

## Questions Submitted Regarding the Citizen's Petition on the 2012 Rec Criteria

The following sets of questions were submitted by ERB members for response by either IDEM or the petitioners. In some cases, the same question was addressed to both parties. These sets of questions were submitted at various times, the first set was submitted in mid-December. The second set was sent in early January, and the third set was submitted in late January.

IDEM staff have been working on responses, as have the petitioners. The petitioners have requested additional time to complete their responses given the number of parties involved in the development of responses specific to their various situations. Neither party has yet had the opportunity to respond to the final set of questions which were submitted shortly before the board packet mail-out. When the parties have completed their responses, the agency will send them out to ERB members.

### **First Set**

1. Please define the terms “designated use” and “existing use” for the board and the impact on adopting RWQC for Indiana.
2. IDEM has designated all waters as full-body contact use and for support of a well-balanced aquatic community. Are there any waters that CSO communities discharge to that have been identified as having an existing use? i.e., Mishawaka discharging to the St Joseph River.
3. Indiana has provided seasonal relief for designated uses and criteria for those uses. If RWQC are adopted can the same relief be provided to communities?
4. Since an existing use cannot be removed would not implementation of RWQC in waters that have an “existing use” cause the anti-degradation policy to be invoked for those waters?
5. Have other states adopted RWQC? If so, have those states developed guidance for monitoring and sampling to ensure compliance with the RWQC?
6. The work group made several attempts to modify the language in 327 IAC 2-1-6(d); would these changes constitute “backsliding” based on limits currently in place?
7. Would communities be allowed one sample/month, or would they have to take a minimum number per day, week, and month?
8. Has EPA insisted that the 2012 RWQC be adopted or do states have flexibility?

### **Second Set**

1. What monitoring data is collected during combined sewer overflow (CSO) events? What are

typical levels of E. coli and Enterococci? How do those numbers compare with IDEM's current water quality criteria at 327 IAC 2-1-6(d) and the 2012 RWQC?

2. What laws or regulations state that any CSO discharge event in Indiana is a prohibited discharge and a violation?

3. Describe the current state of water monitoring Indiana. I understand that IDEM's working plan to evaluate impaired waters for the 303(d) list focuses on different parts of the state each year. I'd like to know about long-term, **ongoing** hourly, daily monthly, or yearly assessments of water quality, both by the state, industry, and anyone else who may monitor water quality in the state. Based on these data, are there any water quality trends reports available?

4. In 2014 (or thereabout) did the terms of Angola's LTCP and/or NPDES permit change? If so, why?

5. I assume that water quality-based effluent limitations are included in water treatment works NPDES permits. How are these limitations applied to dischargers with CSOs? Is there a one size fits all limitation, or are they tailored for each individual discharger? If there are differences, please give examples.

6. Are all CSO NPDES compliance monitoring requirements based on discharge sampling, or are there requirements for instream monitoring? If requirements differ from permit to permit, why is that so?

7. Please provide a list of all communities/municipalities/cities etc. with approved CSO long-term control plans, and the year that those plans were approved. URL links would be very helpful.

8. Are there significant differences between the content of LTCPs in communities under federal consent decrees vs state enforceable requirements? If so, what are they?

9. Are there significant differences between the compliance audits of LTCP implementation in communities under federal consent decrees vs state enforceable requirements? If so, what are they?

10. Are there still CSO communities without finalized LTCPs? (Just the plans. I know implementation is still ongoing.) If so, what are the impediments to finalizing them?

11. In her presentation, Ms. Mettler indicated there is no clear way to be sure that communities are done with their LTCPs and that EPA is reluctant to agree that the work has been completed. If the communities have LTCPs under consent decree and/or state enforceable requirements, why can't an end point be approved?

12. Commissioner Pigott's presentation on UAAs ([https://www.in.gov/idem/cleanwater/files/cso\\_uaa\\_presentation.pdf](https://www.in.gov/idem/cleanwater/files/cso_uaa_presentation.pdf)) indicates that 53 communities have completed their work. Does this mean that IDEM believes LTCP

commitments in these communities have been met? What about EPA?

13. Is “force majeure” defined the same way in all the approved plans/consent decrees? Based on the testimony we heard, I got the idea that the force majeure was related to **CSO events** that were beyond the control of the community, and not anticipated (or expected to be controlled) in the long-term control plans. In an Indiana community’s long-term control plan I downloaded from the internet, it appears force majeure was related to events (not CSO events) not under the community’s control that affected the community’s ability to fulfill the commitments in the long-term control plan.

a. How has force majeure been applied to CSO discharge events in Indiana?

b. Is force majeure defined in any law or regulation? If so, please cite.

14. I also understood from testimony that EPA no longer allows for relief under force majeure. Where is this information in laws/regulation/guidance?

a. If IDEM did not provide relief due to “an act of nature, or force majeure,” please provide a record of those CSO communities and circumstances.

b. If IDEM has provided relief due to “an act of nature, or force majeure,” please provide a record of where this has impacted CSO communities?

15. What is the nature of enforcement discretion IDEM can apply with regards to CSOs? Please provide examples, or if possible, a list of such discretions.

16. Why must a new UAA, after the first one is approved, be submitted five years later?

17. What IDEM water quality regulations are not yet approved by the EPA (if any)?

18. Please provide a comparison table of where IAC rules would be changed should the board adopt EPA’s 2012 RWQC.

19. How might IDEM improve objectivity in the assessment of LTCPs?

20. Where are there potentials for standard backsliding on water quality in Indiana if the 2012 RWQC are adopted?

### **Third Set**

1. If CSO-receiving waters are re-designated to a limited use subcategory during and following certain CSO events, approximately how many CSO communities will be seeking this designation for CSO impacted waters. Rough estimate?

2. How many waterways, stream miles and hours will be subject to this designation?

3. Will the review/processing of water quality standards put a burden on the agency or is that a polite way to ask us to consider the burden it places on the communities?
4. Are these permanent or temporary changes to the water quality standards?
5. Indianapolis CSO Wet Weather Limited Use Designation vs. IDEM adoption of RWQC – Some may believe that a “CSO Compliance Certainty” solution is already in place. The “Limited Use Designation” is TEMPORARY, whereby Agency review and ERB approval must be performed every 5 years. What may seem reasonable to some may be a considerable expense to smaller systems. Should this be a one size fits all solution or should we consider variables based on community size and requirements?
6. NPDES Permits & CSO Prohibition – if our product contains language prohibiting CSOs, how will IDEM apply “enforcement discretion”? Will new IDEM staff be consistent with past discretion? It sounds like everyone appreciates and knows that discretion is valued and necessary just needs to be a little better defined. How can we predict if the EPA evaluation (if that occurs) will mirror the local evaluation?