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**TITLE 327 WATER POLLUTION CONTROL
BOARD**

Proposed Rule
LSA Document #02-327

DIGEST

Amends 327 IAC 5-1-1.5 and 327 IAC 15-3-2 and adds 327 IAC 15-4 concerning on-site residential sewage discharging disposal systems in Allen County. Effective 30 days after filing with the secretary of state.

HISTORY

Second Notice of Comment Period: #02-327(WPCB) December 1, 2002, Indiana Register (26 IR 885).

Notice of First Hearing: February 1, 2003, Indiana Register (26 IR 1593).

Date of First Hearing: March 12, 2003.

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

This proposed (preliminarily adopted) rule is substantively different from the draft rule published on December 1, 2002, at 26 IR 885. The Indiana Department of Environmental Management (IDEM) is requesting comment on the entire proposed (preliminarily adopted) rule.

The proposed rule contains numerous changes from the draft rule that make the proposed rule so substantively different from the draft rule that public comment on the entire proposed rule is advisable. This notice requests the submission of comments on the entire proposed rule, including suggestions for specific amendments. 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.

Additionally, the public is advised that the proposed rule continues to be discussed by IDEM and interested persons at the direction of the Water Pollution Control Board (board) to address issues raised by the public during the first public hearing. This notice requests comments specifically on the version of the rule preliminarily adopted by the board on March 12, 2003. IDEM will also review any comment related to suggestions for inclusion in a version to be presented for final adoption. Individuals wanting information on current discussions related to this rule may contact Ms. Stevens at (317) 232-8635 or mstevens@dem.state.in.

Mailed comments should be addressed to:

LSA Document #02-327 [Allen County On-site Disposal]

MaryAnn Stevens

Rules Section

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 IDEM receptionist on duty at the twelfth floor reception desk, Office of Water Quality, Indiana Government Center-North, Room 1255, 100 North Senate Avenue, Indianapolis, Indiana. Comments may be delivered by facsimile to (317) 232-8406. Please confirm the timely receipt of faxed comments by calling the Office of Water Quality Rules Section at (317) 233-8903. Please note it is not necessary to follow a faxed comment letter with another sent through the postal system.

COMMENT PERIOD DEADLINE

Comments must be postmarked, hand delivered, or faxed by June 21, 2003.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD UNDER IC 13-14-9-7

The Indiana Department of Environmental Management (IDEM) requested public comment from December 1, 2002, through December 31, 2002, on the draft of amendments to 327 IAC 5-1-1.5 and 327 IAC 15-3-2 and new rule 327 IAC 15-14 concerning on-site residential sewage discharging disposal systems in Allen County. IDEM received comments from the following parties during the comment period:

Daniel W. Bloodgood, Clinton County Sanitarian (DWB)
Gary Chapple, Fort Wayne-Allen County Department of Health (GC)
William Hartsuff, Elkhart County Health Department (WH)
Don Schnoebelen, Elkhart County Health Department (DS)

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

Comment: Public health is paramount for a community's growth and prosperity. Though the citizens of Allen County are in need of a solution for the predicament they are in, a rule to sanction technology that is energy and maintenance intensive and is limited in its application and environmental appropriateness should not supercede good sanitary practices that are documented to be effective. In the least, a maintenance district must be established to administer the permitting process compliance assessment for the on-site discharging treatment systems. The likelihood is small that Allen County will have enough personnel to oversee and administer such a program effectively. If this program becomes another unfunded mandate, then voluntary compliance will be all there is to rely upon, and it seems doubtful that will be sufficient. (WH)

Response: IDEM is the administrator of the National Pollutant Discharge Elimination System (NPDES) permit process and has the responsibility to assure compliance with any permit it issues. The district will be required to work with the owners of on-site waste management systems to assure compliance with the NPDES permit limits and state water quality standards.

Comment: How can a reduction in the number of public comment periods be justified for this rule that will likely have a significant deleterious environmental and economic impact on the vaguely informed, affected parties within Allen County? What alternatives were dismissed or so limited in scope so as to justify this abbreviated decision making process? (WH)

Response: Senate Enrolled Act (SEA) 461-2002 requires IDEM to put in place a NPDES general permit for on-site waste management systems in Allen County; thus, there are no other alternatives. The rulemaking, therefore, fits the criteria under IC 13-14-8-7 for reducing the number of public comment periods necessary to complete the rulemaking. The affected citizenry has additional opportunity to comment at the two public hearings held before this rule is final adopted. More importantly, SEA 461-2002 requires public hearings for the formation of the district, the formation and operation of which more directly affect the citizenry than this NPDES general permit rule. IDEM provided informational materials at the initial public hearing on formation of the district. The information was designed to inform affected persons of the role of the NPDES permit in the installation and use of on-site waste management systems.

Comment: Some fine tuning will be needed as the relationship between the various entities is further defined; otherwise, this rule is thought out well. (GC)

Response: IDEM continues to work with EPA to develop a rule that meets the requirements for NPDES permits. Additionally, IDEM will continue to work with all affected parties to refine and clarify relative roles and responsibilities under this rule.

Comment: The potential for environmental degradation that can be unleashed by allowing the use of this type of on-site technology without regard to the water quality of the region can be realized by reviewing the case histories of similar implementation in and around the suburbs of Cincinnati, Ohio. (WH)

Response: IDEM is aware that this type of system is a developing technology. All systems are required to meet state water quality standards. The environmental degradation from existing failing septic systems must be addressed in some manner until such time as all such waste can be properly treated at wastewater treatment plants or comparably effective ways.

Comment: This rule is intended to regulate and permit point source discharges from existing, failing, and permitted on-site sewage disposal systems, but it is not to be misused to facilitate the permitting and implementation of discharging systems utilizing a machine in lieu of either on-site technology or connection to municipal facilities in the case of new construction. (WH)

Response: SEA 461-2002 authorizes the Indiana State Department of Health to study the use of, develop plans and specifications for, and adopt rules for the use of specific technologies as alternatives to currently operating systems that are either under-performing or have failed. This legislation also directs the local health department to issue operating permits for on-site residential discharging systems that are installed to replace existing sewage disposal systems that have failed and cannot otherwise be repaired or replaced. SEA 461-2002 requires that facilities permitted under the NPDES general permit as proposed in 327 IAC 15-14 meet state water quality standards. The general permit itself does not prescribe or promote specific technology to meet those water quality standards.

Comment: The commissioner's findings and determination published in the Indiana Register under the heading "Background" mention that the rule has provisions for mitigation bypasses and quality control within the requirements of the operation permit. These concepts should not be used, as they have in the past, to barter and justify the degradation of one ecosystem over another, such as stream eutrophication vs. ground water protection. (WH)

Response: IDEM agrees that transferring pollution from one area to another is not a sound environmental policy, and that is not the intent of this rule. Discharges from on-site waste management systems under this rule are required to meet state water quality standards.

Comment: Under existing 327 IAC 15-3-2(5), the requirements for content of a notice of intent (NOI) letter include the name of a municipal storm sewer operator and the ultimate receiving stream if the discharge from an on-site discharging system is connected to a storm sewer. Combined sewer overflow regulations have been requiring CSO communities to rid themselves of CSOs because they are recognized as a major source of surface water contamination. Why now should Allen County or any other location be permitted to utilize these separate and reasonably clean conveyances for point source discharges that are rich in E. coli and nutrients without requirements for frequent monitoring and assessment of the cumulative effects of multiple discharges? (WH)

Response: EPA recognizes on-site waste management system technology as a bridge between existing, failing septic systems and sewerage of all wastes. Environmental degradation from failing septic systems cannot be ignored. Discharges from these on-site systems are required to meet state water quality standards. Existing regulation at 327 IAC 15-3-2(5) recognizes that, in some cases, a direct discharge to waters is not feasible, but discharge to storm sewers may be necessary where authorized by local ordinances. IDEM does not encourage discharge to storm sewers under 327 IAC 15 but is making it clear that such discharges are regulated by the NPDES program.

Comment: The applicability of this rule according to 327 IAC 15-14-2 is limited to existing on-site systems or the replacement of such systems that were installed on or before July 1, 2002. The July date should be removed from the draft rule because it will create problems for those in Allen County needing this type assistance. Every effort is being made to refine the process and identify problem soils prior to construction, but, if a site meets all the requirements of the current state department of health rules, then Allen County is unable to deny a permit. Some sites will, therefore, fail no matter when the system is constructed. A system that fails due to soil problems will likely need a discharging solution. (GC)

Response: IDEM agrees that SEA 461-2002 is not so limiting in its applicability. Reference to the date has been removed from the draft rule.

Comment: What method will be used to evaluate whether an existing system is failing and what criteria will be used to determine if an on-site system is eligible to use the discharging technology allowed by this draft rule? Threshold values for pathogens, nutrients, and chemicals must be established before any compulsory implementation of the rule can be considered. (WH)

Response: Under SEA 461-2002, the local health department is required to issue an operating permit for a new on-site waste management system only after determining that the existing septic is failing to meet public health standards. Additionally, the local health department is charged with adopting procedures for monitoring on-site waste disposal systems, and the district formed under SEA 461-2002 will be required to monitor and keep records for each system within the district assessing compliance with the permit limits established by this rule and state water quality standards.

Comment: 327 IAC 15-14-3(6) defining “on-site residential sewage discharging disposal system” provides conflicting ideas between the term itself and its definition regarding “discharges effluent off-site”. (DWB)

Response: The term is so defined in statute at IC 13-11-2-144.7. Such a system is not a closed loop system. It is precisely because the system does discharge effluent off-site that a NPDES permit is necessary.

Comment: Table 1 in 327 IAC 15-14-7 contains daily maximum limits for CBOD₅, TSS, and ammonia-nitrogen that may not be realistic according to the manufacturers of units designed for these on-site applications. It is requested that these limits contained in the table be an average value, and the daily maximum limit should be established at twice the values currently in the table for each of the named parameters. Limits established at these suggested values would allow for inevitable fluctuations in system performance while maintaining the high overall water quality standards necessary. (GC)

Response: SEA 461-2002 requires that these treatment systems discharge effluent that does not violate water quality standards. The local health department and the State Department of Health are to ensure that technologies, that are approved for use under the general permit according to this rule, are capable of meeting these standards.

Comment: The monitoring regimen contained in section 7 of the draft rule is not stringent enough. The technology to be allowed by this draft rule is untested in Indiana and should be considered as alternative or experimental. Existing state department of health requirements for soil based technology, those discharging to a soil absorption field not to a receiving stream, mandate a minimum of monthly sampling for the physical parameters listed in table 1 of section 7 and should be the minimum monitoring standard for these on-site discharging units. Several other counties are considering such a monitoring standard; establishing some sort of baseline data would be prudent. Telemetry that is currently available allows for round-the-clock monitoring of some of these parameters, but it is no substitute for proper operation, maintenance, or planning. (DWB, DS)

Response: IDEM has revised the monitoring requirements for several effluent parameters in section 7 of the draft rule and has added monitoring requirements for effluent flow, pH, and total residual chlorine. Monitoring frequencies may be revised in the future if IDEM determines a need based on compliance trends.

Comment: Draft rule 327 IAC 15-14 will allow on-site discharging systems to use machines that are actually small, individually

sized, sewage treatment plants receiving the same basic raw constituents that enter a municipal treatment plant. It is irresponsible to allow discharges from individual treatment machines that would otherwise be prohibited discharges from a municipal treatment plant. Specifically missing from the list of too few parameters required to be monitored by section 7, table 1 of the draft rule is a phosphate or phosphorus limit. Municipal treatment systems monitor and treat for this parameter and so should these individual on-site discharge systems. (WH)

Response: Indiana water quality standards do not include criteria for phosphorus or phosphates. NPDES rules as contained in 327 IAC 5-10-2 and 327 IAC 5-10-4 require phosphorus removal for certain point source discharges that discharge directly to or within forty (40) miles of a lake or are within the Great Lakes watershed.

Comment: The draft rule requires no use of or monitoring for disinfectants. Both are needed as well as monitoring for residual chlorine in the receiving waters. (DWB, DS)

Response: Table 1 in section 7 of the draft rule has been amended to include monitoring requirements for total residual chlorine in the event that chlorine is used as the disinfectant.

Comment: Recent studies show that E. coli replicate easily in the environment. The receiving waters of these on-site discharging disposal systems need to be monitored for E. coli. Will background levels of receiving streams be considered as two hundred thirty-five (235) colonies per one hundred milliliter may be deleterious to the receiving stream? (DWB, DS)

Response: Indiana water quality standards for E. coli, as contained in 327 IAC 2-1.5-8(e), require that E. coli bacteria not exceed two hundred thirty-five (235) count per one hundred (100) milliliters in any one (1) sample. These standards are used directly as effluent limitations to the undiluted discharge in accordance with 327 IAC 5-2-11.4(d)(2). The Indiana water quality standards for E. coli are protective of full body recreational contact.

Comment: Cumulative effects on a single stretch of receiving stream from multiple discharges of on-site disposal systems need to be evaluated. There also needs to be sampling done of the receiving stream at a specified distance, for example one hundred feet, downstream of the final point source discharge from an on-site system entering the receiving stream. (DS)

Response: At this point it is unclear which receiving streams will be impacted by these systems. IDEM intends to monitor the effects of these systems in the watershed and will continue to work with individuals and the district to closely monitor any cumulative effects. If it is determined that any particular receiving stream is being impacted, IDEM has the authority to require additional sampling and monitoring.

Comment: The prohibitions listed in subdivisions (1) through (5) of 327 IAC 15-14-7(d) seem to be aesthetic concerns, but they will not be achievable without limitation placed on phosphorus discharged from the on-site discharging systems. Indiana's state legislature recognized many years ago the detrimental water quality ramifications from phosphorus creating eutrophication in surface waters and acted appropriately by creating the phosphate ban for detergents. Draft rule 327 IAC 15-14, however, is countercurrent with Indiana's long-standing law against allowing phosphates and phosphorus to reach our state waters. (WH)

Response: Indiana water quality standards do not include criteria for phosphorus or phosphates. The conditions listed in subdivisions (1) through (5) are minimum narrative criteria that apply to all point source discharges. 327 IAC 5-2-11.1(h) and 327 IAC 5-2-11.6(a) require that these minimum standards be included in all NPDES permits. Violation of these minimum standards could result in additional permit conditions to protect water quality.

Comment: The draft rule does not address who will have the power and responsibility to enforce this rule. Will enforcement be done by the same local health department that allowed the illegal systems to be installed in the first place? (DWB)

Response: IDEM retains the ultimate authority to enforce any permit it issues as well as state water quality standards.

Comment: According to the draft rule with only twice annual monitoring requirements, an on-site discharging disposal system could potentially malfunction for six months prior to any action being taken to address a discharge of raw or partially treated sewage. (DS)

Response: The monitoring requirements for several effluent parameters in section 7 of the draft rule have been revised. Monitoring frequencies may be further revised if IDEM determines a need based on compliance trends. In addition to monitoring, these systems are subject to inspections and must be under the supervision of a certified operator.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On March 12, 2003, the water pollution control board (board) conducted the first public hearing/board meeting concerning the development of a new rule and amendments to rules concerning on-site residential sewage discharging disposal systems in Allen County. Comments were made by the following parties:

Gary Chapple, Fort Wayne-Allen County Department of Health (GC)

Sandra Flum, Allen County Commissioners Office (SF)

Glenn Pratt, Sierra Club (GP)

Loren Robertson, Fort Wayne-Allen County Department of Health (LR)

Rae Schnapp, Hoosier Environmental Council (HEC)

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

Comment: Allen County has a problem with failing septic systems due to the soil type in the county. The county sought a legislative solution to the problem because it couldn't afford to have vacant homes or to turn people out of their homes if their septic systems failed. The new rule will only apply to a small percentage of the total septic systems in Allen County because the state law requires first trying to find a sewer solution. The required district is in the process of organizing. A small administrative fee will be collected from the participating homeowners at a rate that is not too harsh yet still allows the district to serve the function of cleaning up the water quality in the area and allowing the homeowners to stay in their homes. The district believes the monthly monitoring requirements in the draft rule are too financially burdensome for homeowners. The district requests the monitoring requirement be set at twice annually. (SF)

Response: IDEM understands the concerns raised and will continue to work with affected parties to forge a compromise on the monitoring requirements. It is important to balance cost with the public health concerns that may arise with less frequent monitoring.

Comment: Area realtors are anxious to have this rule in effect because failing septic systems and sewage on the ground adversely affect property marketability. Currently, between one and two hundred homes are on pump and haul orders to remove sewage from their septic tanks. Many of those homes were identified as potential candidates for on-site systems when the owner either tried to refinance or sell and could not get a mortgage on a home that didn't have a working septic system. (SF)

Response: IDEM is working as quickly as possible to pass this rule. However, the rule cannot be finalized until the district, required by SEA 461 is established since the district is a co-permittee in this rule.

Comment: Allen County Health Department predecessors left the county with many serious public health issues relating to water quality resulting from malfunctioning systems. A study three years ago by the health department judged that over ninety percent of the ditches in the county have E.coli levels that are unsafe for full body contact. This rule is necessary to prevent public health problems since nothing can be done presently to undo the decisions of past administrators. The increase of monitoring requirements that occurred since the draft rule was published for comment in the Indiana Register surprised the county health personnel who worked to develop this rule with IDEM. The county estimates that the monitoring requirements currently in the rule for the board's consideration of adoption will cost a homeowner over one hundred seventy-five dollars (\$175) per month. This will be in addition to the installation cost of a very expensive treatment system. The county believes the expense to the homeowner for monitoring is excessive. This rule is needed to combat the West Nile Virus problem that has hard hit Allen County; therefore, it would benefit public health to make the rule requirements affordable to the homeowners. (LR)

Response: IDEM understands and is working to address the concerns raised about monitoring costs. IDEM is confident that the final rule will include monitoring requirements that represent an appropriate balance between the importance of verification that the systems are effective and meeting standards and are affordable. While it is difficult to rectify the mistakes of the past, it is important not to continue practices that would allow bacteria from the discharges of these types of systems to continue to be a problem. IDEM does not believe it is appropriate to continue to indicate that the spread of West Nile Virus is somehow tied to the contents of this rule. Effluent from a discharging system may also be a breeding ground for disease-carrying mosquitoes. IDEM will continue to work with all interested persons to recommend a final rule that is environmentally sound and economically reasonable. IDEM did provide Allen County information on the contents of the preliminarily adopted rule prior to presenting the rule to the Board and offered to meet with officials before that meeting.

Comment: It is expected that this rule will be used only as a solution to existing homes with failing septic systems and not for new home construction. The type home needing these on-site disposal systems is one that is on a very small lot with no additional area for locating another absorption field. The health department does not expect to approach the water board in the future to request applying this rule to new construction. (LR)

Response: IDEM agrees that this rule should not be available for new construction. Alternatives exist for new construction that should be pursued in lieu of ultimate reliance upon a discharging on-site wastewater treatment system.

Comment: The on-site disposal system is going to be very expensive for the homeowner so it is not going to be the first choice solution. The county is working with Purdue University to develop soil based solutions. There are, however, some sites where the soil just doesn't absorb water, and, for those sites, the discharging system is necessary. Given the great expense of installing a discharging system, the added burden of monthly monitoring may be too much for the homeowner. These systems are going to be used to replace failed ones that have created a water pollution impact. The rule requirements should facilitate the homeowner's ability to have these systems that will improve an existing water quality problem. The twice per year sampling requirement that was in the draft rule will help homeowners be able to correct the water pollution that has occurred from the failed septic systems. (GC)

Response: IDEM understands the concern about monitoring costs and will work to recommend a final rule that addresses these concerns. However, these systems have not been used heretofore in this state; therefore, it is difficult to determine appropriate monitoring frequencies to assure compliance with water quality standards. Because this rule constitutes a NPDES permit, any discharge from a permitted source must meet water quality standards.

Comment: The county would not have a problem with monthly monitoring as a requirement placed on a discharging system

manufacturer who wanted to prove in the county that the company's product works and can meet the limits specified in the rule. (GC)

Response: This rule does not regulate the manufacturer of such systems. Rather, this rule regulates the discharge from these systems as NPDES discharges, as required under SEA 461.

Comment: The county is working with Purdue University and the State Department of Health to be able to predict what soils and areas are destined to have failed septic systems. Currently, there is no predictability, and some newly installed septic systems go into immediate failure. The rule's applicability is expected to provide the option of utilizing the on-site discharging system if a newly constructed home's septic system fails. Managing the program for on-site discharging systems is going to be more difficult for the district and the county health department than managing soil absorption systems so the discharging systems will only be utilized where no other option exists. (GC)

Response: IDEM believes that such systems may be a valuable tool to aid homeowners with existing septic system problems. IDEM does not agree that discharging on-site wastewater treatment systems should be an option for new construction in Allen County or elsewhere in Indiana. The law was passed based on testimony that existing homes with no viable option needed this approach to continue to be able to live affordably on the property. New construction has many options, and it is our understanding that protocols for determining the acceptability of a site to conventional and other on-site wastewater systems are in place and should be used for new construction.

Comment: The Allen County on-site management district is one of the co-permittees under this rule, but the county also sees itself as a co-enforcement agency along with IDEM to ensure compliance of the on-site discharging system with the homeowner. The county has a stake in the success of the entire program of allowing on-site discharging systems. If monitoring costs are too great for the homeowner, problems may arise and jeopardize the whole program. (GC)

Response: The district may adopt its own ordinances and require homeowners to meet certain obligations. However, Allen County as a "co-permittee" is not a "co-enforcement" agency along with IDEM. IDEM retains full enforcement authority, as required under its delegation of authority from the US EPA to administer the NPDES program. IDEM will continue to work with affected parties to craft acceptable monitoring standards while balancing the cost with the important need of making sure that the effluent from these systems meets state water quality standards.

Comment: It is surprising to hear the county representative say that on-site discharging systems will be used only as a last resort and that, in the absence of sewers, soil absorption systems will still be the first choice despite also acknowledging that eighty percent of the county's soils are unsuitable for soil based systems. Several years ago this water board considered a request for a rulemaking to allow on-site discharging systems, and the decision at that time was not to allow those on-site treatment systems because they would be too resource intensive to regulate and assure compliance. These on-site discharging systems are very high maintenance and subject to the same failure as septic systems due to poor operation and maintenance on the part of the homeowner. (HEC)

Response: IDEM understands the concern raised by the commentor. Properly working systems will require effort on the part of the homeowner, the district, and IDEM to assure compliance with state water quality standards.

Comment: It seems no other alternative has been considered such as separating the gray water and hauling the black water or a cluster system if the homes with failed septic systems are in close proximity to each other. (HEC)

Response: SEA 461 requires the local health department to determine that such systems are the only option available in each case prior to an operating permit being issued. Further, SEA 461 requires the development of this rule as a NPDES general permit for such discharging disposal systems.

Comment: No mention has been made of the affect of these on-site discharging systems to E. coli impaired waters of the state. The water quality standards do not allow for adding pollutants to a water body that is already impaired for that pollutant. (HEC)

Response: The effluent from each of these systems is required to meet state water quality standards. As these systems are new in this state, it will be important to monitor to assure no deleterious effect on the state's waters. Should a problem arise, IDEM retains the authority to require more stringent limits and management practices.

Comment: A Total Maximum Daily Load assessment has not been done in the Allen County area so there cannot be assurance that these on-site discharging systems won't exceed the load allocation for the receiving water body. (HEC)

Response: Many of these systems will not be discharging directly into a receiving water body. IDEM must be prepared to closely monitor these systems to assure that the load allocations to any receiving streams are not exceeded.

Comment: The section 7 rulemaking process has truncated the public participation on this rule. There have been no comments from citizens of Allen County which is a big concern since they are the people that are going to be affected. IDEM and Allen County need to do a better job of involving local citizens before the rule becomes final. (HEC)

Response: The section 7 process was used because SEA 461 requires the development of a NPDES general permit for these discharging disposal systems. Therefore, the policy alternatives available to IDEM in implementing that statutory mandate are extremely limited. Such is the requirement for the use of a "section 7" (IC 13-14-9-7) rulemaking, which only eliminates the first notice of rulemaking. IDEM has provided outreach materials to be distributed at public meetings held in Allen County related to

the formation of the district. IDEM will continue to attempt to involve all interested parties in this rulemaking.

Comment: Thirty years ago federal reports from EPA stated that septic systems are a problem. Despite that knowledge, septic systems are still being installed and continuing to be even more of a problem. A program from IDEM and the state department of health is needed to control septic systems to avoid creating the problem that results in the only solution being on-site discharging systems. Most importantly, construction needs to be prohibited in areas that have no sewers and, yet, have soils that will not be suitable for septic systems. IDEM needs to assure that the Allen County on-site management district is adequately staffed to provide sufficient oversight of operation of the on-site systems. (GP)

Response: IDEM has no authority over the staffing requirements of the district. IDEM acknowledges that the best solution to the moraine soil issue facing Allen County is to provide sewer connections for all systems currently on septic systems. However, such a solution is not an economically viable solution in all situations. IDEM has no authority to halt construction in areas that are beyond available sewer connections.

327 IAC 5-1-1.5

327 IAC 15-3-2

327 IAC 15-14

SECTION 1. 327 IAC 5-1-1.5 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-1-1.5 Prohibitions

Authority: IC 13-11-2-99; IC 13-13-5-1; IC 13-22-2-3

Affected: IC 13-18-3

Sec. 1.5. **Except as provided in 327 IAC 15-14**, the point source discharge of sewage treated or untreated, from a dwelling or its associated residential sewage disposal system, to the waters of the state is prohibited. (*Water Pollution Control Board; 327 IAC 5-1-1.5; filed Nov 13, 1995, 5:00 p.m.: 19 IR 660; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 2. 327 IAC 15-3-2, PROPOSED TO BE AMENDED AT 26 IR 1616, SECTION 6, IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-3-2 Content requirements of a NOI letter

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; IC 13-18-4

Sec. 2. **Except for permittees covered under 327 IAC 15-5 and 327 IAC 15-13 and as provided in 327 IAC 15-14-4**, the NOI letter shall include the following:

- (1) Name, mailing address, and location of the facility for which the notification is submitted.
 - (2) Standard Industrial Classification (SIC) codes, as defined in 327 IAC 5, up to four (4) digits, that best represent the principal products or activities provided by the facility.
 - (3) The person's name, address, telephone number, **e-mail address (if available)**, ownership status, and status as federal, state, private, public, or other entity.
 - (4) The latitude and longitude of the approximate center of the facility to the nearest fifteen (15) seconds, **or and, if the section, township, and range are provided**, the nearest quarter section (~~if the section, township, and range are provided~~) in which the facility is located.
 - (5) The name of receiving water, or, if the discharge is to a municipal separate storm sewer, the name of the municipal operator of the storm sewer and the ultimate receiving water.
 - (6) A description of how the facility complies with the applicability requirements of the general permit rule.
 - (7) Any additional NOI letter information required by the applicable general permit rule.
 - (8) The NOI letter must be signed by a person meeting the signatory requirements in 327 IAC 15-4-3(g).
- (*Water Pollution Control Board; 327 IAC 15-3-2; filed Aug 31, 1992, 5:00 p.m.: 16 IR 19; errata filed Sep 10, 1992, 12:00 p.m.: 16 IR 65; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 3. 327 IAC 15-14 IS ADDED TO READ AS FOLLOWS:

Rule 14. On-Site Residential Sewage Discharging Disposal Systems within the Allen County On-Site Waste Management

District

327 IAC 15-14-1 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 point source discharges of treated sewage from on-site residential sewage discharging disposal systems within the Allen County on-site waste management district so that the public health, existing water uses, and aquatic biota are protected. *(Water Pollution Control Board; 327 IAC 15-14-1)*

327 IAC 15-14-2 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; IC 13-18-12-9

Sec. 2. This rule applies to on-site residential sewage discharging disposal systems located within the Allen County on-site waste management district that have been installed to repair or replace a sewage disposal system that fails to meet public health and environmental standards and for which an operating permit has been issued pursuant to IC 13-18-12-9. Such systems shall discharge one thousand (1,000) gallons or less per day of treated sanitary wastewater. *(Water Pollution Control Board; 327 IAC 15-14-2)*

327 IAC 15-14-3 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 36-11

Sec. 3. In addition to the definitions contained in IC 13-11-2, 327 IAC 5, and 327 IAC 15-1-2, the following definitions apply throughout this rule:

- (1) "CBOD₅" means Five (5)-day Carbonaceous Biochemical Oxygen Demand.
- (2) "Commissioner" means the commissioner of the department of environmental management.
- (3) "Department" means the department of environmental management.
- (4) "District" means the Allen County on-site waste management district established under IC 36-11.
- (5) "E. coli" means Escherichia coli bacteria.
- (6) "Notice of intent letter" or "NOI" means a written notification indicating a person's intention to comply with the terms of a specified general permit rule in lieu of applying for an individual National Pollutant Discharge Elimination System (NPDES) permit and includes information as required by 327 IAC 15-3 and the general permit rules.
- (7) "On-site residential sewage discharging disposal system" means a sewage disposal system that:
 - (A) is located on a site with and serves a one (1) or two (2) family residence; and
 - (B) discharges effluent off-site.
- (8) "Permittee" means, for purposes of this rule, the owner of an on-site residential sewage discharging disposal system and the district, as defined in subdivision (3).
- (9) "Sewage disposal system" means septic tanks, wastewater holding tanks, seepage pits, cesspools, privies, composting toilets, interceptors or grease traps, portable sanitary units, and other equipment, facilities, or devices used to:
 - (A) store;
 - (B) treat;
 - (C) make inoffensive; or
 - (D) dispose of;human excrement or liquid carrying wastes of a domestic nature.
- (10) "TSS" means total suspended solids.

(Water Pollution Control Board; 327 IAC 15-14-3)

327 IAC 15-14-4 NOI 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; IC 13-18-12-9; IC 13-18-20-12

Sec. 4. (a) The owner of property upon which an on-site residential sewage discharging disposal system subject to this rule is located shall submit to the district a request for inclusion into the district and coverage under this rule. The request shall include the following:

- (1) Name and address of the owner and location of the property for which the request is submitted, if different than the mailing address.
- (2) A copy of the operating permit issued by the local health department with jurisdiction over the system as provided in section 7 of this rule, pursuant to IC 13-18-12-9(d).
- (3) A statement that the person named under subdivision (1) wishes to be covered by this rule.
- (4) Signature of the person named under subdivision (1).

(b) If an on-site residential sewage discharging disposal system serves more than one (1) home, each homeowner served by the system shall submit the information required in subsection (a).

(c) If there is a change of ownership of the property upon which an on-site residential sewage discharging disposal system is located, the following must be accomplished in accordance with any applicable district requirements:

- (1) The seller of the property shall submit:
 - (A) a notice to the district reporting the change in property ownership; and
 - (B) a written statement to the buyer of the property explaining the obligations, including the requirements of this rule, of owning an on-site residential sewage discharging disposal system.
- (2) The buyer of the property shall submit to the district a statement requesting to remain subject to coverage under this rule.

(d) The district shall submit a NOI letter to the following address:

Indiana Department of Environmental Management
Office of Water Quality
100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015
Attention: Permits Section

(e) The NOI letter shall include the following:

- (1) Names and mailing addresses of all persons requesting inclusion in the district.
- (2) Map indicating the following:
 - (A) The location of each on-site residential sewage discharging disposal system within the district.
 - (B) The location of any pond or lake within two (2) miles downstream of any on-site residential sewage discharging disposal system within the district.
- (3) Names of the receiving streams into which the on-site residential sewage discharging disposal systems will discharge.
- (4) A statement that the district and the persons listed under this subsection intend to be covered by this rule.
- (5) The application fee required under IC 13-18-20-12.

(f) The NOI letter must be signed by the head of the governing body of the district. (*Water Pollution Control Board; 327 IAC 15-14-4*)

327 IAC 15-14-5 Deadline for submission of a NOI letter and update 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. 5. (a) Any person requesting inclusion in the district and coverage under this rule shall submit the request for inclusion to the district within thirty (30) days of receipt of the operating permit issued by the local health department.

(b) The district shall submit the NOI letter to the department within ninety (90) days of the effective date of this rule.

(c) The district shall provide written updates to the department every three (3) months after submission of the initial NOI letter. The updates shall include the following:

- (1) Updated list of names and mailing addresses of district members, including the following:
 - (A) Additional persons included in the district and requesting coverage under this rule since the last update.
 - (B) Changes in ownership of any systems, including the names of the new and former owners.
- (2) Updated map containing the most recent information required under section 4(e)(2) of this rule.

(d) The update required by subsection (c) must be signed by the head of the governing body of the district. *(Water Pollution Control Board; 327 IAC 15-14-5)*

327 IAC 15-14-6 General permit rule 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. 6. On-site residential sewage discharging disposal systems located within the boundaries of the Allen County on-site waste management district are regulated under this rule. *(Water Pollution Control Board; 327 IAC 15-14-6)*

327 IAC 15-14-7 General 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; IC 13-18-12-9

Sec. 7. (a) The point source discharge of treated sewage from an on-site residential sewage discharging disposal system is prohibited unless:

- (1) the local health department with jurisdiction over the system has issued an operating permit for the system as provided under IC 13-18-12-9(d); and
- (2) all applicable requirements of this article and 327 IAC 5 have been met.

(b) Coverage commences under this rule according to the following:

- (1) Upon receipt by the department of the initial NOI letter for discharges from an on-site residential sewage discharging disposal system included in the NOI letter.
- (2) Upon receipt by the district of the request for inclusion and coverage under section 4 of this rule for owners of an on-site residential sewage discharging disposal system installed after the district sends the initial NOI letter to the department.

(Water Pollution Control Board; 327 IAC 15-14-7)

327 IAC 15-14-8 Discharge limits and monitoring and 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. 8. (a) Under this rule, the permittee must meet the discharge and monitoring requirements listed in Table 1 as follows:

Table 1

The discharge shall be limited and monitored by the permittee as specified as follows:

Parameter	Daily Maximum	Daily Minimum	Units	Monitoring Frequency	Sample Type
Effluent flow	—	—	GPD	1 X Monthly	24-Hr. Total [1]
Temperature	Report	Report	°C	2 X Annually	Grab
CBOD ₅	15	—	mg/l	2 X Annually	Grab
TSS	18	—	mg/l	2 X Annually	Grab
Ammonia-nitrogen	2	—	mg/l	2 X Annually	Grab
pH	9.0	6.0	s.u.	2 X Annually	Grab
Dissolved Oxygen [2]				2 X Annually	Grab
Winter [3]	—	5.0	mg/l		
Summer [4]	—	[5]	mg/l		
E. coli	235	—	colonies/100ml	1 X Monthly	Grab
Total residual chlorine [6]					

Contact tank	–	0.5	mg/l	1 X Monthly	Grab
Final	<0.06	–	mg/l	1 X Monthly	Grab

[1] Flows may be estimated.

[2] Dissolved oxygen must be monitored once during the winter monitoring period, and once during the summer monitoring period.

[3] Winter limitations apply from December 1 through April 30 of each year.

[4] Summer limitations apply from May 1 through November 30 of each year.

[5] During the summer monitoring period, the dissolved oxygen concentration shall not be less than fifty percent (50%) of saturation as determined by Table 2 as follows:

Table 2

No one (1) sample shall be less than 4.0 mg/l.

Temp. °C	18.0	18.5	19.0	19.5	20.0	20.5	21.0	21.5	22.0	22.5	23.0	23.5	24.0	24.5	25.0	25.5	26.0
D.O. mg/l	4.703	4.654	4.606	4.559	4.513	4.467	4.422	4.378	4.335	4.293	4.251	4.210	4.169	4.129	4.090	4.051	4.012

[6] If chlorine is used as a disinfectant, the residual prior to dechlorination shall be maintained at a minimum of 0.5 mg/l at all times. Dechlorination is required such that the concentration of residual chlorine does not exceed the limit of quantification of 0.06 mg/l.

(b) Samples and measurements required by this rule shall:

- (1) be representative of the volume and nature of the monitored discharge flow;
- (2) be taken at times that reflect the full range of effluent parameters normally expected to be present;
- (3) be taken more than four (4) months apart unless approved by the commissioner;
- (4) not be taken at times or in a manner to avoid showing elevated levels of any parameter; and
- (5) be analyzed by a laboratory using approved methods.

(c) The analytical results of monitoring required by this rule shall be reported as follows:

- (1) The homeowner shall submit to the district the required analytical results on or before the twenty-eighth day of the month following the month in which the samples were collected.
- (2) The district shall submit to the department on a semi-annual basis the sampling results for all of the on-site residential sewage discharging disposal systems that are regulated under this rule.

(d) The discharge from the on-site residential sewage discharging disposal system shall not cause receiving waters, including the mixing zone, to contain substances (for example, foam), materials, floating debris, oil, scum, or other pollutants that:

- (1) will settle to form putrescent or otherwise objectionable deposits;
- (2) are in amounts sufficient to be unsightly or deleterious;
- (3) produce color, visible oil sheen, odor, or other conditions in such degree as to create a nuisance;
- (4) are in amounts sufficient to be acutely toxic to or otherwise severely injure or kill aquatic life, other animals, plants, or humans; or
- (5) are in concentrations or combinations that will cause or contribute to the growth of aquatic plants or algae to such a degree as to create a nuisance, be unsightly, or otherwise impair the designated uses.

(e) The discharge from the on-site residential sewage discharging disposal system shall not cause receiving waters outside the mixing zone to contain substances in concentrations that on the basis of available scientific data are believed to be sufficient to injure, be chronically toxic to, or be carcinogenic, mutagenic, or teratogenic to humans, animals, aquatic life, or plants.

(f) The permittee shall take all reasonable steps to minimize any adverse impact to waters of the state resulting from noncompliance with any effluent limitations specified in this permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge. (*Water Pollution Control Board; 327 IAC 15-14-8*)

327 IAC 15-14-9 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 13-18-4

Sec. 9. (a) In addition to the conditions set forth in this rule, the standard conditions for a NPDES permit under 327 IAC 5 and the standard conditions for a NPDES general permit under this article apply to this rule.

(b) The district shall maintain the following records within the district office and make them available for inspection pursuant to section 10 of this rule:

- (1) Monitoring reports required under section 8 of this rule for each system within the district.**
- (2) A copy of the operating permit issued by the local health department for each system within the district.**
- (3) Signed requests for inclusion in the district and coverage under this rule for each system within the district.**

(Water Pollution Control Board; 327 IAC 15-14-9)

327 IAC 15-14-10 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 13-15-7; IC 13-18-3; IC 13-18-4; IC 13-30; IC 36-11-2-1; IC 36-11-5

Sec. 10. (a) The owner of an on-site residential sewage discharging disposal system shall allow the commissioner or an authorized representative, upon presentation of credentials, to enter upon the premises where an on-site residential sewage discharging disposal system is located to determine compliance with this rule and state water quality standards.

(b) The district shall allow the commissioner or an authorized representative, upon presentation of credentials, to enter the district office and have access to and copy any records that must be kept under the conditions of this rule, in accordance with 327 IAC 15-4-1(l).

(c) The conditions of this rule are subject to enforcement pursuant to 327 IAC 15-4-1 and IC 13-30. *(Water Pollution Control Board; 327 IAC 15-14-10)*

327 IAC 15-14-11 Duration and renewal of coverage

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. (a) Coverage under this rule is granted by the commissioner for a period of five (5) years from the date coverage commences according to section 7(b) of this rule.

(b) To obtain renewal of coverage under this general permit rule, the district shall submit the information required under section 4 of this rule to the commissioner no later than ninety (90) days prior to the expiration of coverage under this rule unless the commissioner determines that a later date is acceptable. *(Water Pollution Control Board; 327 IAC 15-14-11)*

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 July 9, 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 new rule 327 IAC 15-14 and amendments to rules concerning on-site residential sewage discharging disposal systems in Allen County.

The purpose of this hearing is to receive comments from the public prior to consideration of 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 rule and amendments. Oral statements will be heard, but for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from MaryAnn Stevens, Rules Section, Office of Water Quality, (317) 232-8635 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 or (317) 232-6565 (TDD). 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 Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Room 1255 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Tim Method

Deputy Commissioner

Indiana Department of Environmental Management