

TITLE 327 WATER POLLUTION CONTROL DIVISION

LSA Document #18-238

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from March 27, 2019, through April 26, 2019, on IDEM's draft rule language. IDEM received comments from the following parties:

Indra Frank, MD, MPH, Hoosier Environmental Council (HEC)
Jarrod Hahn, CFM, Wells County Surveyor and President of the County Surveyors Association of Indiana (JH-CSAI)
Kevin M. Pierard, Chief, U.S. EPA, Region 5, NPDES Programs Branch (U.S. EPA)
Jay Poe, P.S., Huntington County Surveyor (JP)

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

Comment: The reporting requirement at 327 IAC 15-4-3(f) for toxic pollutants in a discharge has been deleted in the draft rule. HEC does not believe there is any reason related to this rulemaking to eliminate permits by rule and replace them with administratively issued general permits that accounts for eliminating subsection (f). Regulated entities operating under administratively issued general permits should be responsible for reporting releases of materials identified as toxic under the Clean Water Act. (HEC)

Response: The reporting requirement for toxic pollutants in a discharge, formerly located at 327 IAC 15-4-3(f), has not been deleted from the draft rule. It is included in the list of standard permit conditions at 327 IAC 15-4-1(n)(15), which states that, "Additional reporting requirement for existing manufacturing, commercial, mining, and silvicultural dischargers according to 40 CFR 122.42(a)." is applicable to a general permit. The language that was at 327 IAC 15-4-3(f) was taken from 40 CFR 122.42(a) concerning toxics in a discharge.

Comment: The criminal penalties at 327 IAC 15-4-3(k) regarding knowingly making a false report have been deleted in the draft rule. It is not apparent why elimination of subsection (k) would be necessary as part of changing from permits by rule to administratively issued general permits. (HEC)

Response: The activities described in 327 IAC 15-4-3(k) are subject to enforcement and criminal penalties covered under IC 13-30 and don't need to be duplicated in rule.

Comment: The U.S. Environmental Protection Agency, Region 5, (U.S. EPA) conducted an initial review of the regulations in the rulemaking LSA Document #18-238 and would like to meet with IDEM staff to discuss the results of this review. After the rulemaking is final adopted, U.S. EPA will review the regulations again for approval consistent with the state program revision procedures found at 40 CFR 123.62. (U.S. EPA)

Response: IDEM and U.S. EPA have held one conversation to discuss the results of U.S. EPA's initial review of the regulations in the rulemaking LSA Document #18-238. Several changes to the rule language have been made in response to the discussion with U.S. EPA. The

changes are as follows:

- 327 IAC 15-2-2(a)(1) and (a)(2), the dates of the General Permits discussed in these subdivisions have been updated.
- 327 IAC 15-4-1(e), the word “modifying” has been added.
- 327 IAC 15-4-2(d)(2)(C), the word “downtime” that had inadvertently been left out has been reinserted.
- 327 IAC 15-4-2(d)(3)(A), the original language, “If this information is provided orally, a written submission must be provided” that was deleted in the second notice draft rule has been reinserted.

Additionally, a change not resulting from the U.S. EPA discussion is at 327 IAC 15-2-2(a) where the language in the second notice draft rule was changed to “The commissioner may issue...”. The draft rule for consideration of preliminary adoption goes back to the original language, “The commissioner may regulate...”. As well, a new subdivision (11) has been added to include coal mining activities.

Comment: The public notice for LSA Document #18-238 says that “No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law.” Section 404 of the Clean Water Act allows exemptions for construction and maintenance of farm ponds, stock ponds, and the like. However, IDEM requires a permit for the construction of ponds for land disturbances over one acre. This seems to be more restrictions imposed by IDEM than by the federal rules. (JP)

Response: The purpose and subject matter of this rulemaking are to change the method of issuance of general permits from the current permit by rule process to administratively issued permits. The commenter’s letter has been shared with IDEM’s Office of Water Quality because the specific comments speak more to the requirements of the draft general permit for stormwater run-off from construction activity than to this rulemaking. IDEM has worked with U.S. EPA and an advisory group of a cross section of interested parties representing key stakeholders, including surveyors, in the development of the draft general permit for stormwater run-off from construction activity. Once this rulemaking is completed, the draft general permit will be public noticed for comment on the general permit’s content. IDEM encourages the commenter to submit a comment in response to that notice with specific comments related to the requirements of the draft general permit for stormwater run-off from construction activity.

Comment: The County Surveyors Association of Indiana does not object to the change from the permit by rule process to an administratively issued process for issuance of general permits for stormwater run-off associated with construction activity so long as the change does not expand the projects that are covered beyond what is required presently under the Clean Water Act. (JH-CSAI)

Response: This rulemaking is concerned only with the process by which a general permit is issued. The type and scope of projects covered under the general permit for stormwater run-off from construction activity is set forth in the general permit itself, not in the rule language under consideration in this rulemaking. Once this rulemaking is completed, the draft general permit will be public noticed for comment on the general permit’s content. IDEM encourages the commenter to submit a comment in response to that notice with specific comments related to the

regulatory requirements of the draft general permit for stormwater run-off from construction activity.