

TITLE 327 WATER POLLUTION CONTROL DIVISION

Rule Information Sheet

Fort Wayne Combined Sewer Overflow Wet Weather Limited Use Subcategory of the
Recreational Use Designation
LSA Document #21-164

Overview

This rulemaking is required under IC 13-14-9-14 and IC 13-18-3-2.5 to establish a combined sewer overflow (CSO) wet weather limited use subcategory of the recreational use designation for waters receiving combined sewer overflows in the city of Fort Wayne. The CSO wet weather limited use subcategory is established by IC 13-18-3-2.5, and IC 13-14-9-14 provides the procedure whereby the Environmental Rules Board can adopt a rule to establish the limited use subcategory for a community served by a combined sewer that has an approved long term control plan (LTCP) and an approved use attainability analysis (UAA) that supports the use of a CSO wet weather limited use subcategory. The subcategory will apply to the community's CSO outfalls as indicated by the UAA when the approved LTCP is fully implemented. The subcategory designation remains in effect during the time and to the physical extent that the recreational use designation that applied to the waters immediately before the application of the wet weather limited use subcategory is not attained but for not more than four (4) days after the date the combined sewer overflow discharge ends. Therefore, the existing recreational use designation and associated bacteria criteria remain in effect at all times except when the CSO wet weather limited use subcategory is in effect.

The LTCP for the Fort Wayne area CSO-impacted waterways was approved in December 2007 and updated by the modified Consent Decree, Case No. 2:07_cv_00445, entered by the United States District Court for the Northern District of Indiana. The UAA was approved July 9, 2020. Complete implementation of the LTCP, expected to occur in 2025, along with the approved UAA makes the city of Fort Wayne eligible for the CSO wet weather limited use subcategory as allowed under IC 13-18-3-2.5.

This rulemaking to grant the subcategory designation to seven (7) CSO-affected waterbodies will constitute new or revised water quality standards that will need to be submitted to and approved by U.S. EPA under Section 303(c) of the Clean Water Act (CWA). IDEM has been in communication with U.S. EPA during this rulemaking.

Affected Persons

This rulemaking to establish a CSO wet weather limited use subcategory affects the city of Fort Wayne, its residents, and recreational users of the Fort Wayne area CSO-impacted waterways.

Reasons for the Rule

IC 13-14-9-14 requires that IDEM develop a rule to establish the subcategory after approval of a community's LTCP and UAA. Before the implementation of the LTCP, every wet weather event had the likelihood of causing overflows from the combined sewer system owned and operated by

the city of Fort Wayne. The implementation of the LTCP has been underway for several years, is anticipated to be completed in 2025, and has cost millions of dollars. Full implementation of the LTCP will result in the reduction of the number of combined sewer overflow events from 71 events per typical year to one event to the St. Joseph River and a maximum of four events for the other CSO impacted streams. This LTCP level of control is consistent with the consent decree and subsequent modifications and is in accordance with the EPA CSO Policy, a federal guidance for the planning, selection, and implementation of CSO controls. Even after completion of the LTCP, some wet weather events could still cause CSOs, which would then be subject to the wet weather limited use subcategory of the recreational use designation for not more than four (4) days after the date the combined sewer overflow discharge ends.

The Clean Water Act and Federal regulations at 40 CFR 131.10 allow states to remove designated uses applied to surface waters under their jurisdiction where it is shown through a UAA that the designated use is not an existing use and that the designated use is not attainable. The city of Fort Wayne's approved UAA relied on factors defined in U.S. EPA's use attainability analysis guideline to show the inability to attain full body contact recreational use in the CSO-impacted Fort Wayne-area waterways, including factors relating to unsafe stream flow velocity during and after large storms, urbanization providing impervious surfaces adding to run off, changes to natural stream hydrology that increase stream flow and velocity, and costs from achieving 100% exclusion of CSOs from all of the community's waterways would be beyond the capability of the sewer rate payers of the community.

IDEM found that the UAA submitted by the city of Fort Wayne provided sufficient information to initiate changing the designated recreational use for seven (7) waterways from full body contact to the CSO wet weather limited use subcategory of Indiana's recreational use designation as provided in IC 13-18-3-2.5. This rulemaking will establish the CSO wet weather limited use subcategory for the seven (7) listed waterways in accord with the Consent Decree entered into by the United States Environmental Protection Agency, IDEM, and the city of Fort Wayne.

Economic Impact of the Rule

There is no fiscal impact to the city of Fort Wayne nor to its rate-paying customers from the establishment of the CSO wet weather limited use subcategory.

Scheduled Board Action and Hearings

Public Hearing: November 10, 2021, at 1:30 P.M., at the Indiana Government Center South, 10 North Senate Avenue, Conference Center Room A, Indianapolis, Indiana. The public may attend the ERB meeting in person or join by using the Zoom link, meeting ID, and passcode, or telephone numbers that can be found prior to the meeting at:

https://events.in.gov/event/environmental_rules_board_meeting.

IDEM Contact

Additional information regarding this rulemaking action can be obtained from MaryAnn Stevens, Rules Development Branch, Office of Legal Counsel, (317) 232-8635, (800) 451-6027 (in Indiana), or mstevens@idem.in.gov.