

Bold = new language

~~Strikeout~~ = existing language deleted in this rulemaking

Bold and single underline = new language added since Indiana Register posting of the proposed rule

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TITLE 327 WATER POLLUTION CONTROL DIVISION

Proposed Rule

LSA Document #21-164

DIGEST

Amends 327 IAC 2-1-3.1, adds 327 IAC 2-1.1, and repeals 327 IAC 2-1-11.5 concerning the establishment of a combined sewer overflow (CSO) wet weather limited use subcategory. Effective 30 days after filing with the Publisher.

HISTORY

Proposed Rule: May 12, 2021, Indiana Register (DIN: 20210512-IR-327210164PRA).

Notice of Hearing: May 12, 2021, Indiana Register (DIN: 20210512-IR-327210164PHA).

Change in Notice of Public Hearing: June 30, 2021, Indiana Register (DIN: 20210630-IR-327210164CHA).

Publisher's Correction: July 7, 2021, Indiana Register (DIN: 20210707-IR-327210164PCA).

Change in Notice of Public Hearing: July 7, 2021, Indiana Register (DIN: 20210707-IR-327210164CHA).

Change in Notice of Public Hearing: August 18, 2021, Indiana Register (DIN: 20210818-IR-327210164CHA).

Date of Hearing: November 10, 2021.

327 IAC 2-1-3.1, 327 IAC 2-1-11.5, 327 IAC 2-1.1

SECTION 1. 327 IAC 2-1-3.1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 2-1-3.1 CSO wet weather limited use designation

Authority: IC 13-14-8; IC 13-14-9; IC 13-18-3-2.5

Affected: IC 13-14-2-6; IC 13-14-9-14; IC 13-18-4

Sec. 3.1. (a) The combined sewer overflow (CSO) wet weather limited use subcategory established under section 3 of this rule ~~only~~ applies **only** to waters receiving wet weather discharges from combined sewer overflows that are listed in ~~section 11.5 of this rule.~~ **327 IAC 2-1.1.**

(b) To receive consideration for the CSO wet weather limited use subcategory designation, a CSO community must do the following:

(1) Perform a use attainability analysis (UAA) to change the recreational designated use of the waterbody or waterbodies receiving the wet weather discharges from combined

sewer overflows.

(2) Submit the UAA to the department for approval.

(3) Submit a long term control plan (LTCP) consistent with the application of the CSO wet weather limited use subcategory to the department for approval.

(c) The LTCP submitted to the department must:

(1) specify the water quality-based requirements that will apply to combined sewer overflows under subsection (h) if the waterbody or waterbodies receiving the wet weather overflows are redesignated to the CSO wet weather limited use subcategory; and

(2) meet the requirements of Section 402(q) of the Clean Water Act*.

(d) The department shall:

(1) review the UAA concurrently with the LTCP if they are submitted concurrently; and

(2) use the LTCP to satisfy the requirements of the UAA, to the extent possible.

(e) Upon approval of a UAA, the department shall begin a rulemaking under IC 13-14-9-14 to amend the designated use to a CSO wet weather limited use designation. The rulemaking may commence before full implementation of the approved LTCP.

(f) Upon completion of the rulemaking required under subsection (e), the department shall submit the amended recreational use designation and the supporting UAA to the U.S. EPA for approval.

(g) Upon U.S. EPA's approval of the use designation change for the waterbody or waterbodies receiving wet weather overflows from a CSO community, the department shall modify the NPDES permit holder's permit to incorporate the CSO wet weather limited use designation and the approved LTCP into the permit.

(h) The water quality-based requirements for the CSO wet weather limited use designation must:

(1) be determined by the approved LTCP for the combined sewer system;

(2) be consistent with the Clean Water Act; and

(3) remain in effect during the time and to the physical extent that the recreational use designation that applied to the waters immediately before the application to the waters of the CSO wet weather limited use subcategory is not attained but for not more than four

(4) days after the date the overflow discharge ends.

*This document is incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, Thirteenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Water Pollution Control Division; 327 IAC 2-1-3.1; filed Sep 6, 2007, 12:25 p.m.: 20071003-IR-327050218FRA; filed Apr 27, 2020, 8:57 a.m.: 20200506-IR-327190510FRA, eff Apr 27, 2020, see Executive Order 20-15, posted at 20200422-IR-GOV200234EOA*)

SECTION 2. 327 IAC 2-1.1 IS ADDED TO READ AS FOLLOWS:

Rule 1.1. Waters Designated as Limited Use under the CSO Wet Weather Limited Use Subcategory Designation

327 IAC 2-1.1-1 Water quality-based requirements for the CSO wet weather limited use subcategory designation

Authority: IC 13-14-8; IC 13-14-9; IC 13-18-3

Affected: IC 13-18-4

Sec. 1. The water quality-based requirements that apply to the combined sewer overflow (CSO) wet weather limited use subcategory designations in this rule are set forth in 327 IAC 2-1-3.1(h). (*Water Pollution Control Division; 327 IAC 2-1.1-1*)

327 IAC 2-1.1-2 CWA Authority, Inc., CSO wet weather limited use; designated waters

Authority: IC 13-14-8; IC 13-14-9; IC 13-18-3

Affected: IC 13-18-4

Sec. 2. (a) The following waters of the state are designated for limited use in CWA Authority, Inc.'s approved long term control plan (LTCP) for the city of Indianapolis pursuant to the CSO wet weather limited use subcategory established under 327 IAC 2-1-3(c):

- (1) White River from 56th Street on the Indianapolis north side to Freedom (River Mile 146).**
- (2) Fall Creek from Keystone Avenue to the White River.**
- (3) Little Eagle Creek from Michigan Street to the confluence with Big Eagle Creek.**
- (4) Big Eagle Creek from the confluence with Little Eagle Creek to the White River.**
- (5) Pagues Run from 21st Street to the White River.**
- (6) Pleasant Run from Kitley Avenue to the White River.**
- (7) Bean Creek from Interstate 65 to Pleasant Run.**

(b) The water quality-based requirements for the CSO wet weather limited use subcategory:

(1) are determined by the November 2017 approved LTCP for the combined sewer system; and

(2) require that CSO discharges that occur be consistent with the performance criteria contained in the approved LTCP that include:

(A) ninety-seven percent (97%) capture of typical year CSO volume and an annual average of two (2) typical year CSOs within the Fall Creek watershed; and

(B) ninety-five percent (95%) capture of typical year CSO volume and an annual average of four (4) typical year CSOs in watersheds other than the Fall Creek watershed.

(Water Pollution Control Division; 327 IAC 2-1.1-2)

327 IAC 2-1.1-3 City of Fort Wayne, CSO wet weather limited use; designated waters

Authority: IC 13-14-8; IC 13-14-9; IC 13-18-3

Affected: IC 13-18-4

Sec. 3. (a) The following waters of the state are designated for limited use in the city of Fort Wayne's approved LTCP and approved use attainability analysis (UAA) pursuant to the CSO wet weather limited use subcategory established under 327 IAC 2-1-3(c) and 327 IAC 2-1.5-5(c):

- (1) St. Marys River (from its junction with Natural Drain #4 near Tillman Road to the confluence with the St. Joseph River).**
- (2) Natural Drain #4 (from CSO Outfall 054, near the intersection of Hollis Lane and Mercer Avenue, to its junction with the St. Marys River).**
- (3) St. Joseph River (from CSO Outfall 052, located immediately south of Coliseum Boulevard near N. Anthony Boulevard, to the confluence with the St. Marys River).**
- (4) Spy Run Creek (from CSO Outfall 036, located north of W. State Street along Eastbrook/Westbrook Drive, to its junction with the St. Marys River south of 4th Street).**
- (5) Baldwin Ditch (from CSO Outfalls 061 and 062, near the intersection of E. State Street and Barnhart Avenue, to its junction with the Maumee River near CSO Ponds 1 and 2).**
- (6) Harvester Drain (from CSO Outfall 064, near New Haven Avenue and South Coliseum Boulevard, to its junction with the Maumee River).**
- (7) Maumee River (from its origin, at the confluence of the St. Marys River and St. Joseph River in the city, to the boundary between the states of Indiana and Ohio).**

(b) The water quality-based requirements for the CSO wet weather limited use subcategory:

- (1) are determined by the December 2007 approved LTCP for the combined sewer system as 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; and**
- (2) require that CSO events that occur be consistent with the performance criteria contained in the approved LTCP, including its maximums of:**
 - (A) one (1) annual, untreated CSO event per typical year to the St. Joseph River; and**
 - (B) four (4) annual, untreated CSO events per typical year to waters other than the St. Joseph River.**

(Water Pollution Control Division; 327 IAC 2-1.1-3)

SECTION 3. 327 IAC 2-1-11.5 IS REPEALED.