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TITLE 327 WATER POLLUTION CONTROL BOARD

FIRST NOTICE OF COMMENT PERIOD

LSA Document #05-254(WPCB)

DEVELOPMENT OF A NEW RULE CONCERNING THE PROCEDURES FOR OBTAINING VARIANCES AND STREAMLINING THE PROCESS FOR OBTAINING A VARIANCE FROM THE WATER QUALITY-BASED EFFLUENT LIMITS FOR E. COLI AND CHLORIDE

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on the development of a new rule to modify the procedures for obtaining a variance from water quality-based effluent limits (WQBELs) so that Indiana Rules are consistent with Federal Regulations and Senate Enrolled Act (SEA) 620 and on the development of a new rule to streamline the process for obtaining a variance from the WQBELs for E. coli and chloride for publicly owned treatment works (POTWs).

CITATIONS AFFECTED: 327 IAC 2-1-8.8; 327 IAC 5-3-4; 327 IAC 5-3-4.1; 327 IAC 5-3.7.

AUTHORITY: IC 13-14-8-8; IC 13-14-8-9; IC 13-15-2; IC 13-15-3.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

This rulemaking is in response to one (1) or more of the following compliance issues experienced by POTWs:

- A. Cannot achieve compliance with the limits for E. coli in the discharges from combined sewer overflows.
- B. Cannot achieve compliance with the effluent limits for chloride.
- C. This rulemaking is also in response to SEA 620 and EPA's regulations specific to the Indiana Rules contained in 327 IAC 2-1-8.8, 327 IAC 5-3-4, and 327 IAC 5-3-4.1 requiring those rules to be consistent with Federal regulations regarding variances from WQBELs.

Alternatives To Be Considered Within the Rulemaking

A. POTWs that cannot achieve compliance with the WQBELs for E. coli in the discharges from combined sewer overflows

Alternative 1: Adopt a streamlined variance rule to allow POTWs that have discharges of wastewater from Combined Sewer Overflows (CSOs) to be granted a variance from WQBELs for E. coli for the period of time it will take to fully implement the Long Term Control Plan (LTCP) to eliminate the CSOs.

Alternative 2: Do not adopt a streamlined variance rule as described in Alternative 1. Outside of the Great Lakes Basin, facilities with CSOs would be required to build and operate a wastewater treatment system capable of achieving compliance with WQBELs for E. coli within three (3) years of being issued an NPDES permit that contains the E. coli limitations. Inside the Great Lakes Basin, facilities with CSOs would be required to build and operate a wastewater treatment system capable of achieving compliance with WQBELs for E. coli within five (5) years of being issued an NPDES permit that contains the E. coli limitations.

B. POTWs that cannot achieve compliance with the water quality-based effluent limits for chloride.

Alternative 1: Adopt a streamlined variance rule to allow POTWs to be granted a variance from the WQBELs for chloride for the period of time it will take for the POTW to obtain compliance with the WQBELs for chlorides.

Alternative 2: Do not adopt a streamlined variance rule as described in Alternative 1. Outside of the Great Lakes Basin, facilities would be required to build and operate a wastewater treatment system capable of achieving compliance with WQBELs for chloride within three (3) years of being issued an NPDES permit that contains the chloride limitations. Inside the Great Lakes Basin, facilities would be required to build and operate a wastewater treatment system capable of achieving compliance with WQBELs for chloride within five (5) years of being issued an NPDES permit that contains the chloride limitations.

C. Modify the procedures for obtaining a variance from WQBELs so that Indiana rules are consistent with Federal Regulations and SEA 620.

Alternative 1: Adopt a variance rule that requires a variance application only be accepted after the WQBEL has been included in a final-issued NPDES permit. It is proposed to model the variance application requirements after the Streamlined Mercury Variance rule application requirements. Doing so would develop a rule where the Pollutant Minimization Program (PMP) requirement is

consistent with the PMP requirement of SEA 620 and would also result in a final rule consistent with existing EPA regulations for variances from WQBELs.

Alternative 2: Do not adopt a variance rule as described in Alternative 1. This would keep Indiana rules inconsistent with federal regulations. The existing process of allowing variances to be requested by permit holders prior to the issuance of a final NPDES permit that includes the WQBEL for which a variance is being requested requires the final decision on the variance application to be completed prior to the issuance of the final NPDES permit. To date, this process has caused extensive delays in the issuance of an NPDES permit renewal.

Applicable Federal Law

A. POTWs that cannot achieve compliance with the WQBELs for E. coli in the discharges from combined sewer overflows: 40 CFR Part 132, Appendix F, Procedure 2.C.

B. POTWs that cannot achieve compliance with the water quality-based effluent limits for chloride: 40 CFR Part 132, Appendix F, Procedure 2.C.

C. Modify the procedures for obtaining a variance from WQBELs so that Indiana rules are consistent with Federal Regulations and SEA 620: 40 CFR Part 132, Appendix F, Procedure 2.C.

Potential Fiscal Impact

A. POTWs that cannot achieve compliance with the WQBELs for E. coli in the discharges from combined sewer overflows: There would be no fiscal impact imposed under Alternative 1 since requesting a variance is voluntary. However, POTWs taking advantage of the variance could see reduced capital and operating costs during the duration of the variance compared to the cost of constructing facilities. Taking advantage of the variance would also give POTWs the additional time necessary to implement their Long Term Control Plan or to seek alternate methods for achieving compliance with the WQBELs for E. coli.

B. POTWs that cannot achieve compliance with the water quality-based effluent limits for chloride: There would be no fiscal impact imposed under Alternative 1 since requesting a variance is voluntary. However, POTWs taking advantage of the variance could see reduced capital and operating costs during the duration of the variance compared to the cost of constructing facilities. Taking advantage of the variance would also give POTWs the additional time necessary to obtain the funding necessary to build and operate a wastewater treatment plant or to seek alternate methods for achieving compliance with the WQBELs for chloride.

C. Modify the procedures for obtaining a variance from WQBELs so that Indiana rules are consistent with Federal Regulations and SEA 620: There would be no fiscal impact imposed under Alternative 1 since requesting a variance after the issuance of a final NPDES permit that includes the WQBEL for which a variance is being requested is currently an option in 327 IAC 5-3-4.1. Removing the option to apply for a variance before the issuance of a final NPDES permit that includes the WQBEL for which a variance is being requested will no longer result in the delay of the NPDES permit renewal because the permit will be issued before the variance is requested.

Small Business Assistance Information

IDEM established a compliance and technical assistance (CTAP) program under IC 13-28-3. The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with IC 13-28-3 and IC 13-28-5, there is a Small Business Assistance Program Ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at www.in.gov/idem/ctap/.

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Sandra El-Yusuf

IDEM Compliance and Technical Assistance Program

OPPTA - MC 60-04

100 N. Senate Avenue

W-041

Indianapolis, IN 46204-2251

317-232-8578

selyusuf@idem.IN.gov

The Small Business Assistance Program Ombudsman is:

Eric Levenhagen

IDEM Small Business Assistance Program Ombudsman

External Affairs - MC 50-01

100 N. Senate Avenue

IGCN 1301

Indianapolis, IN 46204-2251

317-234-3386

elevenha@idem.IN.gov

Public Participation and Workgroup Information

An external workgroup will be established for this rulemaking. The workgroup will be made up of a cross section of stakeholders, interested parties, and IDEM staff. When the workgroup is created, information on workgroup meetings and scheduling and agendas of future meetings will be available on the IDEM Web site at: <http://www.IN.gov/idem/water/planbr/rules/index.html>.

If you wish to provide comments to the workgroup on the rulemaking, attend meetings, obtain any additional information on the workgroup, or submit suggestions related to the workgroup process, please contact MaryAnn Stevens, Rules Section, Office of Water Quality at (317) 232-8635 or (800) 451-6027 (in Indiana). Please provide your name, phone number, and e-mail address, if applicable, where you can be contacted. The public is also encouraged to submit comments and questions to members of the workgroup who represent their particular interests in the rulemaking.

STATUTORY AND REGULATORY REQUIREMENTS

IC 13-14-8-4 requires the board to consider the following factors in promulgating rules:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as the case may be.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of a rule concerning operation and maintenance of small wastewater treatment plants.
- (2) The submission of suggestions for the development of draft rule language.
- (3) Specific cost and effectiveness analyses for operation and maintenance of small wastewater treatment plants.

Mailed comments should be addressed to:

#05-254(WPCB) [Variances]
MaryAnn Stevens, Senior Rulewriter
Rules Section
Office of Water Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204.

Hand delivered comments will be accepted by the IDEM receptionist on duty at the twelfth floor reception desk, Office of Water Quality, Indiana Government Center-North, Room N1255, 100 North Senate Avenue, Indianapolis, Indiana. Comments also may be submitted by facsimile to (317) 232-8406, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Office of Water Quality, Rules Section at (317) 233-8903. Please note that we are not able to take electronic (e-mail) submission of formal comments at this time.

COMMENT PERIOD DEADLINE

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

Additional information regarding this rulemaking action may be obtained from MaryAnn Stevens, Rules Section, Office of Water Quality, (317) 232-8635 or (800) 451-6027 (in Indiana) or technical information concerning variances may be obtained from Lawrence Wu, Rules Section, Office of Water Quality, (317) 234-1805 or (800) 451-6027 (in Indiana).

Bruno Pigott
Assistant Commissioner
Office of Water Quality