

Document: IC 13-14-9 Notice, **Register Page Number:** 28 IR 1866

Source: March 1, 2005, Indiana Register, Volume 28, Number 6

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TITLE 327 WATER POLLUTION CONTROL BOARD

SECOND NOTICE OF COMMENT PERIOD #04-293(WPCB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING THE STATE REVOLVING FUND (SRF) LOAN PROGRAMS

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to rules 327 IAC 13, concerning the wastewater state revolving fund loan program, and 327 IAC 14, concerning the drinking water state revolving fund loan program. By this notice, IDEM is soliciting public comment on the draft rule language. IDEM seeks comment on the affected citations listed and any other provisions of Title 327 that may be affected by this rulemaking.

HISTORY

First Notice of Comment Period: December 1, 2004, Indiana Register (28 IR 1080).

CITATIONS AFFECTED: 327 IAC 13; 327 IAC 14.

AUTHORITY: IC 13-14-8; IC 13-14-9; IC 13-18-3; IC 13-18-13; IC 13-18-21.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

The purpose of this rulemaking is to remove inconsistencies within 327 IAC 13 and 327 IAC 14, both internally and as they relate to each other. This rulemaking also will streamline the wastewater and the drinking water state revolving fund loan programs. This will make them more efficient and easier for participating entities to comply with, thus enabling additional wastewater and drinking water projects to be financed and constructed. This rulemaking will also serve to enable the refinancing of loans, which is not an option with the current rules but is expressly permitted by the federal Clean Water Act and Indiana Code.

The wastewater state revolving fund loan program was promulgated in April 1990 to implement the wastewater state revolving fund established by IC 13-18-13. It facilitates compliance with the state and federal water quality standards by providing low cost financial assistance to construct necessary and environmentally sound treatment works. The fund is a self-sufficient funding program for the improvement and protection of water quality and public health and any other activity permitted by the Clean Water Act.

The drinking water state revolving fund loan program was promulgated in August 1998 to implement the drinking water state revolving fund established by IC 13-18-21. It provides funding for loans and other financial assistance for the planning, designing, construction, renovation, improvement, or expansion of public water systems to facilitate compliance with the national primary drinking water regulations under the federal Safe Drinking Water Act.

Any user or participant of a wastewater or drinking water utility is a potentially affected party to this rulemaking. Wastewater projects funded by the SRF loan program could include wastewater treatment plant improvements and upgrades, sewer line extensions to existing unsewered properties, combined sewer overflow corrections, and infiltration or inflow projects. Drinking water projects funded by the SRF loan program could include treatment plant improvements and upgrades, water line extensions to existing unserved properties, and water storage facilities.

IC 13-14-9-4 Identification of Restrictions and Requirements Not Imposed Under Federal Law

This rule is authorized under IC 13-18-13 and IC 13-18-21, and the amendments being proposed will result in removing inconsistencies within 327 IAC 13 and 327 IAC 14 as well as streamlining the wastewater and the drinking water state revolving fund loan programs. This rulemaking will also serve to enable the refinancing of loans, which is not an option with the current rules but is expressly permitted by the federal Clean Water Act and Indiana Code. No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law.

Potential Fiscal Impact

There are no added costs due to this rulemaking. In fact, it will actually reduce some of the business costs for affected parties by reducing some of the requirements. These amendments will allow refinancing to occur so affected parties can take advantage of

lowered interest rates.

Public Participation and Workgroup Information

No workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is necessary, please contact Kiran Verma, Rules Section, Office of Water Quality at (317) 234-0986 or (800) 451-6027 (in Indiana).

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from December 1, 2004, through December 30, 2004, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received no comments in response to the first notice of public comment period.

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Mailed comments should be addressed to:

#04-293(WPCB) SRF Loan Programs Rulemaking
Larry Wu, Chief
Rules Section
Office of Water Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana, 46204-2251.

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 be submitted by facsimile at the IDEM fax number: (317) 232-8406, Monday through Friday, between 8:15 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 must be postmarked, faxed, or hand delivered by March 30, 2005.

Technical information regarding this action may be obtained from Jim McGoff, SRF Loan Programs, (317) 234-2916 or (888) 290-0016. 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).

DRAFT RULE

SECTION 1. 327 IAC 13-2-7.5 IS ADDED TO READ AS FOLLOWS:

327 IAC 13-2-7.5 “Construction project” defined

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-13-18

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

Sec. 7.5. “Construction project” means the activities or tasks the department identifies in the preliminary engineering report or any other document required by the department related to the construction of a project for which the political subdivision may commit and expend funds. (*Water Pollution Control Board; 327 IAC 13-2-7.5*)

SECTION 2. 327 IAC 13-2-11 IS AMENDED TO READ AS FOLLOWS:

327 IAC 13-2-11 “EA” defined

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-13-18

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

Sec. 11. “EA” means an environmental assessment that is a document prepared by the department upon completion of the department’s review of a preliminary engineering report that:

- (1) describes the possible treatment works alternatives;**
- (2) describes the potential environmental impacts of the feasible alternatives;**
- (3) acts as a public record of the documentation and review process used to arrive at a preliminary decision as to whether an environmental impact statement is necessary; and**

~~(4) provides information adequate for the public to comment on the proposed project.~~
or any other document required by the department and includes those items required by 327 IAC 13-9-5. *(Water Pollution Control Board; 327 IAC 13-2-11; filed Apr 26, 1990, 10:45 a.m.: 13 IR 1687; filed Aug 28, 1998, 4:53 p.m.: 22 IR 28; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 3. 327 IAC 13-2-21 IS AMENDED TO READ AS FOLLOWS:

327 IAC 13-2-21 “Loan” defined

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-13-18

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

Sec. 21. “Loan” means purchasing the notes or bonds of a political subdivision to finance a ~~treatment works project~~ or ~~refinancing~~ **refinance** an existing debt obligation where debt was incurred and building began after March 7, 1985, as opposed to providing other types of financial assistance eligible under the Clean Water Act. *(Water Pollution Control Board; 327 IAC 13-2-21; filed Apr 26, 1990, 10:45 a.m.: 13 IR 1688; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 4. 327 IAC 13-2-24 IS AMENDED TO READ AS FOLLOWS:

327 IAC 13-2-24 “PPL” defined

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-13-18

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

Sec. 24. “PPL” means a project priority list ~~which that~~ is generated through the department and updated annually and **may also** ~~be amended quarterly as needed.~~ It ranks, in descending priority of need, political subdivisions ~~which that~~ have indicated a need ~~for to reimburse eligible expenses related to the construction of treatment works: a project.~~ **a project.** *(Water Pollution Control Board; 327 IAC 13-2-24; filed Apr 26, 1990, 10:45 a.m.: 13 IR 1689; filed Aug 28, 1998, 4:53 p.m.: 22 IR 29; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 5. 327 IAC 13-2-24.3 IS AMENDED TO READ AS FOLLOWS:

327 IAC 13-2-24.3 “Preliminary engineering report” defined

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-13-18

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

Sec. 24.3. “Preliminary engineering report” means the ~~document documents~~ submitted by the political subdivision that ~~provides~~ **provide** the information necessary for the department to determine the technical, economic, and environmental adequacy of the proposed ~~treatment works: project.~~ **project.** *(Water Pollution Control Board; 327 IAC 13-2-24.3; filed Aug 28, 1998, 4:53 p.m.: 22 IR 29; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 6. 327 IAC 13-2-25.5 IS ADDED TO READ AS FOLLOWS:

327 IAC 13-2-25.5 “Refinancing” defined

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-13-18

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

Sec. 25.5. “Refinancing” means the refinancing of a political subdivision’s issued and outstanding bond, note, or other debt obligation as permitted by the Clean Water Act through the wastewater state revolving fund (SRF). *(Water Pollution Control Board; 327 IAC 13-2-25.5)*

SECTION 7. 327 IAC 13-2-26.5 IS AMENDED TO READ AS FOLLOWS:

327 IAC 13-2-26.5 “Sewer charge system” defined

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-13-18

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

Sec. 26.5. “Sewer charge system” means a set of documents submitted by the political subdivision to the agency that ~~includes~~ **may include** a rate study, sewer rate ordinance, and any interlocal agreements or contracts that will determine the financial and legal capability associated with the operation and use of the treatment works project financed by the wastewater SRF. (*Water Pollution Control Board; 327 IAC 13-2-26.5; filed Aug 28, 1998, 4:53 p.m.: 22 IR 29; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 8. 327 IAC 13-2-27.5 IS ADDED TO READ AS FOLLOWS:

327 IAC 13-2-27.5 “Study area” defined

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-13-18

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

Sec. 27.5. “Study area” means the geographical area within a political subdivision’s boundaries, which also includes the location of the project to be financed or refinanced by the political subdivision through the wastewater SRF. (*Water Pollution Control Board; 327 IAC 13-2-27.5*)

SECTION 9. 327 IAC 13-2-28 IS AMENDED TO READ AS FOLLOWS:

327 IAC 13-2-28 “Substantial completion date of construction” defined

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-13-18

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

Sec. 28. “Substantial completion ~~date~~ of construction” means the date determined by the **political subdivision and provided to the department** when:

- (1) all but minor components of a project have been built;
- (2) all equipment is operational; and
- (3) the project is capable of functioning as designed.

(*Water Pollution Control Board; 327 IAC 13-2-28; filed Apr 26, 1990, 10:45 a.m.: 13 IR 1689; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 10. 327 IAC 13-2-29 IS AMENDED TO READ AS FOLLOWS:

327 IAC 13-2-29 “Substantive environmental impact” defined

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-13-18

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

Sec. 29. “Substantive environmental impact” means a significant adverse ~~change in the environment~~ **environmental impact** resulting directly or indirectly from **a project** or the:

- (1) construction;
- (2) operation;
- (3) upgrade; or
- (4) expansion;

of a treatment works. (*Water Pollution Control Board; 327 IAC 13-2-29; filed Apr 26, 1990, 10:45 a.m.: 13 IR 1689; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 11. 327 IAC 13-3-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 13-3-1 Wastewater SRF program expenditures

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-13-18

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

Sec. 1. The wastewater SRF shall be used to do the following:

- (1) Provide financial assistance for the construction of ~~treatment works~~ projects and all other activities that are permitted by the Clean Water Act.
- (2) Refund outstanding indebtedness of political subdivisions eligible for repurchase by the agency under the Clean Water Act.
- (3) Pay reasonable direct and indirect program administration costs.

(Water Pollution Control Board; 327 IAC 13-3-1; filed Apr 26, 1990, 10:45 a.m.: 13 IR 1689; filed Aug 28, 1998, 4:53 p.m.: 22 IR 29; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 12. 327 IAC 13-4-2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 13-4-2 Intended use plan

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-13-18

Affected: IC 13-11-2; IC 13-18-13-3

Sec. 2. (a) The department and the agency shall prepare annually an IUP, including a PPL and a nonpoint source project list pursuant to the Clean Water Act, to be effective on the first day of the state's fiscal year.

(b) The following documents shall be included as appendices of the IUP and are subject to modification in accordance with this section:

(1) The PPL.

(2) A document describing the project ranking process.

(3) A list of nonpoint source projects.

(4) A list of refinancings that may be treated in the PPL as part of a treatment works project or other project otherwise listed on the PPL.

(c) The department shall adopt an IUP after holding a public meeting on the plan and responding to substantial comments received. The department ~~shall~~ **may** amend the IUP to add eligible projects or change or amend listed projects as necessary ~~on a quarterly basis~~ after pursuing a public notification process.

(d) Placement in the PPL shall be based on the following criteria:

(1) The project must be consistent with the PPL and uses of the wastewater SRF as identified in the CWA and IC 13-18-13-3.

(2) A political subdivision must submit general project information on an application form provided by the department that is signed by the political subdivision's authorized representative and includes relevant information as follows:

(A) A general description of the project.

(B) An appropriate cost estimate for different phases of the project.

(C) An estimated initiation date and completion date for each phase of the project.

(D) For a refinancing, information received in clauses (A) through (C) and any other information required by and evaluated by the agency.

(Water Pollution Control Board; 327 IAC 13-4-2; filed Apr 26, 1990, 10:45 a.m.: 13 IR 1690; filed Aug 28, 1998, 4:53 p.m.: 22 IR 30; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 13. 327 IAC 13-6-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 13-6-1 Criteria

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-13-18

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

Sec. 1. Loans and other available SRF financial assistance shall be made only to a political subdivision that meets all of the following criteria:

(1) **For treatment works projects**, owns, operates, and maintains, or causes to be operated and maintained, a treatment works for its useful life.

(2) Demonstrates financial, managerial, technical, and legal capability to:

(A) meet the terms of the financial assistance agreement; and ~~to~~

(B) operate and maintain the treatment works project or other project for its useful life.

(3) Agrees to:

(A) maintain financial records in accordance with generally accepted government accounting principles for utilities; ~~and to~~

(B) provide a copy of audits of the treatment work's financial records as conducted by the state board of accounts or other certified independent auditor during the term of its financial assistance agreement; and

~~(4) Agrees to~~ **(C) allow inspection by the agency of the financial records related to the treatment works during the term of the financial assistance agreement.**

~~(5)~~ (4) Meets all other wastewater SRF program requirements.

(Water Pollution Control Board; 327 IAC 13-6-1; filed Apr 26, 1990, 10:45 a.m.: 13 IR 1690; filed Aug 28, 1998, 4:53 p.m.: 22 IR 30; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 14. 327 IAC 13-8.1-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 13-8.1-1 Purpose

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-13-18

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

Sec. 1. ~~It is~~ The purpose of this rule is to establish the preliminary engineering report procedures required for funding of treatment works **and other projects** from the wastewater SRF. The preliminary engineering report:

(1) shall provide the information necessary for the department to determine the technical, economic, and environmental adequacy of the proposed treatment works **The preliminary engineering report and other projects; and**

(2) must be approved by the department ~~prior to~~ **before** award of financial assistance for a construction **project**.

(Water Pollution Control Board; 327 IAC 13-8.1-1; filed Aug 28, 1998, 4:53 p.m.: 22 IR 31; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 15. 327 IAC 13-8.1-2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 13-8.1-2 Applicability

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-13-18

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

Sec. 2. (a) This rule shall apply to any political subdivision requesting financial assistance from the wastewater SRF program **for a construction project**.

(b) **This rule does not apply to a refinancing or to a project that is determined by the department to be categorically excluded under 327 IAC 13-9-3.** *(Water Pollution Control Board; 327 IAC 13-8.1-2; filed Aug 28, 1998, 4:53 p.m.: 22 IR 31; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 16. 327 IAC 13-8.1-3 IS AMENDED TO READ AS FOLLOWS:

327 IAC 13-8.1-3 Project summary

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-13-18

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

Sec. 3. The preliminary engineering report shall include a section that provides a brief summary of the proposed project and shall include the following:

(1) Project purpose, scope, and schedule.

(2) Project cost estimates for construction and nonconstruction activities.

(3) All anticipated funding sources for the project.

(4) ~~Legal~~ Description of the project area.

(5) Current population data and twenty (20) year projection.

(6) Current condition of facilities, current pollutant loadings and flows, and twenty (20) year projection.

(7) The preliminary design summary with schematics, layouts, and maps for the affected and proposed treatment works.

(8) Sewer system studies, where appropriate, in order to establish that the system is not subject to excessive inflow and infiltration.

(9) The department may request additional information ~~from a political subdivision~~ that it deems necessary to complete a preliminary engineering report **from a political subdivision**.

(Water Pollution Control Board; 327 IAC 13-8.1-3; filed Aug 28, 1998, 4:53 p.m.: 22 IR 31; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 17. 327 IAC 13-8.1-6 IS AMENDED TO READ AS FOLLOWS:

327 IAC 13-8.1-6 Public participation

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-13-18

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

Sec. 6. The preliminary engineering report shall include the following:

(1) Copies of all written comments submitted by the public during the preliminary engineering process.

(2) A transcript of the public hearing.

(3) A mailing list **or labels, or both**, of all:

(A) individuals;

(B) industries;

(C) groups;

(D) **media outlets within the study area**; and

(E) organizations **within the study area**;

that demonstrated an interest in receiving copies of the EA and FNSEI issued ~~pursuant to~~ **under** 327 IAC 13-9-5 through 327 IAC 13-9-6.

(4) A copy of the publisher's affidavit from the newspaper with the public hearing notice.

(Water Pollution Control Board; 327 IAC 13-8.1-6; filed Aug 28, 1998, 4:53 p.m.: 22 IR 32; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 18. 327 IAC 13-8.1-7 IS AMENDED TO READ AS FOLLOWS:

327 IAC 13-8.1-7 Public hearings

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-13-18

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

Sec. 7. At least one (1) public hearing shall be held ~~prior to~~ **within the study area approving the** adoption of the preliminary engineering report by the political subdivision. The purpose of the public hearing shall be to discuss the preliminary engineering report. A copy of the preliminary engineering report shall be available to all attendees at the hearing. Requirements for the hearing shall include the following:

(1) The public hearing shall be publicized in at least one (1) newspaper of general circulation in the study area a minimum of ~~fourteen (14)~~ **ten (10)** days ~~prior to~~ **before** the date of the hearing.

(2) The preliminary engineering report shall be available for public review for a minimum of ~~fourteen (14)~~ **ten (10)** days ~~prior to~~ **before** the date of the public hearing.

(3) Written comments shall be accepted during the **public** hearing and for a period of ten (10) days following the **public** hearing.

(4) A sign up sheet shall be available **at the public hearing** for all individuals interested in receiving the EA and FNSEI. ~~at the public hearing.~~

(Water Pollution Control Board; 327 IAC 13-8.1-7; filed Aug 28, 1998, 4:53 p.m.: 22 IR 32; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 19. 327 IAC 13-9-2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 13-9-2 Applicability

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-13-18

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

Sec. 2. (a) This rule applies to any political subdivision requesting financial assistance for treatment works from the wastewater SRF program.

(b) This rule does not apply to a refinancing. *(Water Pollution Control Board; 327 IAC 13-9-2; filed Apr 26, 1990, 10:45 a.m.: 13 IR 1693; filed Aug 28, 1998, 4:53 p.m.: 22 IR 33; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 20. 327 IAC 13-9-3 IS AMENDED TO READ AS FOLLOWS:

327 IAC 13-9-3 Categorical exclusions

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-13-18

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

Sec. 3. (a) The following classes of projects may be categorically ~~exempt~~ **excluded** from the requirements of this rule **and 327 IAC 13-8.1**, except as described in subsection (b):

- (1) Minor addition, rehabilitation, improvement, or expansion of any existing treatment works that will disturb only previously disturbed land.
- (2) Rehabilitation of sewer systems that will:
 - (A) not result in the extension of the existing system; and ~~will~~
 - (B) disturb only previously disturbed land.

(b) If it is determined by the department that the construction or operation, or both, of any treatment works listed in subsection (a) may result in substantive environmental impacts, a categorical ~~exemption~~ **exclusion** shall not be granted, and the political subdivision shall prepare a preliminary engineering report under 327 IAC 13-8.1.

(c) A categorical ~~exemption~~ **exclusion** may be rescinded by the department if it is determined that information exists sufficient to suggest that substantive environmental impacts may occur as a result of the construction or operation, or both, of any treatment works included in a project that received a categorical ~~exemption~~ **exclusion**.

(d) All decisions to categorically ~~exempt~~ **exclude** a project from the requirements of this rule, or to rescind a previously granted categorical ~~exemption~~ **exclusion**, shall be issued for public comments for thirty (30) days **in one (1) newspaper of general circulation within the study area**. The decision shall be considered final ~~in at the absence of significant public comments~~ **conclusion of the comment period**. If significant public comments are received during the comment period, the decision ~~shall~~ **may** be reevaluated and a new decision, if appropriate, issued for public comments for ~~an additional thirty (30) days~~ **day comment period**.

(e) **If a project is determined by the department to be categorically excluded under this section, the information describing the project required to be submitted to the department for its review shall be limited to only that information specifically requested by the department, which may vary for each project being considered.** (*Water Pollution Control Board; 327 IAC 13-9-3; filed Apr 26, 1990, 10:45 a.m.: 13 IR 1693; filed Aug 28, 1998, 4:53 p.m.: 22 IR 33; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 21. 327 IAC 13-9-5 IS AMENDED TO READ AS FOLLOWS:

327 IAC 13-9-5 Environmental assessment

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-13-18

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

Sec. 5. (a) The purpose of an EA shall be the following:

- (1) To provide a description of all feasible treatment works alternatives.
- (2) To document the potential environmental impacts of the feasible alternatives.
- (3) To act as a public record of the information evaluated by the department.
- (4) To provide information adequate for the public to evaluate the alternatives.

(b) The preparation of an EA shall be the responsibility of the department.

(c) The EA shall, at a minimum, include the following information:

- (1) Project identification.
- (2) System summary.
- (3) System need and purpose.
- (4) System description.
- (5) Project costs ~~affordability~~, and funding.
- (6) ~~Evaluation~~ **Identification** of feasible alternatives **provided by the political subdivisions**.
- (7) Environmental impacts of the feasible alternatives.
- (8) Mitigation measures.
- (9) Public participation.

(d) The EA shall be provided as an attachment to the FNSEI document issued ~~pursuant to~~ **under** section 6 of this rule. (*Water*

Pollution Control Board; 327 IAC 13-9-5; filed Apr 26, 1990, 10:45 a.m.: 13 IR 1694; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 22. 327 IAC 13-11-1.5 IS ADDED TO READ AS FOLLOWS:

327 IAC 13-11-1.5 Applicability

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-13-18

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

Sec. 1.5. This rule does not apply to a refinancing. *(Water Pollution Control Board; 327 IAC 13-11-1.5)*

SECTION 23. 327 IAC 13-12-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 13-12-1 Construction permit

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-13-18

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

Sec. 1. (a) ~~The~~ Political subdivisions must obtain a construction permit from the department in accordance with ~~327 IAC 3-2-3~~ **327 IAC 3-2-3.5 or other applicable permitting authority** in conjunction with the approved preliminary engineering report ~~prior to~~ **before** contract award approval.

(b) The political subdivision must receive authorization from the department ~~prior to initiating~~ **before initiating** procurement for construction. *(Water Pollution Control Board; 327 IAC 13-12-1; filed Apr 26, 1990, 10:45 a.m.: 13 IR 1696; filed Aug 28, 1998, 4:53 p.m.: 22 IR 35; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 24. 327 IAC 13-12-1.5 IS ADDED TO READ AS FOLLOWS:

327 IAC 13-12-1.5 Applicability

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-13-18

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

Sec. 1.5. This rule does not apply to a refinancing. *(Water Pollution Control Board; 327 IAC 13-12-1.5)*

SECTION 25. 327 IAC 13-12-2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 13-12-2 Acquisition of land, easements, and existing facilities

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-13-18

Affected: IC 13-11-2; IC 13-18-13; IC 32-24

Sec. 2. The political subdivision is responsible for acquisition of land, easements, and any existing facilities necessary to construct, operate, and maintain the project. ~~Prior to~~ **Before** the ~~issuance approval of a construction permit contract award~~ by the department, the political subdivision shall provide evidence that it has ~~or will have or, by a mutually agreeable date,~~ the required property rights. All acquisitions of property by exercise of power of eminent domain shall comply with the procedure in ~~IC 32-11~~ **IC 32-24** or other applicable law. *(Water Pollution Control Board; 327 IAC 13-12-2; filed Apr 26, 1990, 10:45 a.m.: 13 IR 1696; filed Aug 28, 1998, 4:53 p.m.: 22 IR 35; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 26. 327 IAC 13-12-6 IS AMENDED TO READ AS FOLLOWS:

327 IAC 13-12-6 Change orders

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-13-18

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

Sec. 6. The political subdivision shall submit copies of each change order to the department **for approval**. Change orders ~~which~~ **that**:

(1) significantly change the scope or design of the project; or

(2) ~~which~~ increase the amount of financing needed for the project; require the prior approval of the department and ~~the~~ agency before the work is authorized by the political subdivision. If the change order will result in the expenditure of more wastewater SRF funds than the current amount of financial assistance approved by the agency, an amendment increasing the amount of assistance must be executed ~~prior to before~~ the implementation of the changes. Any additional financial assistance shall comply with existing law as to the borrowing power of the political subdivision. (*Water Pollution Control Board; 327 IAC 13-12-6; filed Apr 26, 1990, 10:45 a.m.: 13 IR 1697; filed Aug 28, 1998, 4:53 p.m.: 22 IR 35; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 27. 327 IAC 13-12-7 IS AMENDED TO READ AS FOLLOWS:

327 IAC 13-12-7 Inspections

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-13-18

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

Sec. 7. The inspections shall proceed as follows:

(1) During the construction of the project, the political subdivision shall provide ~~continuous inspection~~ **frequent inspections** by qualified inspectors in sufficient numbers to ensure that the construction complies with **the following**:

(A) Department approved plans and specifications. ~~and~~

(B) The terms and conditions of the contract.

(2) The inspectors shall maintain logs, written in ink, with entries sufficient to establish the amount and quality of work completed by the contractor including **the following**:

(A) Weather conditions. ~~and~~

(B) Problems encountered.

(3) The department shall conduct construction inspections to determine compliance with **the following**:

(A) Department approved plans. ~~and specifications.~~

(B) **Preliminary engineering reports.**

(C) **Construction permits.**

Inspections performed by the department are not made to replace the political subdivision's responsibility to properly monitor the construction of its project but are made solely to protect the department's and ~~the~~ agency's financial interest in the project.

(4) The political subdivision shall:

(A) conduct a prefinal inspection making a punch list of incomplete and unacceptable work to be corrected before final inspection; ~~and~~

~~(5) The political subdivision shall~~ (B) notify the department after:

(i) the prefinal inspection has been done; and

(ii) all punch list items have been corrected or agreed to be corrected;

to set up a final inspection to be made by the department to determine the date of substantial completion.

(*Water Pollution Control Board; 327 IAC 13-12-7; filed Apr 26, 1990, 10:45 a.m.: 13 IR 1697; filed Aug 28, 1998, 4:53 p.m.: 22 IR 35; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 28. 327 IAC 13-15-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 13-15-1 Disbursement process

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-13-18

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

Sec. 1. The loan proceeds shall be disbursed as follows:

(1) The department shall review and certify the wastewater SRF loan share of the appropriate costs incurred for the project. These costs shall be documented as requested by the department. ~~in the political subdivision's most recent invoice statement.~~ The agency ~~shall~~ **may** pay these costs in accordance with ~~state disbursement procedures.~~

~~(2) Multiple disbursements of the loan proceeds shall be made by the agency on the basis of incurred costs during the construction of the project with the first disbursement made at financial assistance closing. Succeeding disbursements shall normally be made monthly until construction completion or until all proceeds of the loan have been disbursed. Interest shall commence on the day funds are disbursed to the political subdivision for that disbursement only or to third parties on behalf of the political subdivision.~~
agreement.

~~(3)~~ (2) The political subdivision shall:

(A) approve ~~the all~~ project costs for payment; ~~prior to disbursement of and~~

(B) **provide the approval to the proceeds department.**

~~(4)~~ (3) Loan proceeds disbursed to or on behalf of the political subdivision shall be used only for authorized purposes. Funds shall not be ~~disbursed applied to pay~~ costs associated with a contract change order that authorized a significant change in project scope or design, or both, ~~prior to before~~ concurrence by the department and the agency.

~~(5)~~ (4) The department and the agency may at any time review and audit requests for loan disbursements and make adjustments for circumstances, including, but not limited to, the following:

(A) Mathematical errors.

(B) Items not bought or built.

(C) Unacceptable construction.

~~(6)~~ (5) By its acceptance of the final loan disbursement, the political subdivision releases and discharges the department and **the** agency **and** its officers, agents, and employees from all liabilities, obligations, and claims arising out of the disbursement of loan proceeds, subject only to exceptions previously specified contractually in writing between the ~~department~~ **agency** and the political subdivision.

~~(7)~~ (6) All files and records pertaining to the project shall be maintained by the political subdivision throughout the project and made accessible to the department and **the** agency. These files and records shall be retained by the political subdivision for at least six (6) years after initiation of operation as determined by the department and **the** agency. However, if any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the six (6) year period, the records shall be retained until:

(A) completion of the action and resolution of all issues that arise from it; or ~~until~~

(B) the end of the regular six (6) year period;

whichever is later.

(Water Pollution Control Board; 327 IAC 13-15-1; filed Apr 26, 1990, 10:45 a.m.: 13 IR 1699; filed Aug 28, 1998, 4:53 p.m.: 22 IR 36; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 29. 327 IAC 13-16-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 13-16-1 “Rights” defined

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-13-18

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

Sec. 1. The following rights are reserved:

(1) Nothing in this article prohibits a political subdivision from requiring more:

(A) assurances;

(B) guarantees; ~~or~~

(C) indemnity; or

(D) other contractual requirements;

from any party performing work on the project.

(2) Nothing in this article affects the department’s **right** and agency’s right under existing rules to take remedial action, including, but not limited to, administrative enforcement action and actions for breach of contract against a political subdivision that fails to carry out its obligations under this article.

(3) Review or approval of any document by or for the department **or the agency** does not relieve the political subdivision of its responsibility to properly plan, design, build, and effectively operate and maintain the treatment works as required by federal and state statutes, rules, regulations, permits, and best management practice. The department ~~is~~ **and the agency are** not responsible for increased costs resulting from defects in the plans, design drawings, specifications, inspections, construction, or other subagreement documents related to the project.

(Water Pollution Control Board; 327 IAC 13-16-1; filed Apr 26, 1990, 10:45 a.m.: 13 IR 1700; filed Aug 28, 1998, 4:53 p.m.: 22 IR 36; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 30. 327 IAC 14-1-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-1-1 Purpose

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16; IC 13-18-21

Sec. 1. The purpose of this article is to implement the drinking water state revolving fund established by IC 13-18-21 and accomplish the following:

(1) Provide funding for loans and other financial assistance to or for the benefit of ~~political subdivisions~~, **participants**, including forgiveness of principal if allowed under federal law.

(2) Provide ~~political subdivisions~~ **participants** in Indiana funding for the:

- (A) planning;
- (B) designing;
- (C) construction;
- (D) renovation;
- (E) improvement; or
- (F) expansion;

of public water systems (PWS) that will facilitate compliance with national primary drinking water regulations applicable to PWS under the ~~federal Safe Drinking Water Act (SDWA)~~ **(42 U.S.C. Section 300f to 300j-26)** or otherwise significantly further the health protection objectives of the ~~federal SDWA~~ **Safe Drinking Water Act** and other activities necessary or convenient to complete these tasks.

(3) Pay the cost of administering the fund and the **drinking water SRF** program, except as provided in the ~~federal SDWA~~ **Safe Drinking Water Act**.

(4) Conduct any other activity permitted by the ~~SDWA~~ **Safe Drinking Water Act**.

(Water Pollution Control Board; 327 IAC 14-1-1; filed Aug 28, 1998, 4:53 p.m.: 22 IR 38; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 31. 327 IAC 14-2-3 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-2-3 “Authorized representative” defined

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 3. “Authorized representative” means a person who has been designated by the governing board of a ~~political subdivision~~ **participant** to sign documents on behalf of that board. *(Water Pollution Control Board; 327 IAC 14-2-3; filed Aug 28, 1998, 4:53 p.m.: 22 IR 38; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 32. 327 IAC 14-2-5 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-2-5 “Board” defined

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 5. “Board” means the governing body of the ~~political subdivision~~ **participant** seeking financial assistance. *(Water Pollution Control Board; 327 IAC 14-2-5; filed Aug 28, 1998, 4:53 p.m.: 22 IR 38; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 33. 327 IAC 14-2-6 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-2-6 “Bond” defined

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 6. “Bond” is the debt instrument that evidences the long term financing undertaken by a ~~political subdivision~~ **participant** in accordance with Indiana statutes for incurring debt. *(Water Pollution Control Board; 327 IAC 14-2-6; filed Aug 28, 1998, 4:53 p.m.: 22 IR 38; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 34. 327 IAC 14-2-7.5 IS ADDED TO READ AS FOLLOWS:

327 IAC 14-2-7.5 “Construction project” defined

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 7.5. “Construction project” means the activities or tasks the department identifies in the preliminary engineering report or any other document required by the department related to the construction of a project for which the participant may commit and expend funds. (*Water Pollution Control Board; 327 IAC 14-2-7.5*)

SECTION 35. 327 IAC 14-2-10 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-2-10 “Due diligence” defined

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 10. “Due diligence” means a process that provides financial disclosures advising the state of economic matters related to the ~~political subdivision participant~~ **participant** and ~~their~~ **its** ability to repay the loan. (*Water Pollution Control Board; 327 IAC 14-2-10; filed Aug 28, 1998, 4:53 p.m.: 22 IR 39; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 36. 327 IAC 14-2-11 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-2-11 “EA” defined

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 11. “EA” means an environmental assessment that is a document prepared by the department upon completion of ~~a the department’s review of a preliminary engineering report that:~~

(1) describes the PWS project alternatives;

(2) describes the potential environmental impacts of the feasible alternatives;

(3) acts as a public record of the documentation and review process used to arrive at a preliminary decision as to whether an EIS is necessary; and

(4) provides information adequate for the public to comment on the proposed project;

or other document required by the department and includes those items required by 327 IAC 14-8-4. (*Water Pollution Control Board; 327 IAC 14-2-11; filed Aug 28, 1998, 4:53 p.m.: 22 IR 39; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 37. 327 IAC 14-2-14 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-2-14 “Financial assistance agreement” defined

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 4-13-2-14.1; IC 13-11-2; IC 13-18-16

Sec. 14. “Financial assistance agreement” means a contract document approved under IC 4-13-2-14.1 that contains the covenants between the ~~political subdivision participant~~ **participant** and agency concerning financial assistance from the drinking water SRF. (*Water Pollution Control Board; 327 IAC 14-2-14; filed Aug 28, 1998, 4:53 p.m.: 22 IR 39; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 38. 327 IAC 14-2-15 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-2-15 “Financial assistance closing” defined

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 15. “Financial assistance closing” means the occasion in which:

(1) a ~~political subdivision participant~~ **participant** tenders its:

(A) note;

(B) bond;

(C) guaranty agreement; or

(D) credit enhancement agreement;

to the agency; and

(2) the agency provides a portion, or all, of the drinking water SRF financial assistance to the ~~political subdivision participant~~ **participant**.

(Water Pollution Control Board; 327 IAC 14-2-15; filed Aug 28, 1998, 4:53 p.m.: 22 IR 39; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 39. 327 IAC 14-2-16 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-2-16 “FNSEI” defined

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 16. “FNSEI” means a finding of no significant environmental impact that is a finding of the department, issued with an EA, that the construction and operation of a proposed PWS **or the improvements thereto** will not significantly impact the environment. *(Water Pollution Control Board; 327 IAC 14-2-16; filed Aug 28, 1998, 4:53 p.m.: 22 IR 39; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 40. 327 IAC 14-2-18 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-2-18 “Loan” defined

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 18. “Loan” means purchasing the notes or bonds of a ~~political subdivision~~ **participant** to finance a **PWS project** or ~~refinancing~~ **refinance** an existing debt obligation where debt was incurred after July 1, 1993. *(Water Pollution Control Board; 327 IAC 14-2-18; filed Aug 28, 1998, 4:53 p.m.: 22 IR 40; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 41. 327 IAC 14-2-20 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-2-20 “Participant” defined

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 5-1.4; IC 5-1.5-1-8; IC 8-1-2-125; IC 13-11-2; IC 13-18-16; IC 13-26; IC 14-33-1-1; IC 36-1-2

Sec. 20. ~~Political subdivision~~ **“Participant”** means the following:

- (1) Political subdivision as defined in IC 36-1-2.
- (2) Regional water, sewage, or solid waste district organized under IC 13-26 or IC 13-3-2, before its repeal July 1, 1996.
- (3) Local public improvement bond bank organized under IC 5-1.4.
- (4) Qualified entity described in IC 5-1.5-1-8(4) that is a public water utility described in IC 8-1-2-125.
- (5) Conservancy district established for the purpose set forth in IC 14-33-1-1(a)(4).

(6) Any other owner of a PWS that is authorized by the Safe Drinking Water Act to borrow from the drinking water SRF. *(Water Pollution Control Board; 327 IAC 14-2-20; filed Aug 28, 1998, 4:53 p.m.: 22 IR 40; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 42. 327 IAC 14-2-21 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-2-21 “PPL” defined

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 21. “PPL” means a project **priority** list ~~which that~~ is generated through the department and updated annually and **may also be amended quarterly, as necessary.** It ranks, in descending priority of need, ~~political subdivisions which participants that~~ have indicated a need **for a PWS to reimburse eligible expenses related to the construction of a project.** *(Water Pollution Control Board; 327 IAC 14-2-21; filed Aug 28, 1998, 4:53 p.m.: 22 IR 40; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 43. 327 IAC 14-2-22 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-2-22 “Preliminary engineering report” defined

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 22. "Preliminary engineering report" means the ~~document~~ **documents** submitted by the ~~political subdivision~~ **participant** that ~~provides~~ **provide** the information necessary for the department to determine the technical, economic, and environmental adequacy of the proposed PWS construction project. (*Water Pollution Control Board; 327 IAC 14-2-22; filed Aug 28, 1998, 4:53 p.m.: 22 IR 40; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 44. 327 IAC 14-2-24 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-2-24 "Project" defined

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 24. "Project" means the activities or tasks the department identifies in the preliminary engineering report for which the ~~political subdivision~~ **participant** may commit and expend funds. (*Water Pollution Control Board; 327 IAC 14-2-24; filed Aug 28, 1998, 4:53 p.m.: 22 IR 40; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 45. 327 IAC 14-2-25.5 IS ADDED TO READ AS FOLLOWS:

327 IAC 14-2-25.5 "Refinancing" defined

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 25.5. "Refinancing" means the refinancing of a participant's issued and outstanding bond, note, or other debt obligation as permitted by the Safe Drinking Water Act through the drinking water SRF. (*Water Pollution Control Board; 327 IAC 14-2-25.5*)

SECTION 46. 327 IAC 14-2-26 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-2-26 "ROD" defined

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 26. "ROD" means a ~~statement~~ **record of decision** issued by the department upon the completion of an EIS, which includes a determination of whether to proceed with a proposed project. (*Water Pollution Control Board; 327 IAC 14-2-26; filed Aug 28, 1998, 4:53 p.m.: 22 IR 40; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 47. 327 IAC 14-2-27.5 IS ADDED TO READ AS FOLLOWS:

327 IAC 14-2-27.5 "Study area" defined

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 27.5. "Study area" means the geographical area within a participant's boundaries, which also includes the location of the project to be financed or refinanced by the participant through the drinking water SRF. (*Water Pollution Control Board; 327 IAC 14-2-27.5*)

SECTION 48. 327 IAC 14-2-28 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-2-28 "Substantial completion date of construction" defined

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 28. "Substantial completion **date** of construction" means the date determined by the **participant and provided to the** department when:

- (1) all but minor components of a project have been built;
- (2) all equipment is operational; and
- (3) the project is capable of functioning as designed.

(Water Pollution Control Board; 327 IAC 14-2-28; filed Aug 28, 1998, 4:53 p.m.: 22 IR 41; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 49. 327 IAC 14-2-29 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-2-29 “Substantive environmental impact” defined

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 29. “Substantive environmental impact” means a significant adverse ~~change in the environment~~ **environmental impact** resulting directly or indirectly from the:

- (1) construction; ~~operation~~;
- (2) upgrade; ~~or~~
- (3) expansion; ~~or~~
- (4) **operation**;

of a PWS construction project. (Water Pollution Control Board; 327 IAC 14-2-29; filed Aug 28, 1998, 4:53 p.m.: 22 IR 41; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 50. 327 IAC 14-3-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-3-1 Drinking water SRF program expenditures

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 1. The drinking water SRF shall be used to do the following:

- (1) Provide financial assistance for PWS construction projects and all other activities that are permitted by the Safe Drinking Water Act.
- (2) Refinance **a participant’s** outstanding indebtedness ~~of political subdivisions as determined to be~~ eligible for repurchase by the agency under the Safe Drinking Water Act.
- (3) Pay reasonable direct and indirect program administration costs.
- (4) **Provide funds for set aside accounts as permitted by the Safe Drinking Water Act.**

(Water Pollution Control Board; 327 IAC 14-3-1; filed Aug 28, 1998, 4:53 p.m.: 22 IR 41; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 51. 327 IAC 14-4-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-4-1 Project priority list

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 1. The agency shall award drinking water SRF financial assistance for PWS construction projects to a ~~political subdivision~~ **participant** only for eligible costs of projects listed on the department’s project priority list PPL. (Water Pollution Control Board; 327 IAC 14-4-1; filed Aug 28, 1998, 4:53 p.m.: 22 IR 41; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 52. 327 IAC 14-4-2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-4-2 Intended use plan

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16; IC 13-18-21-3

Sec. 2. (a) The department and the agency shall prepare annually an IUP, including a project priority list pursuant to the Safe Drinking Water Act, to be effective on the first day of the state’s fiscal year.

(b) The following documents shall be included as appendices of the IUP and are subject to modification in accordance with this section:

- (1) The PPL.
- (2) A document describing the project ranking process.
- (3) A list of any other types of project permitted by the Safe Drinking Water Act.
- (4) A list of refinancings that may be treated in the PPL as part of a project otherwise listed on the PPL.**

(c) The department shall adopt an IUP after holding a public meeting on the plan and responding to substantial comments received. The department ~~shall~~ **may** amend the IUP to add eligible projects and change or amend listed projects as necessary ~~on a quarterly basis~~ after pursuing a public notification process.

(d) Placement ~~in~~ **on** the PPL shall be based on the following criteria:

- (1) The project must be consistent with the uses of the drinking water SRF as identified in the ~~SDWA~~ **Safe Drinking Water Act** and IC 13-18-21-3.
- (2) A ~~political subdivision~~ **participant** must submit general project information on an application form provided by the department that is signed by the ~~political subdivision's~~ **participant's** authorized representative and includes relevant information as follows:
 - (A) A general description of the project.
 - (B) An appropriate cost estimate for different phases of the project.
 - (C) An estimated initiation date and completion date for each phase of the project.
 - (D) For a refinancing, information like that received in clauses (A) through (C) and any other information required by and evaluated by the agency.**
 - (E) Any additional relevant information the department may request.**

(Water Pollution Control Board; 327 IAC 14-4-2; filed Aug 28, 1998, 4:53 p.m.: 22 IR 41; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 53. 327 IAC 14-5-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-5-1 Criteria

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 1. Loans and other available SRF financial assistance for PWS construction projects shall be made only to a ~~political subdivision~~ **participant** that meets all of the following criteria:

- (1) Owns, operates, and maintains, or causes to be operated and maintained, a PWS for its useful life.
- (2) Demonstrates financial, managerial, technical, and legal capability to:

(A) meet the terms of the financial assistance agreement; and ~~to~~

(B) operate and maintain the PWS for its useful life.

- (3) Agrees to:

(A) submit an annual operating budget for the agency's approval and periodically adjust:

(i) fees;

(ii) charges;

(iii) taxes;

(iv) special assessments; and

(v) revenues available;

to the ~~political subdivision~~ **participant**, if any, in order to assure receipt of sufficient revenue annually to comply with all requirements of the loan agreement;

- ~~(4)~~ **Agrees to:**

~~(A)~~ **(B)** maintain financial records in accordance with generally accepted government accounting principles for utilities; and

~~(B)~~ **(C)** provide a copy of audits of the PWS financial records as conducted by the state board of accounts or other certified independent auditor during the term of ~~the~~ **its** financial assistance agreement; and

~~(5)~~ **Agrees to (D)** allow inspection by the agency of the financial records related to the PWS during the term of the financial assistance agreement.

- ~~(6)~~ **(4)** Meets all other drinking water SRF program requirements.

(Water Pollution Control Board; 327 IAC 14-5-1; filed Aug 28, 1998, 4:53 p.m.: 22 IR 42; readopted filed Jan 10, 2001, 3:23 p.m.):

24 IR 1518)

SECTION 54. 327 IAC 14-6-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-6-1 Due diligence process

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 1. The due diligence process shall include the following tasks:

(1) The ~~political subdivision~~ **participant** shall submit a completed due diligence form issued or authorized by the agency with the required documentation.

(2) The agency shall:

(A) review or cause to be reviewed the due diligence form and documentation; and

(B) inform the ~~political subdivision~~ **participant**, in writing, of the determination.

(Water Pollution Control Board; 327 IAC 14-6-1; filed Aug 28, 1998, 4:53 p.m.: 22 IR 42; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 55. 327 IAC 14-7-2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-7-2 Applicability

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 2. **(a)** This rule shall apply to any ~~political subdivision~~ **participant** requesting financial assistance from the drinking water SRP program **for a PWS construction project.**

(b) This rule does not apply to a refinancing or to a project that is determined by the department to be categorically excluded under 327 IAC 14-8-3. *(Water Pollution Control Board; 327 IAC 14-7-2; filed Aug 28, 1998, 4:53 p.m.: 22 IR 42; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 56. 327 IAC 14-7-3 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-7-3 Project summary

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 3. The preliminary engineering report shall include a section that provides a brief summary of the proposed project, including the following:

(1) Project purpose, scope, and schedule.

(2) Project cost estimates for construction and nonconstruction activities.

(3) All anticipated funding sources for the project.

(4) ~~Legal~~ Description of the project area.

(5) Current population data and twenty (20) year projection.

(6) Current condition of facilities, current ~~pollutant loadings and flows~~ **water supply, design and peak demand, treatment, and** twenty (20) year projection.

(7) The preliminary design summary with schematics, layouts, and maps for the affected project and proposed PWS.

(8) The department may request additional information ~~from a political subdivision~~ that it deems necessary to complete a preliminary engineering report **from a participant.**

(Water Pollution Control Board; 327 IAC 14-7-3; filed Aug 28, 1998, 4:53 p.m.: 22 IR 42; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 57. 327 IAC 14-7-5 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-7-5 Environmental information

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 5. The preliminary engineering report shall contain the following:

- (1) A comparison of the potential environmental impacts among feasible alternatives, including that of doing nothing.
- (2) A basis for a determination to prepare either an EA and FNSEI, issued pursuant to **under** 327 IAC 13-9-5 and 327 IAC 13-9-6 or an EIS, issued under 327 IAC 13-9-7, as the final environmental document.
- (3) An assessment of the cumulative environmental impacts of the feasible alternatives within each of the following categories:
 - (A) Soils and prime farmland.
 - (B) Air quality.
 - (C) Ground water, drinking water, and sole source aquifers.
 - (D) Flood plains, wetlands, waterways, and other surface waters.
 - (E) Plants and animals.
 - (F) Historic, architectural, and archaeological sites.
 - (G) Natural national landmarks.
 - (H) Coastal zones.
- (4) The environmental information document shall include an evaluation of the environmental impacts of taking no action to modify, improve, or expand an existing PWS.
- (5) Specific mitigation measures shall be listed, as necessary, which shall eliminate, minimize, or compensate for the environmental impacts described in subdivision (3).
- (6) If the construction of an approved project is initiated five (5) or more years after the date of approval of a preliminary engineering report, an additional environmental information document shall be required unless it is determined by the department that there have been no substantial changes in the environmental impacts of the project.
- (7) If a proposed project is to be completed in several distinct phases, the environmental information associated with the first phase must consider the cumulative impacts of the entire proposed system, including all succeeding phases. As succeeding phases are constructed, no additional environmental information shall be required if there have been no significant changes to the original preliminary engineering report.
- (8) If a project is to be constructed ~~in for a political subdivision~~ **participant** that had a preliminary engineering report for a previous project approved by the department, the environmental information submitted with the previous project shall be evaluated by the department to determine if its scope and content encompassed the environmental impacts associated with the current project. Based on this evaluation, the ~~political subdivision~~ **participant** shall only be required to submit additional information if the department deems it necessary to complete the environmental review for the current project.

(Water Pollution Control Board; 327 IAC 14-7-5; filed Aug 28, 1998, 4:53 p.m.: 22 IR 43; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 58. 327 IAC 14-7-6 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-7-6 Public participation

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 6. The preliminary engineering report shall include the following:

- (1) Copies of all written comments submitted by the public during the preliminary engineering process.
- (2) A transcript of the public hearing.
- (3) A mailing list **or labels, or both**, of all:
 - (A) individuals;
 - (B) industries;
 - (C) groups;
 - (D) **media outlet within the study area;** and
 - (E) organizations **within the study area;**

that have demonstrated an interest in receiving copies of the EA and FNSEI issued pursuant to **under** 327 IAC 13-9-5 ~~through and~~ 327 IAC 13-9-6.

- (4) A copy of the publisher's affidavit from the newspaper with the public hearing notice.

(Water Pollution Control Board; 327 IAC 14-7-6; filed Aug 28, 1998, 4:53 p.m.: 22 IR 43; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 59. 327 IAC 14-7-7 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-7-7 Public hearings

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 7. At least one (1) public hearing shall be held ~~prior to~~ **within the study area approving the** adoption of the preliminary engineering report by the ~~political subdivision~~ **participant**. The purpose of the public hearing shall be to discuss the preliminary engineering report. A copy of the preliminary engineering report shall be available to all attendees at the hearing. Requirements for the hearing shall include the following:

(1) The public hearing shall be publicized in at least one (1) newspaper of general circulation in the study area a minimum of ~~fourteen (14)~~ **ten (10)** days ~~prior to~~ **before** the date of the hearing.

(2) The preliminary engineering report shall be available for public review for a minimum of ~~fourteen (14)~~ **ten (10)** days ~~prior to~~ **before** the date of the public hearing.

(3) Written comments shall be accepted:

(A) during the hearing; and

(B) for a period of ten (10) days following the hearing.

(4) A sign up sheet shall be available **at the hearing** for all individuals interested in receiving the EA and FNSEI. ~~at the public hearing.~~

(Water Pollution Control Board; 327 IAC 14-7-7; filed Aug 28, 1998, 4:53 p.m.: 22 IR 43; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 60. 327 IAC 14-8-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-8-1 Purpose

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 1. ~~It is~~ The purpose of this rule ~~is~~ to accomplish the following:

(1) To establish the environmental impact assessment procedures required for ~~political subdivisions~~ **participants** seeking financial assistance for PWS construction projects from the drinking water SRF.

(2) To assure that the:

(A) environmental impacts of all projects funded by the drinking water SRF be evaluated adequately ~~prior to~~ **before** award of financial assistance; **and**

~~(3) To assure that the~~ (B) consideration of public comments is an integral component of the environmental impact assessment process.

(Water Pollution Control Board; 327 IAC 14-8-1; filed Aug 28, 1998, 4:53 p.m.: 22 IR 44; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 61. 327 IAC 14-8-2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-8-2 Applicability

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 2. (a) This rule applies to any ~~political subdivision~~ **participant** requesting financial assistance ~~for PWS construction projects~~ from the drinking water SRF program **for a PWS construction project**.

(b) **This rule does not apply to a refinancing.** *(Water Pollution Control Board; 327 IAC 14-8-2; filed Aug 28, 1998, 4:53 p.m.: 22 IR 44; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 62. 327 IAC 14-8-3 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-8-3 Categorical exclusions

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 3. (a) The following classes of projects may be categorically ~~exempt~~ **excluded** from the requirements of this rule ~~and 327 IAC 14-7~~, except as described in subsection (b):

- (1) Minor addition, rehabilitation, improvement, or expansion of any existing ~~PWS~~ **PWS's treatment facilities** that will disturb only previously disturbed land.
- (2) Rehabilitation of ~~PWS~~ **a PWS's distribution system** that will not result in the extension of the existing system and will disturb only previously disturbed land.

(b) ~~If it is determined by the department~~ **determines** that the construction or operation, or both, of any PWS construction project listed in subsection (a) may result in substantive environmental impacts, a categorical ~~exemption~~ **exclusion** shall not be granted, and the ~~political subdivision~~ **participant** shall prepare a preliminary engineering report environmental information document under this rule.

(c) A categorical ~~exemption~~ **exclusion** may be rescinded by the department if it is determined that information exists sufficient to suggest that substantive environmental impacts may occur as a result of the construction or operation, or both, of any PWS construction project that received a categorical ~~exemption~~ **exclusion**.

(d) All decisions to categorically ~~exempt~~ **exclude** a project from the requirements of this rule, or to rescind a previously granted categorical ~~exemption~~ **exclusion**, shall be issued for public comments for thirty (30) days **in one (1) newspaper of general circulation within the study area**. The decision shall be considered final ~~in at the absence of significant public comments~~ **conclusion of the comment period**. If significant public comments are received during the comment period, the decision ~~shall may~~ be reevaluated and a new decision, if appropriate, issued for public comments for ~~an additional thirty (30) days~~ **day comment period**.

(e) **If a project is determined by the department to be categorically excluded under this section, the information describing the project required to be submitted to the department for its review shall be limited to only that information specifically requested by the department, which may vary for each project based upon the specific type of project being considered.** *(Water Pollution Control Board; 327 IAC 14-8-3; filed Aug 28, 1998, 4:53 p.m.: 22 IR 44; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 63. 327 IAC 14-8-4 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-8-4 Environmental assessment

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 4. (a) The purpose of an EA shall be the following:

- (1) To provide a description of all feasible PWS alternatives.
- (2) To document the potential environmental impacts of the feasible alternatives.
- (3) To act as a public record of the information evaluated by the department.
- (4) To provide information adequate for the public to evaluate the alternatives.

(b) The preparation of an EA shall be the responsibility of the department.

(c) The EA shall, at a minimum, include the following information:

- (1) Project identification.
- (2) System summary.
- (3) System need and purpose.
- (4) System description.
- (5) Project costs ~~affordability~~, and funding.
- (6) ~~Evaluation~~ **Identification of feasible alternatives provided by the participant**.
- (7) Environmental impacts of the feasible alternatives.
- (8) Mitigation measures.
- (9) Public participation.

(d) The EA shall be provided as an attachment to the FNSEI document issued under section 5 of this rule. (*Water Pollution Control Board; 327 IAC 14-8-4; filed Aug 28, 1998, 4:53 p.m.: 22 IR 44; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 64. 327 IAC 14-9-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-9-1 Approval rate study water rate ordinance

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16; IC 36-7-23

Sec. 1. (a) Every ~~political subdivision~~ **participant** shall obtain the agency's approval of its water system rates and charges as part of the due diligence process.

(b) Each ~~political subdivision~~ **participant** shall establish rates and charges at a level adequate to produce and maintain sufficient revenue to:

(1) properly operate and maintain the treatment works; and to

(2) repay all debt obligations of the treatment works.

(*Water Pollution Control Board; 327 IAC 14-9-1; filed Aug 28, 1998, 4:53 p.m.: 22 IR 45; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 65. 327 IAC 14-9-2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-9-2 Interlocal agreement

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16; IC 36-7-23

Sec. 2. If the project will serve two (2) or more ~~political subdivisions~~, **participants**, the ~~political subdivision~~ **participants** shall submit an interlocal service agreement, contract, or other legally binding instrument necessary for the:

(1) financing;

(2) construction;

(3) operation; and

(4) maintenance;

of the proposed public water system project for approval by the agency. If the ~~political subdivision~~ **participant** is a multicounty infrastructure authority under IC 36-7-23, the agency may require similar documentation and assurances. (*Water Pollution Control Board; 327 IAC 14-9-2; filed Aug 28, 1998, 4:53 p.m.: 22 IR 45; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 66. 327 IAC 14-10-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-10-1 Professional services

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 5-16-11.1; IC 13-11-2; IC 13-18-16; IC 36-1-12

Sec. 1. ~~Political subdivisions~~ **Participants** conducting procurement for the uses authorized by the drinking water SRF for professional services shall proceed ~~pursuant to~~ **under** IC 5-16-11.1. (*Water Pollution Control Board; 327 IAC 14-10-1; filed Aug 28, 1998, 4:53 p.m.: 22 IR 45; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 67. 327 IAC 14-10-1.5 IS ADDED TO READ AS FOLLOWS:

327 IAC 14-10-1.5 Applicability

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 1.5. This rule does not apply to a refinancing. (*Water Pollution Control Board; 327 IAC 14-10-1.5*)

SECTION 68. 327 IAC 14-10-2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-10-2 Procurement

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16; IC 36-1-12

Sec. 2. ~~Political subdivisions~~ **Participants** conducting procurement for the uses authorized by the drinking water SRF for any activity other than professional services shall proceed ~~pursuant to~~ **under** IC 36-1-12. (*Water Pollution Control Board; 327 IAC 14-10-2; filed Aug 28, 1998, 4:53 p.m.: 22 IR 45; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 69. 327 IAC 14-10-3 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-10-3 Small, minority, and women's business enterprises

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 3. The ~~political subdivision~~ **participant** shall take all necessary affirmative steps to assure that small, minority, and women's business enterprises are used when possible. Affirmative steps shall include taking the following actions:

- (1) Placing qualified enterprises on solicitation lists.
 - (2) Assuring that these enterprises are solicited whenever they are potential sources.
 - (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by these enterprises.
 - (4) Establishing delivery schedules, where the requirement permits, that encourage participation by these enterprises.
 - (5) Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce.
 - (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in this section.
- (*Water Pollution Control Board; 327 IAC 14-10-3; filed Aug 28, 1998, 4:53 p.m.: 22 IR 46; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 70. 327 IAC 14-11-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-11-1 Construction permit

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 1. (a) The ~~political subdivision~~ **participant** must obtain a construction permit from the department in accordance with 327 IAC 8-3-2, **or other permitting authority, if applicable**, in conjunction with the approved preliminary engineering report ~~prior to~~ **before** contract award approval.

(b) The ~~political subdivision~~ **participant** must receive authorization from the department ~~prior to~~ **before** initiating procurement for construction. (*Water Pollution Control Board; 327 IAC 14-11-1; filed Aug 28, 1998, 4:53 p.m.: 22 IR 46; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 71. 327 IAC 14-11-1.5 IS ADDED TO READ AS FOLLOWS:

327 IAC 14-11-1.5 Applicability

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 1.5. This rule does not apply to a refinancing. (*Water Pollution Control Board; 327 IAC 14-11-1.5*)

SECTION 72. 327 IAC 14-11-2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-11-2 Acquisition of land, easements, and existing facilities

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16; IC 32-24

Sec. 2. The ~~political subdivision~~ **participant** is responsible for acquisition of land, easements, and any existing facilities necessary to construct, operate, and maintain the project. ~~Prior to~~ **Before** the ~~issuance~~ **approval** of a ~~construction permit~~ **contract award** by the department, the political subdivision shall provide evidence that it has ~~or will have by a mutually agreeable date,~~ the required property rights. All acquisitions of property by exercise of power of eminent domain shall comply with the procedure in ~~IC 32-11~~ **IC 32-24** and Section 1452(a)(2) of the Safe Drinking Water Act. (*Water Pollution Control Board; 327 IAC 14-11-2; filed Aug 28, 1998, 4:53 p.m.: 22 IR 46; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 73. 327 IAC 14-11-4 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-11-4 Contract information submittal

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 4. Following the department's approval of the proposed award, each ~~political subdivision~~ **participant** shall provide copies of the following to the department:

- (1) Executed contracts.
- (2) Notices to contractors to proceed.
- (3) Bid bonds.
- (4) Performance and payment bonds.
- (5) Construction schedules.

(*Water Pollution Control Board; 327 IAC 14-11-4; filed Aug 28, 1998, 4:53 p.m.: 22 IR 46; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 74. 327 IAC 14-11-5 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-11-5 Construction wage rates

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 5. Wages paid for the construction of public water systems shall conform to the prevailing wage rates established for the ~~political subdivision's~~ **participant's** locality by the U.S. Department of Labor under the Davis-Bacon Act, 40 U.S.C. 276a. (*Water Pollution Control Board; 327 IAC 14-11-5; filed Aug 28, 1998, 4:53 p.m.: 22 IR 46; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 75. 327 IAC 14-11-6 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-11-6 Change orders

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 6. The ~~political subdivision~~ **participant** shall submit copies of each change order to the department. Change orders that:

- (1) significantly change the scope or design of the project; or
- (2) increase the amount of financing needed for the project;

require the prior approval of the department and ~~the~~ agency before the work is authorized by the political subdivision. If the change order will result in the expenditure of more drinking water SRF funds than the current amount of financial assistance approved by the agency, an amendment increasing the amount of assistance must be executed ~~prior to~~ **before** the implementation of the changes. Any additional financial assistance shall comply with existing law as to the borrowing power of the political subdivision. (*Water Pollution Control Board; 327 IAC 14-11-6; filed Aug 28, 1998, 4:53 p.m.: 22 IR 46; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

SECTION 76. 327 IAC 14-11-7 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-11-7 Inspections

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 7. The inspections shall proceed as follows:

(1) During the construction of the project, the ~~political subdivision~~ **participant** shall provide ~~continuous inspection~~ **frequent inspections** by qualified inspectors in sufficient numbers to ensure that the construction complies with the **following**:

(A) The department-issued construction permit. ~~and~~

(B) The terms and conditions of the contract.

(2) The inspectors shall maintain logs, written in ink, with entries sufficient to establish the amount and quality of work completed by the contractor, including **the following**:

(A) Weather conditions. ~~and~~

(B) Problems encountered.

(3) The department shall conduct construction inspections to determine compliance with the **following**:

(A) The department ~~issued~~ **preliminary engineering report**.

(B) The construction permit. ~~and~~

(C) The financial assistance agreement.

Inspections performed by the department are not made to replace the ~~political subdivision's~~ **participant's** responsibility to properly monitor the construction of its project but are made solely to protect the department's and the agency's financial interest in the project.

(4) The ~~political subdivision~~, **participant** shall:

(A) conduct a prefinal inspection making a punch list of incomplete and unacceptable work to be corrected before final inspection; ~~and~~

~~(5) The political subdivision shall~~ (B) notify the department after:

(i) the prefinal inspection has been done; and

(ii) all punch list items have been corrected or agreed to be corrected;

to set up a final inspection to be made by the department to determine the date of substantial completion.

(Water Pollution Control Board; 327 IAC 14-11-7; filed Aug 28, 1998, 4:53 p.m.: 22 IR 47; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 77. 327 IAC 14-11-8 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-11-8 As-built plans

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 8. After completion of the project, the ~~political subdivision~~ **participant** shall obtain as-built plans for the project from its engineer and provide these to the department. *(Water Pollution Control Board; 327 IAC 14-11-8; filed Aug 28, 1998, 4:53 p.m.: 22 IR 47; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

SECTION 78. 327 IAC 14-12-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-12-1 Disbursement process

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 1. The loan proceeds shall be disbursed as follows:

(1) The department shall review and certify the drinking water SRF loan share of the appropriate costs incurred for the project. These costs shall be documented as requested by the department. ~~in the political subdivision's most recent invoice statement~~. The agency ~~shall~~ **may** pay these costs in accordance with ~~state disbursement procedures~~:

~~(2) Multiple disbursements of the loan proceeds shall be made by the agency on the basis of incurred costs during the construction of the project with the first disbursement made at financial assistance closing. Succeeding disbursements shall normally be made monthly until construction completion or until all proceeds of the loan have been disbursed. Interest shall commence on the day funds are disbursed to the political subdivision for that disbursement only or to third parties on behalf of the political subdivision: agreement.~~

~~(3) (2) The political subdivision participant shall approve the all project costs for payment prior to disbursement of and provide the approval to the proceeds: department.~~

~~(4) (3) Loan proceeds disbursed to or on behalf of the political subdivision participant shall be used only for authorized purposes.~~

Funds shall not be ~~disbursed~~ **applied** to pay costs associated with a contract change order that authorized a significant change in project scope or design, or both, ~~prior to~~ **before** concurrence by the department and the agency.

~~(5)~~ **(4)** The department and the agency may at any time review and audit requests for loan disbursements and make adjustments for circumstances including, but not limited to, the following:

- (A) Mathematical errors.
- (B) Items not bought or built.
- (C) Unacceptable construction.

~~(6)~~ **(5)** By its acceptance of the final loan disbursement, the ~~political subdivision~~ **participant** releases and discharges the department and ~~the agency~~ **and** its officers, agents, and employees from all liabilities, obligations, and claims arising out of the disbursement of loan proceeds, subject only to exceptions previously specified contractually in writing between the ~~department~~ **agency** and the political subdivision.

~~(7)~~ **(6)** All files and records pertaining to the project shall be maintained by the ~~political subdivision~~ **participant** throughout the project and made accessible to the department and ~~the agency~~ **the** agency. These files and records shall be retained by the political subdivision for at least six (6) years after initiation of operation as determined by the department and ~~the agency~~ **the** agency. However, if any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the six (6) year period, the records shall be retained until:

(A) completion of the action and resolution of all issues that arise from it; or ~~until~~

(B) the end of the regular six (6) year period;

whichever is later.

(Water Pollution Control Board; 327 IAC 14-12-1; filed Aug 28, 1998, 4:53 p.m.: 22 IR 47; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 79. 327 IAC 14-13-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-13-1 “Rights” defined

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 1. The following rights are reserved:

(1) Nothing in this article prohibits a ~~political subdivision~~ **participant** from requiring more:

- (A) assurances;
- (B) guarantees; ~~or~~
- (C) indemnity; or
- (D) other contractual requirements;

from any party performing work on the project.

(2) Nothing in this article affects the department’s and ~~agency~~ **the agency’s** right under existing rules to take remedial action, including, but not limited to, administrative enforcement action and actions for breach of contract against a ~~political subdivision~~ **participant** that fails to carry out its obligations under this article.

(3) Review or approval of any document by or for the department **or the agency** does not relieve the ~~political subdivision~~ **participant** of its responsibility to properly plan, design, build, and effectively operate and maintain the PWS as required by federal and state statutes, rules, regulations, permits, and best management practice. **Neither** the department **nor the agency** is ~~not~~ responsible for increased costs resulting from defects in the plans, design drawings, specifications, inspections, construction, or other subagreement documents related to the project.

(Water Pollution Control Board; 327 IAC 14-13-1; filed Aug 28, 1998, 4:53 p.m.: 22 IR 47; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 80. 327 IAC 14-14-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 14-14-1 Review procedures

Authority: IC 13-14-7; IC 13-14-8; IC 13-18-2; IC 13-18-3; IC 13-18-16-8

Affected: IC 13-11-2; IC 13-18-16

Sec. 1. A ~~political subdivision~~ **participant** whose:

(1) financial assistance application is denied or disputes the terms contained in the financial assistance agreement; or ~~whose~~

(2) preliminary engineering report or any provisions of its preliminary engineering report as defined in 327 IAC 13-8.1-3 is rejected;
may request a special review. The department and the agency shall conduct the review and make a determination. If further review is requested, the ~~political subdivision~~ **participant** may present its case to the department and the agency. The department and the agency shall make a recommendation to the agency director, whose decision is final. (*Water Pollution Control Board; 327 IAC 14-14-1; filed Aug 28, 1998, 4:53 p.m.: 22 IR 48; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

Notice of First Meeting/Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on May 11, 2005, 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 amendments to rules 327 IAC 13, concerning the wastewater state revolving fund loan, and 327 IAC 14, concerning the drinking water state revolving fund loan programs.

The purpose of this hearing is to receive comments from the public prior to preliminary 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 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 Jim McGoff, SRF Loan Programs, (317) 234-2916, or (888) 290-0016. 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

Indianapolis, Indiana 46204-2251

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 Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Twelfth Floor, Indianapolis, Indiana and are open for public inspection.

Martha Clark Mettler, Chief
Watershed-Planning Branch
Office of Water Quality
Indiana Department of Environmental Management