



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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Mike Braun
Governor

Clint Woods
Commissioner

October 15, 2026

Administrator Lee M. Zeldin
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

RE: Support for EPA's Compliance First Approach and its Application to Indiana Combined Sewer Overflow Communities

Dear Administrator Zeldin:

The Indiana Department of Environmental Management (IDEM) has been working with Indiana's combined sewer overflow (CSO) communities for over thirty years to address water quality impacts caused by these discharges. Of Indiana's 110 CSO communities, 65 have fully implemented CSO long term control plans (LTCP), resulting in one of the single biggest improvements to Indiana's water quality over the years. Indiana has among the largest number of (and most geographically diverse) CSO communities and outfalls in the U.S.¹ To achieve these water quality improvements, Indiana's CSO communities have incurred astounding financial commitments, and these commitments directly impact each rate-paying citizen. Indiana has experienced more dramatic improvements in CSO related events over the last two decades than any other state in the country and the EPA overreach in contravention of the Clean Water Act threatens to derail environmental progress and burden Hoosier ratepayers with unnecessary and excessive costs.²

Accordingly, IDEM was encouraged to read U.S. EPA's recent memorandum from the Office of Enforcement and Compliance Assurance (OECA) dated December 5, 2025, entitled *Reinforcing a "Compliance First" Orientation for Compliance Assurance and Civil Enforcement Activities*. It is particularly encouraging to read that OECA is prioritizing efficiency, economics, and swiftness as key tenets moving forward in enforcement and compliance matters. It is particularly important that OECA recognizes a framework of cooperative federalism, acknowledging that IDEM, as the delegated authority to issue National Pollutant Discharge Elimination System (NPDES) permits, has primary jurisdiction over CSO matters as discussed further below. IDEM believes that the Clean Water Act's Federal Combined Sewer Overflow Policy (the "Policy") is designed to protect human health and the environment for all Americans, while energizing economic growth by recognizing the cost/benefit ("knee of the curve") application of CSO abatement. IDEM continues its work to streamline processes to get CSO communities to a clear, reasonable, and balanced endpoint on CSO reductions.

IDEM strongly contends, as discussed further below, that compliance with a fully implemented and approved LTCP embedded in an NPDES permit should equate to compliance with state and federal law. IDEM is encouraged that EPA intends to consider programmatic impacts to ensure EPA is not

¹ See <https://www.epa.gov/npdes/where-combined-sewer-overflow-outfalls-are-located>.

² See <https://events.in.gov/event/dig-indy>.

causing mission creep and expanding regulatory requirements through other processes. IDEM seeks EPA confirmation and clarity on several key interpretive matters that will allow many of Indiana's CSO communities to enshrine these water quality successes, in a manner consistent with the Clean Water Act and the Policy, to avoid unnecessary oversight from federal counterparts based on non-statutory concepts in the future.

IDEM has spent considerable time working with EPA as co-plaintiffs to develop our federal consent decrees as well as working in close partnership to develop our State Agreed Judgments and other enforceable documents. The enforceable documents all contain approved LTCPs that comply with the technology-based and water quality-based requirements of the Policy and equivalent state law. As Indiana's communities work to achieve full implementation of their LTCPs, IDEM must begin to consider terminating the enforceable documents like federal consent decrees and state agreed judgments that contain LTCP requirements. Future NPDES permits will embody these LTCP requirements. Therefore, IDEM seeks EPA's concurrence that compliance with NPDES permits containing control measures from fully implemented and approved LTCPs is compliance with the water quality-based requirements of state and federal law.

As the Policy specifically states, LTCPs are technical documents and any modification of current consent decrees like in the cities of Mishawaka and Evansville, as well as any of Indiana's other communities diligently working to complete these requirements, should be developed in consideration of the economic, technological, practicable, and logistical impediments that CSO communities face in considering CSO elimination and not based on theories that are not contained in the Policy. For example, historically, EPA has required that any modification to a CSO consent decree have a level of control that is the "same or better than" what is contemplated in a community's existing CSO consent decree. Therefore, IDEM seeks EPA's concurrence that any future modification of consent decrees or other enforceable documents will be developed by technical staff in consultation with Indiana's communities using the requirements of the Policy and not be based on unwritten theories, including the aforementioned historic "same or better than" requirement. IDEM recently articulated the significant economic and affordability issues associated with this interpretation in comments on EPA's proposed changes to financial capability assessment.³

IDEM greatly appreciates EPA's 2025 reestablishment of the Guidance Portal in order to transparently display past quasi-regulatory actions that did not go through rulemaking administrative procedures. We also commend EPA's Office of Water for the August 11, 2026, memorandum entitled "Initial Review of EPA Office of Water Guidance Documents." This document announced the rescission of guidance, policy memoranda, fact sheets, and draft guidance, related to climate change, environmental justice, PFAS, effluent limitations, and the Supreme Court's *County of Maui v. Hawaii Wildlife Fund* decision. 140 S. Ct. 1462 (2020).⁴ We strongly encourage EPA to similarly rescind the Biden EPA's 2024 Draft Guidance for Future National Pollutant Discharge Elimination System (NPDES) Permits for Combined Sewer Systems as well as references to this guidance in EPA's draft water quality handbook.⁵ This guidance constitutes federal overreach, is not consistent with the federal CSO Policy, incorporates extra statutory climate and environmental justice provisions, and moves the goal post for Indiana CSO communities that have been implementing LTCPs for decades.

³ Available at: <https://www.regulations.gov/comment/EPA-HQ-OW-2026-1090-0040>.

⁴ Available at: <https://www.epa.gov/guidance/initial-review-epa-office-water-guidance-documents>.

⁵ Available at: <https://www.epa.gov/system/files/documents/2024-02/draft-guidance-for-future-npdes-permitting-of-css.pdf>. See also, IDEM comments available at: <https://www.regulations.gov/comment/EPA-HQ-OW-2024-0517-0006>.

In addition, EPA should rescind the 2024 Office of Water memorandum entitled “CSO Temporal Recreational Uses or WQS variances based on 40 CFR 131.10(g)(3).”⁶

Neither EPA nor Congress mandated the elimination of CSOs during the development of the Policy, or that CSO communities be pushed to the brink of financial hardship for CSO abatement, in accordance with the “knee of the curve” concept outlined in cost/performance considerations in the Policy. Under its delegated authority, IDEM is the primary agency responsible for ensuring that communities meet this obligation. Therefore, IDEM seeks EPA’s concurrence that the Policy only requires communities to meet the “knee of the curve” concept outlined in the cost/performance considerations of the Policy.

The development and implementation of an LTCP is a technically challenging, disruptive, and enormously expensive undertaking. The development phase alone is typically a multi-year process using extensive hydraulic flow monitoring, developing a range of alternatives that could be implemented to reduce and/or treat CSOs down to various levels of control, monitoring water quality of CSO-impacted receiving waters, and soliciting and obtaining public input on selecting the LTCP. Based upon this information, an LTCP approved and fully implemented and embedded into an NPDES permit achieves the water quality requirements for receiving waters and demonstrates compliance with Indiana’s water quality standards negating the need for a use attainability analysis (UAA) and associated rulemaking. Therefore, IDEM seeks concurrence from EPA that a community’s full implementation of its LTCP equates to full compliance with its consent decree and that a UAA is not required. EPA’s concurrence will alleviate a minimum of 24 Indiana rulemakings and possibly an additional 62 rulemakings that all require EPA’s approval.

Termination of open-ended, costly, and inflexible consent decrees is important so communities can focus on more impactful environmental matters and other water quality measures. Modification of enforceable documents like consent decrees must be accomplished using the technical compliance measures contained in the Policy or the law. IDEM, which has delegated authority to administer the CSO program, should be the final arbiter of compliance for Indiana communities and should not be subjected to second-guessing by the whims of a new administration in Washington, D.C. Accordingly, IDEM and EPA should modify consent decrees based upon the technical implication of these modifications, and not based on a concept like “same or better than” that is not grounded in the Policy or the law. When approved LTCPs are fully implemented, the LTCP should become an enforceable permit requirement. Compliance with these NPDES permit requirements is compliance with state and federal law, negating the need for a UAA process. IDEM appreciates EPA’s consideration of its aforementioned requests and looks forward to EPA correspondence acknowledging and concurring with the statements contained herein.

Sincerely,



Clint Woods, Commissioner
Indiana Department of Environmental Management

⁶ Available at: <https://www.epa.gov/system/files/documents/2024-02/cso-temp-recreational-memo-1-19-2024.pdf>.

cc:

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