

Document: IC 13-14-9 Notice, **Register Page Number:** 28 IR 2207

Source: April 1, 2005, Indiana Register, Volume 28, Number 7

Disclaimer: This document was created from the files used to produce the official CD-ROM Indiana Register.

TITLE 327 WATER POLLUTION CONTROL BOARD

SECOND NOTICE OF COMMENT PERIOD

#03-44(WPCB)

DEVELOPMENT OF NEW RULES AND AMENDMENTS TO RULES CONCERNING ANTIDegradation STANDARDS AND IMPLEMENTATION PROCEDURES

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for new rules and amendments to rules 327 IAC 2-1, 327 IAC 2-1.5, and 327 IAC 5-2 concerning antidegradation standards and implementation procedures. 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: March 1, 2003, Indiana Register (26 IR 2136).

CITATIONS AFFECTED: 327 IAC 2-1; 327 IAC 2-1.5; 327 IAC 5-2.

AUTHORITY: IC 13-18-2-1; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-11; IC 13-18-4.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

This rulemaking will review and consider additions and modifications to Title 327 concerning antidegradation standards and implementation procedures. Federal rules require states to develop, adopt, and retain a statewide antidegradation policy regarding water quality standards and establish procedures for its implementation. The antidegradation policy and implementation procedures serve as the mechanism states use to assure that water quality improvements obtained through the implementation of permits and best management practices are maintained and protected. The subject matter of this rulemaking has been under consideration since the initiation of rulemaking document #97-1(WPCB) in February 1997. However, that 1997 rulemaking was withdrawn on May 1, 2001, 24 IR 2471, and its subject matters divided into a number of individual new rulemakings, including this rulemaking. This rulemaking was First Noticed on March 1, 2003, 26 IR 2136. These rulemakings are required to satisfy the federal requirement to conduct triennial review of the state's water quality standards. The purpose of this rulemaking is to meet, in part, that requirement found at Section 303(c) of the Clean Water Act (33 U.S.C. 1313(c)), which specifies that a review of state water quality standards must be done at least every three (3) years.

Applicable Federal Law

The federal rules require states to have, at a minimum, three tiers of antidegradation. Tier 1 (40 CFR 131.12(a)(1)) protects existing uses by providing the absolute floor of water quality in all waters of the United States. Tier 2 (40 CFR 131.12(a)(2)) applies to waters whose quality exceeds that necessary to protect the Section 101(a)(2) goals of the Clean Water Act (criteria, 33 U.S.C. 1251(a)(2)). In this case, water quality may not be lowered to less than the level necessary to fully protect the "fishable/swimmable" uses and other existing uses. Water quality in Tier 2 waters may only be lowered after a determination is made that allowing lowered water quality is necessary and will accommodate important economic or social development in the area in which the waters are located. Any such lowering must still assure water quality adequate to protect existing uses fully. Tier 3 (40 CFR 131.12(a)(3)) applies to Outstanding National Resource Waters (ONRWs) where the ordinary use classifications and supporting criteria may not be sufficient or appropriate. States may allow some limited activities that result in temporary and short term changes in water quality in the ONRW, but such changes in water quality should not impact existing uses or alter the essential character or special use that makes the water an ONRW.

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

The following elements of the draft rule impose either a restriction or a requirement on persons to whom the draft rule applies that are not imposed under federal law. (NIFL elements):

A. 327 IAC 2-1.3-3(c); 327 IAC 2-1.3-8. The draft rule adds a fourth tier of antidegradation protection to the three tiers required

by federal law. Tier 2.9 has been included to provide an additional level of protection to Outstanding State Resource Waters (OSRWs). IC 13-18-3-2 authorizes the WPCB to designate an OSRW by rule. This provides the needed protection of certain waters that have unique ecological, aesthetic, or recreational significance beyond that established for high quality Tier 2 waters.

There currently are six waterbodies designated as OSRWs in the state. They are listed under 327 IAC 2-1-2(3) and 327 IAC 2-1.5-19(b). Those waterbodies will remain designated OSRWs under IC 13-18-3-2. Section 8 of the draft rule provides the criteria and process for the designation of additional OSRWs by the Board.

The preservation of this additional tier of protection is expected to continue to make possible the enhanced protection of certain waterbodies in the state and allow the citizens of Indiana to continue to enjoy and benefit from their recreational, aesthetic, and ecological characteristics.

There is no direct fiscal impact of this NIFL element as this draft rule merely establishes the antidegradation standard and designation process for OSRWs. This draft rule does not, in itself, impose any additional requirements upon persons to whom it applies in terms of designation of OSRWs. The designation process outlined by section 8 of the draft rule requires that any designation of an OSRW occur via rulemaking. That rulemaking must consider, among other issues, the economic impacts of that particular designation.

The inclusion of this NIFL element A in the draft rule is primarily a result of the requirements of IC 13-18-3-2. IDEM also included this NIFL element in the draft rule because of the current existence of waters designated as OSRWs in 327 IAC 2.

B. 327 IAC 2-1.3-3(c); 327 IAC 2-1.3-7(h). The draft rule also provides certain antidegradation requirements for OSRWs that are not imposed under federal law. These requirements were established by IC 13-18-3-2. These provisions require that a person who has proposed a new or increased discharge to an OSRW and completed an antidegradation demonstration shall:

- (1) implement a water quality project in the watershed of the OSRW that will result in overall improvement of the water quality of the OSRW; or
- (2) pay a fee, not to exceed \$500,000, to fund a water quality project that will result in overall improvement of the water quality of the OSRW.

Due to the very site-specific nature of any potential water quality project required under 327 IAC 2-1.3-7(h), any estimate of the fiscal impact of that project is highly speculative. Variables that affect the fiscal impact of a project include the type and quantity of pollutants in the proposed discharge and the characteristics of the receiving water. It is anticipated that there will not be a large number of proposed new or increased discharges on current OSRWs. It is also anticipated that there will not be a large number of newly designated OSRWs.

The inclusion of this NIFL element B in the draft rule is solely a result of the requirements of IC 13-18-3-2. There were no other materials relied on by IDEM in the development of this NIFL element.

Potential Fiscal Impact

IDEM anticipates that there is an effective cap of \$500,000 per project under the draft rule. If a discharger subject to 327 IAC 2-1.3-7(h) finds that the implementation of a water quality project will result in costs to the discharger in excess of \$500,000, it seems likely the discharger will instead merely take advantage of the option to pay a fee.

Public Participation and Workgroup Information

An external workgroup has been established to discuss issues involved in this rulemaking. The workgroup is made up of IDEM staff and a wide cross section of stakeholders. The first meeting was held on November 6, 2002, and there have been meetings held approximately once every four (4) weeks until September 2004. The minutes from these meetings and other information regarding this workgroup can be viewed at IDEM's Triennial Review Web site at <http://www.in.gov/idem/water/planbr/wqs/review/trirev.html>.

If you wish to provide comments to the workgroup on the rulemaking or attend meetings please contact Megan Wallace, Rules Section, Office of Water Quality at (317) 233-8669 or (800) 451-6027 (in Indiana). The public is also encouraged to submit comments and questions to members of the workgroup who represent their particular interests in the rulemaking.

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from March 1, 2003, through April 29, 2003, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received comments from the following parties by the comment period deadline:

- City of Carmel (COC)
- Indiana Manufacturers Association (IMA)
- Indiana Water Quality Coalition (IWQC)
- The Izaak Walton League of America (IWLA)
- Save the Dunes Council (SDC)
- Town of Brownsburg (TOB)

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

APPLICABILITY

Comment: The mechanism for an entity to request a lowering of its stream water quality, the antidegradation review/demonstration, should not be required for municipal wastewater treatment plant expansions. The intent of the mechanism is to demonstrate a social or economic need. Municipalities managing population growth within their own jurisdictional areas have already demonstrated these needs through projections of required increases in wastewater flow to accommodate this growth. It would appear repetitive for a municipality to be required to reestablish a need for expansion of its own wastewater treatment plant. (COC, TOB)

Response: In the proposed 1999 rules, IDEM proposed that new (or expanding) municipal wastewater treatment plants that utilized certain treatment technologies (meet 10 mg/L suspended solids, 10 mg/L BOD, ultraviolet disinfection, etc.) would not be considered as resulting in a significant lowering of water quality and thus would not be required to do an antidegradation demonstration. This concept will be considered by IDEM and the antidegradation workgroup as they formulate recommendations for the rule.

Comment: If municipalities cannot be exempted from performing antidegradation reviews/demonstrations for wastewater treatment plant expansions, is it possible for IDEM to create a fast-track antidegradation process for municipal dischargers? (COC, TOB)

Response: In the proposed 1999 rules, IDEM proposed that new (or expanding) municipal wastewater treatment plants that utilized certain treatment technologies (meet 10 mg/L suspended solids, 10 mg/L BOD, ultraviolet disinfection, etc.) would not be considered as resulting in a significant lowering of water quality and thus would not be required to do an antidegradation demonstration. This concept will be considered by IDEM and the antidegradation workgroup as they formulate recommendations for the rule.

Comment: In the antidegradation context, we are dealing with waters that already possess water quality better than applicable standards. For these waters, antidegradation imposes additional requirements because the water constitutes an important resource that, for policy reasons, is deemed worthy of special protection. It is important to recognize that this is a policy judgement, not an environmental protection judgement, because water quality is already protected sufficiently by existing standards. (IMA, IWQC)

Response: The commentor appears to be equating all antidegradation with Tier III antidegradation. While designating a water body as an Outstanding National Resource Water (or an Outstanding State Resource Water) is a policy decision to provide a high level of protection on a certain water body, application of Tier I and Tier II antidegradation is required by federal regulations and is not applied to provide special protection of a unique water resource. Tier I antidegradation applies to all water bodies and requires the protection of water quality necessary to support existing uses. The purpose of Tier II antidegradation requirements is to maintain high quality where it exists unless there are compelling reasons to allow the water quality to be lowered. Tier II antidegradation has been applied in Indiana on a pollutant-by-pollutant basis and is not related to whether the water body is deemed worthy of special protection.

Comment: This rulemaking process should be strictly limited to antidegradation standards and implementation procedures. Sediment and biological criteria should not be considered at all at this time. (IMA, IWQC)

Response: IDEM is not considering sediment or biological criteria as a part of the antidegradation rulemaking.

Comment: EPA approved rules for Indiana's Great Lakes Basin waters must serve as a template for extending federally required antidegradation standards and implementation procedures for Indiana's waters outside the Great Lakes Basin. (SDC)

Response: The use of the EPA approved rules for Indiana's Great Lakes Basin outside the Great Lakes Basin was considered by the workgroup. Portions of Indiana's Great Lakes Basin rules has been incorporated into this draft.

Comment: The first notice's reference to "tiers of degradation" should more correctly be described as "tiers of protection". (SDC)

Response: The language used in the first notice does not necessarily reflect eventual rule language. This concern has been brought to the attention of the workgroup as rule language is being developed.

Comment: This rulemaking must extend antidegradation standards and implementation procedures, as well as a Tier 3 category to all Indiana waters. (SDC, IWLA)

Response: IDEM agrees and the draft rule extends antidegradation standards and implementation procedures, as well as a Tier 3 category, to all Indiana waters.

Comment: The new rules must provide that when an application is made for a new or increased discharge of a pollutant into Indiana waters, the applicant or the agency must make available to the public all existing biological and habitat information available for the area of the discharge. Where little or no data on biological or habitat quality exists, the applicant who requests a new or increased discharge of a pollutant must monitor for biological and habitat impacts to the water body involved, if the request is granted. (SDC)

Response: The draft rule currently requires biological and habitat information. Such information is available to the public upon a public records request.

Comment: The federal rules for antidegradation procedures require that when a request for a significant lowering is allowed, the commissioner must assure that water quality is adequate to fully protect existing and designated uses, assure the highest statutory and regulatory requirements for all new and existing point sources, and assure that reasonable best management practices for nonpoint sources are achieved. This rulemaking must spell out specifically how and in what time frame these assurances will be implemented. (SDC)

Response: IDEM will comply with all federal requirements for antidegradation procedures.

Comment: Antidegradation procedures for high quality waters, Tier 2, outlined in the existing rules for Indiana's Great Lakes Basin waters for both BCCs and non BCCs discharges should be adapted for Indiana's nonBasin waters. (SDC)

Response: The draft rule incorporates portions of the existing rules for the Indiana's Great Lakes Basin for all waters of the state.

Comment: A combined list of BCCs should be developed from both existing rules supplemented by any new or proposed additions to the BCC list since the Great Lakes Water Quality Guidance was approved. (SDC)

Response: IDEM and the antidegradation workgroup will be evaluating the existing lists of BCC's in both the Great Lakes System rules and the outside the Great Lakes System rules as to individual substances which meet the definition of BCC's and will make recommendations as to a list of BCC's for the current proposed rulemaking.

Comment: Limited Use Waters should also be addressed in this rulemaking as part of the Triennial Review required by the Clean Water Act. The new rules should provide procedures and firm time lines for evaluating these waters. (SDC)

Response: Limited Use Waters will be addressed, but not as part of the antidegradation rulemaking.

Comment: This rulemaking must protect, maintain, and restore existing uses. (IWLA)

Response: Tier I antidegradation requires the protection of existing uses and the level of water quality to protect those uses. Restoration of waters that are not meeting existing or designated uses is handled through other requirements such as the development of Total Maximum Daily Loads.

Comment: This rulemaking must be applicable to all waters, including wetlands. (IWLA)

Response: This draft rule applies to all surface waters of the state.

Comment: This rulemaking must be uniformly applied and understandable. (IWLA)

Response: The workgroup intends for any of several possible levels of antidegradation protection to be applied consistently within each level. IC 4-22-2-19.5 requires that rules adopted by the WPCB be written for ease of comprehension.

Comment: This rulemaking must protect, maintain, and restore species and habitats that are rare, threatened and endangered (IWLA).

Response: The purposes of Tier I and Tier II antidegradation requirements are: 1) assure that waters are maintained at some minimum level to assure maintenance of designated (and existing) uses and 2) to protect and maintain existing high quality waters unless there are compelling reasons to allow some lowering of water quality, respectively. If water quality criteria are not adequate to protect rare, threatened or endangered species in waters where they exist, the criteria should be changed to be protective of these organisms. Additionally, special protection of any aquatic federally listed threatened and endangered species or any aquatic state listed endangered species has been added under 327 IAC 2-1.3-5(a)(1).

Comment: This rulemaking must provide a process for waterbodies to be added to High Quality Water Designations. (IWLA)

Response: The final Antidegradation/OSRW rule is required to provide a process for waterbodies to be designated an Outstanding State Resource Water.

Comment: This rulemaking must place the burden of the antidegradation demonstration on the applicant. (IWLA)

Response: IDEM agrees that the burden of making the antidegradation demonstration should be on the applicant.

Comment: This rulemaking must provide uniform requirements and procedures for the antidegradation demonstration, decision making, and public participation. (IWLA)

Response: The workgroup intends for any of several possible levels of antidegradation protection to be applied consistently within each level, including the factors mentioned by the commentor.

Comment: The following four part sequence must be the backbone of this rulemaking: standards, implementation, demonstration and decision. (IWLA)

Response: The issues identified: standards, implementation, demonstration and decision, are all considered part of the antidegradation process.

Comment: The Great Lakes Initiative Guidance and sequence should be used as requirements for this rulemaking. (IWLA)

Response: The Great Lakes Initiative Guidance as well as Indiana's existing rules on antidegradation and the 1999 proposed rules as they pertain to antidegradation were considered in the development of this draft rule.

IMPACT

Comment: An antidegradation review/demonstration for a municipal treatment plant expansion may be a costly process without any clear, definable benefits to the environment. This activity diverts limited municipal funds from improvements of water pollution equipment or facilities operation. (COC, TOB)

Response: IDEM agrees that an antidegradation review/demonstration may be a costly process. IDEM is currently working with representatives from the various stakeholder groups to develop antidegradation rules that both protect the quality of the state's water resources and minimizes expense to dischargers. IDEM is open to comments and suggestions on how to proceed with these issues.

Comment: If the antidegradation review/demonstration process does not allow a municipality to expand its wastewater treatment facility, does this mean that the municipality would be essentially on an "invisible sewer ban" that would restrict all new growth? (COC, TOB)

Response: An expansion of a wastewater treatment facility will not necessarily result in a significant lowering of water quality and, therefore, would not necessarily require an antidegradation demonstration. The specifics of the situation leads to too many

possibilities to discuss in this format. This concern has been brought to the attention of the workgroup as rule language is being developed.

Comment: Has an antidegradation review/demonstration fiscal impact analysis been performed and is it available in writing? (COC, TOB)

Response: A fiscal impact analysis has not yet been performed, nor does IDEM currently have any information on the cost of an antidegradation review.

Comment: The antidegradation process, if resulting in denial, infringes on growth and is a local land use issue. (COC, TOB)

Response: The outcome of an antidegradation determination does not necessarily involve land use issues, nor does it necessarily infringe on growth.

Comment: Any new antidegradation rule must clearly define the following: degradation, antidegradation, overall improvement in water quality, significant lowering, total loading capacity, unused loading capacity and de minimis. Clearly defining “overall improvement in water quality” is especially important since existing rules to determine antidegradation use a parameter by parameter approach. (SDC)

Response: The draft rule contains definitions for many of these terms.

SEA 431 & OSRW/ONRW

Comment: Senate Enrolled Act 431, P.L. 140-2000 (“SEA 431”), enacted several requirements concerning the antidegradation policies and implementation procedures and designation criteria and processes for outstanding national resource waters (“ONRWs”), outstanding state resource waters (“OSRWs”), and exceptional use waters. IDEM published a first notice to initiate this rulemaking after this statutory deadline in the Indiana Register, volume 24, page 2471 on May 1, 2001. That first notice was not followed by additional action, and it would appear that the present first notice is replacing that May 2001 proposal. (IMA, IWQC)

Response: Yes, the current rulemaking replaces the former rulemaking.

Comment: It is critical to carefully consider not only the substantive requirements of SEA 431, but also the timing and sequence for rulemaking and implementation. Two sections of that legislation required rulemaking actions completed by specific dates. This rulemaking process also did not occur within the time specified in the statute, and can not be completed until the Board adopts antidegradation implementation procedures for OSRWs. These deadlines must be taken seriously in the future. (IMA, IWQC)

Response: IDEM takes all statutory deadlines seriously, and has consistently affirmed its intention to complete the rulemakings required under SEA 431 (and HEA 1221 from the 2003 session).

Comment: If this rulemaking will establish the criteria and procedures for making special designations, it must consider the new special designation requirements of SEA 431, which establish a high bar for designation of waterbodies as ONRWs and OSRWs. (IMA, IWQC)

Response: The draft rule contains designation criteria and procedures for ONRWs and OSRWs.

Comment: The ONRW designation is meant to describe the benchmark of water quality that shall be maintained and protected, and is only intended for certain types of important waters. IC 13-18-3-2(d). Only the Indiana General Assembly can designate a water body as an ONRW, following recommendations made by the Board and the Environmental Quality Service Council after IDEM conducts a series of proscribed public participation steps. *See* IC 13-18-3-2(o) and 13-18-3-2(p). (IMA, IWQC)

Response: The draft rule contains designation criteria and procedures for ONRWs and OSRWs.

Comment: The designation requirements for OSRWs are even more detailed. The Board may not adopt a rule designating a water body as an OSRW until it has considered a number of factors. *See* IC 13-18-3-2(h) and 13-18-3-2(g). All of these considerations and findings must be summarized, made available to the public and presented to the Environmental Quality Service Council. *See* IC 13-18-3-2(j). Further, for any newly designated OSRWs, the Board must have already adopted antidegradation implementation procedures consistent with other provisions of SEA 431. *See* IC 13-18-3-2(n). (IMA, IWQC)

Response: The draft rule contains designation criteria and procedures for ONRWs and OSRWs.

Comment: The first notice recognizes that SEA 431 requires the Board to consider redesignating exceptional use waters as OSRWs. IDEM should expedite this reevaluation process by adopting antidegradation implementation procedures for OSRWs in this rulemaking process, which is a prerequisite to designating any new OSRWs. (IMA, IWQC)

Response: The draft rule contains designation criteria and procedures for ONRWs and OSRWs.

Comment: This rulemaking should not consider addition of a tier 2.9 category of waters. (IMA, IWQC)

Response: A Tier 2.9 has been included in this draft rule.

Comment: A fourth tier, between Tier 2 and Tier 3 must be formalized in this rulemaking. We recommend that all waters designated as OSRWs and EUWs currently and those to be designated in the future be protected as Tier 2.9 waters. Implementation standards approved by the Water Pollution Control Board (WPCB) in a separate rulemaking can serve as a model for antidegradation implementation procedures for all Tier 2.9 waters throughout Indiana as soon as this rule, 327 IAC 5-2-11.7, receives EPA approval. (SDC)

Response: A Tier 2.9 has been included in this draft rule.

Comment: SEA 431 sets criteria that the WPCB is to consider before designating a new OSRW. It also directs the Board to adopt rules for implementation procedures for waters named OSRWs after June 30, 2000. It appears that the existing antidegradation implementation procedures for OSRWs in the Great Lakes Basin now covered by 327 IAC 5-2-11.7 are not affected, but may affect existing OSRWs outside the Basin even though they were in existence as of June 30, 2000. We recommend extending 327 IAC 5-2-11.7 protections to these waters. (SDC)

Response: The draft rule contains designation criteria and procedures for ONRWs and OSRWs.

Comment: This rulemaking must include a process by which the commissioner evaluates a discharger's proposal for a short term or temporary degradation to an ONRW, and provides the public in advance of any determination, an opportunity to comment. (SDC)

Response: Section 6 of the draft rule requires authorization from the Commissioner and public notice of the request prior to any short term or temporary new or increased discharge to an ONRW.

Comment: New OSRWs designated by the WPCB must be sent to the Environmental Quality Service Council (EQSC) within one hundred twenty (120) days after rule adoption. The purpose of this requirement is unstated and unclear. New OSRW and ONRW designations should appear in the Indiana Register as soon as possible after designation. The Triennial Review following the designations must revise the rules to add the new OSRWs and ONRWs. (SDC)

Response: IC 13-18-3-2 already requires the WPCB to designate OSRWs by rule. All rules adopted by the environmental boards are required to undergo review and approval by the Indiana Attorney General and the Governor before filing and publication in the Indiana Register. It will be unnecessary for subsequent Triennial Reviews to amend 327 IAC to add new OSRWs as the OSRW designation rulemaking itself will do that. Since ONRW designations are done by the general assembly it will not be necessary to amend 327 IAC to include them. IDEM presumes the general assembly will designate ONRWs by statute.

Comment: Provisions enabling the public to propose water bodies for ONRW status must be added to this rulemaking. (SDC)

Response: IC 13-18-3-2, as amended by SEA 431, sets forth the process by which a water may be considered for designation as an ONRW by the General Assembly. Subsection (o) of 13-18-3-2 grants to the Water Pollution Control Board and the Environmental Quality Service Council the authority to formally recommend water bodies for consideration. The rule cannot provide formal authority to the public without contradicting the clear language of the statute. However, the public is free to contact any member of the WPCB, EQSC or general assembly to present their concerns regarding any particular water body.

Comment: SEA 431 provides for the WPCB to evaluate EUWs for designation as OSRWs. Since "exceptional use" is a use, any downgrading of an EUW to Tier 2 may require the Board to do a Use Attainability Analysis. We suggest that EUWs be designated by rule as OSRWs and subject to the implementation procedures that apply to OSRWs in the Basin. (SDC)

Response: SEA 431 and HEA 1221 require the WPCB to consider the designation of Exceptional Use Waters as OSRWs.

Comment: This rulemaking must provide a specific process for citizens to nominate OSRWs and ONRWs such as the procedures and process contained in the February 1, 1999 draft rule at 327 IAC 2-1.4-1. (SDC)

Response: SEA 431, enacted by the general assembly after the 1999 draft rule, preempted many provisions of the 1999 draft rule concerning OSRWs and ONRWs.

Comment: This rulemaking must preserve and conform with historically designated highest quality waters of Indiana's OSRWs designation and EUW designated waters, including parks, memorials, nature preserves, etc. (IWLA)

Response: IDEM agrees that the level of protection afforded Indiana's highest quality waters should be appropriate to those waters.

DE MINIMIS

Comment: SEA 431 unambiguously requires a de minimis level for outstanding state resource waters. This de minimis level is triggered when a discharger needs a new or increased permit limit. If the new or increased discharge is below the de minimis level, the antidegradation implementation procedures do not apply to the discharge. Although the provisions of SEA 431 do not expressly apply to high quality waters that are not designated as OSRWs, it only makes sense to extend the de minimis concept in SEA 431 to all high quality waters (except ONRWs). Otherwise, the antidegradation implementation procedures for regular high quality waters would be more stringent than the requirements for OSRWs. (IMA, IWQC)

Response: The draft rule defines de minimis at 327 IAC 2-1.3-5(a)(1).

Comment: The rulemaking should clearly establish that antidegradation review is only triggered when a discharge needs a new or increased permit limit. (IMA, IWQC)

Response: The draft rule clearly establishes an antidegradation trigger.

Comment: This trigger concept already is articulated in 327 IAC 5-2-11.7, the antidegradation implementation procedures for OSRWs in the Great Lakes system. This language should be incorporated in the implementation procedures for high quality waters and OSRWs throughout the State. (IMA, IWQC)

Response: The draft rule clearly establishes an antidegradation trigger.

Comment: The "new or increased discharge" trigger only should apply to incremental or "net" increases. (IMA, IWQC)

Response: IDEM is willing to discuss where the "new or increased discharge trigger" would be applied.

Comment: In situations where there is a "net" increase that is subject to review, only the "net" amount should be subject to

antidegradation restrictions. (IMA, IWQC)

Response: The draft rule contains an antidegradation review trigger for new or increased discharges that exceed the de minimis level.

Comment: The “net” approach should apply to entirely new or expanded projects where the project proponent succeeds in procuring, from other point or nonpoint sources within the watershed, reduced loadings of the pollutants to be discharged from the new project. (IMA, IWQC)

Response: The draft rule contains an antidegradation review trigger for new or increased discharges that exceed the de minimis level.

Comment: The opportunity to “trade” will facilitate economic growth and energy availability, while at the same time protecting water quality. This approach is consistent with EPA’s new water quality trading policy. (IMA, IWQC)

Response: The draft rule contains an antidegradation review trigger for new or increased discharges that exceed the de minimis level.

Comment: Intake pollutants should be “netted” out of antidegradation review. (IMA, IWQC)

Response: The draft rule specifies how intake pollutants are addressed in an antidegradation review.

Comment: The rules should contain a de minimis of ten percent of unused loading capacity, as long as at least 10 percent of total loading capacity remains unused, for high quality waters and OSRWs. This de minimis level is consistent with the current antidegradation implementation procedures for high quality waters in the Great Lakes system according to 327 IAC 5-2-11.3(b)(1)(B)(ii). (IMA, IWQC)

Response: The draft rule defines de minimis at 327 IAC 2-1.3-5(a)(1).

Comment: Activities that will only result in insignificant or temporary lowering of water quality do not warrant the time and expense of dischargers demonstrating and the State reviewing whether an activity should be allowed. Full antidegradation review should only be required for projects that will likely result in a significant lowering of water quality. Including a set of exceptions in the antidegradation rules provides certainty and ease of administration because interested parties understand that certain activities will not require full antidegradation review. (IMA, IWQC)

Response: The draft rule contains a *de minimis* level below which no antidegradation demonstration would be required. Activities which will not be considered to cause a significant lowering of water quality are addressed in 327 IAC 2-1.3-6.

EXCEPTIONS & EXEMPTIONS

Comment: This rulemaking must be without exemptions, exceptions, or alternatives unless specific to the federal guidelines as limited in The Great Lakes Initiative portion, App. E. (IWLA)

Response: The draft rule contains a limited list of activities that do not constitute a significant lowering of water quality at 327 IAC 2-1.3-6.

Comment: The rules should retain the set of exceptions in the antidegradation implementation procedures for the Great Lakes system for high quality waters and OSRWs according to 327 IAC 5-2-11.3 and 327 IAC 5-2-11.7. (IMA, IWQC)

Response: The draft rule contains a limited list of activities that do not constitute a significant lowering of water quality at 327 IAC 2-1.3-6.

Comment: The short-term, temporary provision in the antidegradation procedures for the Great Lakes system for high quality waters and OSRWs should also be incorporated into the provisions for ONRWs. (IMA, IWQC)

Response: The draft rule contains short-term, temporary lowering for ONRWs at 327 IAC 2-1.3-6.

Comment: All activities covered by general permits should be excepted from antidegradation review because these activities do not result in a significant lowering of water quality. (IMA, IWQC)

Response: General Permits are not included in this draft rule. For most general permit categories, a justification can be provided to U.S. EPA to demonstrate that existing requirements are satisfactory to address antidegradation. IDEM will keep working with U.S. EPA and the public to establish the best approach relative to general permit categories as U.S. EPA and other states gain some experience in responding to the court decision.

Comment: General permits are only authorized for activities with an insignificant water quality impact. If the concern with excepting certain general permits from antidegradation review regards specific situations where water quality standards may be jeopardized, it is appropriate for IDEM to require individual permits for these situations. Requiring antidegradation review for general permits would negate the fundamental efficiencies of the general permit program, by requiring case-by-case review of in excess of 3, 000 activities subject to general permits in Indiana. (IMA, IWQC)

Response: The degree to which an activity impacts water quality does not determine the activity’s eligibility for a general NPDES permit. General permits are authorized for an activity based on its status as part of a class of activities deemed by the permitting authority to be amenable to the general permit process.

Comment: Discharges that have been granted variances should be excepted from antidegradation review because the application and review process for obtaining a variance is substantially the same as the antidegradation demonstration and review process. All

variance applications must review both the types of technology capable of treating the pollutant of concern and the social and economic costs of installing and operating each type of technology. This review is very similar to the technology review and demonstration of social or economic importance that is required for antidegradation review. Thus, if IDEM has granted a variance to a discharger, it makes sense that the discharger should not also need to complete an antidegradation demonstration. (IMA, IWQC)

Response: IDEM will be discussing with EPA how to best address situations which involve both antidegradation and variances.

Comment: It makes no sense to apply antidegradation review for high quality waters to situations where a discharger is requesting a variance, because a variance grants conditional permission to exceed a water quality criteria or standard. In these cases, the more appropriate review focuses on ensuring that reasonable progress can be made to meet the water quality criterion or standard in the future. (IMA, IWQC)

Response: IDEM will be discussing with EPA how to best address situations which involve both antidegradation and variances.

Comment: Discharges of wastewater and water treatment additives (“WTAs”) subject to certain conditions should be excepted from antidegradation review. It is important that IDEM continue to support the exception for WTAs that was adopted by the Water Pollution Control Board in its recent amendments to 327 IAC 5-2-11.7, Great Lakes system dischargers interim antidegradation implementation procedures for outstanding state resource waters. (IMA, IWQC)

Response: The draft rule contains a limited list of activities that do not constitute a significant lowering of water quality at 327 IAC 2-1.3-6.

Comment: Certain new or increased discharges from Publically Owned Treatment Works (POTWs) should be allowed if they achieve best technology or result in an overall improvement in water quality. These activities should include new or increased discharges of treated sanitary wastewater that are designed to meet the following permit conditions: ten (10) milligrams per liter 5-day carbonaceous biochemical oxygen demand (CBOD₅) as a monthly average; ten (10) milligrams per liter total suspended solids (TSS) as a monthly average; one (1) milligram per liter ammonia as nitrogen as a monthly average; and, disinfection by ultraviolet light. POTWs can be encouraged to design for this high level of treatment technology if they are excepted from further antidegradation review. (IMA, IWQC)

Response: The draft rule contains a limited list of activities that do not constitute a significant lowering of water quality at 327 IAC 2-1.3-6.

Comment: IDEM should modify the exemption for cleanup actions so that it will not prevent or discourage environmentally beneficial activities. The current exemptions in 327 IAC 5-2-11.3 and 327 IAC 5-2-11.7 require that the action be undertaken to alleviate an environmental release that “may pose an imminent and substantial endangerment to public health or welfare.” That “endangerment” test comes from Federal statutes, and has historically been interpreted broadly, so that it is not very difficult to trigger. However, that is not the way that IDEM has interpreted the test in applying its interim antidegradation rules. (IMA, IWQC)

Response: The draft rule contains a limited list of activities that do not constitute a significant lowering of water quality at 327 IAC 2-1.3-6.

Comment: The “response action” exemption should be modified to remove the requirement that the response action must meet the “endangerment” test. As long as the activity is conducted under CERCLA, RCRA, or similar Federal or State authorities, there is adequate assurance that the cleanup is necessary and will improve the environment. In that case, there is no reason that antidegradation review is needed. In fact, having to go through that review would only discourage parties from taking responsible cleanup actions, which would result in more impact to the environment, rather than less. (IMA, IWQC)

Response: The draft rule contains a limited list of activities that do not constitute a significant lowering of water quality at 327 IAC 2-1.3-6.

Comment: Antidegradation review should not be required for pH, whole effluent toxicity (WET) and heat/temperature. It is simply not feasible to apply a trigger level for antidegradation review to these parameters. The standards adopted by the Board are the only valid reference point to use in assessing water impacts with respect to these parameters. IDEM already has to enforce those standards through permit limits, so there is nothing to be gained by using those standards in the antidegradation process. The rules should also clarify that thermal discharges subject to Section 316(a) thermal variances are not subject to antidegradation review, but rather must be consistent with Section 316 of the Clean Water Act. (IMA, IWQC)

Response: The draft rule contains a limited list of activities that do not constitute a significant lowering of water quality at 327 IAC 2-1.3-6.

Comment: As IDEM has provided in other portions of its rules, an exemption should be provided for research and development projects. These projects are generally short-term and temporary in nature, and produce socially important results. (IMA, IWQC)

Response: The draft rule contains a limited list of activities that do not constitute a significant lowering of water quality at 327 IAC 2-1.3-6.

Comment: An exemption should be provided for “brownfields” and other redevelopment projects. An important policy of this State is to encourage redevelopment of former industrial sites in urban areas. If a company seeks to build a new facility in one of those areas, bringing new jobs into areas where those jobs are badly needed, State policies should encourage those activities. If a developer has to go through the lengthy and resource-intensive antidegradation review process before beginning a redevelopment project, it

might very well go elsewhere, especially since it might find out at the end of the process that its project did not meet the vague “important social and economic development” test, so that the project would not “pass” antidegradation review and could not happen at all. (IMA, IWQC)

Response: The draft rule contains a limited list of activities that do not constitute a significant lowering of water quality at 327 IAC 2-1.3-6.

DEMONSTRATION

Comment: Who will define the meaning of “important economic or social development” pertaining to the antidegradation review/demonstration? Could this mean that an economically depressed community would be allowed to degrade water quality if they demonstrated a need, and a more prosperous community could be denied growth if they could not demonstrate a need based on minimal economic survival? (COC, TOB)

Response: The draft rule provides that the commissioner will make the decision on whether a proposed new or increased discharge supports important economic or social development. The commissioner’s decision will be based upon factors contained in section 7 of this draft rule.

Comment: The technical necessity component of antidegradation review should focus on whether cost-effective, reasonably available technologies can reduce or eliminate a proposed significant lowering of water quality (See, EPA’s Great Lakes Water Quality Guidance). EPA’s regulations and guidance on the technical necessity demonstration clearly take cost into consideration. In fact, cost considerations must play a role in the technical necessity demonstration; otherwise, most dischargers would ever get beyond this part of the demonstration, and antidegradation review would act as a complete bar to new or increased discharges. (See also, 40 CFR Part 132, Appendix E, III and Supplementary Information Document (SID), Section VIII.A.2.c.) (IMA, IWQC)

Response: The technical necessity component of an antidegradation review is described in section 7 of this draft rule.

Comment: If a discharger is meeting federal technology-based standards, it should not have to make another demonstration regarding technical necessity in antidegradation review. Technology review could become extremely cumbersome and time-consuming, slowing down the process for making changes in facility operations. Also, if not done properly, the technology review could contradict control decisions that have already been made by EPA. For many industries, EPA has issued effluent limitations guidelines, which specify technology standards for the industry. (IMA, IWQC)

Response: The technical necessity component of an antidegradation review is described in section 7 of this draft rule.

Comment: If a discharger has installed federally-required technology controls, it should be presumed that those controls meet the antidegradation technical necessity test and nothing more should be required. (IMA, IWQC)

Response: The technical necessity component of an antidegradation review is described in section 7 of this draft rule.

Comment: Where federal technology-based standards have not been developed, the assessment of technical necessity should focus on national capabilities of a particular industry. When EPA has not established technology requirements for a particular industry or operation, IDEM should adhere strictly to the spirit of the EPA process in undertaking a technical necessity review. Factors that should be considered are: the age of the equipment and facilities involved, the processes employed, the engineering aspects of the application of various types and control techniques, process changes, the cost of achieving such effluent reduction, and non-water quality environmental impact. An Indiana facility would be justified in reducing a proposed discharge if, and only if, it would have been required for the entire industry in accordance with EPA protocols. (IMA, IWQC)

Response: The technical necessity component of an antidegradation review is described in section 7 of this draft rule.

Comment: Agents of the State other than IDEM, whether other State agencies or local government, already have the authority and duty to make judgments about the economic or social worth of a project or activity. The economic or social importance demonstration process should rely on these State agents to act within their existing authority to review economic or social importance. This approach will assure that the decision maker is appropriate to carry out the task. It will also avoid the redundancy of having multiple governmental entities making similar or identical decisions, and eliminate the possibility of inconsistent findings. (IMA, IWQC)

Response: The draft rule provides that the commissioner will make the decision on whether a proposed new or increased discharge supports important economic or social development. The commissioner’s decision will be based upon factors contained in section 7 of this draft rule.

Comment: Under this approach, IDEM would still be making the other determination under antidegradation review: that the new or increased discharge is necessary from a technical standpoint. (IMA, IWQC)

Response: The draft rule provides that the commissioner will make the decision on whether a proposed new or increased discharge supports important economic or social development. The commissioner’s decision will be based upon factors contained in section 7 of this draft rule.

Comment: New business and development activities typically require review and approval by one or more agents of the State. If an agent of the State approves a new business or development, this decision is presumed to meet the economic or social importance test for antidegradation purposes, and separate review by IDEM is not necessary. (IMA, IWQC)

Response: There is not necessarily a correlation between an authority’s approval of a new or modified activity and the activity’s

economic or social importance.

Comment: If the general approach allowing appropriate agents of the State to make economic or social importance determinations is adopted, existing authorities would need to be identified and evaluated for their appropriateness. (IMA, IWQC)

Response: The draft rule provides that the commissioner will make the decision on whether a proposed new or increased discharge supports important economic or social development. The commissioner's decision will be based upon factors contained in section 7 of this draft rule.

Comment: It may be the case that some new businesses or developments will not be required to undergo a preexisting state or local approval process. New businesses or developments could request that the local government adopt a resolution or issue a letter of support for the activity or project. If the local government does so, this action would create a presumption of the economic or social importance of an activity or project. If the local government does not act, the new business or development would submit information to IDEM or another agent of the State to allow it to make an economic or social importance decision. Likewise, at its option, the new business or development could go straight to IDEM or another agent of the State to seek a determination that an activity or project is economically or socially important. (IMA, IWQC)

Response: The draft rule provides that the commissioner will make the decision on whether a proposed new or increased discharge supports important economic or social development. The commissioner's decision will be based upon factors contained in section 7 of this draft rule. One factor the commissioner considers is the action or recommendation made by a local unit of government affected by the new or increased discharge.

Comment: An economic or social importance review should not be necessary for an existing business or development whom wish to boost production. If the business or development was originally judged to be economically or socially important, doing more of the same does not require additional review. (IMA, IWQC)

Response: The necessity for an antidegradation review is based on the proposal for a new or increased discharge, not on the economic or social importance of the original activity.

Comment: An existing business or development may want to add a new product or process that changes the nature of the business or development, and consequently, the nature of the discharge from the facility. As a general rule, these types of changes may not require any review by a state agency or a local zoning determination. The existing business or development could seek a local resolution or letter of support or request review by IDEM or another agent of the State if local government does not act or in lieu of local government action. (IMA, IWQC)

Response: The draft rule provides that the commissioner will make the decision on whether a proposed new or increased discharge supports important economic or social development. The commissioner's decision will be based upon factors contained in section 7 of this draft rule. One factor the commissioner considers is the action or recommendation made by a local unit of government affected by the new or increased discharge.

Comment: In connection with the social and economic development analysis, IDEM should be required to consider the environmental benefits of the affected discharge. (IMA, IWQC)

Response: The draft rule considers environmental benefits of the proposed new or increased discharge.

FEES

Comment: SEA 431's provisions make the definition and the subsequent rules for degradation difficult because the antidegradation process is not straightforward. The range of choices offered an applicant who seeks to significantly lower water quality in an OSRW or EUW include payment of a fee up to five hundred thousand dollars (\$500,000) to be deposited in a Water Quality Improvement Fund. Does such a payment or a water quality improvement project relieve the applicant of some or all of the procedures of a rigorous antidegradation demonstration? (SDC)

Response: As outlined by IC 13-18-3-2(b), the funding of a properly conducted water quality improvement project in conjunction with a new or increased discharge to an OSRW or EUW will result in the discharge's being deemed not a significant lowering of water quality. A discharge that does not result in a significant lowering of water quality for a given pollutant or pollutant parameter does not require an antidegradation determination.

Comment: Does the payment of a fee conflict with the Clean Water Act? (SDC)

Response: No

Comment: The fee is not a fine. Is it a free-will donation and what does the applicant expect to benefit from paying the fee? (SDC)

Response: The applicant will need to determine what benefit it expects to realize from funding a water quality improvement project, and whether that benefit is the applicant's preferred option.

Comment: The rules to be enacted for these antidegradation procedures would inherently conflict between minimizing proposed degradation and allowing increased pollutants from proposed new or existing discharges in OSRWs and EUWs as laid out in subsections (l) and (m), especially when payment of a five hundred thousand dollar (\$500,000) fee is one option. Is EPA expected to approve this option as part of Indiana's revised antidegradation procedures? (SDC)

Response: IDEM anticipates that it will.

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:

#03-44(WPCB) Antidegradation Standards and Implementation Procedures
Megan Wallace
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 Office of Water Quality Rules Section at (317) 233-8903.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by May 30, 2005.

Additional information regarding this action may be obtained from Megan Wallace, Rules Section, Office of Water Quality, (317) 233-8669 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. 327 IAC 2-1-6, AS AMENDED AT 28 IR 2047, SECTION 5, IS AMENDED TO READ AS FOLLOWS:

327 IAC 2-1-6 Minimum surface water quality standards

Authority: IC 13-14-8; IC 13-14-9; IC 13-18-3

Affected: IC 13-18-4; IC 13-30-2-1; IC 14-22-9

Sec. 6. (a) The following are minimum surface water quality conditions:

(1) All surface waters at all times and at all places, including waters within the mixing zone, shall meet the minimum conditions of being free from substances, materials, floating debris, oil, or scum attributable to municipal, industrial, agricultural, and other land use practices, or other discharges that do any of the following:

(A) Will settle to form putrescent or otherwise objectionable deposits.

(B) Are in amounts sufficient to be unsightly or deleterious.

(C) Produce:

(i) color;

(ii) visible oil sheen;

(iii) odor; or

(iv) other conditions;

in such degree as to create a nuisance.

(D) Are in concentrations or combinations that will cause or contribute to the growth of aquatic plants or algae to such degree as to:

(i) create a nuisance;

(ii) be unsightly; or

(iii) otherwise impair the designated uses.

(E) Are in amounts sufficient to be acutely toxic to, or to otherwise severely injure or kill aquatic life, other animals, plants, or humans. To assure protection of aquatic life, concentrations of toxic substances shall not exceed the ~~final acute value~~ **FAV** (FAV = 2 (AAC)) in the undiluted discharge or the ~~acute aquatic criterion~~ AAC outside the zone of initial dilution or, if applicable, the zone of discharge-induced mixing:

(i) for certain substances, an AAC is established and set forth in subdivision (3), Table 6-1, and subdivision (3), Table 6-2 (which table incorporates subdivision (4), Table 6-3);

(ii) for substances for which an AAC is not specified in subdivision (3), Table 6-1, or subdivision (3), Table 6-2, an AAC can be calculated by the commissioner using the procedures in section 8.2 of this rule; and

(iii) the AAC determined under item (i) or (ii) may be modified on a site-specific basis to reflect local conditions in accordance

with section 8.9 of this rule.

This clause shall not apply to the chemical control of plants and animals when that control is performed in compliance with approval conditions specified by the Indiana department of natural resources as provided by IC 14-22-9.

(2) At all times, all surface waters outside of mixing zones shall be free of 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. To assure protection against the adverse effects identified in this subdivision, the following requirements are established:

(A) A toxic substance or pollutant shall not be present in such waters in concentrations that exceed the most stringent of the following continuous criterion concentrations (CCCs):

- (i) A ~~chronic aquatic criterion~~ CAC to protect aquatic life from chronic toxic effects.
- (ii) A ~~terrestrial life cycle safe concentration~~ TLSC to protect terrestrial organisms from toxic effects that may result from the consumption of aquatic organisms or water from the waterbody.
- (iii) A ~~human life cycle safe concentration~~ An HLSC to protect human health from toxic effects that may result from the consumption of aquatic organisms or drinking water from the waterbody.
- (iv) For carcinogenic substances, a criterion to protect human health from unacceptable cancer risk of greater than one (1) additional occurrence of cancer per one hundred thousand (100,000) population.

(B) For certain substances, one (1) or more of the CCCs identified in clause (A) are established and set forth in subdivision (3), Table

6-1, and subdivision (3), Table 6-2 (which table incorporates subdivision (4), Table 6-3).

(C) For substances for which one (1) or more of the CCCs identified in clause (A) are not specified in subdivision (3), Table 6-1, or subdivision (3), Table 6-2, such criterion or criteria may be calculated by the commissioner using the corresponding procedures prescribed by sections 8.3 through 8.6 of this rule.

(D) A CCC determined under clause (B) or (C) may be modified on a site-specific basis to reflect local conditions in accordance with section 8.9 of this rule.

(E) The CAC and TLSC for a substance apply in all surface waters outside a mixing zone for a discharge of that substance. Similarly, in waters where a public water system intake is not present or is unaffected by the discharge of a substance, the HLSC and the carcinogenic criterion for that substance based on consumption of organisms from the waterbody and only incidental ingestion of water shall apply to all surface waters outside the mixing zone for a discharge of that substance. In surface waters where a public water system intake is present, the HLSC and the carcinogenic criterion for a substance based on consumption of organisms and potable water from the waterbody shall apply at the point of the public water system intake.

(3) The following establishes surface water quality criteria for specific substances:

Table 6-1

Surface Water Quality Criteria for Specific Substances

Substances	AAC (Maximum)		CCC		
			Outside of Mixing Zone		Point of Water Intake
			Aquatic Life (CAC) (4-Day Average)	Human Health (30-Day Average)	Human Health (30-Day Average)
<u>Metals (µg/l)</u>					
(Total recoverable)					
Antimony			45,000 (T)	146 (T)	
Arsenic (III)	#	#	0.175 (C)	0.022 (C)	
Barium				1,000 (D)	
Beryllium			1.17 (C)	0.068 (C)	
Cadmium	#	#		10 (D)	
Chromium (III)	#	#	3,433,000 (T)	170,000 (T)	
Chromium (VI)	#	#		50 (D)	
Copper	#	#			
Lead	#	#		50 (D)	
Mercury\$	2.4	0.012	0.15 (T)	0.14 (T)	
Nickel	#	#	100 (T)	13.4 (T)	
Selenium	130*	35		10 (D)	
Silver	#			50 (D)	
Thallium			48 (T)	13 (T)	

Zinc	#	#		
<u>Organics (µg/l)</u>				
Acrolein			780 (T)	320 (T)
Acrylonitrile			6.5 (C)	0.58 (C)
Aldrin\$	1.5*		0.00079 (C)	0.00074 (C)
Benzene			400 (C)	6.6 (C)
Benzidine			0.0053 (C)	0.0012 (C)
Carbon Tetrachloride			69.4 (C)	4.0 (C)
Chlordane\$	1.2*	0.0043	0.0048 (C)	0.0046 (C)
Chlorinated Benzenes				
Monochlorobenzene				488 (T)
1,2,4,5-Tetrachlorobenzene\$			48 (T)	38 (T)
Pentachlorobenzene\$			85 (T)	74 (T)
Hexachlorbenzene\$			0.0074 (C)	0.0072 (C)
Chlorinated Ethanes				
1,2-dichloroethane			2,430 (C)	9.4 (C)
1,1,1-trichloroethane			1,030,000 (T)	18,400 (T)
1,1,2-trichloroethane			418 (C)	6.0 (C)
1,1,2,2-tetrachloroethane			107 (C)	1.7 (C)
Hexachloroethane			87.4 (C)	19 (C)
Chlorinated Phenols				
2,4,5-trichlorophenol				2,600 (T)
2,4,6-trichlorophenol			36 (C)	12 (C)
Chloroalkyl Ethers				
bis(2-chloroisopropyl) ether			4,360 (T)	34.7 (T)
bis(chloromethyl) ether			0.018 (C)	0.000038 (C)
bis(2-chloroethyl) ether			13.6 (C)	0.3 (C)
Chloroform			157 (C)	1.9 (C)
Chlorpyrifos	0.083	0.041		
DDT\$	0.55*	0.0010	0.00024 (C)	0.00024 (C)
Dichlorobenzenes			2,600 (T)	400 (T)
Dichlorobenzidine			0.2 (C)	0.1 (C)
1,1-dichloroethylene			18.5 (C)	0.33 (C)
2,4-dichlorophenol				3,090 (T)
Dichloropropenes			14,100 (T)	87 (T)
Dieldrin\$	1.3*	0.0019	0.00076 (C)	0.00071 (C)
2,4-dinitrotoluene			91 (C)	1.1 (C)
Dioxin (2,3,7,8-TCDD)\$			0.0000001 (C)	0.0000001 (C)
1,2-diphenylhydrazine			5.6 (C)	0.422 (C)
Endosulfan	0.11*	0.056	159 (T)	74 (T)
Endrin\$	0.09*	0.0023		1.0 (D)
Ethylbenzene			3,280 (T)	1,400 (T)
Fluoranthene\$			54 (T)	42 (T)
Halomethanes			157 (C)	1.9 (C)
Heptachlor\$	0.26*	0.0038	0.0028 (C)	0.0028 (C)
Hexachlorobutadiene\$			500 (C)	4.47 (C)
Hexachlorocyclohexane (HCH)				
alpha HCH\$			0.31 (C)	0.09 (C)
beta HCH\$			0.55 (C)	0.16 (C)
gamma HCH (Lindane)\$	1.0*	0.080	0.63 (C)	0.19 (C)
Technical HCH\$			0.41 (C)	0.12 (C)
Hexachlorocyclopentadiene				206 (T)

Isophorone			520,000 (T)	5,200 (T)
Nitrobenzene				19,800 (T)
Nitrophenols				
4,6-dinitro-o-cresol			765 (T)	13.4 (T)
Dinitrophenol			14,300 (T)	70 (T)
Nitrosamines				
N-nitrosodiethylamine			12.4 (C)	0.008 (C)
N-nitrosodimethylamine			160 (C)	0.014 (C)
N-nitrosodibutylamine			5.9 (C)	0.064 (C)
N-nitrosodiphenylamine			161 (C)	49 (C)
N-nitrosopyrrolidine			919 (C)	0.16 (C)
Parathion	0.065	0.013		
Pentachlorophenol	$e^{(1.005 [\text{pH}]-4.830)}$	$e^{(1.005 [\text{pH}]-5.290)}$		1,000 (T)
Phenol				3,500 (T)
Phthalate Esters				
Dimethyl phthalate			2,900,000 (T)	313,000 (T)
Diethyl phthalate			1,800,000 (T)	350,000 (T)
Dibutyl phthalate			154,000 (T)	34,000 (T)
Di-2-ethylhexyl phthalate			50,000 (T)	15,000 (T)
Polychlorinated Biphenyls (PCBs)\$		0.014	0.00079 (C)	0.00079 (C)
Carcinogenic Polynuclear Aromatic Hydrocarbons (PAHs)			0.31 (C)	0.028 (C)
Tetrachloroethylene			88.5 (C)	8 (C)
Toluene			424,000 (T)	14,300 (T)
Toxaphene\$	0.73	0.0002	0.0073 (C)	0.0071 (C)
Trichloroethylene			807 (C)	27 (C)
Vinyl Chloride			5,246 (C)	20 (C)
<u>Other Substances</u>				
Asbestos (fibers/liter)				300,000 (C)
Chlorides (mg/l)	860	230		
Chlorine				
(Total Residual) (µg/l)	19	11		
Chlorine ^a (mg/l)				
(intermittent, total residual)		0.2		
Cyanide (Free) (µg/l)	22	5.2		
Cyanide (Total) (µg/l)				200 (D)
Nitrate-N + Nitrite-N (mg/l)				10 (D)
Nitrite-N (mg/l)				1.0 (D)

Fluoride shall not exceed two (2.0) mg/l in all surface waters outside of the mixing zone except the Ohio River and Interstate Wabash River where it shall not exceed one (1.0) mg/l outside of the mixing zone.

Sulfates shall not exceed one thousand (1,000) mg/l in all surface waters outside of the mixing zone.

#The AAC and CAC for this substance are established in Table 6-2.

*One-half (½) of the ~~final acute value~~ FAV as calculated by procedures developed by U.S. EPA in 1980. This value would correspond to acute aquatic values calculated using IDEM procedures or U.S. EPA procedures developed in 1985 in which the calculated FAV is divided by two (2) to reduce acute toxicity.

T derived from threshold toxicity.

C derived from nonthreshold cancer risk.

D derived from drinking water standards, equal to or less than threshold toxicity.

\$This substance is a ~~bioaccumulative chemical of concern~~. **BCC**.

^aTo be considered an intermittent discharge, total residual chlorine shall not be detected in the discharge for a period of more than forty (40) minutes in duration, and such periods shall be separated by at least five (5) hours.

Table 6-2
Surface Water Quality Criteria for Specific Substances

Substances	AAC (Maximum) (µg/l)	AAC Conversion Factors	CAC (4-Day Average) (µg/l)	CAC Conversion Factors
Metals (dissolved) ^[1]				
Arsenic (III)	WER ^[2] (360)	1.000	WER ^[2] (190)	1.000
Cadmium	WER ^[2] (e ^{(1.128 [ln(hardness)]-3.828)})	1.136672-[(ln hardness)(0.041838)]	WER ^[2] (e ^{(0.7852 [ln(hardness)]-3.490)})	1.101672-[(ln hardness)(0.041838)]
Chromium (III)	WER ^[2] (e ^{(0.819 [ln(hardness)]+3.688)})	0.316	WER ^[2] (e ^{(0.8190 [ln(hardness)]+1.561)})	0.860
Chromium (VI)	WER ^[2] (16)	0.982	WER ^[2] (11)	0.962
Copper	WER ^[2] (e ^{(0.9422 [ln(hardness)]-1.464)})	0.960	WER ^[2] (e ^{(0.8545 [ln(hardness)]-1.465)})	0.960
Lead	WER ^[2] (e ^{(1.273 [ln(hardness)]-1.460)})	1.46203-[(ln hardness)(0.145712)]	WER ^[2] (e ^{(1.273 [ln(hardness)]-4.705)})	1.46203-[(ln hardness)(0.145712)]
Nickel	WER ^[2] (e ^{(0.8460 [ln(hardness)]+3.3612)})	0.998	WER ^[2] (e ^{(0.8460 [ln(hardness)]+1.1645)})	0.997
Silver	WER ^[2] (e ^{(1.72 [ln(hardness)]-6.52)/2^[3])}	0.85		
Zinc	WER ^[2] (e ^{(0.8473 [ln(hardness)]+0.8604)})	0.978	WER ^[2] (e ^{(0.8473 [ln(hardness)]+0.7614)})	0.986

^[1] The AAC and CAC columns of this table contain total recoverable metals criteria (numeric and hardness-based). The criterion for the dissolved metal is calculated by multiplying the appropriate conversion factor by the AAC or CAC. This dissolved AAC or CAC shall be rounded to two (2) significant digits, except when the criteria are used as intermediate values in a calculation, such as in the calculation of water quality-based effluent limitations (WQBELs).

^[2] A value of one (1) shall be used for the water-effect ratio WER unless an alternate value is established under section 8.9 of this rule.

^[3] One-half (½) of the final acute value FAV as calculated by procedures developed by U.S. EPA in 1980. This value would correspond to acute aquatic values calculated using IDEM procedures or U.S. EPA procedures developed in 1985 in which the calculated FAV is divided by two (2) to reduce acute toxicity.

(4) The following establishes dissolved acute aquatic criteria AAC and chronic aquatic criteria CAC for certain metals at selected hardness values calculated from the equations and conversion factors in subdivision (3), Table 6-2, and using a value of one (1) for the WER:

Table 6-3
Metals Concentrations in Micrograms Per Liter; Hardness in Milligrams Per Liter CaCO₃¹

Hardness	Arsenic (III)		Cadmium		Chromium (III)		Chromium (VI)		Copper		Lead		Nickel		Silver		Zinc	
	AA C	CA C	AA C	CA C	AA C	CA C	AA C	CA C	AA C	CA C	AA C	CA C	AA C	CA C	AA C	CA C	AA C	CAC
50	360	190	1.7	0.62	310	100	16	11	8.9	6.3	30	1.2	790	87	0.52	—	64	58
100	360	190	3.7	1.0	550	180	16	11	17	11	65	2.5	1400	160	1.7	—	110	100
150	360	190	5.7	1.4	760	250	16	11	25	16	100	3.9	2000	220	3.5	—	160	150
200	360	190	7.8	1.7	970	310	16	11	33	21	140	5.3	2500	280	5.7	—	210	190
250	360	190	10	2.0	1200	380	16	11	40	25	170	6.7	3100	340	8.3	—	250	230
300	360	190	12	2.3	1300	440	16	11	48	29	210	8.1	3600	400	11	—	290	270

350	360	190	14	2.6	150	500	16	11	55	33	240	9.5	4100	450	15	–	330	300
					0													
400	360	190	17	2.9	170	550	16	11	63	37	280	11	4600	510	19	–	370	340
					0													
450	360	190	19	3.1	190	610	16	11	70	41	320	12	5100	560	23	–	410	370
					0													
500	360	190	21	3.4	210	670	16	11	78	45	350	14	5500	610	27	–	450	410
					0													

^[1] The dissolved metals criteria in this table have been rounded to two (2) significant digits in accordance with subdivision (3), Table 6-2. The equations and conversion factors in subdivision (3), Table 6-2 shall be used instead of the criteria in this table when dissolved metals criteria are used as intermediate values in a calculation, such as in the calculation of ~~water quality-based effluent limitations~~ WQBELs.

(b) This subsection establishes minimum surface water quality for aquatic life. In addition to subsection (a), subdivisions (1) through (5) are established to ensure conditions necessary for the maintenance of a well-balanced aquatic community. The following are applicable at any point in the waters outside of the mixing zone:

(1) There shall be no substances that:

(A) impart unpalatable flavor to food fish; or

(B) result in offensive odors in the vicinity of the water.

(2) No pH values below ~~six~~ 6.0 or above ~~nine~~ 9.0, except daily fluctuations that exceed pH ~~nine~~ 9.0 and are correlated with photosynthetic activity, shall be permitted.

(3) Concentrations of dissolved oxygen shall:

(A) average at least five (5.0) milligrams per liter per calendar day; and ~~shall~~

(B) not be less than four (4.0) milligrams per liter at any time.

(4) The following are conditions for temperature:

(A) There shall be no abnormal temperature changes that may adversely affect aquatic life unless caused by natural conditions.

(B) The normal daily and seasonal temperature fluctuations that existed before the addition of heat due to other than natural causes shall be maintained.

(C) The maximum temperature rise at any time or place above natural temperatures shall not exceed **the following**:

(i) Five (5) degrees Fahrenheit (two and eight-tenths (2.8) degrees Celsius) in streams. ~~and~~

(ii) Three (3) degrees Fahrenheit (one and seven-tenths (1.7) degrees Celsius) in lakes and reservoirs.

(D) Water temperatures shall not exceed the maximum limits in the following table during more than one percent (1%) of the hours in the twelve (12) month period ending with any month. At no time shall the water temperature at such locations exceed the maximum limits in the following table by more than three (3) degrees Fahrenheit (one and seven-tenths (1.7) degrees Celsius):

Table 6-4

	Ohio River Main Stem °F(°C)	Other Indiana Streams °F(°C)
January	50 (10.0)	50 (10.0)
February	50 (10.0)	50 (10.0)
March	60 (15.6)	60 (15.6)
April	70 (21.1)	70 (21.1)
May	80 (26.7)	80 (26.7)
June	87 (30.6)	90 (32.2)
July	89 (31.7)	90 (32.2)
August	89 (31.7)	90 (32.2)
September	87 (30.7)	90 (32.2)

October	78 (25.6)	78 (25.5)
November	70 (21.1)	70 (21.1)
December	57 (14.0)	57 (14.0)

(5) The following criteria will be used to regulate ammonia:

(A) Except for waters covered in clause (B), at all times, all surface waters outside of mixing zones shall be free of substances in concentrations that, on the basis of available scientific data, are believed to be:

- (i) sufficient to injure; ~~be~~
- (ii) chronically toxic to; or ~~be~~
- (iii) carcinogenic, mutagenic, or teratogenic to humans, animals, aquatic life, or plants.

(B) For those waters listed in subsection (c), the following ammonia criteria will apply outside the mixing zone:

Maximum Ammonia Concentrations
(Unionized Ammonia as N)^{***}
(mg/l)

pH	Temperature (°C)						
	0	5	10	15	20	25	30
6.5	0.0075	0.0106	0.0150	0.0211	0.0299	0.0299	0.0299
6.6	0.0092	0.0130	0.0183	0.0259	0.0365	0.0365	0.0365
6.7	0.0112	0.0158	0.0223	0.0315	0.0444	0.0444	0.0444
6.8	0.0135	0.0190	0.0269	0.0380	0.0536	0.0536	0.0536
6.9	0.0161	0.0228	0.0322	0.0454	0.0642	0.0642	0.0642
7.0	0.0191	0.0270	0.0381	0.0539	0.0761	0.0761	0.0761
7.1	0.0244	0.0316	0.0447	0.0631	0.0892	0.0892	0.0892
7.2	0.0260	0.0367	0.0518	0.0732	0.1034	0.1034	0.1034
7.3	0.0297	0.0420	0.0593	0.0837	0.1183	0.1183	0.1183
7.4	0.0336	0.0474	0.0669	0.0946	0.1336	0.1336	0.1336
7.5	0.0374	0.0528	0.0746	0.1054	0.1489	0.1489	0.1489
7.6	0.0411	0.0581	0.0821	0.1160	0.1638	0.1638	0.1638
7.7	0.0447	0.0631	0.0892	0.1260	0.1780	0.1780	0.1780
7.8	0.0480	0.0678	0.0958	0.1353	0.1911	0.1911	0.1911
7.9	0.0510	0.0720	0.1017	0.1437	0.2030	0.2030	0.2030
8.0	0.0536	0.0758	0.1070	0.1512	0.2135	0.2135	0.2135
8.1	0.0537	0.0758	0.1071	0.1513	0.2137	0.2137	0.2137
8.2	0.0537	0.0758	0.1071	0.1513	0.2137	0.2137	0.2137
8.3	0.0537	0.0758	0.1071	0.1513	0.2137	0.2137	0.2137
8.4	0.0537	0.0758	0.1071	0.1513	0.2137	0.2137	0.2137
8.5	0.0537	0.0758	0.1071	0.1513	0.2137	0.2137	0.2137
8.6	0.0537	0.0758	0.1071	0.1513	0.2137	0.2137	0.2137
8.7	0.0537	0.0758	0.1071	0.1513	0.2137	0.2137	0.2137
8.8	0.0537	0.0758	0.1071	0.1513	0.2137	0.2137	0.2137
8.9	0.0537	0.0758	0.1071	0.1513	0.2137	0.2137	0.2137
9.0	0.0537	0.0758	0.1071	0.1513	0.2137	0.2137	0.2137

^{***}To calculate total ammonia, divide the number in the table by the value determined by:

$$1/(10^{pK}$$

^a

$$-pH + 1).$$

Where: $pK_a = 0.09018 + (2729.92/(T + 273.2))$
 $pH =$ pH of water
 $T =$ °C

24-Hour Average Ammonia Concentrations
(Unionized Ammonia as N)^{***}

pH	(mg/l)						
	Temperature (°C)						
	0	5	10	15	20	25	30
6.5	0.0005	0.0008	0.0011	0.0015	0.0015	0.0015	0.0015
6.6	0.0007	0.0010	0.0014	0.0019	0.0019	0.0019	0.0019
6.7	0.0009	0.0012	0.0017	0.0024	0.0024	0.0024	0.0024
6.8	0.0011	0.0015	0.0022	0.0031	0.0031	0.0031	0.0031
6.9	0.0014	0.0019	0.0027	0.0038	0.0038	0.0038	0.0038
7.0	0.0017	0.0024	0.0034	0.0048	0.0048	0.0048	0.0048
7.1	0.0022	0.0031	0.0043	0.0061	0.0061	0.0061	0.0061
7.2	0.0027	0.0038	0.0054	0.0077	0.0077	0.0077	0.0077
7.3	0.0034	0.0048	0.0068	0.0097	0.0097	0.0097	0.0097
7.4	0.0043	0.0061	0.0086	0.0122	0.0122	0.0122	0.0122
7.5	0.0054	0.0077	0.0108	0.0153	0.0153	0.0153	0.0153
7.6	0.0068	0.0097	0.0136	0.0193	0.0193	0.0193	0.0193
7.7	0.0086	0.0122	0.0172	0.0242	0.0242	0.0242	0.0242
7.8	0.0092	0.0130	0.0184	0.0260	0.0260	0.0260	0.0260
7.9	0.0098	0.0138	0.0196	0.0276	0.0276	0.0276	0.0276
8.0	0.0103	0.0146	0.0206	0.0294	0.0294	0.0294	0.0294
8.1	0.0103	0.0146	0.0206	0.0294	0.0294	0.0294	0.0294
8.2	0.0103	0.0146	0.0206	0.0294	0.0294	0.0294	0.0294
8.3	0.0103	0.0146	0.0206	0.0294	0.0294	0.0294	0.0294
8.4	0.0103	0.0146	0.0206	0.0294	0.0294	0.0294	0.0294
8.5	0.0103	0.0146	0.0206	0.0294	0.0294	0.0294	0.0294
8.6	0.0103	0.0146	0.0206	0.0294	0.0294	0.0294	0.0294
8.7	0.0103	0.0146	0.0206	0.0294	0.0294	0.0294	0.0294
8.8	0.0103	0.0146	0.0206	0.0294	0.0294	0.0294	0.0294
8.9	0.0103	0.0146	0.0206	0.0294	0.0294	0.0294	0.0294
9.0	0.0103	0.0146	0.0206	0.0294	0.0294	0.0294	0.0294

***To calculate total ammonia, divide the number in the table by the value determined by:

$$\frac{1}{10^{a \cdot (-\text{pH} + 1)}}$$

Where: $\text{pK}_a = 0.09018 + (2729.92 / (T + 273.2))$
 $\text{pH} = \text{pH of water}$
 $T = \text{°C}$

(c) This subsection establishes surface water quality for coldwater fish. In addition to subsections (a) through and (b), the following criteria are established to ensure conditions necessary for the maintenance of a well-balanced, coldwater fish community and are applicable at any point in the waters outside of the mixing zone:

- (1) Waters designated as salmonid waters and that shall be protected for coldwater fish are those waters designated by the Indiana department of natural resources for put-and-take trout fishing.
- (2) In the waters listed in subdivision (1), dissolved oxygen concentrations shall not be less than **the following**:
 - (A) Six (6.0) milligrams per liter at any time. ~~and shall not be less than~~
 - (B) Seven (7.0) milligrams per liter in areas:
 - (i) where spawning occurs during the spawning season; and ~~in areas~~
 - (ii) used for imprinting during the time salmonids are being imprinted.
- (3) In those waters listed in subdivision (1), the maximum temperature rise above natural shall not exceed two (2) degrees Fahrenheit (one and one-tenth (1.1) degrees Celsius) at any time or place and, unless due to natural causes, the temperature shall

not exceed the following:

(A) Seventy (70) degrees Fahrenheit (twenty-one and one-tenth (21.1) degrees Celsius) at any time.

(B) Sixty-five (65) degrees Fahrenheit (eighteen and three-tenths (18.3) degrees Celsius) during spawning and imprinting periods.

(d) This subsection establishes bacteriological quality for recreational uses. In addition to subsection (a), the criteria in this subsection are to be used to evaluate waters for full body contact recreational uses, to establish wastewater treatment requirements, and to establish effluent limits during the recreational season, which is defined as the months of April through October, inclusive. E. coli bacteria, using membrane filter (MF) count, shall not exceed **the following:**

(1) One hundred twenty-five (125) per one hundred (100) milliliters as a geometric mean based on not less than five (5) samples equally spaced over a thirty (30) day period. **and**

(2) Two hundred thirty-five (235) per one hundred (100) milliliters in any one (1) sample in a thirty (30) day period.

If a geometric mean cannot be calculated because five (5) equally spaced samples are not available, then the criteria stated in subdivision (2) must be met.

(e) This subsection establishes surface water quality for public water supply. In addition to subsections (a) and (d), the following criteria are established to protect the surface water quality at the point at which water is withdrawn for treatment for public supply:

(1) The coliform bacteria group shall not exceed the following:

(A) Five thousand (5,000) per one hundred (100) milliliters as a monthly average value (either MPN or MF count).

(B) Five thousand (5,000) per one hundred (100) milliliters in more than twenty percent (20%) of the samples examined during any month.

(C) Twenty thousand (20,000) per one hundred (100) milliliters in more than five percent (5%) of the samples examined during any month.

(2) Taste and odor producing substances, other than naturally occurring, shall not interfere with the production of a finished water by conventional treatment consisting of **the following:**

(A) Coagulation.

(B) Sedimentation.

(C) Filtration. **and**

(D) Disinfection.

(3) The concentrations of either chlorides or sulfates shall not exceed two hundred fifty (250) milligrams per liter unless due to naturally occurring sources.

(4) The concentration of dissolved solids shall not exceed seven hundred fifty (750) milligrams per liter unless due to naturally occurring sources. A specific conductance of one thousand two hundred (1,200) micromhos per centimeter (at twenty-five (25) degrees Celsius) may be considered equivalent to a dissolved solids concentration of seven hundred fifty (750) milligrams per liter.

(5) Surface waters shall be considered acceptable for public water supply if radium-226 and strontium-90 are present in amounts not exceeding three (3) and ten (10) picocuries per liter, respectively. In the known absence of strontium-90 and alpha emitters, the water supply is acceptable when the gross beta concentrations do not exceed one thousand (1,000) picocuries per liter.

(6) Chemical constituents in the waters shall not be present in such levels as to prevent, after conventional treatment, meeting the drinking water standards contained in 327 IAC 8-2, due to other than natural causes.

(f) This subsection establishes surface water quality for industrial water supply. In addition to subsection (a), the criterion to ensure protection of water quality at the point at which water is withdrawn for use (either with or without treatment) for industrial cooling and processing is that, other than from naturally occurring sources, the dissolved solids shall not exceed seven hundred fifty (750) milligrams per liter at any time. A specific conductance of one thousand two hundred (1,200) micromhos per centimeter (at twenty-five (25) degrees Celsius) may be considered equivalent to a dissolved solids concentration of seven hundred fifty (750) milligrams per liter.

(g) This subsection establishes surface water quality for agricultural uses. The criteria to ensure water quality conditions necessary for agricultural use are the same as those in subsection (a).

(h) This subsection establishes surface water quality for limited uses. The quality of waters classified for limited uses under section 3(a)(5) of this rule shall, at a minimum, meet the following criteria:

(1) The criteria contained in subsection (a).

(2) The criteria contained in subsection (d).

(3) The criteria contained in subsection (f), where applicable.

(4) The waters must be aerobic at all times.

(5) Notwithstanding subdivisions (1) through (4), the quality of a limited use stream at the point where it becomes physically or chemically capable of supporting a higher use or at its interface with a higher use water segment shall meet the criteria that are applicable to the higher use water.

(i) This subsection establishes surface water quality for exceptional uses. Waters classified for exceptional uses warrant extraordinary protection. Unless criteria are otherwise specified on a case-by-case basis, the quality of all waters designated for exceptional use shall be maintained without degradation **in the same manner set forth for outstanding state resource waters (OSRWs) under 327 IAC 2-1.3.** (*Water Pollution Control Board; 327 IAC 2-1-6; filed Sep 24, 1987, 3:00 p.m.: 11 IR 581; filed Feb 1, 1990, 4:30 p.m.: 13 IR 1020; errata, 13 IR 1861; errata filed Jul 6, 1990, 5:00 p.m.: 13 IR 2003; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1725; errata filed May 7, 1993, 4:00 p.m.: 16 IR 2189; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1348; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3376; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2047*)

SECTION 2. 327 IAC 2-1.3 IS ADDED TO READ AS FOLLOWS:

Rule 1.3. Antidegradation Standards and Implementation Procedures

327 IAC 2-1.3-1 Applicability of water quality standards

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-1; IC 13-18-4-3

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

Sec. 1. Notwithstanding the requirements of 327 IAC 2-1.5-1, the water quality standards established by this rule apply to all surface waters of the state. (*Water Pollution Control Board; 327 IAC 2-1.3-1*)

327 IAC 2-1.3-2 Definitions

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-1; IC 13-18-4-3

Affected: IC 13-13-1-1; IC 13-18-1; IC 13-18-4; IC 14-8-2-310; IC 14-22-34; IC 36-2-3.5; IC 36-3-1

Sec. 2. The following definitions apply throughout this rule and 327 IAC 2-1 through 327 IAC 2-1.5:

(1) “Application” means an application for either of the following:

(A) A permit.

(B) A determination related to a permit.

(2) “Best management practices” or “BMPs” means the following measures to prevent or reduce the pollution of surface waters of the state:

(A) Schedules of activities.

(B) Prohibitions of practice.

(C) Treatment requirements.

(D) Operation and maintenance procedures.

(E) Use of containment facilities.

(F) Other management practices.

BMPs may be employed, for example, to control plant site run-off, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage resulting from manufacturing, commercial, mining, or silvicultural activities.

(3) “Bioaccumulation” means the net accumulation of a substance by an organism as a result of uptake from all environmental sources.

(4) “Bioaccumulation factor” or “BAF” means the ratio (in liters per kilogram) of a substance’s concentration in tissue of an aquatic organism to its concentration in the ambient water in situations where:

(A) both the organism and its food are exposed; and

(B) the ratio does not change substantially over time.

(5) “Bioaccumulative chemical of concern” or “BCC” has the meaning set forth in 327 IAC 2-1.5-6.

(6) “Board” means the water pollution control board established under IC 13-18-1.

(7) “CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 through 42 U.S.C. 9675, as amended on October 11, 1996.

(8) “Clean Water Act” or “CWA” means the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., as amended on December 16, 1996.

(9) “Combined sewer” means a sewer designed and employed to receive both of the following:

(A) Water-carried or liquid wastes.

(B) Storm or surface water.

(10) “Commissioner” means the commissioner of the department of environmental management.

(11) “Community” means a general collective term to describe the varieties of aquatic species and associated organisms living together in a waterbody.

(12) “Control document” means an NPDES permit or a Section 401 water quality certification.

(13) “Criterion” means a definite numerical value or narrative statement promulgated by the board to maintain or enhance water quality to provide for and fully protect designated uses of the surface waters of the state.

(14) “Degradation” means, with respect to an NPDES permit, the following:

(A) With respect to an ONRW, any new or increased discharge of a pollutant or a pollutant parameter, except for a short term, temporary increase.

(B) With respect to an outstanding state resource water or an exceptional use water, any new or increased discharge of a pollutant or pollutant parameter that results in a significant lowering of water quality for that pollutant or pollutant parameter, unless:

(i) the activity causing the increased discharge:

(AA) results in an overall improvement in water quality in the outstanding state resource water or exceptional use water; and

(BB) meets the applicable requirements of 327 IAC 2-1-2(1), 327 IAC 2-1-2(2), 327 IAC 2-1.5-4(a), and 327 IAC 2-1.5-4(b); or

(ii) the person proposing the increased discharge undertakes or funds a water quality improvement project in accordance with IC 13-18-3-2(l) in the watershed of the outstanding state resource water or exceptional use water that:

(AA) results in an overall improvement in water quality in the outstanding state resource water or exceptional use water; and

(BB) meets the applicable requirements of 327 IAC 2-1-2(1), 327 IAC 2-1-2(2), 327 IAC 2-1.5-4(a), and 327 IAC 2-1.5-4(b).

(15) “Department” means the department of environmental management established under IC 13-13-1-1.

(16) “Designated uses” means those uses specified in these water quality standards for each waterbody whether or not they are being attained. Waste:

(A) transport;

(B) treatment; and

(C) assimilation;

shall not be designated uses.

(17) “Discharge” or “direct discharge”, when used without qualification, means a discharge of a pollutant.

(18) “Draft permit” means a document prepared under 327 IAC 5-3-6 before the public comment period by the commissioner indicating the commissioner’s tentative decision to:

(A) issue or deny;

(B) modify;

(C) revoke and reissue;

(D) terminate; or

(E) reissue;

a permit. A notice of intent to terminate a permit and a notice of intent to deny a permit are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination is not a draft permit. A proposed permit is not a draft permit.

(19) “Effluent” means a wastewater discharge from a point source to the surface waters of the state.

(20) “Effluent limitation” means any restriction established by the commissioner on:

(A) quantities;

(B) discharge rates; and

(C) concentrations;

of pollutants that are discharged, or will be discharged, from point sources into surface waters of the state.

(21) “Exceptional use water” means any water designated as an exceptional use water by the board, regardless of when the designation occurred.

(22) “Existing uses” means those uses actually attained in the waterbody on or after November 28, 1975, whether or not they are included under 327 IAC 2-1-3.

(23) “Great Lakes” means Lake Erie and Lake Michigan.

(24) “Great Lakes states” means the following:

(A) Illinois.

- (B) Indiana.
- (C) Michigan.
- (D) Minnesota.
- (E) New York.
- (F) Ohio.
- (G) Pennsylvania.
- (H) Wisconsin.

(25) "Great Lakes system" means all the:

- (A) streams;
- (B) rivers;
- (C) lakes; and
- (D) other surface waters;

of the state within the drainage basin of the Great Lakes within Indiana.

(26) "High quality waters" or "HQWs" means waterbodies in which, on a parameter by parameter basis, the quality of the surface water exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water. The term includes any waterbody for which the pollutant has not been detected in the following:

- (A) The water column.
- (B) Nontransient aquatic organisms at levels that would indicate that a water quality criterion or value is not being met.

(27) "Indirect discharger" means a nondomestic discharger introducing pollutants into a POTW.

(28) "Legislative body" means any of the following:

- (A) For a county not subject to IC 36-2-3.5 or IC 36-3-1, a board of county commissioners.
- (B) For a county subject to IC 36-2-3.5, a county council.
- (C) For a consolidated city or county having a consolidated city, a city council.
- (D) For a city other than a consolidated city, a common council.
- (E) For a town, a town council.
- (F) For a township, a township board.

(29) "Mixing zone" means an area contiguous to a discharge where:

- (A) the discharged wastewater mixes with the receiving water; and
- (B) numeric water quality criteria or values may be exceeded.

The mixing zone should not be considered a place where effluents are treated.

(30) "National Pollutant Discharge Elimination System" or "NPDES" means the national program for:

- (A) issuing;
- (B) modifying;
- (C) revoking and reissuing;
- (D) terminating;
- (E) denying;
- (F) monitoring; and
- (G) enforcing;

permits for the discharge of pollutants from point sources and imposing and enforcing pretreatment requirements by the U.S. EPA or an authorized state under Sections 307, 318, 402, and 405 of the Clean Water Act. The term includes a state program approved by the U.S. EPA under 40 CFR 123.

(31) "New Great Lakes discharger" means any:

- (A) building;
- (B) structure;
- (C) facility; or
- (D) installation;

from which there is or may be a discharge of a pollutant to the Great Lakes system, the construction of which commenced after March 23, 1997.

(32) "Nuisance species" means a harmful, nonindigenous species including the following:

- (A) Zebra mussel.
- (B) Round goby.
- (C) Spiny water flea.
- (D) Sea lamprey.
- (E) Eurasian watermilfoil.
- (F) Purple loosestrife.

(G) Ruffle.

(33) “Open waters of Lake Michigan” means all of the surface waters within Lake Michigan lakeward from a line drawn across the mouth of tributaries to the lake, including all surface waters enclosed by constructed breakwaters. For the Indiana Harbor Ship Canal, the boundary of the open waters of Lake Michigan is delineated by a line drawn across the mouth of the harbor from the East Breakwater Light (1995 United States Coast Guard Light List No. 19675) to the northernmost point of the LTV Steel property along the west side of the harbor.

(34) “Outstanding national resource water” or “ONRW” means a water designated as such by the general assembly after recommendations by the board and the environmental quality service council under IC 13-18-3-2(o) and IC 13-18-3-2(p). The designation must describe the quality of the ONRW to serve as the benchmark of the water quality that shall be maintained and protected. Waters that may be considered for designation as ONRWs include waterbodies that are recognized as any of the following:

(A) Important because of protection through official action, such as any of the following:

- (i) Federal or state law.**
- (ii) Presidential or secretarial action.**
- (iii) International treaty.**
- (iv) Interstate compact.**

(B) Having:

- (i) exceptional:**
 - (AA) recreational; or**
 - (BB) ecological;**significance; or
- (ii) other special environmental, recreational, or ecological attributes.**

(C) Waters with respect to which designation as an ONRW is reasonably necessary for protection of other waterbodies designated as ONRWs.

(35) “Outstanding state resource water” or “OSRW” means any water designated as such by the board regardless of when the designation occurred or occurs. Waters that may be considered for designation as OSRWs include waterbodies that have unique or special:

- (A) ecological;**
- (B) recreational; or**
- (C) aesthetic;**

significance.

(36) “Parameter” means a quantitative or characteristic element that describes:

- (A) physical;**
- (B) chemical; or**
- (C) biological;**

conditions of water.

(37) “Permit” means:

- (A) a permit;**
- (B) a license;**
- (C) a registration;**
- (D) a certificate; or**
- (E) any other type of authorization required before construction or operation;**

that may be issued by the commissioner under pollution control laws or environmental management laws.

(38) “Permittee” means the holder of a permit.

(39) “Person” means any of the following:

- (A) An individual.**
- (B) A partnership.**
- (C) A copartnership.**
- (D) A firm.**
- (E) A company.**
- (F) A corporation.**
- (G) An association.**
- (H) A joint stock company.**
- (I) A trust.**
- (J) An estate.**

- (K) A municipal corporation.
- (L) A city.
- (M) A school city.
- (N) A town.
- (O) A school town.
- (P) A school district.
- (Q) A school corporation.
- (R) A county.
- (S) Any consolidated unit of government.
- (T) A political subdivision.
- (U) A state agency.
- (V) A contractor.
- (W) Any other legal entity.

(40) "Point source" means any discernible, confined, and discrete conveyance, including, but not limited to, any of the following from which pollutants are or may be discharged:

- (A) A pipe.
- (B) A ditch.
- (C) A channel.
- (D) A tunnel.
- (E) A conduit.
- (F) A well.
- (G) A discrete fissure.
- (H) A container.
- (I) Rolling stock.
- (J) A concentrated animal feeding operation.
- (K) A landfill leachate collection system.
- (L) A vessel.
- (M) Any other floating craft.

The term does not include return flows from irrigated agriculture or agricultural storm run-off. See 327 IAC 5-2-4 for other exclusions.

(41) "Pollutant" means:

- (A) dredged spoil;
- (B) solid waste;
- (C) incinerator residue;
- (D) filter backwash;
- (E) sewage;
- (F) garbage;
- (G) sewage sludge;
- (H) munitions;
- (I) chemical wastes;
- (J) biological materials;
- (K) radioactive materials;
- (L) heat;
- (M) wrecked or discarded equipment;
- (N) rock;
- (O) sand;
- (P) cellar dirt; and
- (Q) industrial, municipal, and agricultural waste;

discharged into water.

(42) "Pollution prevention" means pollution prevention as defined by the United States Environmental Protection Agency under the following:

- (A) The federal Pollution Prevention Act, 42 U.S.C. 13101 et seq.
- (B) The United States Environmental Protection Agency pollution prevention policy statement (June 15, 1993).

(43) "Privately owned treatment works" means any device or system that is as follows:

- (A) Used to treat wastes from any facility whose operator is not the operator of the treatment works.

(B) Not a POTW.

(44) “Publicly owned treatment works” or “POTW” means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature that is owned by a state or municipality. The term includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

(45) “RCRA” means the Resource Conservation and Recovery Act, 42 U.S.C. 6901 through 42 U.S.C. 6992k, as amended on October 19, 1996.

(46) “Recommencing discharger” means a source that recommences discharge after terminating operations.

(47) “Risk” means the probability that a pollutant or pollutant parameter, when released to the environment, will cause an adverse effect in exposed humans or other living organisms.

(48) “Sanitary sewer” means a sewer, to which storm, surface, and ground waters are not intentionally allowed to enter, that conveys liquid and water-carried wastes from the following:

(A) Residences.

(B) Commercial buildings.

(C) Industrial plants.

(D) Institutions.

(49) “Sewage” means all refuse, human excreta, garbage, waste, or waste products or any combination of these substances that:

(A) is potentially capable of contaminating the environment; and

(B) may be collected and carried off in a:

(i) pipe;

(ii) ditch; or

(iii) channel.

(50) “Sewer” means a pipe or conduit that carries wastewater or drainage water.

(51) “Stream design flow” means the stream flow that represents critical conditions, upstream from the source, for protection of:

(A) aquatic life;

(B) human health; or

(C) wildlife.

(52) “Threatened or endangered species” means the following:

(A) Species listed under Section 4 of the ESA*.

(B) Species listed as state threatened or endangered by the Indiana department of natural resources under IC 14-22-34.

(C) Species designated as state threatened or endangered species in the January 22, 1997, database for endangered, threatened, rare, and special concern species maintained by the Indiana natural heritage data center, division of nature preserves, department of natural resources.**

(53) “Tier I criteria” means numeric criteria derived by use of the Tier I procedures in 327 IAC 2-1-8.2 through 327 IAC 2-1-8.7 and 327 IAC 2-1.5-11 through 327 IAC 2-1.5-16 that either have been adopted as numeric criteria into a water quality standard or are used to implement narrative water quality criteria.

(54) “Tier II values” means numerical values derived by use of the Tier II procedures in 327 IAC 2-1.5-12 through 327 IAC 2-1.5-16 that are used to implement narrative water quality criteria.

(55) “Toxic substances” means substances that are or may become harmful to:

(A) aquatic life;

(B) humans;

(C) other animals;

(D) plants; or

(E) food chains;

when present in sufficient concentrations or combinations. The term includes those substances identified as toxic under Section 307(a)(1) of the Clean Water Act.

(56) “Tributaries of the Great Lakes system” means all surface waters of the Great Lakes system that are not open waters of Lake Michigan or connecting channels.

(57) “Unit of government” means a:

(A) county;

(B) municipality; or

(C) township.

(58) “Variance” means a deviation from a:

(A) water quality criterion or value; or

(B) narrative water quality standard;
granted by the commissioner under 327 IAC 2-1-8.8 or 327 IAC 2-1.5-17.

(59) "Wastewater" means the following:

(A) Human excreta, water, scum, sludge, and sewage from:

- (i) sewage disposal systems;
- (ii) retained contents of wastewater holding tanks; or
- (iii) portable sanitary units.

(B) Grease, fats, and retained wastes from grease traps or interceptors.

(C) Wastes carried in liquid from ordinary living processes.

(D) Incidental or accidental seepage from sewage disposal systems.

(60) "Waters" or "waters of the state" means either:

(A) the accumulations of water:

- (i) surface and underground;
- (ii) natural and artificial; and
- (iii) public and private; or

(B) a part of the accumulations of water;

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

(61) "Watershed" has the meaning set forth in IC 14-8-2-310.

(62) "Water use designations" means a use of the surface waters of the state as established by 327 IAC 2-1-3.

(63) "Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

*Section 4 of the ESA is incorporated by reference and may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46206.

**The database for endangered, threatened, rare, and special concern species is incorporated by reference and may be obtained from the Indiana Department of Environmental Management, Office of Water Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46206. (*Water Pollution Control Board; 327 IAC 2-1.3-2*)

327 IAC 2-1.3-3 Maintenance of surface water quality standards (antidegradation standards)

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-1; IC 13-18-4-3

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

Sec. 3. (a) The Tier 1 antidegradation standard is as follows:

(1) For all surface waters of the state, existing uses and the level of water quality necessary to protect existing uses shall be maintained and protected. To ensure this standard is met, the commissioner shall do the following:

(A) Ensure that the level of water quality necessary to protect existing uses is maintained. In order to achieve this requirement, water quality standards use designations must include all existing uses.

(B) Establish controls as necessary on nonpoint sources, where authority exists, and point sources of pollutants to ensure the following:

- (i) The criteria or values, or both, applicable to the designated use are achieved in the water.
- (ii) Any designated use of a downstream water is protected.

(2) Where designated uses of the waterbody are impaired, there shall be no lowering of the water quality with respect to the pollutants or pollutant parameters that are causing the impairment. To ensure this standard is met, the commissioner shall not allow a lowering of water quality for the pollutants or pollutant parameters that prevents the attainment of the designated use or the water quality criterion or value.

(b) The Tier 2 antidegradation standard for HQWs is as follows:

(1) The surface waters of the state whose existing quality for any parameter is better than the water quality criteria or value for that parameter established in 327 IAC 2-1-6 or 327 IAC 2-1.5-8 shall be considered high quality for that parameter consistent with the definition of high quality waters.

(2) This high quality of water shall be maintained and protected unless the commissioner finds, after full satisfaction of intergovernmental coordination and public participation of Indiana's continuing planning process and the provisions in

section 7 of this rule, that allowing a significant lowering of water quality is necessary to accommodate important economic or social development in the area in which the surface waters are located. In allowing a significant lowering of water quality, the commissioner shall assure the following:

(A) Water quality adequate to fully protect designated uses.

(B) That there be achieved:

(i) the highest statutory and regulatory requirements for all new and existing point sources; and

(ii) where authority exists, all cost-effective and reasonable best management practices for nonpoint source control.

(3) The commissioner shall use the antidegradation implementation procedures in sections 4 and 5 of this rule to determine if a significant lowering of water quality shall be allowed unless section 6 of this rule applies.

(c) The Tier 2.9 antidegradation standard for OSRWs is as follows:

(1) For BCCs in OSRWs, as well as waters within two (2) miles upstream of an OSRW, no new or increased loading shall be allowed unless section 6(c) of this rule applies.

(2) For non-BCCs in OSRWs, as well as waters within two (2) miles upstream of an OSRW, these waters shall be maintained and protected in their present high quality unless the commissioner finds, after full satisfaction of intergovernmental coordination and public participation of Indiana's continuing planning process and the provisions in section 7 of this rule, that allowing a significant lowering of water quality is necessary to accommodate important economic or social development in the area in which the surface waters are located. In allowing a significant lowering of water quality, the commissioner shall:

(A) assure water quality adequate to fully protect designated uses;

(B) assure that there be achieved:

(i) the highest statutory and regulatory requirements for all new and existing point sources; and

(ii) where authority exists, all cost-effective and reasonable best management practices for nonpoint source control; and

(C) use the antidegradation implementation procedures in section 5 of this rule to determine if a significant lowering of water quality shall be allowed unless section 6(d) of this rule applies.

(3) Additionally, for non-BCCs in OSRWs, any new or increased discharge limit shall only be allowed if the discharger demonstrates that the proposed discharge or other activities will result in a net improvement to the water quality of the receiving waterbody unless section 6(d) of this rule applies.

(d) The Tier 3 antidegradation standard for ONRWs is that all surface waters designated as an ONRW and their tributaries shall be maintained and protected in their present high quality without degradation except for short term, temporary discharges as described in section 6(b)(3) of this rule. To ensure this antidegradation standard is met, the following requirements apply:

(1) All deliberate actions that result in a new or increased discharge from an existing or new discharger are prohibited.

(2) Discharges to a tributary of an ONRW shall not be allowed if it would cause an increase in the ambient concentration of that pollutant in the ONRW.

(e) Except for OSRWs and ONRWs, any determination made by the commissioner in accordance with Section 316 of the Clean Water Act concerning alternative thermal effluent limitations shall be considered to be consistent with the antidegradation standards contained in this section. (*Water Pollution Control Board; 327 IAC 2-1.3-3*)

327 IAC 2-1.3-4 Antidegradation implementation procedures for bioaccumulative chemicals of concern

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-1; IC 13-18-4-3

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

Sec. 4. (a) In HQWs, for a BCC, unless section 6(c) of this rule applies, a significant lowering of water quality will occur and an antidegradation demonstration will be required when a new or increased loading of any BCC is proposed from any new or existing discharger, either point source or nonpoint source, for which a new, renewed, or modified control document would be required as a result of any activity, including the following:

(1) Construction of a new regulated facility or modification of an existing regulated facility such that a new or modified permit is required.

(2) Modification of an existing regulated facility operating under a current permit such that the production capacity of the facility is increased.

(3) Addition of a new source of untreated or pretreated effluent containing or expected to contain any BCC to an existing

wastewater treatment works, whether public or private.

(4) A request for an increased limit for a BCC in an applicable permit.

(5) Other deliberate activities that, based on the information available, could reasonably be expected to result in an increased loading of any BCC.

(b) In OSRWs, for a BCC, unless section 6(c) of this rule applies or the permittee elects to implement a water quality improvement project or payment of a fee as detailed in section 7(h) of this rule, no new or increased loading of a BCC shall be allowed from a point or nonpoint source for which a new, renewed, or modified control document would be required as a result of any of the activities listed in subsection (a). (*Water Pollution Control Board; 327 IAC 2-1.3-4*)

327 IAC 2-1.3-5 Definitions and coverage for pollutants that are not bioaccumulative

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-1; IC 13-18-4-3

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

Sec. 5. (a) The following definitions apply throughout this section:

(1) “De minimis lowering of water quality” means:

(A) For discharges to waters that are not OSRWs or ONRWs but are within:

(i) four (4) miles upstream of any aquatic federally listed threatened and endangered species or any aquatic state listed endangered species; or

(ii) a distance the commissioner has determined to be necessary for the protection of any species listed in item (i); there is a proposed increase in mass discharged less than or equal to five percent (5%) of the unused loading capacity. At least ninety percent (90%) of the unused loading capacity must remain unused after the lowering of water quality.

(B) For other discharges to waters that are not OSRWs or ONRWs, there is a proposed increase in mass discharged less than or equal to ten percent (10%) of the unused loading capacity. At least eighty-five percent (85%) of the unused loading capacity must remain unused after the lowering of water quality.

(C) For discharges to OSRWs, there is a proposed increase in mass discharged less than or equal to ten percent (10%) of the unused loading capacity. Except for heat, the sum of all previously approved new or increased discharges for the pollutant or pollutant parameter plus the new requested increase shall not exceed ten percent (10%) of the unused loading capacity for the pollutant or pollutant parameter as determined as of the date of the first approved increase. For heat, one (1) of the following conditions must be satisfied:

(i) The new or increased discharge will not result in an increase in temperature:

(AA) in a stream or an inland lake, outside of the designated mixing zone, where applicable; or

(BB) in Lake Michigan, as allowed in 327 IAC 2-1.5-8(c)(4)(D)(iv), at the edge of a one thousand (1,000) foot arc inscribed from a fixed point adjacent to the discharge.

(ii) The new or increased discharge will not result in an increase in waste heat:

(AA) for a stream, that is greater than the amount determined by calculating the number of British thermal units (BTUs) required to raise the temperature of the stream design flow of the receiving stream by one (1) degree Fahrenheit; or

(BB) for Lake Michigan, greater than five-tenths (0.5) billion BTUs per hour.

(2) “Total loading capacity for discharges directly into Lake Michigan” means the product of the applicable Tier I water quality criterion or Tier II value times the sum of the proposed effluent flow from a new or expanding discharger and the approved mixing volume, if any. The total loading capacity shall be expressed as a mass loading rate.

(3) “Total loading capacity for discharges directly into lakes other than Lake Michigan” means the product of the applicable Tier I water quality criterion or Tier II value times the proposed effluent flow from a new or expanding discharger. The total loading capacity shall be expressed as a mass loading rate.

(4) “Total loading capacity for streams” means the product of the applicable Tier I water quality criterion or Tier II value times the sum of the proposed effluent flow from a new or expanding discharger and the stream design flow for the waterbody in the area where the water quality is proposed to be lowered, expressed as a mass loading rate.

(5) “Unused loading capacity” means that amount of the total loading capacity not allocated to point source dischargers by NPDES permits and nonpoint source discharges at the applicable stream design flow. The unused loading capacity is established at the time a request to lower water quality is considered.

(b) For a nonbioaccumulative chemical of concern (non-BCC), except for pH and whole effluent toxicity testing, and unless section 6(d) of this rule applies, a significant lowering of water quality will occur and an antidegradation demonstration will be required when all of the following occur:

(1) One (1) of the following is met:

(A) The non-BCC has a numeric water quality criterion listed in 327 IAC 2-1-6 or 327 IAC 2-1.5-8.

(B) The non-BCC has sufficient data for a Tier I criterion or Tier II value to be calculated under 327 IAC 2-1-8.2 through 327 IAC 2-1-8.7 and 327 IAC 2-1.5-11 through 327 IAC 2-1.5-16.

(2) There is a new or increased limit, based on either mass or concentration, for the non-BCC from an existing or new point or nonpoint source discharger, either point source or nonpoint source, for which a new, renewed, or modified control document is needed, as a result of any activity.

(3) The new or increased limit for the non-BCC results in both of the following:

(A) The new or increased limit for the non-BCC will result in a calculated increase (calculated decrease for dissolved oxygen) in the ambient concentration for the non-BCC in the receiving waterbody outside of the designated mixing zone, where applicable, calculated by using the stream design flow.

(B) The lowering of water quality will be greater than a de minimis lowering of water quality.

(c) The proposed increase in mass discharged shall be determined as follows:

(1) $M_p - M_E$ = proposed increase in mass discharged, where:

(A) M_p = monthly average mass effluent limitation for the pollutant or pollutant parameter in the proposed discharge; and

(B) M_E = monthly average mass effluent limitation for the pollutant or pollutant parameter in the existing permit.

(2) If the existing permit does not contain a monthly average mass effluent limitation for the non-BCC, but does contain a weekly average or daily maximum mass limit, the existing weekly average or daily maximum permit limit shall be converted into a monthly average value to be used in this equation.

(3) If the existing permit does not contain a monthly average mass limit for the non-BCC, but does contain a concentration limit, this concentration limit shall be converted into a monthly average mass value, using the discharge flow determined under 327 IAC 5-2-11.4(a)(9), to be used in this equation.

(4) If the existing permit does not contain an effluent limit for the non-BCC, the actual monthly average mass discharged shall be used in this equation. The actual monthly average mass discharged is the highest monthly average value of the non-BCC in the discharge derived from the most recent two (2) years of monitoring data for the pollutant. If no monitoring data exist, the permittee will be required to monitor its effluent for a minimum of three (3) months to establish a monthly average value.

(5) For a new discharge of a non-BCC, M_E shall equal zero (0).

(d) If a new or increased limit for the non-BCC would cause a significant lowering of water quality, the discharger may accept a limit for the non-BCC that:

(1) is more stringent than would otherwise be applicable; and

(2) would result in the discharge not causing a significant lowering of water quality.

(Water Pollution Control Board; 327 IAC 2-1.3-5)

327 IAC 2-1.3-6 Activities that will not constitute a significant lowering of water quality

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-1; IC 13-18-4-3

Affected: IC 13-11-2-24; IC 13-18-3; IC 13-18-4

Sec. 6. (a) Any existing or new discharger that proposes a new or increased discharge under one (1) of the provisions listed in subsections (c) and (d) must submit information to the commissioner before applying for a facility construction permit under 327 IAC 3, if applicable, or for a new, renewed, or modified control document that describes how the provision is applicable. The commissioner shall review the submittal and determine whether the provision applies. If the commissioner determines the provision does apply, the commissioner shall process the request in the following manner:

(1) Approved activities not required to be public noticed under section 10 of this rule shall be public noticed as part of the draft permit and briefing memo, as described in 327 IAC 5-3-6 and 327 IAC 5-3-7, or fact sheet, as described in 327 IAC 5-3-8.

(2) Activities required to be public noticed under section 10 of this rule shall follow the process described in section 10 of this rule.

(b) Proposed new or increased discharges of a pollutant or pollutant parameter that meet one (1) of the provisions in this section are not considered a significant lowering of water quality as follows:

(1) For HQWs, subsections (c) and (d) apply in their entirety.

(2) For OSRWs, subsections (c) and (d) apply, except that subsection (d)(8) and (d)(9) are not available and subsection (d)(10) must meet the public notice requirements in section 10 of this rule before being approved by the commissioner.

(3) For ONRWs, only short term, temporary, new, or increased discharges may be allowed if the following conditions are met:

- (A) The impact will last less than twelve (12) months.
- (B) A proposed new or existing discharger applies for and receives authorization from the commissioner.

(c) The following new or increased discharges of BCCs are not considered a significant lowering of water quality:

(1) Changes in loadings of any BCC within the existing capacity and processes that are covered by an existing applicable control document. These changes include the following:

- (A) Normal operational variability, including intermittent increased discharges due to wet weather conditions.
- (B) Changes in intake water pollutants not caused by the discharger.
- (C) Increasing the production hours of the facility, for example, adding a second shift.
- (D) Increasing the rate of production.

(2) Bypasses not prohibited by 327 IAC 5-2-8(11).

(3) New or increased discharges of a BCC above the existing mass discharged due to increasing the sewer area, connection of new sewers and customers, or acceptance of trucked-in wastes, such as septage and holding tank wastes, by a POTW, provided that:

- (A) the increase is within the existing NPDES permit limits of the facility;
- (B) there is no increased loading of BCCs from nondomestic wastes; and
- (C) no significant change is expected in the composition of the wastewater discharged.

(4) New or increased discharges of a pollutant or pollutant parameter due to:

- (A) response actions under CERCLA, as defined in IC 13-11-2-24, as amended;
- (B) corrective actions under RCRA, as amended; or
- (C) similar federal or state authorities;

undertaken to alleviate a release into the environment of hazardous substances, pollutants, or contaminants that may pose an imminent and substantial danger to public health or welfare.

(d) The following new or increased discharges of non-BCCs are not considered a significant lowering of water quality:

(1) Changes in loadings of any non-BCC within the existing capacity and processes that are covered by an existing applicable control document. These changes include the following:

- (A) Normal operational variability, including intermittent increased discharges due to wet weather conditions.
- (B) Changes in intake water pollutants not caused by the discharger.
- (C) Increasing the:
 - (i) production hours of the facility, for example, adding a second shift; or
 - (ii) rate of production.

(2) New limits for a non-BCC for an existing permitted discharger that will not allow an increase in either the existing mass or concentration of the non-BCC discharged, including new limits that are a result of the following:

- (A) New or improved:
 - (i) monitoring data; or
 - (ii) analytical methods.
- (B) New or modified:
 - (i) water quality criteria or values; or
 - (ii) effluent limitations guidelines, pretreatment standards, or control requirements for POTWs.

(3) New or increased discharges of a pollutant when the:

- (A) facility withdraws intake water containing the pollutant from the same body of water; and
- (B) new or increased discharge of the pollutant is due solely to the presence of the pollutant in the intake.

(4) New or increased discharges of a non-BCC due solely to implementation of enforceable industrial or municipal controls on wet weather flows, including combined sewer overflows and individual NPDES permits for storm water associated with industrial activity, when there is not a calculated increase in the quantity and concentration of pollutants discharged to the same body of water.

(5) New or increased discharges of a non-BCC that will result only in a short term, temporary (not to exceed twelve (12) months) lowering of water quality.

(6) A new or increased discharge of a substance used to treat zebra mussels or other nuisance species in an intake water pipe or structure if the commissioner determines that the new or increased discharge will not cause adverse effects on the

following:

- (A) Human health.
- (B) Aquatic life.
- (C) Wildlife.

(7) New or increased discharges of a pollutant or pollutant parameter due to:

- (A) response actions under CERCLA, as defined in IC 13-11-2-24, as amended;
- (B) corrective actions under RCRA, as amended; or
- (C) similar federal or state authorities;

undertaken to alleviate a release into the environment of hazardous substances, pollutants, or contaminants that may pose an imminent and substantial danger to public health or welfare.

(8) New or increased discharges of a non-BCC, where there is a contemporaneous enforceable decrease in the actual loading of the non-BCC from sources contributing to the same body of water such that there is a net decrease in the loading of the non-BCC to the same body of water or sensitive area.

(9) A new or increased discharge of a non-BCC if the applicant demonstrates the following:

- (A) The new or increased discharge is necessary to accomplish a reduction in the discharge of another pollutant or pollutant parameter.
- (B) All reasonable and cost-effective methods for minimizing or preventing the new or increased discharge have been taken.
- (C) There will be an improvement in water quality in the waterbody. An improvement in water quality will occur if the new or increased discharge of the non-BCC is:
 - (i) not more bioaccumulative; and
 - (ii) either less bioaccumulative or less toxic than the reduced pollutant or pollutant parameter.

In making these determinations regarding bioaccumulation, the bioaccumulation factor methodology under 327 IAC 2-1.5-13 will be used.

(10) New or increased discharges of a pollutant or pollutant parameter due to increasing the sewered area, connection of new sewers and customers, or acceptance of trucked-in wastes, such as septage and holding tank wastes, by a POTW, provided that:

- (A) the increase is within the design flow of the facility;
- (B) there is no increased loading of BCCs from nondomestic wastes; and
- (C) no significant change is expected in the characteristics of the wastewater discharged.

(11) New or increased discharges of noncontact cooling water that will not:

- (A) increase the temperature of the receiving waterbody outside of the designated mixing zone, where applicable; or
- (B) require numeric WQBELs for toxic substances or WET as determined under 327 IAC 5-2-11.5.

(e) As used in subsection (c), the following definitions apply:

- (1) "Same body of water" has the meaning set forth in section 327 IAC 5-2-11.5(b)(4)(B)(i).
- (2) "Sanitary wastewater" means the liquid and water-carried waste from:

- (A) residences;
- (B) commercial buildings;
- (C) industrial plants;
- (D) institutions; and
- (E) other places of human occupancy;

that is transported by sewers and is primarily composed of human and household waste. The term does not include industrial process wastewater.

(Water Pollution Control Board; 327 IAC 2-1.3-6)

327 IAC 2-1.3-7 Antidegradation demonstration and determination

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-1; IC 13-18-4-3

Affected: IC 13-18-3-14; IC 13-18-4; IC 13-18-7; IC 13-23-13; IC 13-24-1; IC 13-25-5

Sec. 7. (a) If the provisions listed in section 6 of this rule do not apply, the person or entity proposing a significant lowering of water quality, as defined in sections 4 and 5 of this rule, must submit an antidegradation demonstration to the commissioner in accordance with this section. The antidegradation demonstration shall be submitted with the application for a new, renewed, or modified NPDES permit.

(b) All antidegradation demonstrations shall contain the following elements:

(1) An identification of all pollutants or pollutant parameters for which the antidegradation demonstration is required, including:

- (A) an estimate of the mass and concentration proposed to be discharged; and**
- (B) the current and projected concentration in the receiving water.**

(2) An identification of the receiving water or waters that would be affected by the new or increased discharge, and a description of the physical, biological, and chemical conditions of the waterbody as determined by:

- (A) available information; or**
- (B) a reasonable investigation conducted by the applicant if no information is available.**

(3) An identification of measures available to the applicant to minimize or prevent the proposed lowering of water quality. A separate analysis shall be performed for each pollutant or pollutant parameter for which there may be significant lowering of water quality. Each analysis shall include the following:

(A) An analysis of:

(i) pollution prevention alternatives and techniques, including:

- (AA) new and innovative technologies; and**
- (BB) the ways to avoid the new discharge;**

available to the applicant that would minimize or prevent the proposed significant lowering of water quality;

(ii) the mass loadings and effluent concentrations attainable by the alternatives and techniques; and

(iii) their costs relative to the cost of treatment necessary to achieve applicable effluent limitations.

(B) An analysis of:

(i) alternative or enhanced treatment techniques available to the applicant that would minimize or prevent the proposed significant lowering of water quality;

(ii) the mass loadings and effluent concentrations attainable by the alternatives and enhanced treatment techniques; and

(iii) their costs relative to the cost of treatment necessary to achieve applicable effluent limitations.

(C) An evaluation of the feasibility and costs of connecting to an existing publicly or privately owned treatment works within the vicinity of the applicant that is willing to accept wastewater from other entities.

(D) For POTWs, if the proposed significant lowering of water quality is a result of a proposed new or increased discharge from one (1) or more indirect dischargers, the antidegradation demonstration shall also include the following:

(i) The requirements of clauses (A) and (B) shall be completed for the indirect discharger or dischargers as well as for the POTW. The POTW may require the indirect dischargers to prepare this information.

(ii) If one (1) or more of the indirect dischargers proposes or does discharge to a:

- (AA) combined sewer; or**
- (BB) sanitary sewer that is connected to a combined sewer;**

all combined sewer overflows (CSOs) between the point of discharge to the sewer and the POTW shall be identified.

(4) Documentation showing that the applicant has made a good faith effort to provide notice to all government or privately sponsored conservation projects that have specifically targeted improved water quality or enhanced recreational opportunities on the proposed receiving waterbody in the area of the new or increased discharge. The notice shall include a list of the parameters for which a significant lowering of water quality is proposed.

(c) The antidegradation demonstration shall also contain an analysis of the positive and negative social or economic development impacts to the area in which the receiving waters are located that will occur if the significant lowering of water quality is allowed. This analysis shall include the following:

(1) The important social, economic, and environmental benefits to be realized through the project or activity if the water quality is lowered, including, as appropriate, the following:

- (A) Industrial, commercial, or residential growth in the community.**
- (B) Changes in or retention of the number and types of jobs.**
- (C) Changes in the tax revenues generated.**
- (D) The extent to which an environmental or public health problem is corrected.**
- (E) Other social and economic benefits to the community.**

(2) The important social, economic, and environmental benefits to be lost if water quality is lowered, such as lost or lowered recreational opportunities.

(d) Instead of the information required by subsections (b) and (c), dischargers proposing:

(1) a response action under CERCLA;

- (2) a corrective action under RCRA;
 - (3) an action under similar federal or state authorities, including:
 - (A) an underground storage tank (UST) corrective action under IC 13-23-13;
 - (B) a remediation of petroleum releases under IC 13-24-1;
 - (C) a voluntary remediation under IC 13-25-5; or
 - (D) an abatement or correction of any polluted condition under IC 13-18-7;
 - (4) a new or increased discharge of a non-BCC that demonstrates:
 - (A) the new or increased discharge is necessary to accomplish a reduction in the release of one (1) or more air pollutants;
 - (B) all reasonable and cost-effective methods for minimizing or preventing the new or increased discharge have been taken; and
 - (C) there will be an environmental improvement, which will occur when the applicant demonstrates that the reduction in the discharge of the air pollutant:
 - (i) is necessary to meet a state or federal air quality standard or emission requirement; or
 - (ii) will substantially reduce human exposure to hazardous air pollutants or other air pollutants that are subject to state or federal air quality standards; or
 - (5) a new discharge from a sanitary wastewater treatment plant constructed to alleviate a public health concern, for example, a connection of existing residences currently on septic systems;
- may submit information to the commissioner demonstrating that the action minimizes the proposed lowering of water quality and will use the most cost-effective pollution prevention and treatment techniques available.

(e) Upon receipt of an antidegradation demonstration, the commissioner shall provide notice and request comment. The commissioner shall hold a public meeting on the application in accordance with section 10 of this rule if:

- (1) the proposed discharge is to an OSRW; or
- (2) a public meeting is requested by at least twenty-five (25) persons.

The commissioner may hold a public meeting in accordance with section 10 of this rule if the commissioner otherwise deems such a meeting necessary or appropriate. The commissioner shall quantify the increased risk to human health due to new or increased discharges of BCCs. This information shall be available for inspection and copying as a public record before the public meeting is held.

(f) Once the commissioner determines that the information provided by the discharger proposing a new or increased discharge is administratively complete, the commissioner shall make an antidegradation determination in accordance with the following:

- (1) The commissioner shall consider the following, as appropriate:
 - (A) The magnitude of the proposed lowering of water quality.
 - (B) The anticipated impact of the proposed lowering of water quality on aquatic life and wildlife, including the following:
 - (i) Threatened and endangered species.
 - (ii) Important commercial or recreational sport fish species.
 - (iii) Other individual species.
 - (iv) The overall aquatic community structure and function.
 - (C) The anticipated impact of the proposed lowering of water quality on the following:
 - (i) Human health.
 - (ii) The overall quality and value of the water resource.
 - (D) The degree to which water quality may be lowered in waters located within the following:
 - (i) National, state, or local parks.
 - (ii) Preserves or wildlife areas.
 - (iii) OSRWs or ONRWs.
 - (E) The effects of lower water quality on the economic value of the waterbody for the following:
 - (i) Recreation, tourism, and other commercial activities.
 - (ii) Aesthetics.
 - (iii) Other use and enjoyment by humans.
 - (F) The extent to which the resources or characteristics adversely impacted by the lowered water quality are unique or rare within the locality or state.
 - (G) The cost of the water pollution controls associated with the proposed activity.
 - (H) The availability, reliability, cost-effectiveness, and technical feasibility of the:
 - (i) nondegradation;

- (ii) minimal degradation; or
- (iii) mitigative technique;

alternatives and the effluent reduction benefits and water quality benefits associated with such alternatives.

(I) The availability, cost-effectiveness, and technical feasibility of central or regional sewage collection and treatment facilities, including long range plans outlined in:

- (i) state or local water quality management; and
- (ii) applicable facility;

planning documents.

(J) The reliability of the preferred alternative including, but not limited to, the possibility of recurring operational and maintenance difficulties that would lead to increased degradation.

(K) The following economic and social factors:

- (i) The condition of the local economy.
- (ii) The changes in the number and types of jobs.
- (iii) The state and local tax revenue to be generated.
- (iv) Other economic and social factors as the commissioner deems appropriate.

(L) Any action or recommendation relevant to the antidegradation demonstration made by a:

- (i) county;
- (ii) township; or
- (iii) municipality;

potentially affected by the new or increased loading.

(M) Any other information regarding the proposed activities and the affected waterbody that the commissioner deems appropriate.

(2) The commissioner shall deny some or all of the request to lower water quality if:

(A) cost-effective measures that would prevent or minimize the proposed lowering are reasonably available and the discharger has chosen not to implement these measures;

(B) the action that would cause the lowering is not necessary to accommodate important economic or social development in the area; or

(C) the action would jeopardize state listed endangered or federally listed threatened and endangered species.

(3) The commissioner may approve some or all of the activities that lower water quality only if:

(A) there has been:

- (i) an examination of nondegradation, minimal degradation, and mitigative technique alternatives;
- (ii) a review of the social and economic issues related to the activity;
- (iii) a public participation process; and
- (iv) appropriate intergovernmental coordination; and

(B) the commissioner determines that the lower water quality is necessary to accommodate important social or economic development in the area in which the waterbody is located.

(4) In no event may a permit be granted that would not meet the requirements of section 3 of this rule.

(g) When the commissioner makes a determination on an antidegradation demonstration, the determination shall be:

(1) summarized in the public notice form; and

(2) incorporated into the draft permit and the fact sheet that is made available for public comment under 327 IAC 5-3-9.

A final antidegradation decision shall be incorporated into the final NPDES permit and the fact sheet.

(h) In addition to the provisions in subsections (b) through (g), dischargers proposing to cause a significant lowering of water quality in an OSRW or exceptional use water shall choose to follow the following provisions in either subdivision (1) or (2) for each activity undertaken that will result in a significant lowering of water quality in an OSRW or exceptional use water:

(1) Implementation of a water quality project in the watershed of the OSRW or exceptional use water that will result in an overall improvement of the water quality of the OSRW or exceptional use water. The water quality project requirements are as follows:

(A) The discharger shall submit the water quality project framework to the commissioner, including the following information:

(i) A detailed description of the project, including the type and quantity of pollutants that will be eliminated as a result of the project.

(ii) Sufficient information to clearly demonstrate that the project will result in an overall improvement in water quality

in the OSRW or exceptional use water.

(B) Any data used to assess overall water quality improvement must be less than seven (7) years old and specific to the OSRW or exceptional use water.

(C) Upon receipt of a water quality improvement project, the commissioner shall provide notice and request comment. The commissioner shall hold a public meeting on the application in accordance with section 10 of this rule if:

(i) the proposed discharge is to an OSRW or exceptional use water; or

(ii) a public meeting is requested by at least twenty-five (25) persons.

The commissioner may hold a public meeting in accordance with section 10 of this rule if the commissioner otherwise deems such a meeting necessary or appropriate.

(D) Once the commissioner determines that the information provided by the discharger proposing a water quality improvement project is administratively complete, the commissioner shall make a determination within one hundred twenty (120) days.

(2) Payment of a fee determined by the department not to exceed five hundred thousand dollars (\$500,000) based on the type and quantity of increased pollutant loadings for deposit in the OSRW improvement fund established under IC 13-18-3-14. The department shall calculate the fee based on projected costs of potential projects determined by the permittee that will result in a net improvement in water quality.

(Water Pollution Control Board; 327 IAC 2-1.3-7)

327 IAC 2-1.3-8 Designation of a waterbody as an outstanding state resource water

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-1; IC 13-18-4-3

Affected: IC 13-14-8-4; IC 13-14-8-5; IC 13-14-9; IC 13-18-3; IC 13-18-4; IC 14-29-6

Sec. 8. (a) The department shall initiate a rulemaking to designate a waterbody as an OSRW if the waterbody has a unique or special:

- (1) ecological;
- (2) recreational; or
- (3) aesthetic;

significance.

(b) For purposes of subsection (a), a waterbody has unique or special ecological significance if the quality of the waterbody is excellent in two (2) of the following areas:

- (1) Biological.
- (2) Chemical.
- (3) Physical.

(c) For purposes of subsection (a), a waterbody has unique or special recreational or aesthetic significance if at least three (3) of the following are met:

- (1) The waterbody has excellent aesthetic quality.
- (2) The waterbody:

- (A) is contained in;
- (B) is partially contained in; or
- (C) borders on;

a park, forest or natural area, or nature preserve designated for special protection on a federal, state, or local level.

(3) Threatened or endangered species are:

- (A) contained within; or
- (B) dependent on;

the waterbody.

(4) The waterbody is:

- (A) an outstanding recreational sport fishery; or
- (B) a first or second order stream in an undeveloped watershed.

(d) The following definitions apply throughout this section:

(1) "Excellent aesthetic quality" means a waterbody that is recommended for designation by the Indiana department of natural resources or is designated by the Indiana natural resources commission as a scenic or recreational river under IC 14-29-6 or that achieves a score of at least thirteen (13) when evaluated using the following framework:

(A) Naturalness of bank vegetation:		
25% or less disturbed; some light cutting, grazing, or thinning may have occurred as long as the character of the vegetation type remains intact		3
25-50% disturbed		2
51-75% disturbed; heavy grazing, cutting, or clearing		1
More than 75% disturbed		0
(B) Vegetation depth-length index, two (2) classes of depth used in determining the index:		
(i) native vegetation extending back at least one hundred (100) feet is simply measured by the miles of its length along the stream; and		
(ii) forest or brush fringes and strips of vegetation less than one hundred (100) feet deep are given one-half (½) the number of miles of their length along the stream.		
Index of at least 75%		3
Index of 51-74%		2
Index of 25-50%		1
Less than 25%		0
(C) Physical modification of the stream or its course:		
Not channelized and no dams		3
Inundation or channelization, or both, that creates artificial pools that back up water for 3% or less of the stream length at normal summer levels		2
Inundation or channelization, or both, have a cumulative total of more than 3% but not more than 5%		1
Inundation or channelization, or both, have a cumulative total of more than 5%		0
(D) Human development of flood plains, slopes, and visible uplands. The stream (or segment) is to be rated when foliage is full for both of the following:		
(i) Visible urban impact.		
(ii) Additional visible structures.		
	Visible urban impact	
100% nonurban along banks		1.5
Up to 5% urban		1
Between 5% and 10% urban		0.5
More than 10% urban		0
	Additional visible structures	
Up to 0.5 additional visible houses, cabins, industrial buildings, gravel pits, or clusters per mile		1.5
Between 0.6 and 1.0 additional visible houses, cabins, industrial buildings, gravel pits, or clusters per mile		1
Between 1.1 and 2.0 additional visible houses, cabins, industrial buildings, gravel pits, or clusters per mile		0.5
More than 2.0 additional visible houses, cabins, industrial buildings, gravel pits, or clusters per mile		0
(E) Special natural features. Views, species of plants, fish and wildlife habitat, or geological formation occurring anywhere along the length of the stream (or segment) either singly or in combinations that are significant.		
National significance		4
Statewide significance		3
Regional significance		2
Local significance		1
Not of significance		0
(F) Aesthetic quality of water:		
No visible pollution except for highly unusual accidents; turbid only after heavy rain		3
Visible pollution except for muddy water is rare		2
Pollution periodically but infrequently, visible, chronically turbid		1
Pollution is chronic and visible, not including muddy surface waters		0

(G) Paralleling roads:

Less than 0.08 mile of paralleling county roads within 1,000 feet of the waterbody per mile. No state, United States, or interstate highways within 1,000 feet of waterbody	3
Between 0.09 and 0.2 mile of paralleling county roads or state highways within 1,000 feet of the waterbody per mile. No United States or interstate highways within 1,000 feet of waterbody	2
Between 0.3 and 0.5 miles of paralleling county roads or state or United States highways within 1,000 feet of the waterbody per mile	1
More than 0.5 miles of paralleling roads within 1,000 feet of the waterbody per mile	0

(H) Crossings:

0.3 crossings per mile	3
0.4 0.5 crossings per mile	2
0.6 1.0 crossings per mile	1
More than 1.0 or more crossings per mile	0

(2) “Excellent biological quality” means that the:

(A) fish community scores at least fifty (50) points using a valid Index of Biotic Integrity (IBI) scoring system of Karr et al. (1986) and as modified for Indiana by Simon (1991, 1992, 1994, 1995, 1998), Simon et al. (1995), and Barbour et al. (1997)*; or

(B) instream macroinvertebrate community scores within the upper twenty-five percent (25%) of the distribution of Indiana sites sampled using an appropriate and valid invertebrate community index and classification system as presented in Barbour et al. (1997).

(3) “Excellent chemical quality” means a determination by a comprehensive assessment of the watershed. This assessment shall consider the chemical water quality, using accepted and reliable analysis techniques and methods that characterize the water quality, including the following:

- (A)** Suspended inorganic matter.
- (B)** Dissolved major ions.
- (C)** Dissolved nutrients.
- (D)** Suspended and dissolved organic matter.
- (E)** Gases.
- (F)** Trace metals.

Excellent chemical quality shall be determined by comparison to reference conditions that have been determined based upon similar studies that characterize the optimal condition for the region.

(4) “Excellent physical quality” means the waterbody or segment has exceptional physical characteristics considering:

- (A)** geological;
- (B)** morphological; and
- (C)** hydrological;

factors.

(5) “Outstanding recreational sport fishery” means a waterbody characterized as being sustained through natural fish reproduction and providing a variety of sport fish species including many of the following:

- (A)** Rock bass.
- (B)** Sauger.
- (C)** Largemouth bass.
- (D)** Smallmouth bass.
- (E)** Spotted bass.
- (F)** Flathead catfish.
- (G)** Channel catfish.
- (H)** Northern pike.

These sport fish populations comprise an appropriate portion of the fish community (relative abundance) and have a representative length frequency distribution and age structure indicative of stable and healthy systems. Such systems also provide higher than average sport fish catch rates, including presence of large individual fish.

(6) “Stream order” means a classification of stream size where the smallest, unbranched tributaries of a drainage basin are designated first order streams in an undeveloped watershed. Where two (2) first order streams join, a second order stream is formed. For the purposes of water quality standards application, stream order is determined from United States Geological Service topographic maps with a scale of 1:24,000.

(7) “Undeveloped watershed” means that the watershed meets all of the following tests:

(A) Less than three percent (3%) of the land in the watershed is employed in urban land uses.

(B) There are no municipalities located in the watershed that have a population greater than five thousand (5,000).

As used in this subdivision, "watershed" means all of the land area that drains to the waterbody at issue, including the land area that drains to tributaries or upstream segments.

(e) A waterbody may be recommended for designation as an OSRW through one (1) of the following procedures:

(1) The board receives a proposal for designation under IC 13-14-8-5, which must be on an application form consistent with the form described in subsection (f).

(2) The commissioner decides under subsection (a) to commence a rulemaking before the board.

(3) An interested party submits a nomination to the commissioner under the procedures set forth in subsection (f), and the commissioner:

(A) determines that the nomination has merit; and

(B) decides to commence a rulemaking before the board with regard to that nomination.

(f) In September of each year, the commissioner shall publish a notice in the Indiana Register announcing that interested parties may submit nominations for waterbodies to be considered for designation as an OSRW. The Indiana Register notice must contain an application form requesting the submittal of available information that supports the designation of the nominated waterbody, including available information showing that the waterbody meets the prerequisites for designation as specified in subsection (a). All nominations must be:

(1) received by the commissioner within sixty (60) days after publication of the notice; and

(2) submitted on the application form published in the Indiana Register.

(g) If the board receives a proposal for designation under subsection (e)(1) and determines the proposal is not plainly devoid of merit, or if the commissioner decides to commence a rulemaking under subsection (e)(2) or (e)(3), the commissioner shall do the following:

(1) Prepare a detailed analysis of the nominated waterbody. This analysis, at a minimum, must include the following information:

(A) A specific delineation of the boundaries of the:

(i) waterbody; and

(ii) watershed area;

that would be affected by the applicable implementation procedures.

(B) A detailed discussion of the reason or reasons that the waterbody is being proposed or considered for special designation.

(C) A detailed description of the procedures to be followed by the:

(i) commissioner; and

(ii) board;

in considering whether the waterbody should be designated.

(D) A comparison of the existing antidegradation requirements applicable to the waterbody to all potential antidegradation requirements applicable to that waterbody if successfully designated as an OSRW.

(E) Economic impact analyses, presented by any interested party, taking into account future:

(i) population; and

(ii) economic development;

growth.

(F) The biological criteria scores for the waterbody, using factors that consider:

(i) fish communities;

(ii) macroinvertebrate communities; and

(iii) chemical quality criteria;

using representative biological data from the waterbody under consideration.

(G) The level of current urban and agricultural development in the watershed.

(H) Whether the designation of the waterbody as an OSRW will have a significant adverse effect on future population, development, and economic growth in the watershed, if the waterbody is in a watershed that:

(i) has more than three percent (3%) of its land in urban land uses; or

(ii) serves a municipality with a population greater than five thousand (5,000).

(I) Whether the designation of the waterbody as an OSRW is necessary to protect the unique or special:

(i) ecological;

(ii) recreational; or
(iii) aesthetic;
significance of the waterbody.

(2) The commissioner shall prepare a summary document of the detailed analysis required under subdivision (1). The summary document must be mailed, using certified mail with return receipt requested, to the following parties within thirty (30) days of completion of the analysis:

(A) All interested parties that have requested notice of proposed designations from the:
Indiana Department of Environmental Management
Office of Water Management, Planning Branch, Rules Section
P.O. Box 6015
Indianapolis, Indiana 46206-6015.

(B) All government units affected by the:

(i) designation; and
(ii) implementation procedures of the designation.

In this notification, IDEM shall indicate that the legislative body of the governmental units may adopt a resolution for consideration by the department regarding the designation.

(C) All NPDES permit holders affected by the:

(i) designation; and
(ii) implementation procedures.

(3) The commissioner shall publish a notice announcing the consideration of the rulemaking in the largest daily circulation newspaper in the county or counties in which the watershed of the waterbody being considered for designation is located. The notice shall:

(A) discuss the availability of the detailed analysis required under subdivision (1); and
(B) include the summary document required under subdivision (2).

(4) The commissioner shall also publish the summary document required under subdivision (2) in the Indiana Register.

(5) All of the notices required under subdivisions (2) through (4) must be mailed and published at least thirty (30) days before the public hearing required under subdivision (6).

(6) If the proposed designation meets the applicable eligibility requirements of this section, the commissioner shall hold a public hearing regarding the proposed designation at a location in the affected watershed. At the public hearing, the commissioner shall present the information required in subdivision (1). Any interested party may present oral testimony and written comments. After considering the oral testimony and written comments, the commissioner shall take one (1) of the following actions, as applicable:

(A) If proceeding under subsection (e)(1), submit a recommendation to the board as to whether a rulemaking should be commenced, along with copies of the following:

(i) The analysis and summary developed under subdivisions (1) and (2).
(ii) Any written comments that were submitted to the commissioner.
(iii) A summary of those comments.
(iv) The record of the public hearing.

The commissioner's recommendation must be made available to the public at least fifteen (15) days before the board holds a hearing on the proposed designation.

(B) If proceeding under subsection (e)(2) or (e)(3) and based upon:

(i) the analysis and summary developed under subdivisions (1) and (2);
(ii) any written comments submitted to the commissioner; and
(iii) the testimony at the public meeting;

publish a notice in the Indiana Register under IC 13-14-9.

(h) In adopting rules to designate a waterbody as an OSRW, the board shall take into account the applicable factors in IC 13-18-3-2 and IC 13-14-8-4.

(i) The commissioner shall present:

(1) a summary of the comments received from the comment period; and
(2) information that supports the waterbody designation under subsection (c) as an OSRW;

to the environmental quality service council not later than one hundred twenty (120) days after the rule regarding the designation is finally adopted by the board.

*Index of Biotic Integrity (IBI) scoring system of Karr et al. (1986) and as modified for Indiana by Simon (1991, 1992, 1994, 1995, 1998), Simon et al. (1995), and Barbour et al. (1997), is incorporated by reference and may be obtained from the Indiana Department of Environmental Management, Office of Water Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46206. (*Water Pollution Control Board; 327 IAC 2-1.3-8*)

327 IAC 2-1.3-9 Designation of a waterbody as an outstanding national resource water

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-1; IC 13-18-4-3

Affected: IC 13-14-8-4; IC 13-14-9; IC 13-18-3; IC 13-18-4

Sec. 9. (a) A waterbody may be designated as an ONRW only by the general assembly after recommendations for designation are made by the:

- (1) board; and
- (2) environmental quality service council.

(b) Before a waterbody may be recommended for designation as an ONRW to the general assembly under IC 13-18-3-2, the department shall provide for an adequate public notice and comment period regarding the designation, as provided under subsection (c).

(c) If a waterbody is recommended for designation as an ONRW under subsection (a), the commissioner shall do the following:

(1) Prepare a detailed analysis of the possible designation. This analysis, at a minimum, must include the following information:

(A) A specific delineation of the boundaries of the:

- (i) waterbody; and
- (ii) watershed area;

that would be affected by the applicable implementation procedures.

(B) A detailed discussion of the reason or reasons that the waterbody is being proposed or considered for designation as an ONRW. This discussion must include an explanation of how the waterbody meets the designation criteria set forth at IC 13-18-3-2(d).

(C) A comparison of the existing antidegradation requirements applicable to the waterbody to all potential antidegradation requirements applicable to that waterbody if successfully designated as an ONRW.

(D) Whether the designation of the waterbody as an ONRW is necessary to protect the characteristics of the waterbody that qualify it for designation as an ONRW.

(2) The commissioner shall prepare a summary document of the detailed analysis required under subdivision (1). The summary document must be mailed, using certified mail with return receipt requested, to the following parties within thirty (30) days of completion of the analysis:

(A) All interested parties that have requested notice of proposed designations from the:

Indiana Department of Environmental Management
Office of Water Management, Planning Branch, Rules Section
P.O. Box 6015
Indianapolis, Indiana 46206-6015.

(B) All government units affected by the:

- (i) designation; and
- (ii) implementation procedures of the designation.

In this notification, IDEM shall indicate that the legislative body of the governmental units may adopt a resolution for consideration by the department regarding the designation.

(C) All NPDES permit holders affected by the:

- (i) designation; and
- (ii) implementation procedures.

(3) The commissioner shall publish a notice announcing the consideration of the designation of the waterbody as an ONRW in the Indiana Register. The notice must:

(A) include the:

- (i) analysis prepared under subdivision (1); and
- (ii) summary document prepared under subdivision (2); and

(B) provide for a public comment period concerning the designation that must be at least thirty (30) days in duration.

(d) The commissioner shall present:

- (1) a summary of the comments and information received during the comment period; and**
- (2) the department's recommendation concerning designation;**

to the environmental quality service council not later than ninety (90) days after the end of the comment period. (Water Pollution Control Board; 327 IAC 2-1.3-9)

327 IAC 2-1.3-10 Public participation in antidegradation decisions

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-1; IC 13-18-4-3

Affected: IC 13-15-4-1; IC 13-15-4-3; IC 13-18-3; IC 13-18-4

Sec. 10. An application for:

- (1) an antidegradation demonstration under section 7 of this rule; and**
- (2) certain other activities under section 6 of this rule;**

must meet the requirements of 327 IAC 5-2-11.2. (Water Pollution Control Board; 327 IAC 2-1.3-10)

SECTION 3. 327 IAC 2-1.5-18 IS AMENDED TO READ AS FOLLOWS:

327 IAC 2-1.5-18 Designation of a waterbody as a limited use water

Authority: IC 13-14-8; IC 13-14-9; IC 13-18-3

Affected: IC 13-18-4

Sec. 18. (a) A person who wishes to propose that a waterbody within the Great Lakes system be considered by the commissioner for designation as a limited use ~~or outstanding state resource~~ water shall submit to the commissioner a written proposal:

- (1) identifying the waterbody; ~~and the proposed designation~~
- (2) stating the rationale for the proposal; and
- ~~(2)~~ (3) including any other supporting documentation.

(b) The commissioner shall evaluate ~~the proposal considering the following:~~ ~~(1) and consider~~ waters that meet the following conditions ~~may be considered~~ for designation as a limited use water:

~~(A)~~ (1) Waters that have:

- ~~(i)~~ (A) naturally poor physical characteristics, that is, suitable habitat to support a well-balanced fish community is severely limited or absent, including lack of sufficient flow ($Q_{7,10}$ low flow upstream of any existing or proposed discharge of one-tenth (0.1) cubic foot per second or less);
- ~~(ii)~~ (B) naturally poor chemical quality;
- ~~(iii)~~ (C) irreversible man-induced conditions that came into existence ~~prior to before~~ January 1, 1983; and
- ~~(iv)~~ (D) no unique or exceptional features.

~~(B)~~ (2) No potential or existing uses made of the waterbody by people in the immediate area would be adversely affected by a limited use designation.

~~(C)~~ (3) The waterbody has been evaluated by a use attainability analysis.

~~(2)~~ Factors that relate to outstanding state resource water designations may include; but are not limited to; the following:

- ~~(A)~~ The presence of a unique or exceptional habitat or species in the waterbody.
- ~~(B)~~ The presence of a rare or endangered species in the waterbody.
- ~~(C)~~ The presence of exceptional aesthetic quality in the immediate environs of the waterbody.
- ~~(D)~~ The waterbody is within the boundaries of or flows through a designated natural area, nature preserve, or state or national park or forest.
- ~~(E)~~ The waterbody supports an excellent sports fishery.
- ~~(F)~~ The waterbody possesses exceptional quality.
- ~~(G)~~ Intensive recreational use is made of the waterbody.
- ~~(H)~~ Designation as a natural, scenic, or recreational waterbody by the Indiana department of natural resources.

Irrespective of these factors, the commissioner's evaluation will generally be a case-by-case determination using information obtained from an on-site evaluation. If appropriate, the commissioner shall consult with the Indiana department of natural resources concerning the designation of a waterbody as an outstanding state resource water.

(c) After completion of the evaluation under subsection (b), if the commissioner determines that reclassification of the waterbody

is appropriate, the commissioner shall initiate a rulemaking to include the waterbody either as a limited use water or an outstanding state resource water under section 19 of this rule.

(d) All waters that are designated as a limited use water under section 19(a) of this rule must be evaluated for restoration and upgrading at each triennial review of this rule.

(e) The department shall initiate a special designations rulemaking in accordance with the following:

(1) The special designations rulemaking shall be initiated for the purposes of the following:

(A) Determining whether any other designations in addition to:

(i) outstanding state resource waters;

(ii) high quality waters;

(iii) limited use waters; and

(iv) outstanding national resource waters;

should be established.

(B) Determining the appropriate factors to consider in designating a waterbody;

(C) Identifying a list of waterbodies for each special designation. and

(D) Specifying antidegradation implementation procedures for outstanding state resource waters, outstanding national resource waters, and for any other newly established designation.

(2) Prior to Before the presentation of proposed rules on special designations to the board, the department shall consult with:

(A) other state and federal agencies; and with

(B) interested persons within Indiana;

as appropriate. The department shall provide information to the public on the history, intent, and importance of the current outstanding state resource water designation and the list of outstanding state resource waters.

(3) The department shall seek comment, as part of the second notice on special designations, on adding waterbodies to the list of outstanding national resource waters, on the specific interim antidegradation implementation procedures included in 327 IAC 5-2-11.7 for outstanding state resource waters, and on procedures for addressing increases not included in the specific exceptions listed in 327 IAC 5-2-11.7(c)(2).

(4) The following statement shall be included in the second notice and shall be used as a guide during the special designation rulemaking: "The interim antidegradation implementation procedures for outstanding state resource waters in 327 IAC 5-2-11.7 are intended only to assure that a specific process exists to address proposed changes pending the completion of the special designation rulemaking. The board does not consider the specific procedures listed in 327 IAC 5-2-11.7 as a final policy statement or as binding on the board in the special designation rulemaking."

(5) The department shall present rules to the board on a schedule such that final rules may be adopted and made effective prior to the expiration of 327 IAC 5-2-11.7.

(Water Pollution Control Board; 327 IAC 2-1.5-18; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1410; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3378)

SECTION 4. 327 IAC 5-2-11.1, AS AMENDED AT 28 IR 2097, SECTION 24, IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-2-11.1 Establishment of water quality-based effluent limitations for dischargers not discharging to waters within the Great Lakes system

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. 11.1. (a) The water quality standards established through the criteria set forth in 327 IAC 2-1-6 and 327 IAC 2-1-8.9 or under the procedures described in 327 IAC 2-1-8.2 through 327 IAC 2-1-8.6 and 327 IAC 2-1-8.9 shall:

(1) be the basis for water quality-based effluent limitations (WQBELs) applicable to point source dischargers, not discharging to waters within the Great Lakes system, through NPDES permits, except for instances where a variance has been approved under 327 IAC 2-1-8.8 and 327 IAC 5-3-4.1; and

(2) not be enforceable against point source dischargers until translated into effluent limitations that are incorporated in NPDES permits in accordance with this article.

(b) This subsection describes how the surface water quality criteria in 327 IAC 2-1-6(a) and 327 IAC 2-1-8.9(g) or those criteria derived using the procedures in 327 IAC 2-1-8.2 through 327 IAC 2-1-8.6 and 327 IAC 2-1-8.9 will be applied in determining appropriate WQBELs to NPDES permits as follows:

(1) The: ~~final acute value~~

(A) FAV (FAV = 2(AAC)) will be applied directly to the undiluted discharge; or

(B) if dilution by discharge induced mixing is allowed, the AAC will be applied outside the discharge induced mixing zone.

If the AAC for a metal is expressed in the form of dissolved metal, the AAC shall be set equal to $C_{instream}$ determined for the AAC in accordance with subdivision (8).

(2) The CAC and the TLSC will be applied outside of the mixing zone. In the absence of site-specific mixing zone data, the allowable mixing zone dilution shall be determined by applying the guideline in 327 IAC 2-1-4 to the $Q_{7,10}$ low flow of the receiving stream. If the CAC for a metal is expressed in the form of dissolved metal, the CAC shall be set equal to $C_{instream}$ determined for the CAC in accordance with subdivision (8).

(3) The HLSC shall be applied outside of the mixing zone if based on the consumption of organisms and incidental water intake. If based on consumption of organisms and drinking water, the HLSC shall apply at the point of the public water system intake, if this does not cause the HLSC based on consumption of organisms and incidental water intake to be exceeded outside of the mixing zone. Allowable mixing zone dilution shall be determined by applying the guideline of 327 IAC 2-1-4 to the:

(A) $Q_{7,10}$ low flow of the receiving stream if the HLSC is based on consumption of organisms and incidental water intake; and
the

(B) $Q_{7,10}$ flow at the point of the public water system intake (provided the effluent has had time to fully mix with the receiving water) shall be allowed for dilution if the HLSC is based on consumption of organisms and drinking water.

(4) The criterion to provide an acceptable degree of protection to public health for cancer effects shall apply outside of the mixing zone if the criterion is based on consumption of organisms and incidental water intake and at the point of the public water system intake if based on the consumption of organisms and drinking water, if this would not cause the criterion based on the consumption of organisms and incidental water intake to be exceeded outside of the mixing zone. For calculation of allowable dilution:

(A) one-fourth ($\frac{1}{4}$) of the fiftieth percentile flow of the receiving stream shall be used if the criterion is based on consumption of organisms and incidental water intake; and

(B) the fiftieth percentile flow of the receiving stream at the point of the public water system intake can be used if the criterion is based on the consumption of organisms and drinking water.

(5) As used in this rule:

(A) "FAV";

(B) "AAC";

(C) "CAC";

(D) "TLSC"; and

(E) "HLSC";

have the meanings set forth in 327 IAC 2-1-9.

(6) For a new discharge of a BCC, the water quality standard for a BCC shall be applied directly to the undiluted discharge. Beginning January 1, 2004, the water quality criteria for a BCC shall be applied directly to the undiluted discharge for all discharges of a BCC. As used in this subdivision, "new discharge" means a discharge of a BCC that is initiated after the effective date of this subdivision.

(7) For intermittent or controlled discharges, the mixing zone dilution may be determined using stream flows other than those specified in this subsection if these alternate stream flows will ensure compliance with water quality criteria.

(8) The following procedures shall be used to calculate $C_{instream}$, the total recoverable metal concentration outside the mixing zone that equates to an AAC or CAC expressed in the form of dissolved metal:

(A) For an AAC expressed in the form of dissolved metal, $C_{instream}$ shall be calculated by dividing the AAC by the acute translator found in clause (D).

(B) For a CAC expressed in the form of dissolved metal, $C_{instream}$ shall be calculated by dividing the CAC by the chronic translator found in clause (D).

(C) If all approved analytical methods for the metal inherently measure only its dissolved form, such as hexavalent chromium, $C_{instream}$ shall not be calculated and the AAC and CAC expressed in the form of dissolved metal shall be applied in determining appropriate WQBELs.

(D) Unless a site-specific translator is determined in accordance with clause (E), the following translators shall be used:

Table 11.1-1

Metals Translators

Dissolved to Total Recoverable

Substances	Acute	Chronic
	Translators	Translators
Arsenic (III)	1.000	1.000

Cadmium	1.136672-[(ln hardness)(0.041838)]	1.101672-[(ln hardness)(0.041838)]
Chromium (III)	0.316	0.860
Copper	0.960	0.960
Lead	1.46203-[(ln hardness)(0.145712)]	1.46203-[(ln hardness)(0.145712)]
Nickel	0.998	0.997
Silver	0.85	
Zinc	0.978	0.986

(E) A discharger or proposed discharger may request the use of an alternate translator by using site-specific data. The discharger must conduct a site-specific study to identify the ratio of the dissolved fraction to the total recoverable fraction for a metal in the receiving waterbody outside the mixing zone. If the discharger provides an acceptable study and other provisions of 327 IAC 2-1, **327 IAC 2-1.3**, and this article are satisfied (such as antibacksliding and antidegradation), the commissioner shall use the site-specific translator. A translator derived for one (1) discharge into a waterbody segment may be applied to other discharges on the same waterbody segment if the translator would adequately represent the site-specific conditions applicable to the other discharges.

(c) In a case where a variance has been granted from a water quality standard under 327 IAC 2-1-8.8 and 327 IAC 5-3-4.1, WQBELs for the pollutant that is the subject of the variance shall be calculated under subsection (b) on the basis of the variance rather than the water quality standard.

(d) WQBELs in an NPDES permit for a metal calculated from a water quality criterion expressed in the form of dissolved metal that is:

- (1) contained in 327 IAC 2-1; or
- (2) subsequently developed under the procedures contained in 327 IAC 2-1;

shall be expressed in the permit as total recoverable metal unless all approved analytical methods for the metal inherently measure only its dissolved form, such as hexavalent chromium.

(e) WQBELs for cyanide, calculated from a criterion for free cyanide contained in 327 IAC 2-1, shall be limited in the permit as free cyanide and monitored in the effluent using the:

- (1) "Cyanides Amenable to Chlorination" (CATC) method (40 CFR 136, Method 4500-CN G); or
- (2) another method approved by the commissioner.

The commissioner may include additional monitoring, limitations, or other requirements in a permit, on a case-by-case basis, if the additional requirements are necessary to ensure that water quality standards will be attained.

(f) When the WQBEL for any substance is less than the limit of quantitation normally achievable and determined by the commissioner to be appropriate for that substance in the effluent, the permit shall contain the following provisions:

(1) The permittee shall be required to use an approved analytical methodology for the substance in the effluent to produce the LOD and LOQ achievable in the effluent. This analytical method, and the LOD and LOQ associated with this method, shall be specified in the permit in addition to the following requirements:

- (A) The permit shall include conditions that state that effluent concentrations less than the limit of quantitation are in compliance with the effluent limitations.
- (B) ~~In addition,~~ The permit shall require the permittee to implement one (1) or more of the following requirements:
 - (i) Develop a more sensitive analytical procedure.
 - (ii) Use an existing, more sensitive, analytical procedure that has not been approved by EPA.
 - (iii) Conduct studies to determine the bioaccumulative or bioconcentrative properties of the substance in aquatic species through caged-biota studies or fish tissue analyses of resident species.
 - (iv) Conduct effluent bioconcentration evaluations.
 - (v) Conduct whole effluent toxicity testing.
 - (vi) Other requirements, as appropriate, such as engineering assessments or sediment analyses.

For substances defined as BCCs, at a minimum, either item (iii) or (iv) shall be included in the permit.

(2) If the measured effluent concentrations for a substance are above the WQBELs and above the LOD specified by the permit in any three (3) consecutive analyses or any five (5) out of nine (9) analyses, or if any of the additional analyses required under subdivision (1)(B) indicate that the substance is present in the effluent at concentrations exceeding the WQBELs, the permit shall contain provisions that require the discharger to:

- (A) determine the source of this substance through evaluation of:

- (i) sampling techniques;
- (ii) analytical/laboratory procedures; and
- (iii) industrial processes and wastestreams; and

(B) increase the frequency of sampling and testing for the substance.

(3) The permit shall contain provisions allowing the permit to be reopened, in accordance with section 16 of this rule, to include additional requirements or limitations if the information gathered under subdivisions (1) and (2) indicates that such additional requirements or limitations are necessary.

(g) The department shall use the representative ambient upstream concentration of a substance in determining the WQBELs for that substance. This upstream concentration shall be determined by the department on a case-by-case basis using existing, acceptable data for the receiving water. Where limited or no acceptable data exists, the permittee shall be required to supply the necessary data. Whenever the representative ambient upstream concentration for a substance in the receiving water is determined to be greater than any applicable water quality criterion for that substance, the following conditions apply:

(1) If the source of the wastewater is not the receiving water, the permit limitations shall be calculated using the applicable water quality criterion and a value of zero (0) for the upstream dilution flow. Except for substances defined as BCCs, the department may establish limitations greater than the applicable water quality criterion for the substance as required in this subdivision in a range up to, but not greater than, the lesser of the representative ambient upstream concentration of the substance in the receiving water or the representative ambient concentration of the substance in the body of water at the point of intake. The limitation shall only be increased above the criterion if it is demonstrated to the department that:

(A) the concentration of the substance in the body of water at the point of intake exceeds the applicable criterion for that substance; and ~~that~~

(B) reasonable, practical, or otherwise required methods are implemented to minimize the addition of the substance to the wastewater.

(2) If the source of the wastewater is the receiving water, the effluent limitation for that substance shall equal the representative ambient upstream concentration of that substance in the receiving water as determined by the department. Where circumstances allow, such as the discharge of once through noncontact cooling water, this will be implemented through the use of net limitations, with a net limitation of zero (0) being applied to the effluent. The representative ambient upstream concentration applicable to this subdivision shall be:

(A) established at the upper ninety-ninth percentile of the available acceptable upstream data; or

(B) otherwise appropriately determined as the reasonably expected upstream concentration for that substance.

(h) In addition to the requirements of 40 CFR 122.43(a), NPDES permits shall include limitations more stringent than promulgated effluent limitations guidelines from Sections 301, 306, 307, 318, and 405 of the CWA where necessary to achieve water quality standards established under Section 303 of the CWA, including narrative criteria for water quality as follows:

(1) Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) that the commissioner determines are, or may be, discharged at a level that:

(A) will cause;

(B) have the reasonable potential to cause; or

(C) contribute to;

an excursion above any narrative or numeric water quality criterion promulgated under 327 IAC 2-1-6.

(2) When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an instream excursion above a narrative or numeric criterion within an Indiana water quality standard, the commissioner shall use procedures that account for **the following**:

(A) Existing controls on point and nonpoint sources of pollution.

(B) The variability of the pollutant or pollutant parameter in the effluent.

(C) The sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity). ~~and~~

(D) Where appropriate, the dilution of the effluent in the receiving water.

(3) When the commissioner determines, using the procedures in subdivision (2), that a discharge:

(A) causes;

(B) has the reasonable potential to cause; or

(C) contributes to;

an instream excursion above the allowable ambient concentration of a numeric criterion from 327 IAC 2-1-6 for an individual pollutant, the permit must contain effluent limitations for that pollutant.

(4) When the commissioner determines, using the procedures in subdivision (2), that a discharge:

- (A) causes;
- (B) has the reasonable potential to cause; or
- (C) contributes to;

an instream excursion above the numeric criterion for whole effluent toxicity, the permit must contain effluent limits for whole effluent toxicity.

(5) Except as provided in this subdivision, when the commissioner determines, using the procedures in subdivision (2), toxicity testing data, or other information, that a discharge:

- (A) causes;
- (B) has the reasonable potential to cause; or
- (C) contributes to;

an instream excursion above a narrative criterion from 327 IAC 2-1-6, the permit must contain effluent limitations for whole effluent toxicity. Limitations on whole effluent toxicity are not necessary where the commissioner demonstrates in the fact sheet or briefing memo of the NPDES permit, using the procedures in subdivision (2), that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative water quality criteria.

(6) Where a water quality criterion has not been established for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion from 327 IAC 2-1-6, the commissioner must establish effluent limits using one (1) or more of the following options:

(A) Establish effluent limits using a calculated numeric water quality criterion for the pollutant that the commissioner demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using a proposed state criterion, or an explicit policy or rule interpreting the narrative water quality criterion, supplemented with other relevant information that may include **the following**:

- (i) EPA's Water Quality Standards Handbook, Second Edition—Revised (1994).
- (ii) Risk assessment data.
- (iii) Exposure data.
- (iv) Information about the pollutant from the Food and Drug Administration. ~~and~~
- (v) Current EPA criteria documents.

(B) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under Section 304(a) of the CWA, supplemented where necessary by other relevant information.

(C) Establish effluent limitations on an indicator parameter for the pollutant of concern, provided the following:

- (i) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation.
- (ii) The fact sheet required by 327 IAC 5-3-8 sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern that are sufficient to attain and maintain applicable water quality standards.
- (iii) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards.
- (iv) The permit contains a reopening clause allowing the permitting authority to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

(7) When developing WQBELs under this subsection, the commissioner shall ensure the following:

(A) The level of water quality to be achieved by limits on point sources established under this subsection is derived from, and complies with, all applicable water quality standards.

(B) Effluent limits developed to protect a narrative water quality criterion or a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available WLA for the discharge prepared by the commissioner and approved by EPA under 40 CFR 130.7.

(Water Pollution Control Board; 327 IAC 5-2-11.1; filed Feb 1, 1990, 4:30 p.m.: 13 IR 1043; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1749; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1432; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3378; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2097)

SECTION 5. 327 IAC 5-2-11.2, AS AMENDED AT 28 IR 2101, SECTION 25, IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-2-11.2 Public notice of comment period and public meetings for site-specific modification of water quality criteria and values; implementation of antidegradation; alternate mixing zone demonstrations; variances

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 13-15-4-1; IC 13-15-5-1; IC 13-18-4; IC 13-18-7; IC 13-23-13; IC 13-24-1; IC 13-25-5

Sec. 11.2. (a) This section is applicable to an application for the following:

- (1) Site-specific modification to water quality criteria under 327 IAC 2-1-8.9 and Tier I water quality criteria and Tier II water quality values under 327 IAC 2-1.5-16.
- (2) An antidegradation demonstration under ~~section 11.3(b)(4) of this rule:~~ **327 IAC 2-1.3-7.**
- (3) ~~An Other antidegradation exception activities under section 11.7(c) of this rule:~~ **327 IAC 2-1.3-6.**
- (4) An alternate mixing zone under section 11.4(b)(4)(F) of this rule.
- (5) A variance under 327 IAC 5-3-4.1(c).

(b) Upon receipt of an application listed in subsection (a), the commissioner shall provide notice, request comment, and, if requested, schedule and hold a public meeting on the application in accordance with the following conditions:

- (1) The commissioner shall provide notice of receipt of an application in the following manner:
 - (A) Publication of a notice in a daily or weekly newspaper in general circulation throughout the area affected by the discharge for which the application was submitted.
 - (B) Send the notice to **the following:**
 - (i) Interested persons on either mailing list identified under the following:
 - (i) ~~(AA)~~ **(AA)** 327 IAC 5-3-8(a).
 - (ii) ~~(BB)~~ **(BB)** 327 IAC 5-3-12(b)(1).
 - (ii) ~~Send the notice to~~ **(ii)** The applicant.
- (2) The notice under subdivision (1) shall contain the following:
 - (A) The name and address of the **following:**
 - (i) Department.
 - (ii) ~~The name and address of the~~ **(ii)** Applicant.
 - (B) ~~An identification of the type of application submitted, such as alternate mixing zone or variance.~~
 - (C) ~~A brief description of the~~ **following:**
 - (i) Location of any existing or proposed discharge point subject to the application, including an identification of the receiving water.
 - (ii) ~~A brief description of the~~ **(ii)** Applicant's activities or operations that result in the discharge identified in the application.
 - (D) ~~An identification of the substance for which the application was submitted.~~
 - (E) ~~The name of an agency contact person and an address and telephone number where interested persons may obtain further information, including a copy of the application.~~
 - (F) ~~A brief description of the comment procedures and the procedures to request a public meeting.~~
- (3) If requested, the commissioner shall hold a public meeting on the application in accordance with the following provisions:
 - (A) The commissioner shall provide notice of the public meeting as follows:
 - (i) Publication of a notice in a daily or weekly newspaper in general circulation throughout the area affected by the discharge for which the application was submitted.
 - (ii) Send the notice to the following interested persons:
 - (AA) Persons on the mailing list identified under 327 IAC 5-3-8(a).
 - (BB) Persons on the mailing list identified under 327 IAC 5-3-12(b)(1).
 - (CC) Those persons that commented on the notice of receipt of the application.
 - (iii) Send the notice to the applicant.
 - (B) The notice required by clause (A) shall contain **the following:**
 - (i) The date, time, and place of the public meeting. ~~and~~
 - (ii) The information required under subdivision (2).
 - (C) The meeting shall be held at least ten (10) days after the later of the following:
 - (i) The notice ~~in accordance with~~ **under** clause (A)(i) appears in the newspaper.
 - (ii) The postmark date of the written notice sent to interested parties and to the applicant ~~in accordance with~~ **under** clause (A)(ii) and (A)(iii).
 - (D) The meeting shall be recorded by any of the following:
 - (i) Audiotape.
 - (ii) Videotape.
 - (iii) Any other method of accurately and completely recording the details of the meeting.
 - (E) The commissioner shall request the applicant to provide a summary and rationale for the application at the meeting.
 - (F) At the commissioner's discretion, a public meeting may be noticed and held without having first received a request for a public meeting. In these instances, the notice for the public meeting may be contained in the notice of receipt of the application.
- (4) The time period under IC 13-15-4-1 is hereby changed to increase the period by thirty (30) days for any permit application

subject to the time period that is affected by the application. If a public meeting is requested, the time period under IC 13-15-4-1 is hereby changed to increase the period by an additional thirty (30) days.
(Water Pollution Control Board; 327 IAC 5-2-11.2; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1435; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3378; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2101)

SECTION 6. 327 IAC 5-2-12.1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-2-12.1 Great Lakes systems dischargers; schedules of compliance

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. 12.1. (a) When a permit issued to a new Great Lakes discharger contains a WQBEL, the permittee shall comply with such a limitation upon the commencement of the discharge.

(b) Any existing permit that is reissued or modified to contain a new or more restrictive WQBEL or a more restrictive ~~limit of quantitation~~ LOQ (when an LOQ is used as the compliance value for a WQBEL below an LOQ) may allow a reasonable period of time, up to five (5) years from the date of permit issuance or modification, for the permittee to comply with that limit in accordance with the following conditions:

(1) When the compliance schedule established under this subsection goes beyond the term of the permit, an interim permit limit effective upon the expiration date shall be included in the permit and addressed in the permit's fact sheet or statement of basis. The permit shall reflect the final limit and its compliance date.

(2) If a permit establishes a schedule of compliance under this subsection, which exceeds one (1) year from the date of permit issuance or modification, the schedule shall set forth interim requirements and dates for their achievement as follows:

(A) The time between such interim dates may not exceed one (1) year.

(B) If the time necessary for completion of any interim requirement is:

(i) more than one (1) year; and ~~is~~

(ii) not readily divisible into stages for completion;

the permit shall require, at a minimum, specified dates for annual submission of progress reports on the status of any interim requirements.

(c) Whenever a limit based upon a Tier II value is included in a reissued or modified permit for an existing Great Lakes discharger, the permit may provide a reasonable period of time, up to two (2) years, in which to provide additional studies necessary to develop a Tier I criterion or to modify the Tier II value. In such cases, the permit shall require compliance with the Tier II limitation within a reasonable period of time, ~~no not~~ later than five (5) years after permit issuance or modification, and contain a reopener clause in accordance with the following conditions:

(1) The reopener clause shall authorize permit modifications if specified studies have been completed by the permittee or provided by a third party during the time allowed to conduct the specified studies, and the permittee or a third party demonstrates, through ~~such the~~ studies, that a revised limit is appropriate. ~~Such a~~ The revised limit shall be incorporated through a permit modification, and a reasonable time period, up to five (5) years, shall be allowed for compliance. If incorporated ~~prior to~~ before the compliance date of the original Tier II limitation, ~~any such the~~ revised limit shall not be considered less stringent for purposes of the antibacksliding provisions of section 10(11) of this rule and Section 402(o) of the ~~Clean Water Act~~ CWA.

(2) If the specified studies have been completed and do not demonstrate that a revised limit is appropriate, the commissioner may provide a reasonable additional period of time, not to exceed five (5) years, with which to achieve compliance with the original effluent limitation.

(3) Where a permit is modified to include new or more stringent limitations, on a date within five (5) years of the permit expiration date, such compliance schedules may extend beyond the term of a permit consistent with subsection (b)(1).

(4) If future studies (other than those conducted under this subsection) result in a Tier II value being changed to a less stringent Tier II value or Tier I criterion, after the effective date of a Tier II-based limit, the existing Tier II-based limit may be revised to be less stringent if:

(A) it complies with section 10(11)(B) and 10(11)(C) of this rule and Section 402(o)(2) and 402(o)(3) of the CWA;

(B) in nonattainment waters, the cumulative effect of the revised effluent limitation will assure compliance with water quality standards; or

(C) in attained waters, the revised effluent limitation complies with the antidegradation standard and procedures contained ~~under 327 IAC 2-1.5-4 and section 11.3 of in this rule.~~ **title.**

(Water Pollution Control Board; 327 IAC 5-2-12.1; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1464; errata filed Aug 11, 1997, 4:15

p.m.: 20 IR 3380)

SECTION 7. 327 IAC 5-3-8 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-3-8 Fact sheet

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. 8. (a) A fact sheet shall be prepared for every draft permit for a major discharger, any draft permit ~~which that~~ incorporates a statutory variance or modification or requires explanation under subsection (b)(5), general permits, and every draft permit ~~which that~~ the commissioner finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the major facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The commissioner shall send this fact sheet to the following:

- (1) The applicant.
- (2) EPA Region 5.
- (3) The district engineer of the Corps of Engineers.
- (4) The regional director of the U.S. Fish and Wildlife Service.
- (5) Other interested state and federal agencies.
- (6) Any other person on request.
- (7) All persons on a mailing list for receipt of fact sheets (see section 12(g) of this rule).

Any of these persons may waive their right to receive a fact sheet for any classes and categories of permits.

(b) The fact sheet shall include the following:

- (1) A brief description of the type of facility or activity that is the subject of the draft permit and, where appropriate, a sketch or detailed description of the discharge described in the application.
- (2) A description of the type and quantity of pollutants ~~which that~~ are, or are proposed to be, discharged.
- (3) A brief explanation of the express statutory or regulatory provisions on which permit requirements are based.
- (4) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, including **the following:**

(A) A citation to the applicable guideline or development documents or standard provisions as required under 327 IAC 5-2-10. ~~and~~

(B) Reasons why they are applicable or an explanation of how alternate effluent limitations were developed.

(5) When the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:

(A) Technology-based limitations to control toxic pollutants under 327 IAC 5-2-10.

(B) Limitations on:

(i) internal wastestreams in accordance with 327 IAC 5-2-11(h); **or**

~~(E) Limitations on~~ (ii) indicator pollutants under 327 IAC 5-2-10(6) and 327 IAC 5-5-2(f).

~~(D)~~ (C) Limitations:

(i) allowing an increase in the discharge of any pollutant, including an explanation that satisfies the requirements of 327 IAC 5-2-10(11) and the antidegradation requirements of ~~327 IAC 2-1, 327 IAC 2-1.5, and 327 IAC 5-2-11.3.~~ **327 IAC 2-1.3;** **or**
~~(E) Limitations~~ (ii) implementing a variance from water quality standards under 327 IAC 2-1-8.8 or 327 IAC 2-1.5-17 and section 4.1 of this rule.

(6) Reasons why requested variances or modifications from otherwise required effluent limitations do or do not appear justified.

(7) **The** name and telephone number of a departmental contact person who can provide additional information.

(8) Any information, not otherwise specified herein, required under section 12 ~~or 12.1~~ of this rule **or 327 IAC 5-2-12.1.**

(Water Pollution Control Board; 327 IAC 5-3-8; filed Sep 24, 1987, 3:00 p.m.: 11 IR 638; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1761; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1472; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

SECTION 8. THE FOLLOWING ARE REPEALED: 327 IAC 2-1.5-4; 327 IAC 5-2-11.3; 327 IAC 5-2-11.7.

Notice of First Meeting/Hearing

These rules are not scheduled for hearing at this time. When the public hearing is scheduled, it will be noticed in the IC 13-14-9 Notices section of the Indiana Register.

Additional information regarding this action may be obtained from Megan Wallace, Rules Section, Office of Water Quality, (317) 233-8669 or (800) 451-6027 (in Indiana).

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.