Application required under subsection (a)(3) must contain the following:

(1) Written listing of the MS4 entities within an MS4 area covered by the NOI letter submittal. The listing must provide the name of each MS4 entity, a responsible individual for each MS4 entity, and contact information for each MS4 entity.

(2) Written schedule which, at a minimum, adheres to the compliance schedule in section 11 of this rule.

(3) Written proposed or estimated budget allocation for the MS4 area’s storm water program, with a summary of identified funding sources. When multiple MS4 entities are applying under a single NOI letter, the budget allocation must be, at a minimum, separated by MS4 entity.

(d) Multiple MS4 entities within an MS4 area may submit a single NOI letter provided they comply with the submittal requirements of this section. Coverage under a single NOI letter will only be allowed if all the MS4 entities seeking coverage consolidate, and provide, the required information in sections 7, 8, and 18 of this rule as single submittals, and the information is submitted to the department by the MS4 operator designated in subsection (b). MS4 operators may utilize materials from existing local or state programs, or partner with an existing individual MS4 permittee, if all parties agree to coordinate responsibilities in accordance with subsection (a)(5).

(e) Multiple MS4 entities within an MS4 area may submit a separate NOI letter corresponding to each entity and still share responsibilities for implementation of one (1) or more of the requirements in this rule provided they comply with the submittal requirements of this section and coordinate responsibilities in accordance with subsection (a)(5).

(f) Where multiple MS4 entities submit one (1) or more NOI letters based on a watershed delineation and the created MS4 area contains undesignated MS4 entities, the undesignated MS4 entities shall not be subject to the provisions of this rule unless the applicability requirements of section 3 of this rule apply.

(g) Where the MS4 operator changes, or where a new operator is added after the submittal of an NOI letter, a new NOI letter must be completed and submitted in accordance with 327 IAC 15-2-8, and sections 6 and 9 of this rule. If no other conditions change except for the name of the MS4 operator, a written letter describing the name change and a statement that no other conditions, including those conditions in the SWQMP–Part A: Initial Application and legal agreements, have changed will be sufficient notification to the department.

(h) An MS4 entity within an MS4 area that does not have the legal authority or other regulatory mechanisms to implement one (1) or more of the six (6) minimum control measures required under this rule shall either obtain the legal authority or other regulatory mechanism, or work with a neighboring regulated MS4 entity, via legally binding agreements, to share responsibilities.

(i) All documents and information required by this section must meet the signatory requirements of 327 IAC 15-4-3(g).

(j) A qualified professional and the MS4 operator shall certify, with the stated paragraph found in 327 IAC 15-4-3(g)(3), a submitted SWQMP–Part A: Initial Application checklist form.

(k) The department shall review initially submitted NOI letters and SWQMP–Part A: Initial Applications for adequacy, and shall assign each NOI letter an NPDES permit number. Either a written NOD letter requesting additional information, or NOS letter containing the assigned NPDES permit number shall be returned to the

MS4 operator within ninety (90) days of the NOI letter submittal. If the MS4 operator does not receive either a NOD letter or NOS letter within ninety (90) days of the NOI letter submittal, the NOI letter and SWQMP–Part A: Initial Application will be considered adequate.

(l) Responses to NOD letters shall be made by the recipient within thirty (30) days of the date on the NOD letter.

(m) Forms for the NOI letter, SWQMP, annual report, and required certifications shall be provided by the department. (*Water Pollution Control Board; 327 IAC 15-13-6*)

327 IAC 15-13-7 SWQMP–Part B: baseline characterization and report

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2

Affected: IC 13-18-4

Sec. 7. (a) An MS4 operator shall characterize the water quality of all known waters that receive storm water outfall discharges within the MS4 area. The water quality characterization must utilize existing or new information that may describe the chemical, biological, or physical condition of the MS4 area water quality. If monitoring is conducted as part of the characterization, the monitoring of receiving waters shall be either at, or in proximity to, all known, or representative, storm water outfall discharges. After the baseline characterization data is collected, the MS4 operator shall evaluate the data in the baseline characterization to determine which identified areas or specific discharge points are in need of additional water quality measures. This baseline characterization must include the following:

(1) An investigation of land usage and assessment of structural and nonstructural storm water BMP locations and conclusions, such as key observation or monitoring locations in the MS4 conveyances, derived from the land usage investigation.

(2) The identification of known sensitive areas, such as public swimming areas, surface drinking water intakes, waters containing threatened or endangered species and their habitat, or state outstanding resource and exceptional use waters. The identified sensitive areas should be given the highest priority for the selection of BMPs and the prohibition of new or significantly increased MS4 discharges.

(3) A review of known existing and available monitoring data of the MS4 area receiving waters, including, as applicable, data that can be correlated from SRCERs.

(4) The identification of areas having a reasonable potential for, or actually, causing storm water quality problems based on the available and relevant chemical, biological, physical, land use, and complaint data.

(5) Assessment results of BMP locations and, as appropriate, the structural condition of the BMP, related to the BMP's effectiveness in improving storm water quality. As appropriate, this assessment should include recommendations for placement and implementation of additional BMPs within the MS4 area.

(b) An SWQMP–Part B: Baseline Characterization and Report addressing the requirements of subsection (a) must be developed and submitted to the department at the address specified in section 9(b) of this rule. The SWQMP–Part B: Baseline Characterization and Report and completed corresponding certification form must be submitted no later than one hundred eighty (180) days from the submission of the NOI letter.

(c) The department shall review the SWQMP–Part B: Baseline Characterization and Report for adequacy, and a written NOS letter or NOD letter shall be issued to the MS4 operator. If no letter is issued within ninety (90) days of submittal, the SWQMP–Part B: Baseline Characterization and Report is deemed sufficient.

(d) Responses to NOD letters shall be made by the recipient within thirty (30) days of the date on the NOD letter.

(e) Ongoing data collection related to the SWQMP–Part B: Baseline Characterization and Report must be submitted to the department with the corresponding annual report.

(f) A qualified professional and the MS4 operator shall certify, with the stated paragraph found in 327 IAC 15-4-3(g)(3), a submitted SWQMP–Part B: Baseline Characterization and Report checklist form. (*Water*

327 IAC 15-13-8 Submittal of an SWQMP–Part C: program implementation

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2

Affected: IC 13-18-4

Sec. 8. (a) An MS4 operator shall develop and implement an SWQMP–Part C: Program Implementation. The SWQMP–Part C: Program Implementation must contain the following:

- (1) An initial evaluation of the storm water program for the MS4 area. This evaluation should include information on all known structural and nonstructural storm water BMPs utilized.
- (2) A detailed program description for each minimum control measure (MCM) referenced in sections 12 through 17 of this rule.
- (3) A timetable for program implementation milestones, which includes milestones for each of the MCMs referenced in sections 12 through 17 of this rule, and applicable SWQMP–Part B: Baseline Characterization and Report conclusions (BMP recommendations, additional protective measures for sensitive areas, and correcting identified water quality problems).
- (4) As appropriate, a schedule for ongoing characterization of the receiving waters either at, or in proximity to, outfall locations identified in the SWQMP–Part B: Baseline Characterization and Report to evaluate BMP effectiveness and receiving water quality.
- (5) A narrative and mapped description of the MS4 area boundaries that indicate responsible MS4 entity areas for each MCM. The narrative description must include the specific sectional or, as appropriate, the street name, boundaries of the MS4 area.
- (6) An estimate of the linear feet of MS4 conveyances within the MS4 area, segregated by MS4 type, for example, by open ditch or pipe.
- (7) A summary of which structural BMP types will be allowed in new development and redevelopment for the MS4 area.
- (8) A summary on storm water structural BMP selection criteria and, where appropriate, associated performance standards that must be met after installation to indicate BMP effectiveness.
- (9) A summary of the current storm water budget expected or actual funding source, and a projection of the budget for each year within the five (5) year permit term.
- (10) A summary of measurable goals for, at a minimum, each MCM referenced in sections 12 through 17 of this rule. These measurable goals shall demonstrate results that relate to an environmental benefit.
- (11) Completed certification forms, as appropriate, for each MCM.
- (12) The identification of programmatic indicators. Programmatic indicators, grouped by corresponding MCM, must include those listed in subsection (b) that apply to the MS4 operator. Other relevant indicators may be used in place of those listed in subsection (b). If an indicator listed in subsection (b) is not applicable to the operator, or if an other relevant indicator is used, the operator shall provide rationale for the nonidentification or substitution. Programmatic indicators do not need to be fully implemented at the time of the SWQMP–Part C: Program Implementation submittal. Updated data for each of these indicators must be submitted in each annual report.

(b) The programmatic indicators must address the following:

- (1) Number or percentage of citizens, segregated by type of constituent as referenced in section 12(a) of this rule, that have an awareness of storm water quality issues.
- (2) Number and description of meetings, training sessions, and events conducted to involve citizen constituents in the storm water program.
- (3) Number or percentage of citizen constituents that participate in storm water quality improvement programs.
- (4) Number and location of storm drains marked or cast, segregated by marking method.
- (5) Estimated or actual linear feet or percentage of MS4 mapped and indicated on an MS4 area map.
- (6) Number and location of MS4 area outfalls mapped.
- (7) Number and location of MS4 area outfalls screened for illicit discharges.
- (8) Number and location of illicit discharges detected.
- (9) Number and location of illicit discharges eliminated.

- (10) Number of, and estimated or actual amount of material, segregated by type, collected from HHW collections in the MS4 area.
- (11) Number and location of constituent drop-off centers for automotive fluid recycling.
- (12) Number or percentage of constituents that participate in the HHW collections.
- (13) Number of construction sites obtaining an MS4 entity-issued storm water run-off permit in the MS4 area.
- (14) Number of construction sites inspected.
- (15) Number and type of enforcement actions taken against construction site operators.
- (16) Number of, and associated construction site name and location for, public informational requests received.
- (17) Number, type, and location of structural BMPs installed.
- (18) Number, type, and location of structural BMPs inspected.
- (19) Number, type, and location of structural BMPs maintained or improved to function properly.
- (20) Type and location of nonstructural BMPs utilized.
- (21) Estimated or actual acreage or square footage of open space preserved and mapped in the MS4 area, if applicable.
- (22) Estimated or actual acreage or square footage of pervious and impervious surfaces mapped in the MS4 area, if applicable.
- (23) Number and location of new retail gasoline outlets or municipal, state, federal, or institutional refueling areas, or outlets or refueling areas that replaced existing tank systems that have installed storm water BMPs.
- (24) Number and location of MS4 entity facilities that have containment for accidental releases of stored polluting materials.
- (25) Estimated or actual acreage or square footage, amount, and location where pesticides and fertilizers are applied by a regulated MS4 entity to places where storm water can be exposed within the MS4 area.
- (26) Estimated or actual linear feet or percentage and location of unvegetated swales and ditches that have an appropriately-sized vegetated filter strip.
- (27) Estimated or actual linear feet or percentage and location of MS4 conveyances cleaned or repaired.
- (28) Estimated or actual linear feet or percentage and location of roadside shoulders and ditches stabilized, if applicable.
- (29) Number and location of storm water outfall areas remediated from scouring conditions, if applicable.
- (30) Number and location of deicing salt and sand storage areas covered or otherwise improved to minimize storm water exposure.
- (31) Estimated or actual amount, in tons, of salt and sand used for snow and ice control.
- (32) Estimated or actual amount of material by weight collected from catch basin, trash rack, or other structural BMP cleaning.
- (33) Estimated or actual amount of material by weight collected from street sweeping, if utilized.
- (34) If applicable, number or percentage and location of canine parks sited at least one hundred fifty (150) feet away from a surface waterbody.

(c) An SWQMP–Part C: Program Implementation and completed corresponding certification form must be submitted to the department within three hundred sixty-five (365) days from the date of NOI letter submittal.

(d) The department shall review submitted SWQMP–Part C: Program Implementations for adequacy. Either a written NOD letter requesting additional information, or NOS letter shall be sent to the MS4 operator within ninety (90) days of the SWQMP–Part C: Program Implementation submittal. If no letter is issued within ninety (90) days of submittal, the plan is deemed sufficient.

(e) Responses to NOD letters must be made by the recipient within thirty (30) days of the date on the NOD letter.

(f) As conditions or allowed technologies change, the SWQMP–Part C: Program Implementation must be updated. When updates are created, relevant sections of the SWQMP–Part C: Program Implementation containing the updates must be submitted to the commissioner as an attachment to the corresponding annual report.

(g) A qualified professional and the MS4 operator shall certify, with the stated paragraph found in 327 IAC 15-4-3(g)(3), a submitted SWQMP–Part C: Program Implementation checklist form. (*Water Pollution Control Board; 327 IAC 15-13-8*)

327 IAC 15-13-9 Submittal of an NOI letter and other documents

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2

Affected: IC 13-18-4; IC 15-4-3

Sec. 9. (a) All information required under section 6 of this rule must be submitted to the commissioner. An MS4 entity that meets the designation criteria under section 3 of this rule shall submit the NOI letter, SWQMP–Part A: Initial Application, and other required documentation no later than ninety (90) days from the effective date of this rule, unless:

- (1) written permission for a later date has been granted by the commissioner; or
- (2) the MS4 entity was not notified in writing at least one hundred eighty (180) days prior to the effective date of this rule.

(b) A termination request, the NOI letter, Parts A, B, and C of the SWQMP, and any other required information must be submitted to:

Indiana Department of Environmental Management
Office of Water Quality, Urban Wet Weather Section
Rule 13 Storm Water Coordinator
100 North Senate Avenue, Room 1255
P.O. Box 6015
Indianapolis, Indiana 46206-6015.

(c) The permit and the compliance schedules of this rule become effective upon receipt of the initial NOI letter by the department.

(d) The commissioner may deny coverage under this rule and require submittal of an application for an individual NPDES permit based on a review of the NOI letter or other information.

(e) An MS4 entity that either was not notified in writing at least one hundred eighty (180) days prior to the effective date of this rule, or meets the designation criteria of section 3 of this rule after the effective date of this rule due to changing conditions or new facility construction, shall submit the required information under section 6 of this rule, within one hundred eighty (180) days of either:

- (1) the date on the written notification;
- (2) becoming aware of the relevant changed conditions; or
- (3) upon the initiation of facility operations;

unless written permission for a later date has been granted by the commissioner.

(f) Any person who knowingly makes any false statement, representation, or certification in any document submitted or required to be maintained under this rule is subject to 327 IAC 15-4-3(i). (*Water Pollution Control Board; 327 IAC 15-13-9*)

327 IAC 15-13-10 MS4 permit implementation; coordination with total maximum daily load allocations

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2

Affected: IC 13-18-4

Sec. 10. If a total maximum daily load (TMDL) is approved for any waterbody into which an MS4 conveyance discharges, the MS4 operator must review and appropriately modify Parts B and C of their SWQMP if the TMDL includes requirements for control of storm water discharges under the jurisdiction of the MS4 operator. (*Water Pollution Control Board; 327 IAC 15-13-10*)

327 IAC 15-13-11 Compliance schedule

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2

Affected: IC 13-18-4

Sec. 11. An MS4 operator shall comply with the following schedule for implementation of this rule:

Rule Requirement	Compliance Deadline (from NOI letter submittal date)
Storm Water Quality Management Plan:	Components throughout term of permit
Part A: Initial Application submitted	With NOI letter
Part B: Baseline Characterization and Report submitted	180 days
Part C: Program Implementation submitted	1 year
Public Education and Outreach MCM implementation:	Throughout term of permit
Public education and outreach program development certification submitted	1 year
Public Involvement/Participation MCM implementation:	Throughout term of permit
Public involvement and participation program development certification submitted	1 year
Illicit Discharge Detection/Elimination MCM implementation:	Throughout term of permit
Illicit discharge plan and regulatory mechanism certification submitted	1 year
25 % of storm water outfalls systems mapped	Each year after 1 year
All known storm water outfall systems, with pipe diameters 12 inches or greater or open ditches with 2 feet or larger bottom width, mapped	5 years
Construction Site Run-Off Control MCM implementation:	Throughout term of permit
Construction site program plan and regulatory mechanism certification submitted	1 year
Postconstruction Run-Off Control MCM implementation:	Throughout term of permit
Operational and maintenance plan certification submitted	2 years
Postconstruction program plan and regulatory mechanism certification submitted	2 years
Municipal operations pollution prevention and good housekeeping MCM implementation:	Throughout term of permit
Operations pollution prevention program development certification submitted	1 year

If an MS4 operator is unable to meet a compliance deadline under this section the operator shall submit a written request and justification for extending the deadline. The request must be submitted to the department no later than thirty (30) days prior to the due date. (*Water Pollution Control Board; 327 IAC 15-13-11*)

327 IAC 15-13-12 Storm water quality management plan public education and outreach MCM

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2

Affected: IC 13-18-4

Sec. 12. (a) An MS4 operator shall develop an SWQMP that includes methods and measurable goals that will be used to inform residents, visitors, public service employees, commercial and industrial facilities, and construction site personnel within the MS4 area about the impacts polluted storm water run-off can have on water quality and ways they can minimize their impact on storm water quality. The MS4 operator shall ensure, via documentation, that a reasonable attempt was made to reach all constituents within the MS4 area to meet this measure.

(b) MS4 operators are encouraged to utilize existing programs and outreach materials to meet this measure. MS4 operators shall identify and implement an informational program with educational materials for constituents. A certification form shall be completed and submitted to the department once the program has been developed and implemented, or three hundred sixty-five (365) days from the date of NOI letter submittal, whichever is earlier.

(c) MS4 operators shall develop measurable goals for this MCM. An initial assessment of the MS4 area constituents must be conducted to determine initial constituent knowledge and practices as they relate to storm water quality. To comply with this measure, specific target outreach or reduction goal percentages and timetables must be identified. As applicable or, if not applicable, then appropriately justified, goals must address relevant targeted audience improvement in disposal practices, cast storm drain cover installations, school curricula or Web site implementation, outreach to every population sector, and educational material distribution.

(d) In combined sewer system municipalities designated under this rule, the current LTCP shall be reviewed, and any necessary additions shall be included in the plan to ensure that this MCM requirement is met. (*Water Pollution Control Board; 327 IAC 15-13-12*)

327 IAC 15-13-13 Storm water quality management plan public participation and involvement MCM

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2

Affected: IC 13-18-4

Sec. 13. (a) The MS4 operator shall develop an SWQMP that includes provisions to allow opportunities for constituents within the MS4 area to participate in the storm water management program development and implementation. An MS4 operator shall ensure, via documented efforts, that sufficient opportunities were allotted to involve all constituents interested in participating in the program process to meet this measure. Correctional facilities will not be required to implement the public participation and involvement MCM.

(b) An MS4 entity shall comply with applicable public notice requirements. An MS4 operator shall identify and implement a public participation and involvement program. A certification form shall be completed and submitted to the department once the program has been developed and implemented, or three hundred sixty-five (365) days from the date of NOI letter submittal, whichever is earlier.

(c) An MS4 operator shall develop measurable goals for this MCM. An initial assessment of MS4 area constituents must be conducted to identify interested individuals for participation in the MS4 area storm water program. To comply with this measure, specific outreach and reduction goal percentages and timetables must be identified. As applicable or, if not applicable, then appropriately justified, goals must address relevant community participation in citizen panels, community clean-ups, citizen watch groups and drain marking projects, and public meeting notification.

(d) In combined sewer system municipalities designated under this rule, the current LTCP shall be reviewed, and any necessary additions shall be included in the plan to ensure that this MCM requirement is met. (*Water Pollution Control Board; 327 IAC 15-13-13*)

327 IAC 15-13-14 Storm water quality management plan illicit discharge detection and elimination MCM

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2

Affected: IC 13-18-4

Sec. 14. (a) An MS4 operator shall develop an SWQMP that includes a commitment to develop and implement a strategy to detect and eliminate illicit discharges to the MS4 conveyance.

(b) An MS4 operator shall develop a storm sewer system map showing the location of all outfalls and MS4 conveyances in the particular MS4 area under the MS4 operator's control and the names and locations of all waters that receive discharges from those outfalls. A map developed under this subsection must meet the following:

(1) At a minimum, longitude and latitude for mapped outfall locations must be done in decimal degrees, or, if a global positioning system is utilized, mapping-grade accuracy data shall be collected, where an accuracy discrepancy is less than five (5) meters.

(2) The mapping requirement must be developed as follows:

(A) All known outfall conveyance systems with a pipe diameter of twelve (12) inches or larger and open ditches with a two (2) foot or larger bottom width must be mapped within the first five (5) year permit term,

according to the following:

(i) After the second year of permit coverage, mapping must depict the location of outfall conveyance systems for at least twenty-five percent (25%) of the MS4 conveyances within the MS4 area.

(ii) For each additional year of the initial permit term, mapping must depict at least an additional twenty-five percent (25%) of the MS4 conveyances.

(B) Subsequent permit terms will require that all remaining outfall conveyance systems are mapped.

(3) The mapping requirements in subdivision (2) do not include private or mutual drains, yard swales that are not maintained by a regulated MS4 entity, or curbs and gutters.

(c) Through an ordinance or other regulatory mechanism, an MS4 operator shall prohibit illicit discharges into MS4 conveyances and establish appropriate enforcement procedures and actions.

(d) An MS4 operator shall develop a plan to detect, address, and eliminate illicit discharges, including illegal dumping, into the MS4 conveyance. This plan need not address the following categories of nonstorm water discharges or flows, unless the MS4 operator identifies them as significant contributors of pollutants to its MS4 conveyance:

- (1) Water line flushing.
- (2) Landscape irrigation.
- (3) Diverted stream flows.
- (4) Rising ground waters.
- (5) Uncontaminated ground water infiltration.
- (6) Uncontaminated pumped ground water.
- (7) Discharges from potable water sources.
- (8) Foundation drains.
- (9) Air conditioning condensation.
- (10) Irrigation water.
- (11) Springs.
- (12) Water from crawl space pumps.
- (13) Footing drains.
- (14) Lawn watering.
- (15) Individual residential car washing.
- (16) Flows from riparian habitats and wetlands.
- (17) Dechlorinated swimming pool discharges.
- (18) Street wash water.
- (19) Discharges from firefighting activities.

(e) The plan developed under subsection (d) must, at a minimum, locate problem areas via dry weather screening or other means, determine the source, remove or otherwise correct illicit connections, and document the actions taken. The dry weather screening or other means must utilize a field testing kit, or similar method, to analyze for pollutants of concern and other parameters, such as pH, conductivity, or nitrogen-ammonia, used to identify possible pollutant sources. All storm water outfalls in the regulated MS4 area under the MS4 operator's control must be screened for illicit discharges. The screening may be initiated gradually throughout successive five (5) year permit cycles. If the gradual approach is utilized, all storm water outfalls with a pipe diameter of twelve (12) inches or larger and open ditches with a two (2) foot or larger bottom width must be screened in the first five (5) year permit term. Subsequent permit terms will require that all remaining outfalls be screened.

(f) The plan developed under subsection (d) must identify all active industrial facilities within the MS4 area that discharge into an MS4 conveyance. This identification shall include the facility name, address, telephone number, and Standard Industrial Classification (SIC) code. Updated information regarding active industrial facilities must be submitted in each annual report.

(g) A certification form must be completed and submitted to the department once the plan has been developed and implemented, or three hundred sixty-five (365) days from the date of NOI letter submittal, whichever is

earlier.

(h) An MS4 operator shall educate public employees, businesses, and the general public about the hazards associated with illicit discharges and improper disposal of waste. This educational effort shall include the following:

- (1) Informational brochures and guidances for specific audiences and school curricula.
- (2) Publicizing and facilitating public reporting of illicit discharges and spills.

(i) An MS4 operator shall initiate, or coordinate existing, recycling programs in the regulated MS4 area for commonly dumped wastes, such as motor oil, antifreeze, and pesticides.

(j) An MS4 operator shall develop measurable goals for this MCM. To comply with this measure, specific outreach and reduction percentages and timetables must be identified. At a minimum, goals must address relevant collection system mapping, regulatory mechanism implementation, employee training, household hazardous waste programs, illicit discharge detection, and illicit discharge elimination.

(k) In combined sewer system municipalities designated under this rule, the current CSOOP and LTCP must be reviewed, and any necessary additions must be included in the plans to ensure that this MCM requirement is met. (*Water Pollution Control Board; 327 IAC 15-13-14*)

327 IAC 15-13-15 Storm water quality management plan construction site storm water run-off control MCM

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2

Affected: IC 13-18-4

Sec. 15. (a) An MS4 operator shall develop an SWQMP that includes a commitment to develop, implement, manage, and enforce an erosion and sediment control program for construction activities that disturb one (1) or more acres of land within the MS4 area.

(b) Through an ordinance or other regulatory mechanism, the MS4 operator shall establish a construction program that controls polluted run-off from construction activities with a land disturbance greater than or equal to one (1) acre, or disturbances of less than one (1) acre of land that are part of a larger common plan of development or sale as defined in 327 IAC 15-5-4(20) if the larger common plan will ultimately disturb one (1) or more acres of land. At a minimum, this ordinance or other regulatory mechanism must contain the requirements of 327 IAC 15-5. A certification form shall be completed and submitted to the department once the ordinance or other regulatory mechanism is developed and a program has been implemented, or three hundred sixty-five (365) days from the date of NOI letter submittal, whichever is earlier. Until the MS4 operator program is implemented, NOI letters and construction plans for construction activities within the MS4 area will be submitted in accordance with 327 IAC 15-5-5 and 15-5-6 to the department and the local SWCD or department of natural resources, division of soil conservation, respectively.

(c) If the MS4 operator has not entered into a written agreement with the local SWCD to review and approve construction site plans or conduct construction site inspections, the MS4 operator shall provide an opportunity to the local SWCD to provide comments and recommendations to the MS4 operator on individual projects. This process may be accomplished by the MS4 operator establishing a local plan review and comment procedure, a project technical review committee, or other mechanism to solicit the input of the local SWCD.

(d) Failure of the SWCD to respond within a predetermined time period should not delay final action of the MS4 operator to approve plans or projects.

(e) In addition to any procedural requirements for submittal to the MS4 operator or MS4 designated entity, an NOI letter required under 327 IAC 15-5 must be submitted to the department for any projects within the MS4 area.

(f) The MS4 operator, or a designated MS4 entity, shall meet the following:

- (1) Develop requirements for the implementation of appropriate BMPs on construction sites to control sediment, erosion and other waste.
- (2) Review and approve the construction plans submitted by the construction site operator before construction activities commence.
- (3) Develop procedures for site inspection and enforcement to ensure that BMPs are properly installed.
- (4) Establish written procedures to identify priority sites for inspection and enforcement based on, at a minimum, the nature and extent of the construction activity, topography, and the characteristics of soils and receiving water quality.
- (5) Develop procedures for the receipt and consideration of public inquiries, concerns, and information submitted regarding local construction activities.
- (6) Implement, at a minimum, a tracking process in which submitted public information, both written and verbal, is documented and then given to appropriate staff for follow-up.

(g) MS4 area personnel responsible for plan review, inspection, and enforcement of construction activities shall attend, at a minimum, an annual training session addressing appropriate control measures, which has been approved of by the department and the department of natural resources, division of soil conservation.

(h) An MS4 operator shall develop measurable goals for this MCM. To comply with this measure, specific outreach, compliance, and implementation goal percentages and timetables must be identified. At a minimum, goals must address relevant regulatory mechanism implementation, public informational request procedure implementation, site inspection procedure implementation, and construction site operator compliance improvement.

(i) For those construction activities operated by the MS4 operator or MS4 municipalities within the MS4 area, construction plans must be submitted to the local SWCD, the department of natural resources, division of soil conservation, or other entity designated by the department for review and approval. If the MS4 operator does not receive either a notice of deficiency or an approval within thirty-five (35) days of the submittal, the plan will be considered adequate. After a one (1) year period of compliance, the MS4 operator or the designated MS4 entity need not submit the plans and may review MS4-operated project construction plans internally with the written authorization of the department of natural resources, division of soil conservation.

(j) In addition to the requirements of 327 IAC 15-5-6.5, the MS4-operated project construction plans must include a traffic phasing plan for those projects that have the potential to alter vehicular traffic routes.

(k) In addition to the requirements of 327 IAC 15-5-6.5(b)(7), the MS4-operated project storm water pollution prevention plan must address the following areas outside of right-of-ways:

- (1) Utility relocation areas.
- (2) Material hauling and transportation routes/roads.
- (3) Borrow pits.
- (4) Temporary staging and material stockpile areas.
- (5) Temporary disposal areas for waste materials.

(Water Pollution Control Board; 327 IAC 15-13-15)

327 IAC 15-13-16 Storm water quality management plan postconstruction storm water run-off control MCM

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2

Affected: IC 13-18-4

Sec. 16. (a) An MS4 operator shall develop an SWQMP that includes a commitment to develop, implement, manage, and enforce a program to address discharges of postconstruction storm water run-off from new development and redevelopment areas that disturb one (1), or more, acre of land, or disturbances of less than one (1) acre of land that are part of a larger common plan of development or sale as defined in 327 IAC 15-5-4(20) if the larger common plan will ultimately disturb one (1) or more acres of land, within the MS4 area.

(b) Through the use of an ordinance or other regulatory means, an MS4 operator shall implement planning procedures to promote improved water quality. These planning procedures must include, at a minimum, the postconstruction requirements of 327 IAC 15-5-6.5(b)(8). Where appropriate, and to the extent of the MS4 operator's authority, the procedures must also include the following:

- (1) Buffer strip and riparian zone preservation.
- (2) Filter strip creation.
- (3) Minimization of land disturbance and surface imperviousness.
- (4) Minimization of directly connected impervious areas.
- (5) Maximization of open space.
- (6) Directing the community's physical growth away from sensitive areas and toward areas that can support it without compromising water quality.

A certification form that combines the completed requirements of this subsection and subsection (e) shall be completed and submitted to the department once the ordinance or other regulatory means has been developed and a program has been implemented, or seven hundred thirty (730) days from the date of NOI letter submittal, whichever is earlier.

(c) Where appropriate, an MS4 operator shall use any combination of storage, infiltration, filtering, or vegetative practices to reduce the impact of pollutants in storm water run-off on receiving waters. In addition to the combination of practices, the following requirements shall be utilized:

- (1) Infiltration practices will not be allowed in wellhead protection areas.
- (2) Discharges from an MS4 area will not be allowed directly into sinkholes or fractured bedrock without treatment that results in the discharge meeting Indiana ground water quality standards as referenced in 327 IAC 2-11.
- (3) Any storm water practice that is a Class V injection well must ensure that the discharge from such practices meets Indiana ground water quality standards as referenced in 327 IAC 2-11.
- (4) As site conditions allow, the rate at which water flows through the MS4 conveyances shall be regulated to reduce outfall scouring and stream bank erosion.
- (5) As site conditions allow, a vegetated filter strip of appropriate width shall be maintained along unvegetated swales and ditches.
- (6) New retail gasoline outlets, new municipal, state, federal, or institutional refueling areas, or outlets and refueling areas that replace their existing tank systems shall be required by MS4 ordinance or other regulatory means to design and install appropriate practices to reduce lead, copper, zinc, and polyaromatic hydrocarbons in storm water run-off.

(d) MS4 area personnel responsible for plan review, inspection, and enforcement of postconstruction BMPs shall attend, at a minimum, an annual training session addressing appropriate control measures, which has been approved of by the department and the department of natural resources, division of soil conservation.

(e) An MS4 operator shall develop and implement a written operational and maintenance plan for all storm water structural BMPs. A certification form that combines the completed requirements of this subsection and subsection (b) shall be completed and submitted to the department once the plan has been developed and implemented, or seven hundred thirty (730) days from the date of NOI letter submittal, whichever is earlier.

(f) An MS4 operator shall develop measurable goals for this measure. To comply with this measure, specific reduction percentages and timetables must be identified. At a minimum, goals must address relevant regulatory mechanism implementation, planning and structural BMP strategies, new impervious surface reduction, and discharge quality improvement. (*Water Pollution Control Board; 327 IAC 15-13-16*)

327 IAC 15-13-17 Storm water quality management plan municipal operations pollution prevention and good housekeeping MCM

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2
Affected: IC 13-18-4

Sec. 17. (a) An MS4 operator shall develop an SWQMP that includes a commitment to develop and implement

a program to prevent or reduce pollutant run-off from municipal operations within the MS4 area.

(b) To the extent of their authority, an MS4 operator shall develop and implement a program to ensure that existing municipal, state, or federal operations are performed in ways that will reduce contamination of storm water discharges. A certification form must be completed and submitted to the department once the program has been developed and implemented or three hundred sixty-five (365) days from the date of NOI letter submittal, whichever is earlier. This program must include the following:

(1) Written documentation of maintenance activities, maintenance schedules, and long term inspection procedures for BMPs to reduce floatables and other pollutants discharged from the separate storm sewers. Maintenance activities shall include, as appropriate, the following:

- (A) Periodic litter pick up as defined in the MS4 area SWQMP.
- (B) Periodic BMP structure cleaning as defined in the MS4 area SWQMP.
- (C) Periodic pavement sweeping as defined in the MS4 area SWQMP.
- (D) Roadside shoulder and ditch stabilization.
- (E) Planting and proper care of roadside vegetation.
- (F) Remediation of outfall scouring conditions.

(2) Controls for reducing or eliminating the discharge of pollutants from operational areas, including roads, parking lots, maintenance and storage yards, and waste transfer stations. Appropriate controls shall include the following:

- (A) Covering, or otherwise reducing the potential for polluted storm water run-off from, deicing salt or sand storage piles.
- (B) Establishing designated snow disposal areas that have minimal potential for pollutant run-off impact on MS4 area receiving waters.
- (C) Providing facilities for containment of any accidental losses of concentrated solutions, acids, alkalies, salts, oils, or other polluting materials.
- (D) Standard operating procedures for spill prevention and clean up during fueling operations.
- (E) BMPs for vehicular maintenance areas.
- (F) Prohibition of equipment or vehicle wash waters and concrete or asphalt hydrodemolition waste waters into storm water run-off, except under the allowance of an appropriate NPDES wastewater permit.
- (G) Promotion of recycling (to reduce litter).
- (H) Minimization of pesticide and fertilizer use. Pesticides shall be used, applied, handled, stored, mixed, loaded, transported, and disposed of via office of the Indiana state chemist's guidance requirements.
- (I) Proper disposal of animal waste. Canine parks shall be sited at least one hundred fifty (150) feet away from a surface waterbody.

(3) Written procedures for the proper disposal of waste or materials removed from separate storm sewer systems and operational areas. All materials removed from separate storm sewer systems and operational areas, including dredge spoil, accumulated sediments, floatables, and debris, must be:

- (A) reused or recycled; or
- (B) disposed of in accordance with applicable solid waste disposal regulations.

(4) Written documentation that new flood management projects are assessed for their impacts on water quality and existing flood management projects are examined for incorporation of additional water quality protection devices or practices.

(5) Written documentation that appropriate MS4 entity employees have been properly trained, with periodic refresher sessions, on topics such as proper disposal of hazardous wastes, vegetative waste handling, fertilizer and pesticide application, and the function of implemented BMPs.

(c) An MS4 operator shall develop measurable goals for this MCM. To comply with this measure, specific reduction percentages and timetables must be identified. As applicable or, if not applicable, then appropriately justified, goals must address relevant catch basin cleaning and street sweeping procedures, employee training, recycling program implementation, pesticide, fertilizer and sand or salt usage reductions, floatables reduction, and maintenance schedule for BMPs.

(d) In combined sewer system municipalities designated under this rule, the current CSOOP and LTCP will need to be reviewed, and any necessary additions must be included in the plans to ensure that this MCM

requirement is met. (*Water Pollution Control Board; 327 IAC 15-13-17*)

327 IAC 15-13-18 Reporting requirements

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2

Affected: IC 13-18-4

Sec. 18. (a) An MS4 operator regulated under this rule shall submit an annual report to the department the following information:

- (1) Progress towards development, implementation, and enforcement of all MCMs, including updated programmatic indicator data.
- (2) Summary of complaints received and follow-up investigation results related to storm water quality issues.
- (3) Updated measurable goals.
- (4) Storm water BMPs installed or initiated.
- (5) Follow-up water quality characterization.
- (6) Updated active industrial facilities list.
- (7) Implementation problems encountered, including BMP changes due to ineffectiveness or infeasibility.
- (8) Funding sources and expenditures.
- (9) Changes to MS4 area boundaries, including land areas added to the MS4 area via annexation or other similar means.
- (10) Identified storm water quality improvement projects.

The initial annual report shall be postmarked no later than three hundred sixty-five (365) days from the date of SWQMP–Part C: Program Implementation submittal. Subsequent report submittals during the first five (5) year permit term shall be provided no later than three hundred sixty-five (365) days from the previous report in years three (3), four (4), and five (5). In subsequent permit terms, reports must be submitted in years two (2) and four (4).

(b) An MS4 operator shall submit a monthly construction site project summary to the department, containing a listing of all project names associated with section 15 of this rule, the project address, project duration, and an indication of enforcement actions undertaken. If no projects occur within a given month, a report does not need to be submitted. Reports must be postmarked no later than the last day of the following month. The commissioner may develop criteria for an alternative acceptable timetable for submission of this summary.

(c) The summary required under subsection (b) must address those projects for which there has been:

- (1) an NOI letter submittal, or its equivalent, to the MS4 entity; or
- (2) a Notice of Termination letter, or its equivalent, processed by the MS4 entity.

(d) An MS4 operator shall certify by signature on the annual report form that information provided is true and accurate. (*Water Pollution Control Board; 327 IAC 15-13-18*)

327 IAC 15-13-19 Permit duration

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2

Affected: IC 13-18-4

Sec. 19. (a) The permits under this rule are valid for five (5) years, from the date the NOI letter was received by the department. Renewal application for the permit is required at least sixty (60) days prior to the expiration date.

(b) If MS4 entity conditions change within an MS4 area, written notification of the changes must be submitted to the commissioner.

(c) For a complete renewal application to be sufficient, a new NOI letter and SWQMP–Part A: Initial Application must be submitted in accordance with sections 6 and 9 of this rule.

(d) Permits may be reissued on a watershed basis, to take into account surface water quality monitoring strategies and sampling data analyses for individual drainage areas.

(e) Subsequent permits will require the MS4 operator to maintain and, where possible, improve their performance in implementing the six (6) MCMs. (*Water Pollution Control Board; 327 IAC 15-13-19*)

327 IAC 15-13-20 Permit termination

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2
Affected: IC 13-18-4

Sec. 20. (a) An MS4 entity may request the department to terminate permit coverage under this rule if:

(1) based on physical changes in the MS4 area, the permit is no longer needed;
(2) based on a lack of cooperation between MS4 entities, a new general permit NOI letter is needed; or
(3) based on documented reductions in population, population density, occupancy, or enrollment that result in numbers below minimum designation criteria, and a request based on this subdivision will only be considered:

- (A) for MS4 entities located outside of mapped UA areas; and
- (B) once a permit under this rule has expired.

(b) The department may terminate permit coverage under this rule and require an MS4 entity to apply for an individual permit if:

- (1) effluent standards and limitations are promulgated for discharges subject to this rule; or
- (2) it is determined that a general permit is not adequate to protect water quality.

(*Water Pollution Control Board; 327 IAC 15-13-20*)

327 IAC 15-13-21 Standard conditions

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2
Affected: IC 13-14-10; IC 13-18-4; IC 13-30

Sec. 21. In addition to the conditions set forth in this rule, the standard conditions for the NPDES general permit rule under 327 IAC 15-4 shall apply also to this rule. (*Water Pollution Control Board; 327 IAC 15-13-21*)

327 IAC 15-13-22 Inspection and enforcement

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2
Affected: IC 13-14-10; IC 13-18-4; IC 13-30

Sec. 22. (a) The commissioner may inspect an MS4 entity regulated under this rule at any time. Any documentation required in sections 6 through 20 of this rule, or related to implementation of this rule must be available at the physical address corresponding to the MS4 operator for review by the commissioner during normal business hours.

(b) At a minimum, records shall be established and maintained at the address referenced in subsection (a) for the five (5) years of the permit term. The five (5) year period will be extended:

- (1) automatically during the course of any unresolved litigation regarding the discharge of pollutants by the MS4 operator, or other MS4 entity regulated by the MS4 area permit, or regarding promulgated effluent guidelines applicable to the MS4 area; or
- (2) as requested by the regional administrator of the United States Environmental Protection Agency or the commissioner.

(c) The commissioner may request data to facilitate the identification or quantification of pollutants that may be released to the environment from an MS4 conveyance or to determine effectiveness of the MCMs.

(d) As it pertains to sections 15 and 16 of this rule, the department of natural resources, division of soil conservation staff, or their designated representative, upon providing appropriate credentials, may inspect an MS4 entity regulated under this rule at any time. Record keeping and reporting requirements for sections 15 and 16 of this rule shall conform to 327 IAC 15-5.

(e) All persons or MS4 entities responsible for the MS4 conveyances shall be responsible for complying with

the SWQMP for the MS4 area and the provisions of this rule. Any person or MS4 entity causing or contributing to a violation of any provisions of this rule shall be subject to IC 13-30 and IC 13-14-10.

(f) All projects within an MS4 area meeting the applicability requirements of 327 IAC 15-5 are subject to inspection and enforcement by the department or their designated representative for violations associated with 327 IAC 15-5. (Water Pollution Control Board; 327 IAC 15-13-22)

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on February 12, 2003 at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Water Pollution Control Board will hold a public hearing on proposed amendments to rules concerning storm water discharges under 327 IAC 5 and on the development of a new rule under the 327 IAC 15 general permit rule program to add the federal requirements for municipal separate sewer systems.

The purpose of this hearing is to receive comments from the public prior to final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed new rules and amendments. Oral statements will be heard, but for the accuracy of the record, all comments should be submitted in writing.

Technical information regarding this action may be obtained from Lori Gates, Office of Water Quality, Wet Weather Section, (317) 233-6725 or (800) 451-6027 (in Indiana). Additional information regarding this action may be obtained from Kiran Verma, Rules Section, Office of Water Quality, (317) 234-0986 or (800) 451-6027 (in Indiana).

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator

Indiana Department of Environmental Management

100 North Senate Avenue

P.O. Box 6015

Indianapolis, Indiana 46206-6015

or call (317) 233-0855. (TDD): (317) 232-6565. Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Indiana Government Center-North, 100 North Senate Avenue, Twelfth Floor and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Mary Ellen Gray
Deputy Assistant Commissioner
Office of Water Quality