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TITLE 327 WATER POLLUTION CONTROL BOARD

FIRST NOTICE OF COMMENT PERIOD

LSA Document #05-255(WPCB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING SANITARY SURVEYS, OPERATING REPORTS, CLASSIFICATION OF WATER TREATMENT PLANTS, AND CERTIFIED OPERATORS IN RESPONSIBLE CHARGE OF PUBLIC WATER SYSTEMS, AND MINOR CHANGES TO DISINFECTANTS, DISINFECTION BYPRODUCTS, AND FILTER BACKWASH RECYCLING RULES, AND NEW RULES FOR SITE SPECIFIC OPERATOR AND THE EXAMINATION TO BECOME A SITE SPECIFIC OPERATOR

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to 327 IAC 8-2-8.2, 327 IAC 8-11-1, and 327 IAC 8-12 concerning sanitary surveys, operating reports, minor corrections to classifications of water treatment plants and distribution systems, provisions for certification of site specific operators, and certified operators in responsible charge of public water systems; as well as amendments to 327 IAC 8-2.5-6, 327 IAC 8-2.5-7, 327 IAC 8-2.5-8, 327 IAC 8-2.5-9, and 327 IAC 8-2.6-6 to incorporate minor corrections to disinfectants, disinfection byproducts, and filter backwash recycling rules. IDEM seeks comment on the affected citations listed and any other provisions of Title 327 that may be affected by this rulemaking.

CITATIONS AFFECTED: 327 IAC 8-2-8.2; 327 IAC 8-2.5-6; 327 IAC 8-2.5-7; 327 IAC 8-2.5-8; 327 IAC 8-2.5-9; 327 IAC 8-2.6-6; 327 IAC 8-11-1; 327 IAC 8-12-1; 327 IAC 8-12-2; 327 IAC 8-12-3; 327 IAC 8-12-3.2; 327 IAC 8-12-3.4; 327 IAC 8-12-3.5; 327 IAC 8-12-3.6; 327 IAC 8-12-4; 327 IAC 8-12-4.5; 327 IAC 8-12-6; 327 IAC 8-12-7; 327 IAC 8-12-7.5.

AUTHORITY: IC 13-11-2; IC 13-12-3-1; IC 13-13-5-1; IC 13-14-9; IC 13-18-11.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

The Interim Enhanced Surface Water Treatment Rule (IESWTR), promulgated by the United States Environmental Protection Agency (U.S. EPA) on December 16, 1998, requires the state to have the authority to require public water systems utilizing surface water or ground water under the direct influence of surface water to correct significant deficiencies found during sanitary surveys conducted by the state. Rule changes are being made to allow the state to require these systems correct deficiencies within the time frames set forth in the federal requirements. 40 CFR § 142.16(b)(1)(iii) requires states to have the appropriate rules or other authority to assure that Subpart H systems take necessary steps to address significant deficiencies found during sanitary surveys if such deficiencies are within the control of the PWS and its governing body. Therefore, changes are being made to some of the sections in 327 IAC 8-2.

327 IAC 8-11-1 currently requires systems to submit weekly reports of operation to the commissioner. This will be changed to require submittal of reports monthly rather than weekly and will clarify the information required to be included in these reports. The requirement for systems to submit reports to the state is found in 40 CFR § 142.10(b)(6)(iv).

327 IAC 8-12-3.6 specifies number of site visits required by certified operators in responsible charge to public water systems. It is proposed to reduce the number of site visits required at small systems with limited treatment facilities and small distribution systems. The state is required to have operator certification standards under federal requirements promulgated February 5, 1999.

Other changes are also being made to 327 IAC 12 to make it easier for nontransient noncommunity and small community public water systems to maintain certified operators and to clarify system classifications.

Alternatives To Be Considered Within the Rulemaking

Alternatives to this rulemaking would not be the most logical course of action. Indiana is required to keep primacy of the drinking water rules, implement the operator certification program, and make it more workable for the smaller systems.

(A) One alternative would be to leave existing rules unchanged and to operate under the existing rules, that is, with the necessary clarification.

(B) Another alternative would be to make changes to all sections of the rule.

(C) Another alternative would be to make changes to sections of the affected rules and wait until a later date to make the remaining

changes, that is, adopt sanitary survey changes now and make other changes as part of a later rulemaking action.

Applicable Federal Law

The requirement for states to have the authority to require surface water or ground water under the influence of surface water systems to correct significant deficiencies found during sanitary surveys is required pursuant to 40 CFR § 142.16. This section requires public water systems to respond in writing to significant deficiencies outlined in sanitary survey reports within forty-five (45) days after receipt of the report, indicating how and on what schedule the deficiencies will be corrected. The state must also have authority to assure that public water systems take the necessary steps to correct significant deficiencies that are within control of the public water systems and its governing body.

The guidelines specifying minimum standards for certification and recertification of operators of community and nontransient noncommunity water systems were published on February 5, 1999 to meet section 1419(a) of the Safe Drinking Water Act (SDWA) amendments of 1996 (Public Law 104-182). A state must have adopted and be implementing an operator certification program that meets the requirements of these guidelines in order to maintain Drinking Water State Revolving Loan Fund (DWSRF) funding. We propose to make minor changes to our approved program. U.S. EPA must withhold twenty (20) percent of the capitalization grant funds entitled to the state if the program is not being implemented.

Potential Fiscal Impact

There is no anticipated fiscal impact to this rule. The potential fiscal impacts, if any, will be due to the federally mandated requirements even if Indiana were not to promulgate the same requirements in its rules.

The only section with potential fiscal impact is the section requiring correction of significant deficiencies found during sanitary surveys. This is a requirement from the federal regulations for the Interim Enhanced Surface Water Treatment Rule and the Long Term 1 Enhanced Surface Water Treatment Rule. Neither rule included correction of significant deficiencies as part of their analysis of the fiscal impacts of the rules. If systems are maintaining their water systems and operating them properly, there should not be any significant deficiencies to correct.

There are no additional costs associated to changing reporting requirements from weekly operating reports to monthly operating reports.

There are no additional costs associated with the revisions to the number of site visits required by certified operators at small, non-complex systems. These systems may actually see a reduction in costs if they have hired an outside certified operator since contracts are normally established at a set charge per site visit. In addition, if Indiana does not implement this program as adopted, there is a possible risk of losing twenty (20) percent of DWSRF capitalization grant funds from the federal government.

There are no additional fiscal impacts to any of the minor corrections being made to the Disinfectants and Disinfection Byproducts or Filter Backwash Recycling rules.

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 - MC60-04
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 - MC50-01
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 has not been formed specifically relating to this rulemaking, however the sanitary survey changes and operational reporting requirements were addressed in part during the IDEM Operational Rules Workgroup meetings and the certified operator in responsible charge options were discussed during the IDEM Operator Certification Workgroup meetings. Operational Rules workgroup meetings were held August 15, 2001, September 19, 2001, October 17, 2001, December 3, 2001, January 16, 2002, February 12, 2002, March 12, 2002, April 18, 2002, May 22, 2002, June 14, 2002, September 26, 2002, January 23, 2003, February 28, 2003, May 1, 2003, and June 6, 2003. Operator Certification workgroup meetings were held June 25, 1999, July 23, 1999, October 26, 1999, November 18, 1999, March 14, 2000, and July 6, 2000. A meeting of interested parties from these workgroups was held on April 22, 2005, to discuss potential draft rule language. A copy of the potential draft rule language was sent out to the parties who attended that meeting in July for comment.

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

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 the rule.
- (2) The submission of suggestions for the development of draft rule language.

Mailed comments should be addressed to:

#05-255(WPCB) Sanitary Surveys, Operator Requirements and minor changes

Larry Wu, Chief

Rules Development Section

Office of Water Quality

Indiana Department of Environmental Management

100 North Senate Avenue

MC 65-40, IGCN 1255

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) 233-8406, Monday through Friday, between 8:15 and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Section at (317) 233-8903.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by October 31, 2005.

Additional information regarding the rulemaking action may be obtained from Kiran Verma, Rules Section, Office of Water Quality, (317) 234-0986 or (800) 451-6027 (in Indiana). Technical information concerning these rules may be obtained from Stacy Jones, Drinking Water Branch, Office of Water Quality, (317) 308-3292 or (800) 451-6027 (in Indiana).

Bruno Pigott
Assistant Commissioner
Office of Water Quality