

TITLE 327 WATER POLLUTION CONTROL DIVISION

LSA Document #24-428

SUMMARY/RESPONSE TO COMMENTS

IDEM requested public comment from November 13, 2024, through December 13, 2024, and during the public hearing on March 12, 2025. IDEM did not receive any comments in response to the Notice of First Public Comment Period.

IDEM requested public comment from April 30, 2025, through May 30, 2025. IDEM received comments from the following party by the comment period deadline:

United States Environmental Protection Agency (U.S. EPA)

The comments received and IDEM's responses to the comments are summarized as follows:

U.S. EPA identified stringency concerns and provided the following comments on the draft rulemaking:

Comment: 327 IAC 8-3.3-3(b): IDEM updated this section to include 40 C.F.R. § 141.401 (Ground Water Rule) but still references 40 C.F.R. § 141.723 (EPA-only sanitary survey rules), which does not apply to surveys conducted by States. That reference should be to 40 C.F.R. § 141.21(d) (Surface Water Treatment Rules). Please maintain 40 C.F.R. § 141.401 and substitute 40 C.F.R. § 141.723 with 40 C.F.R. § 141.21(d).

Response: 327 IAC 8-3.3-3(b): IDEM has revised 327 IAC 8-3.3-3(b) to be consistent with this comment.

On January 16, 2025, U.S. EPA provided IDEM with an abbreviated crosswalk that included suggested revisions to the proposed rule including incorporation by reference citation corrections, definition clarifications, correction of the list of exclusions, and other changes as summarized below.

Comment: 327 IAC 8-2.7-1(b): Why use the July 1, 2023 edition of the C.F.R. if IDEM's draft rule references 2024 rules?

Response: 327 IAC 8-2.7-1(b): IDEM updated the C.F.R. reference to the July 1, 2024, edition.

Comment: 327 IAC 8-2.7-3: Since the state draft rulemaking includes state and federal definitions of the same term, the state should reconcile these definitions and specify when state or federal definitions are controlling or amend the definitions to be consistent. Specifically, the state definition of "Contaminant" appears narrower than the federal definition, and the definition of "Drinking water violation" does not appear to encompass all potential violations under the safe drinking water act.

Response: 327 IAC 8-2.7-3: IDEM has updated the state definitions of "Contaminant" and "Surface water" to be consistent with the equivalent federal definitions. All other

definitions in this IAC section are state-only definitions. IDEM has struck the definition of “Drinking water violation” in response to U.S. EPA’s concern and because the term no longer appears in the draft rule.

Comment: 327 IAC 8-2.7-2(a)(2): EPA has a stringency concern in excepting out Section 141.5 of the federal regulations. Unless there is a more stringent applicable section (that should be cited to here), the state must incorporate by reference 141.5.

Response: 327 IAC 8-2.7-2(a)(2): IDEM removed language that proposed excluding 40 C.F.R. 141.5 from the incorporation by reference of the federal regulations.

Comment: 327 IAC 8-2.8-1(f): Recommend stating this section should be "in accordance with this section and federal regulations incorporated by reference in 327 IAC 2.7-1."

Response: 327 IAC 8-2.8-1(f): IDEM has revised the draft rule to be consistent with this comment.

Comment: 327 IAC 8-2.8-1(f)(1)(D): In (1)(D), the State should cite 40 CFR 141.714 (or Subpart W) and 40 CFR 141, Subpart H.

Response: 327 IAC 8-2.8-1(f)(1)(D) was revised to cite to 40 C.F.R. § 141.714 and 40 C.F.R. Part 141, Subpart H.

Comment: 327 IAC 8-2.8-1(f)(2)(D): Section (2)(D), should refer to 40 CFR 141.708 and 141.709 in addition to 40 CFR 141.172 and Subpart T.

Response: 327 IAC 8-2.8-1(f)(2)(D) was revised to include citations to 40 C.F.R. §§ 141.708 and 141.709, in addition to 40 C.F.R. § 141.172 and 40 C.F.R. Part 141, Subpart T.

Comment: 327 IAC 8-2.8-1(f)(2)(H): EPA recommends that (H) references the GWR (141.404(c)) as well as LT2 SWTR (141.700(c)(4) and 141.714 or Subpart W).

Response: 327 IAC 8-2.8-1(f)(2)(H) was revised to include citations to 40 C.F.R. § 141.700(c)(4) and 40 C.F.R. Part 141, Subpart W, as well as 40 C.F.R. Part 141, Subpart H and 40 C.F.R. Part 141, Appendix A to Subpart O.

Comment: 327 IAC 8-2.8-1(f)(3)(F)(ii)(CC): EPA recommends that (CC) reads: "If required by the commissioner to maintain public health, a PWS must meet higher minimum disinfectant residual..." rather than "may be required to meet higher ..."

Response: IDEM has revised the draft rule to be consistent with this comment.

Comment: 327 IAC 8-2.8-1(f)(6): EPA recommends adding a reference to Subpart I under (E) to include LCRR site sampling plans. Federal regulations under Subpart I (for both LCR and LCRR), require systems to follow site sampling plans. EPA recommends that this section also includes reporting requirements in Subpart W (LT2 SWTR) under 141.721.

Response: IDEM has revised the draft rule to be consistent with this comment.

Comment: 327 IAC 8-2.8-1(g)(1)(A): EPA recommends that (g)(1)(A) references

subsection (f) on deficiencies rather than subsection (e).

Response: 327 IAC 8-2.8-1(g)(1)(A) was revised to reference subsection (f) on deficiencies instead of subsection (e).

Comment: 327 IAC 8-3-1(10)(A) and 327 IAC 8-3-1(11)(A): U.S. EPA recommends stating "as incorporated by reference under 37 IAC 8-2.7-3".

Response: 327 IAC 8-3-1(10)(A) and 327 IAC 8-3-1(11)(A) were revised to include "as incorporated by reference under" 37 IAC 8-2.7-3 rather than citing to 327 IAC 8-2-1.

Comment: 327 IAC 8-3.2-8(a): EPA recommends amending the definition of Lead-Free Pipe and Fittings to read as follows: LEAD-FREE PIPE AND FITTINGS: Before July 1, 2025, containing not more than 8.0-percent lead. On or after July 1, 2025, containing not more than 8.0-percent lead for water supply pipe and fittings and containing not more than .25 percent weighted average lead content for drinking water pipe and fittings.

Response: 327 IAC 8-3.2-8(a): IDEM revised subsection (a) to cite to 40 C.F.R. § 143.12(a), in addition to 327 IAC 8-1, which achieves the same outcome as including the text of the new lead-free definition. IDEM remains open to further revisions to this section in a future rulemaking.

Comment: 327 IAC 8-3.4-9(2)(B): EPA recommends citing to 40 CFR 141.72 as well as 40 CFR 141.132. See SWTR - Section 141 - Subpart H (40 CFR 141.72(a)(3)).

Response: 327 IAC 8-3.4-9(2)(B) was revised to include a citation to 40 C.F.R. § 141.72 (Surface Water Treatment Rule), in addition to 40 C.F.R. § 141.132.

Comment: 327 IAC 8-3.4-9(5)(D): EPA questions whether the list of water should also include reservoirs. Also, a river is usually considered to be a type of stream - usually a 6th to 12th order stream. (e.g., the Mississippi River is a 10th order stream).

Response: 327 IAC 8-3.4-9(5)(D) was revised to strike "river" because rivers fall under the umbrella of streams and to add "reservoir" to the list of surface waters that must be twenty-five feet from a public water system well casing.

Comment: 327 IAC 8-3.4-24(b)(3) EPA questions whether IDEM intended the "shall" in (3) to be "must".

Response: 327 IAC 8-3.4-24(b)(3) was revised to substitute "must" for "shall".

Comment: 327 IAC 8-3.6-4(b)(2) EPA recommends adding a reference to the incorporation by reference of federal regulations or state ... "the PWS requirements of this article and 327 IAC 8-2.7-1."

Response: 327 IAC 8-3.6-4(b)(2) was revised to include a citation to 327 IAC 8-2.7-1.

Comment: 327 IAC 8-4-2(a) EPA recommends adding a citation to 327 IAC 8-2.7-1.

Response: 327 IAC 8-4-2(a) IDEM has revised the draft rule to be consistent with this comment.

Comment: 327 IAC 8-4.1-1(28) EPA questioned why IDEM removed the reference to

SDWA, Sec. 1428. EPA also noted that the rule's definition did not include the reference to public health that is included in the safe drinking water act. EPA questioned whether a wellhead protection area can extend beyond a well or wellfield and suggested use of the term "wellhead protection area" per the federal statute.

Response: 327 IAC 8-4.1-1(28) was revised to include reference to public health and use the term "wellhead protection area". While the state regulation strikes the statement that affirms the existence of the Wellhead Protection Program under Section 1428 of the Safe Drinking Water Act, the program is still a requirement without reiterating such.

Comment: 327 IAC 8-10-1: EPA suggests adding a citation to 327 IAC 8-2.7-3 to section 1.

Response: IDEM has revised the draft rule to be consistent with this comment.

Comment: 327 IAC 8-11-1(c)(5): EPA suggestions that section (c)(5) should also include NTNCWS.

Response: 327 IAC 8-11-1(c)(5) was revised to include non-transient non-community water systems in addition to community water systems.

Comment: 327 IAC 8-11-1(e): EPA recommends adding: "in accordance with federal rules incorporated by reference under 327 IAC 8-2.7-1" to the end of the sentence. EPA recommends limiting language (e.g., IDEM may not use this provision to allow large SW systems to not report Disinfection/etc data as required by SWTR)

Response: 327 IAC 8-11-1(e): This provision pertains specifically to Monthly Reports of Operation and has no impact on large surface water systems reporting disinfection, since that would fall under a separate surface water treatment rule. Therefore, no change has been made.