

TITLE 327 WATER POLLUTION CONTROL DIVISION

LSA Document #19-510

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from October 16, 2019, through November 15, 2019, on IDEM's proposed rule language. IDEM received comments from the following parties:

United States Environmental Protection Agency (USEPA)
White River Alliance (WRA)

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

Comment: To clarify the water quality-based requirements that would apply for the seven waters affected by the proposed rule and improve transparency, it is recommended that 327 IAC 2-1-11.5(b) identify which long term control plan (LTCP) the rule references and which conditions in that LTCP are included as part of the water quality-based requirements for those waters. It is suggested that the current rule language at 327 IAC 2-1-11.5(b)(1) that states, “are determined by the approved LTCP for the combined sewer system” be amended with additional language to read, “and shall require that combined sewer overflow (CSO) discharges be consistent with the following performance criteria in the approved LTCP dated November 2017: 95% capture and an annual average of four CSOs for Indianapolis’s five-year typical year period (as defined in the LTCP) for CSO discharges into any watershed other than the Fall Creek watershed, and 97% capture and an annual average of two CSOs for Indianapolis’s five-year typical year period for CSO discharges into the Fall Creek watershed;”. (USEPA)

Response: U.S. EPA’s suggested language describes what is already contained in both the LTCP and the Consent Decree. This rulemaking is required under IC 13-14-9-14. In accordance with that statute, this rule establishes the limited use subcategory that applies only to those stream reaches that may still be impacted upon full implementation of CWA Authority, Inc.’s approved LTCP. Further, the subcategory is an acknowledgement that, during extreme wet weather events, the recreational use of full body contact is not attainable for the reasons outlined in CWA Authority, Inc.’s approved Use Attainability Analysis (UAA). The use suspension is temporary and only applicable as it relates to CSOs allowed in extreme wet weather events, which amount to up to four (4) CSO events in a typical year on all watersheds outside the Fall Creek watershed and two (2) CSO events in a typical year in the Fall Creek watershed as required by both the LTCP and the Consent Decree.

Comment: Millions of dollars in improvements to the White River are being made by a large array of institutions, including public, private, non-profit, and philanthropic entities, with the aim of the river providing full body contact recreation and safe fish consumption. This rule change to suspend the recreational use designation runs contrary to and impedes community goals and investments and may make these goals ultimately unachievable. (WRA)

Response: This rulemaking is required under IC 13-14-9-14. In accordance with that statute, this rule establishes the limited use subcategory that applies only to those stream reaches that may still be impacted upon full implementation of CWA Authority, Inc.’s approved LTCP. Further, the subcategory is an acknowledgement that, during extreme wet weather events, the recreational use of full body contact is not attainable for the reasons outlined in CWA Authority,

Inc.'s approved UAA. The use suspension is temporary and only applicable as it relates to CSOs allowed in extreme wet weather events, which amount to up to four (4) CSO events in a typical year on all watersheds outside the Fall Creek watershed and two (2) CSO events in a typical year in the Fall Creek watershed as required by both the LTCP and the Consent Decree.

Comment: In return for the wastewater rate increases the public is experiencing, the public expects the 97% capture of sewage laden overflows as agreed to in the original LTCP and Consent Decree. There is concern that this rate of capture may not be realized because the CSO abatement strategies were based on typical year storm data from 1996-2000, but recent and future modeled storm conditions indicate something altogether different, meaning larger and more frequent storm events. The problem with the proposed rule is that it allows the existence of a CSO wet weather condition to dictate the designated use standards without clear limitations as to the frequency of those events. Specifically, the proposed rule does not set a boundary on the number of events or associated total number of days when the CSO wet weather limited use designation can occur. This could leave significant portions of the recreational season saddled with non-recreational water conditions. (WRA)

Response: This rule is not intended to set boundaries on the number of CSO events allowed in the affected watersheds. The boundaries are set within the Consent Decree and LTCP and will be appropriately reflected in CWA Authority, Inc.'s NPDES permit. This rule merely codifies the result of the UAA that demonstrates which stream reaches will be impacted during the most extreme wet weather events. Under the Consent Decree, CSOs are only allowed to occur during two (2) CSO events in a typical year in the Fall Creek watershed and four (4) CSO events in a typical year on waters outside the Fall Creek watershed. CSOs beyond those allowed under the state and federally enforceable Consent Decree and the LTCP will be a violation.

Comment: The only reference in the Consent Decree to performance standards and compliance in regard to the capture rate is based on post construction monitoring of overflow volumes. It is unclear how overflow monitoring will specifically inform compliance since it appears there is an element of both physical sampling for a period of twelve months as well as an associated simulation. This compliance simulation is linked to a "typical year", which itself was based on a simulation, and this, then, determines performance within the watershed for CSO volume, overflow frequency, and percent capture. It is assumed that the "typical year" is based on the original 1996-2000 period since no other reference is given. When compliance is tied to a "typical year" that is not representative of current conditions, there are no assurances that we will actually realize a 97% capture of CSO flows, and there will be no way to utilize the compliance process to ensure that such a negotiated end point occurs. (WRA)

Response: The Consent Decree and LTCP require 97% capture of CSO volume and two (2) CSO events in a typical year in the Fall Creek watershed and 95% capture of CSO volume and four (4) CSO events in a typical year on waters outside the Fall Creek watershed. Compliance is tied to the number of allowed CSOs within a typical year, as specified in the enforceable Consent Decree, which will be appropriately reflected in CWA Authority, Inc.'s NPDES permit. Failure to meet these requirements will be a violation.

Comment: Several determinations need to be updated based on current data representative of current conditions, including the following:

- The "typical year" should be reconsidered using the well-researched data from the Indiana Climate Change Impacts Assessment (Purdue University).

- A newly determined “typical year” should be compared to the “typical year” flow and frequency in the LTCP as well as the capacity of the associated proposed CSO abatement strategies and overall capture volumes identified in the LTCP.
- Based on a reconsidered “typical year”, consider if a similar number of CSO events could be expected to trigger the wet weather limited use designation when the LTCP is completed in 2025.
- Apply the updated “typical year” simulation to the post-construction monitoring compliance simulation.
- Compare the frequency and associated storm volumes of a reconsidered “typical year” to the anticipated drawdown rate of the deep rock tunnel and determine if the deep rock tunnel will be emptied and have capacity when the next storm arrives in the event of large back-to-back storms.

If the above determinations cannot be completed in a timely fashion, consider setting a strict maximum in the new rule on the number of times a CSO wet weather limited use designation can be put into effect before the associated NPDES permit must be revisited and additional abatement measures put in place. (WRA)

Response: The number of overflows allowed after full implementation of the approved LTCP is not governed by this rule. It is governed by the Consent Decree and LTCP and will be appropriately reflected in CWA Authority, Inc.’s NPDES permit. This rule is required under state law and is merely a codification of the legally binding agreement that CWA Authority, Inc. has entered into with IDEM and U.S. EPA. It does not, in and of itself, set standards, nor direct compliance. It provides the locations of the stream reaches that may be affected during the CSOs allowed under the Consent Decree upon full implementation of the LTCP. Any overflows beyond those allowed under the Consent Decree, LTCP, and NPDES permit will be subject to enforcement.

Comment: Strategies for stormwater management and runoff abatement should be incentivized, mandated, or both to lessen the likelihood of having to use the CSO wet weather limited use designation thus ensuring that the number of these events are in line with the Consent Decree/LTCP stated average outcomes of two to four events per year per named waterbody. The current and anticipated future weather events did not exist at the time the Consent Decree was drawn up, but, if they are ignored, the agreed upon outcomes of the Consent Decree may be unmet. (WRA)

Response: The number of overflows allowed after full implementation of the approved LTCP is not governed by this rule. It is governed by the Consent Decree and LTCP and will be appropriately reflected in CWA Authority, Inc.’s NPDES permit. This rule is required under state law and is merely a codification of the legally binding agreement that CWA Authority, Inc. has entered into with IDEM and U.S. EPA. It does not, in and of itself, set standards, nor direct compliance. It provides the locations of the stream reaches that may be affected during the CSOs allowed under the Consent Decree upon full implementation of the LTCP. Any overflows beyond those allowed under the Consent Decree, LTCP, and NPDES permit will be subject to enforcement.