TITLE 327 WATER POLLUTION CONTROL BOARD

FINAL RULE
LSA Document #08-764(F)

DIGEST

Adds 327 IAC 2-1.3 and amends 327 IAC 2-1.5-6, 327 IAC 2-1.5-18, 327 IAC 5-2-11.2, 327 IAC 5-2-12.1, 327 IAC 5-3-8, and 327 IAC 15-2-6 concerning antidegradation standards and implementation procedures. Repeals 327 IAC 2-1-2, 327 IAC 2-1.5-4, 327 IAC 5-2-11.3, and 327 IAC 5-2-11.7. Effective 30 days after filing with the Publisher.

HISTORY

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327 IAC 2-1-2
327 IAC 2-1.3
327 IAC 2-1.5-4
327 IAC 2-1.5-6
327 IAC 2-1.5-18
327 IAC 5-2-11.2
327 IAC 5-2-11.3
327 IAC 5-2-11.7
327 IAC 5-2-12.1
327 IAC 5-3-8
327 IAC 15-2-6

SECTION 1. 327 IAC 2-1.3 IS ADDED TO READ AS FOLLOWS:

Rule 1.3. Antidegradation Standards and Implementation Procedures

327 IAC 2-1.3-1 Applicability of antidegradation standards and implementation procedures

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18
Affected: IC 13-18-3; IC 13-18-4

Sec. 1. (a) The antidegradation standards established by section 3 of this rule apply to all surface waters of the state.

(b) The antidegradation implementation procedures established in sections 4 through 7 of this rule apply to a proposed new or increased loading of a regulated pollutant to surface waters of the state from a deliberate activity subject to the Clean Water Act, including a change in process or operation that will result in a significant lowering of water quality.

(c) The antidegradation implementation procedures for activities covered by an NPDES general permit authorized by the department apply according to the following:

(1) The department shall complete an antidegradation review of the NPDES general permits.

(2) After an antidegradation review of an NPDES general permit is conducted, activities covered by that NPDES general permit are not required to undergo an additional antidegradation review.

(Water Pollution Control Board; 327 IAC 2-1.3-1)

327 IAC 2-1.3-2 Definitions

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18
Affected: IC 13-11-2-265; IC 13-13-1-1; IC 13-18-1; IC 13-18-3-2; IC 14-8-2-310; IC 14-22-34; IC 36-2-3.5; IC 36-3-1

Sec. 2. The following definitions apply throughout 327 IAC 2-1, this rule, and 327 IAC 2-1.5:

(1) "Approved alternate mixing zone volume for Lake Michigan" means the volume associated with an alternate mixing zone for Lake Michigan established according to 327 IAC 5-2-11.4(b)(6) and 327 IAC 5-2-11.4(b)(7).

(2) "Available loading capacity" is expressed as a regulated pollutant mass loading rate per twenty-four (24) hour period, for the waterbody in that area where the water quality is proposed to be lowered, and means the difference between the total loading capacity and the used loading capacity.

(3) "Best available demonstrated control technology" or "BADCT" means wastewater treatment capable of meeting the technology-based effluent limit (TBEL) established by the department under 327 IAC 5-5-2 that represents the best cost-effective treatment technology that is readily available.

(4) "Best management practices" or "BMPs" means the following measures to prevent or reduce the pollution of surface waters of the state:

(A) Schedules of activities.
(B) Prohibitions of practice.
(C) Treatment requirements.
(D) Operation and maintenance procedures.

(E) Use of containment facilities.
(F) Other management practices.

BMPs may be employed, for example, to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage resulting from manufacturing, commercial, mining, or silvicultural activities.

(5) "Bioaccumulation" means the net accumulation of a substance by an organism as a result of uptake from all environmental sources.

(6) "Bioaccumulation factor" or "BAF" means the ratio (in liters per kilogram) of a substance's concentration in tissue of an aquatic organism to its concentration in the ambient water in situations where:

(A) both the organism and its food are exposed; and
(B) the ratio does not change substantially over time.

(7) "Bioaccumulative chemical of concern" or "BCC" has the meaning set forth in 327 IAC 2-1-9 and 327 IAC 2-1.5-6.

(8) "Board" means the water pollution control board established under IC 13-18-1.

(9) "CERCLA" has the meaning set forth at IC 13-11-2-24.

(10) "Clean Water Act" or "CWA" has the meaning set forth at IC 13-11-2-29.

(11) "Combined sewer" means a sewer designed and employed to receive both of the following:

(A) Water-carried or liquid wastes.
(B) Storm or surface water.

(12) "Commissioner" has the meaning set forth at IC 13-11-2-35.

(13) "Criterion" means a definite numerical value or narrative statement promulgated by the board to maintain or enhance water quality to provide for and fully protect designated uses of the surface waters of the state.

(14) "Degradation" means, for purposes of an antidegradation demonstration, the following:

(A) For an ONRW, any new or increased loading of a regulated pollutant, except for a short-term, temporary increase as described under section 4(a) of this rule.
(B) For an HQW, including an OSRW, but excluding an ONRW, any new or increased loading of a regulated pollutant, except as provided under section 4 of this rule, to a surface water of the state that results in a significant lowering of water quality for that regulated pollutant.

(15) "Department" has the meaning set forth at IC 13-11-2-51.

(16) "Designated uses" means those uses specified in the water quality standards at:

(A) 327 IAC 2-1-3; and
(B) 327 IAC 2-1.5-5;

for each waterbody whether or not they are being attained.

(17) "Draft permit" means a document prepared by the commissioner under 327 IAC 5-3-6 before the public comment period indicating the commissioner's tentative decision to:

(A) issue or deny;
(B) modify;
(C) revoke and reissue;
(D) terminate; or
(E) reissue;

a permit.
(18) "Effluent" means a wastewater discharge from a point source to the surface waters of the state.
(19) "Effluent limitation" means any restriction established by the commissioner on:
(A) quantities;
(B) discharge rates; and
(C) concentrations;
of pollutants that are discharged, or will be discharged, from point sources into surface waters of the state.
(20) "Endangered or threatened species" means the following:
(A) Species and designated critical habitat listed as endangered or threatened under 50 CFR 17.11 and 50 CFR 17.12*, as in effect on October 1, 2010.
(B) Species listed as state endangered by the Indiana department of natural resources under the following:
(i) 312 IAC 9-3-19.
(ii) 312 IAC 9-4-14.
(iii) 312 IAC 9-5-4.
(iv) 312 IAC 9-6-9.
(v) 312 IAC 9-9-4.
(C) State endangered or threatened species identified in the Natural Resources Commission Information Bulletin #2 as approved by the Indiana Natural Resources Commission.**
(21) "Existing uses" means those uses actually attained in the waterbody on or after November 28, 1975, whether or not they are included under 327 IAC 2-1-3 or 327 IAC 2-1.5-5.
(22) "Governmental entity" has the meaning set forth at IC 13-11-2-90.
(23) "Great Lakes" means, in Indiana, the following:
(A) Lake Erie.
(B) Lake Michigan.
(24) "High quality water" or "HQW" means a waterbody, including an ONRW or OSRW, in which, on a pollutant by pollutant basis, the quality of the surface water exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water. The term includes any waterbody for which the pollutant has not been detected in:
(A) the water column; and
(B) nontransient aquatic organisms;
at levels that would indicate that a water quality criterion is not being met.
(25) "Indirect discharger" means a discharger introducing nondomestic waste pollutants into a POTW.
(26) "Lake Michigan" means the Indiana portion of the open waters of Lake Michigan.
(27) "Legislative body" means any of the following:
(A) For a county not subject to IC 36-2-3.5 or IC 36-3-1, a board of county commissioners.
(B) For a county subject to IC 36-2-3.5, a county council.
(C) For a consolidated city or a county having a consolidated city, a city

council.

(D) For a city other than a consolidated city, a common council.

(E) For a town, a town council.

(F) For a township, a township board.

(28)"Mixing zone" means an area contiguous to a discharge where the discharge mixes with the receiving water or waters. Where the quality of the effluent is lower than that of the receiving water, it may not be possible to attain within the mixing zone all designated uses attained outside the zone. The mixing zone should not be considered a place where effluents are treated.

(29) "National Pollutant Discharge Elimination System" or "NPDES" means the national program for:

(A) issuing;

(B) modifying;

(C) revoking and reissuing;

(D) terminating;

(E) denying;

(F) monitoring; and

(G) enforcing;

permits for the discharge of pollutants from point sources and imposing and enforcing pretreatment requirements by the U.S. EPA or an authorized state under Sections 307, 318, 402, and 405 of the CWA. The term includes a state program approved by the U.S. EPA under 40 CFR 123.

(30) "Open waters of Lake Michigan" means the following:

(A) The surface waters within Lake Michigan lakeward from a line drawn across the mouth of tributaries to the lake, including all surface waters enclosed by constructed breakwaters.

(B) For the Indiana Harbor Ship Canal, the boundary of the open waters of Lake Michigan is delineated by a line drawn across the mouth of the harbor from the East Breakwater Light (1995 United States Coast Guard Light List No. 19675) to the northernmost point of the shore line along the west side of the harbor.

(31) "Outstanding national resource water" or "ONRW" has the meaning set forth at IC 13-11-2-149.5.

(32) "Outstanding state resource water" or "OSRW" has the meaning set forth at IC 13-11-2-149.6.

(33) "Parameter" means a quantitative or characteristic element that describes:

(A) physical;

(B) chemical; or

(C) biological;

conditions of water.

(34) "Permit" has the meaning set forth at IC 13-11-2-157.

(35) "Permittee" means the holder of a permit.

(36) "Person" has the meaning set forth at IC 13-11-2-158(a).

(37) "Point source" means any discernible, confined, and discrete conveyance, including, but not limited to, any of the following from which pollutants are or may be discharged:

(A) A pipe.

(B) A ditch.
(C) A channel.
(D) A tunnel.
(E) A conduit.
(F) A well.
(G) A discrete fissure.
(H) A container.
(I) Rolling stock.
(J) A concentrated animal feeding operation.
(K) A landfill leachate collection system.
(L) A vessel.
(M) Any other floating craft.

The term does not include return flows from irrigated agriculture or agricultural storm runoff. See 327 IAC 5-2-4 for other exclusions.

(38) "Pollutant" means any of the following when discharged into water:
(A) Dredged spoil.
(B) Solid waste.
(C) Incinerator residue.
(D) Filter backwash.
(E) Sewage.
(F) Garbage.
(G) Sewage sludge.
(H) Munitions.
(I) Chemical wastes.
(J) Biological materials.
(K) Radioactive materials.
(L) Heat.
(M) Wrecked or discarded equipment.
(N) Rock.
(O) Sand.
(P) Cellar dirt.
(Q) Industrial, municipal, or agricultural waste.

(39) "Pollution prevention" has the meaning set forth at IC 13-11-2-166.

(40) "Privately owned treatment works" means any device or system:
(A) including recycling and reclamation, used in the treatment of:
(i) municipal sewage; or
(ii) industrial wastes; and
(B) that is not a POTW.

(41) "Publicly owned treatment works" or "POTW" has the meaning set forth at IC 13-11-2-177.5.

(42) "RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. 6901 through 42 U.S.C. 6992k, as effective December 2010.

(43) "Regulated pollutant" means any:
(A) parameter of a pollutant as defined in subdivision (39):
(i) for which water quality criteria have been adopted in or developed pursuant to 327 IAC 2-1 or 327 IAC 2-1.5;
(ii) including:

(AA) narrative and numeric criteria; and
(BB) nutrients, specifically phosphorus and nitrogen; and
(iii) excluding:
(AA) biological criteria;
(BB) pH; and
(CC) dissolved oxygen; and
(B) other parameter of a pollutant as defined in subdivision (39) that may be limited in an NPDES permit as a result of, but not limited to:
(i) best professional judgment;
(ii) new source performance standards;
(iii) best conventional pollutant control technology;
(iv) best available technology economically achievable; or
(v) best practicable control technology currently available;
for the appropriate categorical guidelines of 40 CFR 400 to 40 CFR 471.
(44) "Representative background concentration" means a value based upon a data set and determined according to 327 IAC 5-2-11.4(a)(8).
(45) "Representative background loading rate" means the product of the representative background concentration multiplied by either the:
(A) approved alternate mixing zone volume for Lake Michigan; or
(B) stream design flow.
(46) "Sanitary sewer" means a sewer, to which storm, surface, and ground waters are not intentionally allowed to enter, that conveys liquid and water-carried wastes from the following:
(A) Residences.
(B) Commercial buildings.
(C) Industrial plants.
(D) Institutions.
(47) "Sanitary wastewater" means the liquid and water-carried waste from:
(A) residences;
(B) commercial buildings;
(C) industrial plants;
(D) institutions; and
(E) other places of human occupancy;
that is transported by sewers and is primarily composed of human and household waste. Sanitary wastewater, as received by a POTW, may contain a component of industrial waste.
(48) "Sewage" has the meaning set forth at IC 13-11-2-200.
(49) "Sewer" means a pipe or conduit that carries wastewater or drainage water.
(50) "Significant lowering of water quality" means:
(A) there is a new or increased loading of a regulated pollutant to a surface water of the state that results in an increase in the ambient concentration of the regulated pollutant and the increased loading is greater than a de minimis lowering of water quality; and
(B) none of the provisions of section 4 of this rule applies.
(51) "Stream design flow" means the stream flow that represents critical conditions, upstream from the source as defined in 327 IAC 5-2-11.1(b) and 327 IAC 5-2-11.4(b)(3), for protection of:

(A) aquatic life;
(B) human health; or
(C) wildlife.

(52) "Total loading capacity", is expressed as a regulated pollutant mass loading rate per twenty-four (24) hour period, for the waterbody in the area where the water quality is proposed to be lowered, and means the product of the applicable water quality criterion multiplied by the sum of:
(A) the existing effluent flow;
(B) the proposed new or increased effluent flow; and
(C) either:
(i) the approved alternate mixing zone volume for Lake Michigan; or
(ii) the stream design flow.

(53) "Toxic substances" means substances that are or may become harmful to:
(A) aquatic life;
(B) humans;
(C) other animals;
(D) plants; or
(E) food chains;
when present in sufficient concentrations or combinations. The term includes those substances identified as toxic under Section 307(a)(1) of the CWA.

(54) "Unit of government" means a:
(A) county;
(B) municipality;
(C) township; or
(D) state.

(55) "Used loading capacity" is expressed as a regulated pollutant mass loading rate per twenty-four (24) hour period, for the waterbody in the area where the water quality is proposed to be lowered, and means the sum of:
(A) the representative background loading rate over a twenty-four (24) hour period; and
(B) the monthly average mass based effluent limitations contained in the existing permit.

(56) "Wastewater" means liquid or water-carried wastes from industrial, municipal, agricultural, or other sources.

(57) “Water quality standard” means a state or federal law or regulation consisting of:
(A) a designated use or uses;
(B) water quality criteria; and
(C) an antidegradation policy and implementation procedures.

(58) "Waters" or "waters of the state" has the meaning set forth in IC 13-11-2-265.

(59) "Watershed" has the meaning set forth in IC 14-8-2-310.

(60) "Whole effluent toxicity" or "WET" means the aggregate toxic effect of an effluent measured directly by a toxicity test performed in accordance with the approved methodologies under 40 CFR Part 136.

*** 50 CFR 17.11 and 50 CFR 17.12 are incorporated by reference and may be obtained from the Superintendent of Documents, Government Printing Office,**

Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana 46206.

****The Natural Resources Commission Information Bulletin #2 can be found at** www.in.gov\dnr\fishwild**.** *(Water Pollution Control Board; 327 IAC 2-1.3-2)*

327 IAC 2-1.3-3 Antidegradation standards

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18
Affected: IC 13-18-3-2; IC 13-18-4

Sec. 3. (a) The Tier 1 antidegradation standard is as follows:

(1) For all surface waters of the state, existing uses and the level of water quality necessary to protect existing uses shall be maintained and protected. To ensure this standard is met, the commissioner shall do the following:

(A) Ensure that the level of water quality necessary to protect existing uses is maintained. In order to achieve this requirement, water quality standards use designations must include all existing uses.

(B) Establish controls as necessary on nonpoint sources, where authority exists, and point sources of regulated pollutants to ensure the following:

(i) The criteria applicable to the designated use are achieved in the water.

(ii) Any designated use of a downstream water is maintained and protected.

(2) Where designated uses of waters are impaired:

(A) there shall be no additional lowering of the water quality with respect to the regulated pollutants that are causing the impairment; and

(B) to ensure the standard under clause (A) is met, the commissioner shall not allow a lowering of water quality for the regulated pollutants that prevents the attainment of the:

(i) designated use; or

(ii) water quality criterion.

(b) The Tier 2 antidegradation standard for HQWs that are not ONRWs or OSRWs is as follows:

(1) The surface waters of the state where existing quality for a parameter is better than the water quality criterion for that parameter established in 327 IAC 2-1-6 or 327 IAC 2-1.5-8 shall be considered high quality for that parameter.

(2) This high quality of water for a parameter shall be maintained and protected unless the commissioner finds, after full satisfaction of intergovernmental coordination and public participation and the provisions in section 5 of this rule, that allowing a significant lowering of water quality is necessary and accommodates important social or economic development in the area in which the waters are located. In allowing a significant lowering of water quality, the commissioner shall assure the following:

(A) Water quality adequate to fully protect existing uses is maintained.

(B) The highest statutory and regulatory requirements for all new and

existing point sources are applied.
(C) Where authority exists, all cost-effective and reasonable BMPs for nonpoint source control are employed.

(c) The Tier 2.9 antidegradation standard for HQWs that are OSRWs is as follows:
(1) For OSRWs inside the Great Lakes basin, no new or increased loading of a BCC, except mercury, shall be allowed that causes a significant lowering of water quality of the OSRW.
(2) For mercury in OSRWs inside the Great Lakes basin, BCCs in OSRWs outside the Great Lakes basin, and non-BCCs in all OSRWs, the following apply:
(A) These waters shall be maintained and protected in their present high quality unless the commissioner finds, after full satisfaction of:
(i) intergovernmental coordination and public participation; and
(ii) the provisions in sections 5 and 7 of this rule;
that allowing a significant lowering of water quality is necessary and accommodates important social or economic development in the area in which the waters are located.
(B) In allowing a significant lowering of water quality, the commissioner shall assure the following:
(i) Water quality adequate to fully protect existing uses is maintained.
(ii) The highest statutory and regulatory requirements for all new and existing point sources are applied.
(iii) Where authority exists, all cost-effective and reasonable BMPs for nonpoint source control are employed.
(3) For OSRWs, any new or increased loading of a regulated pollutant that results in a significant lowering of water quality for that regulated pollutant shall be prohibited, unless the:
(A) activity causing the increased loading:
(i) results in an overall improvement in water quality in the OSRW; and
(ii) meets the applicable requirements of this section; or
(B) person proposing the increased loading implements or funds a water quality improvement project in accordance with IC 13-18-3-2 in the watershed of the OSRW that:
(i) results in an overall improvement in water quality in the OSRW; and
(ii) meets the applicable requirements of this section.

(d) In addition to the OSRWs designated under IC 13-18-3-2(u) or listed at 327 IAC 2-1.5-19(b), the following waters are designated by the board to be OSRWs:
(1) The Blue River in Washington, Crawford, and Harrison Counties, from river mile 57.0 to river mile 11.5.
(2) The North Fork of Wildcat Creek in Carroll and Tippecanoe Counties, from river mile 43.11 to river mile 4.82.
(3) The South Fork of Wildcat Creek in Tippecanoe County, from river mile 10.21 to river mile 0.00.

(e) The Tier 3 antidegradation standard for HQWs that are ONRWs is the following:

(1) These waters shall be maintained and protected in their present high quality without degradation except for short-term, temporary loadings as described in section 4(a) of this rule.

(2) To ensure the antidegradation standard under subdivision (1) is met, the following requirements apply:

(A) A deliberate activity that:

(i) is not exempt under section 4 of this rule; and

(ii) results in a new or increased loading;

is prohibited.

(B) A loading to a tributary of an ONRW that is not exempt under section 4 of this rule shall not be allowed if it would cause an increase in the ambient concentration of that pollutant in the ONRW.

(f) Except for ONRWs, any determination made by the commissioner in accordance with Section 316 of the CWA concerning alternative thermal effluent limitations shall be considered to be consistent with the antidegradation standards contained in this section. *(Water Pollution Control Board; 327 IAC 2-1.3-3)*

327 IAC 2-1.3-4 Exemptions from the antidegradation demonstration requirements and the water quality improvement project or payment to the OSRW improvement fund requirements

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18

Affected: IC 13-11-2-24; IC 13-18-7; IC 13-23-13; IC 13-24-1; IC 13-25-5

Sec. 4. (a) For an ONRW or OSRW inside the Great Lakes basin, an exemption from the antidegradation demonstration requirements included in section 5 of this rule and the water quality improvement project or payment to the OSRW improvement fund requirements included in section 7 of this rule shall be allowed for new or increased loadings of mercury and non-BCCs if the following conditions are met:

(1) All reasonable methods for minimizing or preventing the new or increased loading have been taken.

(2) The discharge will last less than twelve (12) months or three hundred sixty-five (365) days.

(3) A person applies for and receives authorization from the commissioner.

(4) The discharge will result only in a short-term, temporary (not to exceed twelve (12) months) lowering of water quality.

(5) The discharge complies with the antidegradation standards contained in section 3 of this rule.

(b) For an HQW except an ONRW or OSRW inside the Great Lakes basin, an exemption from the antidegradation demonstration requirements included in section 5 of this rule and the water quality improvement project or payment to the OSRW improvement fund requirements included in section 7 of this rule shall be allowed for new or increased loadings if the following conditions are met:

(1) All reasonable methods for minimizing or preventing the new or increased

loading have been taken.
(2) The discharge will last less than twelve (12) months or three hundred sixty-five (365) days.
(3) A person applies for and receives authorization from the commissioner.
(4) The discharge will result only in a short-term, temporary (not to exceed twelve (12) months) lowering of water quality.
(5) The discharge complies with the antidegradation standards contained in section 3 of this rule.

(c) For an HQW except an ONRW, a new or increased loading of a regulated pollutant resulting from the following is exempt from the antidegradation demonstration requirements included in section 5 of this rule and the water quality improvement project or payment to the OSRW improvement fund requirements included in section 7 of this rule:
(1) A new or increased loading of a non-BCC that is a demonstrated de minimis lowering of water quality as shown by the submission of sufficient information that allows the commissioner to verify the de minimis as determined according to the following:
(A) Calculation considerations according to the following:
(i) The proposed net increase in the loading of a regulated pollutant is less than or equal to ten percent (10%) of the available loading capacity determined at the time of the specific proposed new or increased loading of the regulated pollutant. The available loading capacity shall be established at the time of each request for a new or increased loading of a regulated pollutant.
(ii) The benchmark available loading capacity is equal to ninety percent (90%) of the available loading capacity established at the time of the request for the initial increase in the loading of a regulated pollutant.
(iii) For every request after the time of the request for the initial increase in the loading of a regulated pollutant, the available loading capacity remaining after the net increase in the loading of a regulated pollutant must be greater than or equal to the benchmark available loading capacity.
(B) For heat, except for loadings to Lake Michigan, the following conditions must be satisfied:
(i) The new or increased loading will not result in an increase in temperature in a stream or an inland lake, outside of the designated mixing zone, where applicable.
(ii) The new or increased loading will not result in an increase in waste heat of an amount in a stream greater than the amount determined by calculating the number of British thermal units (BTUs) required to raise the temperature of the stream design flow of the receiving stream by one (1) degree Fahrenheit.
(C) For loadings to Lake Michigan, relative to temperature and heat, the following conditions must be satisfied:
(i) The new or increased loading will not result in an increase in

temperature as allowed in 327 IAC 2-1.5-8(c)(4)(D)(iv), at the edge of a one thousand (1,000) foot arc inscribed from a fixed point adjacent to the loading.

(ii) The new or increased loading will not result in an increase in waste heat in an amount greater than five-tenths (0.5) billion BTUs per hour.

(2) A new or increased loading that results from one (1) of the following activities that does not require the submission of information beyond what is required to comply with the discharger's existing applicable permit:

(A) A change in loading of a regulated pollutant within the existing capacity and processes that are covered by an existing applicable permit, including, but not limited to, the following:

(i) Normal operational variability, including, but not limited to, intermittent increased loadings due to wet weather conditions.

(ii) A change in intake water pollutants not caused by the discharger.

(iii) Increasing the production hours of the facility, for example, adding a second shift.

(iv) Increasing the rate of production.

(v) A change at an internal outfall that does not directly discharge to a surface water of the state.

(vi) A change in the applicable effluent limitation guideline based on a change in production.

(B) A bypass not prohibited by 327 IAC 5-2-8(11).

(C) A new limit for a regulated pollutant for an existing permitted discharger that will not allow an increase in either the mass or concentration of the regulated pollutant discharged, including a new limit that is a result of one (1) of the following:

(i) New or improved:

(AA) monitoring data; or

(BB) analytical methods.

(ii) New or modified:

(AA) water quality criteria; or

(BB) effluent limitation guidelines, pretreatment standards, or control requirements for POTWs.

(D) An increased loading of a regulated pollutant at an existing outfall discharging to a water of the state due to increasing the sewered area, connection of new sewers and users, or acceptance of trucked-in wastes, such as septage and holding tank wastes, by a POTW, provided the following are true:

(i) There is no increase in the existing NPDES permit limits.

(ii) There is no increase beyond the treatment capacity of the facility.

(iii) There is no significant change expected in the characteristics of the wastewater discharged.

(iv) There is no increased loading of BCCs from nondomestic wastes.

(Water Pollution Control Board; 327 IAC 2-1.3-4)

327 IAC 2-1.3-5 Antidegradation demonstration

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18
Affected: IC 13-23-13; IC 13-24-1; IC 13-25-5

Sec. 5. (a) Any person requesting a new or increased loading that would cause a lowering of water quality that is not exempt under section 4 of this rule shall submit the information described in this section to the commissioner to support the commissioner's determination that the proposed new or increased loading is necessary and accommodates important social or economic development in the area of the loading. The following basic information must be submitted:

(1) The regulated pollutants proposed to be in the new or increased loading.

(2) The estimated concentration and mass of all regulated pollutants proposed to be in the new or increased loading.

(3) The location of the proposed discharge and a map of the area of the proposed discharge that shows the receiving water or waters that would be affected by the new or increased loading, including the area downstream of the proposed discharge.

(4) The physical, biological, and chemical conditions of the receiving water or waters as determined by:

(A) available information; or

(B) additional information, including, if requested by the department, the results of water quality analysis such as:

(i) chemical analysis;

(ii) biological analysis; or

(iii) both items (i) and (ii).

(b) Any person requesting a new or increased loading that would cause a lowering of water quality that is not exempt under section 4 of this rule shall submit an antidegradation demonstration that includes the basic information required under subsection (a) and the necessary information required under subsection (c) for the following beneficial activities that result in a new or increased loading:

(1) A change in loading of a regulated pollutant due solely to implementation of:

(A) enforceable municipal or industrial controls on wet weather flows, including combined sewer overflows; or

(B) an enforceable individual NPDES permit for storm water associated with industrial activity;

when there is no net increase in the quantity and concentration of the regulated pollutant to the same ten (10) digit watershed.

(2) A new or increased loading of a regulated pollutant due to one (1) or more of the following:

(A) A response action under CERCLA, as defined in IC 13-11-2-24, as amended.

(B) A corrective action under RCRA, as amended.

(C) An action utilizing federal or state authorities with regulations to alleviate a release into the environment of hazardous substances, pollutants, or contaminants that may pose an imminent or existing and substantial danger to public health or welfare, including one (1) or more of the following:

(i) An underground storage tank (UST) corrective action under IC

13-23-13.
(ii) A remediation of petroleum releases under IC 13-24-1.
(iii) A voluntary remediation under IC 13-25-5.
(iv) An abatement or correction of any polluted condition under IC 13-18-7.

(3) A new or increased loading of noncontact cooling water that will not do the following:

(A) Increase the temperature of the receiving water or waters outside of the designated mixing zone, where applicable.
(B) Increase the loading of BCCs.
(C) Require numeric water quality-based effluent limitations (WQBELs) for toxic substances or WET as determined under 327 IAC 5-2-11.5.

(4) A new or increased loading of an approved non-BCC water treatment additive.

(5) A change in loading of a regulated pollutant:

(A) where there is a voluntary, simultaneous, enforceable decrease in the actual loading of the regulated pollutant from sources contributing to the same ten (10) digit watershed; and
(B) with the result that there is a net decrease in the loading of the regulated pollutant to the same ten (10) digit watershed.

(6) A new or increased loading of a regulated pollutant from a sanitary wastewater treatment plant constructed or expanded to alleviate a public health concern, for example, a connection of existing residences currently on septic systems.

(c) For each regulated pollutant in the proposed new or increased loading associated with activities in subsections (b), (d), and (f), each antidegradation demonstration shall include the following necessary information:

(1) The availability, reliability, cost-effectiveness, and technical feasibility of the following:

(A) No degradation.
(B) Minimal degradation.
(C) Degradation mitigation techniques or alternatives.

(2) An analysis of the loading reduction benefits and water quality benefits associated with the degradation mitigation techniques or alternatives required to be assessed under subdivision (1)(C), including the following:

(A) A review of pollution prevention alternatives and techniques that includes the following:

(i) A listing of alternatives and techniques, including new and innovative technologies.
(ii) A description of how the alternatives and techniques available to the applicant would minimize or prevent the proposed significant lowering of water quality.
(iii) The loading reduction attainable by employing the alternatives and techniques.
(iv) The costs associated with employing the alternatives and techniques.
(v) An identification of the pollution prevention alternatives and techniques selected to be employed and an explanation of why those

selections were made.

(B) An evaluation of the feasibility and costs of connecting to an existing POTW or privately owned treatment works, within the vicinity of the proposed new or increased loading, that:

(i) will effectively treat the proposed discharge; and

(ii) is willing to accept wastewater from other entities.

(C) For POTWs, if the proposed significant lowering of water quality is a result of a proposed new or increased loading from one (1) or more indirect dischargers, the analysis shall also include the following:

(i) The requirements of clause (A) shall be completed for the indirect discharger or dischargers as well as for the POTW. The POTW may require the indirect dischargers to prepare this information.

(ii) If one (1) or more of the indirect dischargers proposes or does discharge to a combined sewer or sanitary sewer that is connected to a combined sewer, all combined sewer overflows (CSOs) between the point of discharge to the sewer and the POTW shall be identified.

(3) The availability, cost-effectiveness, and technical feasibility of central or regional sewage collection and treatment facilities, including long-range plans for discharges outlined in:

(A) state or local water quality management planning documents; and

(B) applicable facility planning documents.

(4) The availability, cost-effectiveness, and technical feasibility of discharging to another waterbody that:

(A) is not an OSRW; or

(B) has a higher assimilative capacity for the regulated pollutant.

(d) Any person requesting a new or increased loading that would cause a lowering of water quality that is not exempt under section 4 of this rule shall submit an antidegradation demonstration that includes the basic information required under subsection (a), the necessary information required under subsection (c), and the alternatives analysis information required under subsection (e) for the following beneficial activities that result in a new or increased loading:

(1) A new or increased loading of a regulated pollutant where the following are true:

(A) The new or increased loading is necessary to accomplish a reduction in the loading of another regulated pollutant.

(B) There will be an improvement in water quality in the receiving water or waters. An improvement in water quality will occur if the impact from the new or increased loading of the regulated pollutant is:

(i) less bioaccumulative; and

(ii) less toxic than the reduced pollutant or pollutant parameter.

In making these determinations regarding bioaccumulation, the BAF methodology under 327 IAC 2-1.5-13 will be used.

(2) A new or increased loading of a regulated pollutant where:

(A) the new or increased loading is necessary to accomplish a reduction in the release of one (1) or more air pollutants; and

(B) there will be an environmental improvement that will occur when the applicant demonstrates that the reduction in the loading of the air pollutant:

(i) is necessary to meet a state or federal air quality standard or emission requirement; or
(ii) will substantially reduce human exposure to hazardous air pollutants or other air pollutants that are subject to state or federal air quality standards.

(e) For each regulated pollutant in the proposed new or increased loading associated with activities in subsections (d) and (f), each antidegradation demonstration shall include the information required by one (1) of the following alternatives analyses:
(1) The identification of an accepted effluent limit based on BADCT, when available, as established by the department.
(2) A discussion of the following:
(A) The alternative or enhanced treatment techniques selected to be employed.
(B) An explanation of why the alternative or enhanced treatment techniques selected in clause (A) were made.
(C) The reliability of the selected treatment alternative or alternatives, including, but not limited to, the possibility of recurring operational and maintenance difficulties that would lead to increased degradation.

(f) Any person seeking a new or increased loading that constitutes a significant lowering of water quality that is not exempt under section 4 of this rule and is not a beneficial activity identified under subsections (b) or (d) shall submit an antidegradation demonstration that includes the following:
(1) Basic information required under subsection (a).
(2) Necessary information required under subsection (c).
(3) Alternatives analysis information required under subsection (e).
(4) Social and economic analysis information required under subsection (g).

(g) For each regulated pollutant in the proposed new or increased loading associated with activities in subsection (f), each antidegradation demonstration shall include the following social and economic analysis information:
(1) The anticipated impact on aquatic life and wildlife, considering the following:
(A) Endangered or threatened species.
(B) Important commercial or recreational sport fish species.
(C) Other individual species.
(D) The overall aquatic community structure and function.
(2) The anticipated impact on human health.
(3) The degree to which water quality may be lowered in waters located within the following:
(A) National, state, or local parks.
(B) Preserves or wildlife areas.
(C) OSRWs or ONRWs.
(4) The extent to which the resources or characteristics adversely impacted by the lowered water quality are unique or rare within the locality or state.
(5) Where relevant, the anticipated impact on economic and social factors, including the following:

(A) Creation, expansion, or maintenance of employment.
(B) The unemployment rate.
(C) The median household income.
(D) The number of households below the poverty level.
(E) Community housing needs.
(F) Change in population.
(G) The impact on the community tax base.
(H) Provision of fire departments, schools, infrastructure, and other necessary public services.
(I) Correction of a public health, safety, or environmental problem.
(J) Production of goods and services that protect, enhance, or improve the overall quality of life and related research and development.
(K) The impact on the quality of life for residents in the area.
(L) The impact on the fishing, recreation, and tourism industries.
(M) The impact on endangered or threatened species.
(N) The impact on economic competitiveness.
(O) Demonstration by the applicant that the factors identified and reviewed under clauses (A) through (N) are necessary to accommodate important social or economic development despite the proposed significant lowering of water quality.
(P) Inclusion by the applicant of additional factors that may enhance the social or economic importance associated with the proposed discharge, such as an approval that recognizes social or economic importance and is given to the applicant by:
(i) a legislative body; or
(ii) other government officials.

(6) Any other:
(A) action or recommendation relevant to the antidegradation demonstration:
(i) made by a:
(AA) state;
(BB) county;
(CC) township; or
(DD) municipality;
potentially affected by the proposed discharge; or
(ii) received during the public participation process; and
(B) factors that the commissioner:
(i) finds relevant; or
(ii) is required to consider under the CWA.

(Water Pollution Control Board; 327 IAC 2-1.3-5)

327 IAC 2-1.3-6 Commissioner's determination
Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18
Affected: IC 13-18-3-14; IC 13-23-13; IC 13-24-1; IC 13-25-5

Sec. 6. (a) In determining whether a proposed loading is necessary and accommodates important social or economic development in the area in which the waters

are located under antidegradation standards and implementation procedures, the commissioner:

(1) must give substantial weight to any applicable determinations by governmental entities; and

(2) may rely on consideration of any one (1) or a combination of the factors listed in section 5(g)(5) of this rule.

(b) Upon receipt of an antidegradation demonstration, the commissioner shall provide notice and request comment according to 327 IAC 5-2-11.2. The commissioner shall hold a public meeting on the antidegradation demonstration in accordance with 327 IAC 5-2-11.2 if:

(1) the proposed loading is to an OSRW; or

(2) a public meeting is requested during the noticed comment period by at least twenty-five (25) persons living or working within:

(A) the same ten (10) digit watershed; or

(B) fifteen (15) miles of the proposed loading.

The commissioner may hold a public meeting in accordance 327 IAC 5-2-11.2 if the commissioner otherwise deems such a meeting appropriate.

(c) The commissioner shall make a determination on the antidegradation demonstration by considering whether the demonstration meets the following:

(1) Is administratively complete.

(2) Provides the following information:

(A) The applicable factors listed in section 5 of this rule, as appropriate, for the new or increased loading.

(B) Any other information that the commissioner deems appropriate regarding the:

(i) proposed activities; and

(ii) affected receiving water or waters.

If the applicant voluntarily held a public meeting that allowed interested parties the opportunity to hear the applicant's rationale supporting the elements of the applicant's antidegradation demonstration, evidence of the public meeting should be included in the antidegradation demonstration for the commissioner's consideration. At a minimum, the evidence of the public meeting should include the date of the public meeting, names of those in attendance, and a summary of questions asked and subjects discussed.

(d) The commissioner shall deny some or all of the request to significantly lower water quality if one (1) or more of the following applies:

(1) The activity that would cause the lowering of water quality is not necessary because cost-effective measures that would prevent or minimize the proposed lowering of water quality are reasonably available but the person proposing the new or increased loading has chosen not to implement these measures.

(2) The activity that would cause the lowering of water quality does not accommodate important social or economic development in the area.

(3) The activity that would cause the lowering of water quality would jeopardize endangered or threatened species.

(e) The commissioner may approve some or all of the request to significantly lower water quality only if the following have occurred:

(1) A public participation process.

(2) Appropriate intergovernmental coordination.

(3) A determination by the commissioner that the lower water quality is necessary and accommodates important social or economic development in the area in which the receiving water or waters is located.

(f) In no event may a permit be granted that would not meet the requirements of section 3 of this rule.

(g) When the commissioner makes a tentative determination on an antidegradation demonstration, the commissioner shall public notice the antidegradation demonstration tentative determination according to 327 IAC 5-2-11.2 and the tentative determination shall:

(1) summarize, in the public notice form, the determining factors relied upon by the commissioner; and

(2) if approved for an NPDES permit, be incorporated into the:

(A) draft permit; and

(B) fact sheet;

that are made available for public comment under 327 IAC 5-3-9.

(Water Pollution Control Board; 327 IAC 2-1.3-6)

327 IAC 2-1.3-7 Water quality improvement project or payment to the OSRW improvement fund

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18

Affected: IC 13-18-3-14; IC 13-23-13; IC 13-24-1; IC 13-25-5

Sec. 7. (a) A discharger proposing to cause a significant lowering of water quality in an OSRW shall:

(1) implement a water quality improvement project in the watershed of the affected OSRW; or

(2) fund a water quality improvement project in the watershed of the affected OSRW by payment of a fee into the OSRW improvement fund established under IC 13-18-3-14;

for each activity undertaken that will result in a significant lowering of water quality in an OSRW.

(b) To implement a water quality improvement project in the watershed of the affected OSRW, the following apply:

(1) A person proposing to implement a water quality improvement project in the watershed of the OSRW that will result in an overall improvement of the water quality of the OSRW shall submit information on the proposed water quality improvement project to the commissioner simultaneously with the submission of the antidegradation demonstration required under section 5 of this rule. The water quality improvement project information must include the following:

(A) A detailed description of the project, including:

(i) the type and quantity of pollutants that will be reduced or eliminated as a result of the project; and

(ii) a project implementation timeline.

(B) Sufficient information to clearly demonstrate that the project will result in an overall improvement in water quality in the OSRW.

(C) Any data used to assess overall water quality improvement must be less than seven (7) years old and specific to the OSRW.

(2) Upon receipt of the water quality improvement project information, the commissioner shall do the following:

(A) Provide notice and request comment according to 327 IAC 5-2-11.2(b).

(B) Hold a public meeting in accordance with 327 IAC 5-2-11.2(b)(3) on the water quality improvement project information concurrently with the public meeting held on the antidegradation demonstration.

(3) Once the commissioner determines that the information provided by the person submitting the proposed water quality improvement project is administratively complete, the commissioner shall make a determination as to whether the project, based on the information submitted by the applicant, will result in an overall improvement in water quality in the OSRW.

(4) The commissioner shall approve or deny a water quality improvement project considering the following factors:

(A) Whether the project can be successfully implemented.

(B) Whether the project will offset the lowering of water quality caused by new or increased loadings of regulated pollutants.

(c) A person proposing to fund a water quality improvement project in the watershed of the affected OSRW by payment of a fee into the OSRW improvement fund established under IC 13-18-3-14 prior to issuance of a permit, shall pay an amount that:

(1) shall not exceed five hundred thousand dollars ($500,000); and

(2) is determined by the department based on the:

(A) type and quantity of increased pollutant loadings;

(B) estimated initial capital cost; and

(C) costs of operation and maintenance;

for the treatment system or other alternative that would be necessary to offset the proposed significant lowering of water quality caused by the increased pollutant loadings to the OSRW.

(2) The commissioner, prior to utilizing the funds in the OSRW improvement fund, shall solicit input from interested parties on the identification and selection of the water quality improvement projects to be funded with the funds in the OSRW improvement fund.

(3) The commissioner shall utilize the funds in the OSRW improvement fund to implement water quality improvement projects considering the following factors:

(A) Whether the project can be successfully implemented.

(B) Whether the project will offset the lowering of water quality caused by new or increased loadings of a regulated pollutant.

(C) Cost-effectiveness of the project.

(Water Pollution Control Board; 327 IAC 2-1.3-7)

SECTION 2. 327 IAC 2-1.5-6 IS AMENDED TO READ AS FOLLOWS:

327 IAC 2-1.5-6 Bioaccumulative chemicals of concern
Authority: IC 13-14-8; IC 13-14-9; IC 13-18-3
Affected: IC 13-18-4; IC 13-30-2-1

Sec. 6. (a) A bioaccumulative chemical of concern (BCC) is any chemical that meets the following requirements:

(1) Has the potential to cause adverse effects.

(2) Has a half-life of at least eight (8) weeks in the water column, sediment, and biota.

(3) Upon entering the surface waters, by itself or as its toxic transformation product, accumulates in aquatic organisms by a human health bioaccumulation factor (BAF) greater than one thousand (1,000) after considering metabolism and other physicochemical properties that might enhance or inhibit bioaccumulation, in accordance with the procedure in section 13 of this rule. The minimum BAF information needed to define a chemical as a BCC is either of the following:

(A) For an organic chemical, either a field-measured BAF or a BAF derived using the BSAF methodology.

(B) For an inorganic chemical, including an organometal, either a field-measured BAF or a laboratory-measured BCF.

(b) Pollutants that are BCCs include, but are not limited to, the following:

Table 6-1

Bioaccumulative Chemicals of Concern

CAS Number	Substance
57749	Chlordane
72548	4,4'-DDD; p,p'-DDD; 4,4'-TDE; p,p'-TDE
72559	4,4'-DDE; p,p'-DDE
50293	4,4'-DDT; p,p'-DDT
60571	Dieldrin
118741	Hexachlorobenzene
87683	Hexachlorobutadiene; hexachloro-1,3-butadiene
608731	Hexachlorocyclohexanes; BHCs
319846	alpha-Hexachlorocyclohexane; alpha-BHC

319857	beta-Hexachlorocyclohexane; beta-BHC
319868	delta-Hexachlorocyclohexane; delta-BHC
58899	Lindane; gamma-Hexachlorocyclohexane; gamma-BHC
7439976	Mercury
2385855	Mirex
29082744	Octachlorostyrene
1336363	PCBs; polychlorinated biphenyls
608935	Pentachlorobenzene
39801144	Photomirex
1746016	2,3,7,8-TCDD; dioxin
634662	1,2,3,4-Tetrachlorobenzene
95943	1,2,4,5-Tetrachlorobenzene
8001352	Toxaphene

(c) The substances established in this subsection shall be treated as BCCs under **327 IAC 2-1.3,** this rule, and ~~under~~ ~~327~~ ~~IAC~~ ~~5-2-11.3~~ **327 IAC 5-2-11.4** through 327 IAC 5-2-11.6. If additional data becomes available (such as a field-measured BAF) for a substance established in this subsection that conclusively demonstrates that the substance should not be treated as a BCC, the commissioner may determine that it is not necessary to treat the substance as a BCC. Substances treated as BCCs include the following:

Table 6-2

Substances Treated as Bioaccumulative Chemicals of Concern

CAS Number	Substance
309002	Aldrin
72208	Endrin

(Water Pollution Control Board; 327 IAC 2-1.5-6; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1370; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3376; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2074)

SECTION 3. 327 IAC 2-1.5-18 IS AMENDED TO READ AS FOLLOWS:

327 IAC 2-1.5-18 Designation of a waterbody as a limited use water or an outstanding state resource water

Authority: IC 13-14-8; IC 13-14-9; IC 13-18-3
Affected: IC 13-18-4

Sec. 18. (a) Except as provided in subsection (f), a person who wishes to propose that a waterbody within the Great Lakes system be considered by the commissioner for designation as a limited use or outstanding state resource water shall submit to the commissioner a written proposal:

(1) identifying the waterbody and the proposed designation stating the rationale for the proposal; and
(2) including any other supporting documentation.

(b) The commissioner shall evaluate the proposal considering the following:
(1) Waters that meet the following conditions may be considered for designation as a limited use water:
(A) Waters that have:
(i) naturally poor physical characteristics (that is, suitable habitat to support a well-balanced fish community is severely limited or absent) including lack of sufficient flow ($Q_{7,10}$ low flow upstream of any existing or proposed discharge of one-tenth (0.1) cubic foot per second or less);
(ii) naturally poor chemical quality;
(iii) irreversible man-induced conditions that came into existence before January 1, 1983; and
(iv) no unique or exceptional features.
(B) No potential or existing uses made of the waterbody by people in the immediate area would be adversely affected by a limited use designation.
(C) The waterbody has been evaluated by a use attainability analysis.
(2) Factors that relate to outstanding state resource water designations may include, but are not limited to, the following:
(A) The presence of any of the following:
(i) A unique or exceptional habitat or species in the waterbody.
(ii) A rare or endangered species in the waterbody.
(iii) Exceptional aesthetic quality in the immediate environs of the waterbody.

(B) The waterbody:

(i) is within the boundaries of or flows through a designated natural area, nature preserve, or state or national park or forest;

(ii) supports an excellent sports fishery; or

(iii) possesses exceptional quality.

(C) Intensive recreational use is made of the waterbody.

(D) Designation as a natural, scenic, or recreational waterbody by the Indiana department of natural resources.

Irrespective of these factors, the commissioner's evaluation will generally be a case-by-case determination using information obtained from an on-site evaluation. If appropriate, the commissioner shall consult with the Indiana department of natural resources concerning the designation of a waterbody as an outstanding state resource water.

(c) After completion of the evaluation under subsection (b), if the commissioner determines that reclassification of the waterbody is appropriate, the commissioner shall initiate a rulemaking to include the waterbody either as a limited use water or an outstanding state resource water under section 19 of this rule.

(d) All waters that are designated as a limited use water under section 19(a) of this rule must be evaluated for restoration and upgrading at each triennial review of this rule.

(e) The department shall initiate a special designations rulemaking in accordance with the following:

(1) The special designations rulemaking shall be initiated for the following purposes:

(A) Determining the following:

(i) Whether any other designations in addition to:

(AA) outstanding state resource waters;

(BB) high quality waters;

(CC) limited use waters; and

(DD) outstanding national resource waters;

should be established.

(ii) The appropriate factors to consider in designating a waterbody.

(B) Identifying a list of waterbodies for each special designation.

(C) Specifying antidegradation implementation procedures for ~~the following:~~

~~(i) Outstanding state resource waters.~~

~~(ii) Outstanding national resource waters.~~

~~(iii)~~ any other newly established designation **that is in addition to those specified at 327 IAC 2-1.3.**

(2) Before the presentation of proposed rules on special designations to the board, the department shall consult with:

(A) other state and federal agencies; and

(B) interested persons within Indiana;

as appropriate. The department shall provide information to the public on the history, intent, and importance of the current outstanding state resource water designation and the list of outstanding state resource waters.

(3) The department shall seek comment, as part of the second notice on special designations, on the following:

(A) Adding waterbodies to the list of outstanding national resource waters.

(B) The specific ~~interim~~ antidegradation implementation procedures included in ~~327 IAC 5-2-11.7~~ **327 IAC 2-1.3-3** for outstanding state resource waters.

(C) Procedures for addressing increases not included in the specific exceptions listed in ~~327 IAC 5-2-11.7(c)(2).~~ **327 IAC 2-1.3-4.**

(4) The following statement shall be included in the second notice and shall be used as a guide during the special designation rulemaking, "The ~~interim~~ antidegradation implementation procedures for outstanding state resource waters in ~~327 IAC 5-2-11.7~~ **327 IAC 2-1.3-3** are intended only to assure that a specific process exists to address proposed changes pending the completion of the special designation rulemaking. The board does not consider the specific procedures listed in ~~327 IAC 5-2-11.7~~ **327 IAC 2-1.3-3** as a final policy statement or as binding on the board in the special designation rulemaking.".

~~(5) The department shall present rules to the board on a schedule such that final rules may be adopted and made effective before the expiration of 327 IAC 5-2-11.7.~~

(f) A person seeking to obtain a CSO wet weather limited use subcategory designation shall do so in accordance with 327 IAC 2-1-3.1. *(Water Pollution Control Board; 327 IAC 2-1.5-18; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1410; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3378; filed Sep 6, 2007, 12:25 p.m.: 20071003-IR-327050218FRA)*

SECTION 4. 327 IAC 5-2-11.2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-2-11.2 Public notice of comment period and public meetings for site-specific modification of water quality criteria and values; an antidegradation demonstration; a water quality improvement project; an alternate mixing zone demonstration; a variance

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; IC 13-15-4-1; IC 13-15-5-1; IC 13-18-4; IC 13-18-7; IC 13-23-13; IC 13-24-1; IC 13-25-5

Sec. 11.2. (a) This section is applicable to ~~an application for~~ the following:

(1) Site-specific modification to water quality criteria under 327 IAC 2-1-8.9 and Tier I water quality criteria and Tier II water quality values under 327 IAC 2-1.5-16.

(2) An antidegradation demonstration under ~~section 11.3(b)(4) of this rule.~~ **327 IAC**

2-1.3-5.

(3) ~~An antidegradation exception~~ **A water quality improvement project** under ~~section 11.7(c) of this rule.~~ **327 IAC 2-1.3-7.**

(4) An alternate mixing zone under section 11.4(b)(4)(F) of this rule.

(5) A variance under 327 IAC 5-3-4.1(c).

(b) Upon receipt of ~~an application~~ **the information for a proposal** listed in subsection (a), the commissioner shall provide notice, request comment, and, if requested, schedule and hold a public meeting ~~on the application~~ in accordance with the following conditions:

(1) The commissioner shall provide notice of receipt of ~~an application~~ **information related to subsection (a)** in the following manner:

(A) Publication of a notice in a daily or weekly newspaper in general circulation throughout the area affected by the discharge for which the ~~application~~ **information** was submitted.

(B) Send the notice to **the following using electronic media whenever possible:**

(i) Interested persons on either mailing list identified under the following:

~~(i)~~ **(AA)** 327 IAC 5-3-8(a).

~~(ii)~~ **(BB)** 327 IAC 5-3-12(b)(1).

~~(C) Send the notice to~~ **(ii)** The applicant.

(2) The notice under subdivision (1) shall contain the following:

(A) The name and address of the department.

(B) The name and address of the applicant.

(C) An identification of the type of ~~application~~ **information** submitted, such as **a site-specific modification, antidegradation demonstration, water quality improvement project,** alternate mixing zone, or variance.

(D) A brief description of the **following:**

(i) Location of any existing or proposed discharge point subject to the ~~application~~ **proposal listed in subsection (a),** including an identification of the receiving water **or waters.**

~~(E) A brief description of~~ **(ii)** The applicant's activities or operations that result in the discharge identified in the ~~application.~~ **information related to subsection (a).**

(iii) The comment procedures and the procedures to request a public meeting.

~~(F)~~ **(E)** An identification of the ~~substance for which the application was submitted.~~ **regulated pollutant proposed to be discharged.**

~~(G) The name of an agency~~ **(F) Information on how to** contact ~~person and an address and telephone number where~~ **the department so** interested persons may obtain further information, including a copy of the ~~application.~~ **information that was submitted related to subsection (a).**

~~(H) A brief description of the comment procedures and the procedures to request~~

~~a public meeting.~~

(3) If requested **by at least twenty-five (25) persons living or working within the same ten (10) digit watershed or within fifteen (15) miles of the proposed discharge,** the commissioner shall hold a public meeting on the ~~application~~ **information that was submitted related to subsection (a)** in accordance with the following provisions:

(A) The commissioner shall provide notice of the public meeting as follows:

(i) Publication of a notice in a daily or weekly newspaper in general circulation throughout the area affected by the discharge for which the ~~application~~ **information related to subsection (a)** was submitted.

(ii) Send the notice, **using electronic media whenever possible,** to the following interested persons:

(AA) Persons on the mailing list identified under 327 IAC 5-3-8(a).

(BB) Persons on the mailing list identified under 327 IAC 5-3-12(b)(1).

(CC) Those persons that commented on the notice of receipt of the ~~application.~~ **information for the proposal related to subsection (a).**

(iii) Send the notice to the applicant.

(B) The notice required by clause (A) shall contain the **following:**

(i) The date, time, and place of the public meeting. ~~and~~

(ii) The information required under subdivision (2).

(C) The meeting shall be held at least ten (10) days after the later of the following:

(i) The notice in accordance with clause (A)(i) appears in the newspaper.

(ii) The ~~postmark~~ date of the ~~written~~ notice sent to interested parties and to the applicant in accordance with clause (A)(ii) and (A)(iii).

(D) The meeting shall be recorded by any ~~of the following:~~

~~(i) Audiotape.~~

~~(ii) Videotape.~~

~~(iii) Any other~~ method of accurately and completely recording the details of the meeting.

(E) **For the information related to a proposal that is listed in subsection (a),** the commissioner shall request the applicant **submitting the information** to provide **at the meeting** a summary and rationale for the ~~application at the meeting.~~ **proposal described by the submitted information.**

(F) At the commissioner's discretion, a public meeting may be noticed and held without having first received a request for a public meeting. In these instances, the notice for the public meeting may be ~~contained~~ **included** in the notice of receipt of the ~~application.~~ **information for the proposal related to subsection (a).**

(4) The time period under IC 13-15-4-1 is hereby changed to increase the period by:

(A) thirty (30) days for any permit application subject to the time period that is affected by the ~~application.~~ **information for the proposal related to subsection (a); and**

(B) an additional thirty (30) days beyond the period extended under clause (A) if a public meeting is requested ~~the time period under IC 13-15-4-1 is hereby changed to increase the period by an additional thirty (30) days.~~ **under subdivision (3).**

(Water Pollution Control Board; 327 IAC 5-2-11.2; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1435; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3378; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2101)

SECTION 5. 327 IAC 5-2-12.1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-2-12.1 Great Lakes systems dischargers; schedules of compliance

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; IC 13-18-4

Sec. 12.1. (a) When a permit issued to a new Great Lakes discharger contains a WQBEL, the permittee shall comply with such a limitation upon the commencement of the discharge.

(b) Any existing permit that is reissued or modified to contain a new or more restrictive WQBEL or a more restrictive limit of quantitation (LOQ) (when an LOQ is used as the compliance value for a WQBEL below an LOQ) may allow a reasonable period of time, up to five (5) years from the date of permit issuance or modification, for the permittee to comply with that limit in accordance with the following conditions:

(1) When the compliance schedule established under this subsection goes beyond the term of the permit, an interim permit limit effective upon the expiration date shall be included in the permit and addressed in the permit's fact sheet or statement of basis. The permit shall reflect the final limit and its compliance date.

(2) If a permit establishes a schedule of compliance under this subsection, which exceeds one (1) year from the date of permit issuance or modification, the schedule shall set forth interim requirements and dates for their achievement as follows:

(A) The time between such interim dates may not exceed one (1) year.

(B) If the time necessary for completion of any interim requirement is more than one (1) year and is not readily divisible into stages for completion, the permit shall require, at a minimum, specified dates for annual submission of progress reports on the status of any interim requirements.

(c) Whenever a limit based upon a Tier II value is included in a reissued or modified permit for an existing Great Lakes discharger, the permit may provide a reasonable period of time, up to two (2) years, in which to provide additional studies necessary to develop a Tier I criterion or to modify the Tier II value. In such cases, the permit shall require compliance with

the Tier II limitation within a reasonable period of time, ~~no~~ **not** later than five (5) years after permit issuance or modification, and contain a reopener clause in accordance with the following conditions:

(1) The reopener clause shall authorize permit modifications if specified studies have been completed by the permittee or provided by a third party during the time allowed to conduct the specified studies, and the permittee or a third party demonstrates, through such studies, that a revised limit is appropriate. Such a revised limit shall be incorporated through a permit modification and a reasonable time period, up to five (5) years, shall be allowed for compliance. If incorporated prior to the compliance date of the original Tier II limitation, any such revised limit shall not be considered less stringent for purposes of the antibacksliding provisions of section 10(11) of this rule and Section 402(o) of the Clean Water Act (CWA).

(2) If the specified studies have been completed and do not demonstrate that a revised limit is appropriate, the commissioner may provide a reasonable additional period of time, not to exceed five (5) years with which to achieve compliance with the original effluent limitation.

(3) Where a permit is modified to include new or more stringent limitations, on a date within five (5) years of the permit expiration date, such compliance schedules may extend beyond the term of a permit consistent with subsection (b)(1).

(4) If future studies (other than those conducted under this subsection) result in a Tier II value being changed to a less stringent Tier II value or Tier I criterion, after the effective date of a Tier II-based limit, the existing Tier II-based limit may be revised to be less stringent if:

(A) it complies with section 10(11)(B) and 10(11)(C) of this rule and Section 402(o)(2) and 402(o)(3) of the CWA;

(B) in nonattainment waters, the cumulative effect of the revised effluent limitation will assure compliance with water quality standards; or

(C) in attained waters, the revised effluent limitation complies with the antidegradation standard and procedures contained under ~~327 IAC 2-1.5-4 and section 11.3 of this rule.~~ **327 IAC 2-1.3.**

(Water Pollution Control Board; 327 IAC 5-2-12.1; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1464; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3380)

SECTION 6. 327 IAC 5-3-8 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-3-8 Fact sheet

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3
Affected: IC 13-11-2; IC 13-18-4

Sec. 8. (a) A fact sheet shall be prepared for every draft permit for a major discharger, any draft permit ~~which~~ **that** incorporates a statutory variance or modification or requires

explanation under subsection (b)(5), general permits, and every draft permit ~~which~~ **that** the commissioner finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the major facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The commissioner shall send this fact sheet to the following:

(1) The applicant.

(2) EPA Region 5.

(3) The district engineer of the Corps of Engineers.

(4) The regional director of the U.S. Fish and Wildlife Service.

(5) Other interested state and federal agencies.

(6) Any other person on request.

(7) All persons on a mailing list for receipt of fact sheets (see section 12(g) of this rule).

Any of these persons may waive their right to receive a fact sheet for any classes and categories of permits.

(b) The fact sheet shall include the following:

(1) A brief description of the type of facility or activity that is the subject of the draft permit and, where appropriate, a sketch or detailed description of the discharge described in the application.

(2) A description of the type and quantity of pollutants ~~which~~ **that** are, or are proposed to be, discharged.

(3) A brief explanation of the express statutory or regulatory provisions on which permit requirements are based.

(4) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, including a citation to the applicable guideline or development documents or standard provisions as required under 327 IAC 5-2-10 and reasons why they are applicable or an explanation of how alternate effluent limitations were developed.

(5) When the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:

(A) Technology-based limitations to control toxic pollutants under 327 IAC 5-2-10.

(B) Limitations on internal waste streams in accordance with 327 IAC 5-2-11(h).

(C) Limitations on indicator pollutants under 327 IAC 5-2-10(6) and 327 IAC 5-5-2(f).

(D) Limitations allowing an increase in the discharge of any pollutant, including an explanation that satisfies the requirements of 327 IAC 5-2-10(11) and the antidegradation requirements of 327 IAC 2-1, **327 IAC 2-1.3, and** 327 IAC 2-1.5. ~~and 327 IAC 5-2-11.3.~~

(E) Limitations implementing a variance from water quality standards under 327 IAC 2-1-8.8 or 327 IAC 2-1.5-17 and section 4.1 of this rule.

(6) Reasons why requested variances or modifications from otherwise required effluent limitations do or do not appear justified.

(7) Name and telephone number of a departmental contact person who can provide additional information.

(8) Any information, not otherwise specified herein, required under section 12 or 12.1 *[sic.]* of this rule.

(Water Pollution Control Board; 327 IAC 5-3-8; filed Sep 24, 1987, 3:00 p.m.: 11 IR 638; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1761; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1472; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; readopted filed Nov 21, 2007, 1:16 p.m.: 20071219-IR-327070553BFA)

SECTION 7. 327 IAC 15-2-6 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-2-6 Exclusions

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3
Affected: IC 13-11-2; IC 13-18-4

Sec. 6. (a) Except as provided in subsection (b), an individual NPDES permit issued under 327 IAC 5 is required for a discharge to a receiving stream identified as an outstanding state resource water, an exceptional use water, or an outstanding national resource water as defined under ~~327 IAC 2-1-2(3),~~ 327 IAC 2-1-11(b), ~~or~~ ~~327~~ ~~IAC~~ ~~2-1.5-4~~ **327 IAC 2-1.3-2, or 327 IAC 2-1.3-3(d)** or ~~which~~ **that** would significantly lower the water quality as defined under ~~327~~ ~~IAC~~ ~~5-2-11.3(b)(1)~~ **327 IAC 2-1.3-2(50)** of such a water downstream of the point source discharge.

(b) A discharge to an outstanding national resource water, outstanding state resource water, or exceptional use water may be permitted under 327 IAC 15-5, 327 IAC 15-6, or 327 IAC 15-13 if the commissioner determines the discharge will not significantly lower the water quality as defined under ~~327~~ ~~IAC~~ ~~5-2-11.3(b)(1)~~ **327 IAC 2-1.3-2(50)** of such a water downstream of that point source discharge. *(Water Pollution Control Board; 327 IAC 15-2-6; filed Aug 31, 1992, 5:00 p.m.: 16 IR 17; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1476; filed Oct 27, 2003, 10:15 a.m.: 27 IR 830)*

SECTION 8. THE FOLLOWING ARE REPEALED: 327 IAC 2-1-2; 327 IAC 2-1.5-4; 327 IAC 5-2-11.3; 327 IAC 5-2-11.7.

Small Business Assistance Information

IDEM established a compliance and technical assistance (CTAP) program under IC 13-28-3. The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with IC 13-28-3 and IC 13-28-5, there is a small business assistance program ombudsman to provide a point of contact for small businesses

affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at:

www.in.gov/idem/ctap

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Jessica Faust-Hamblin
IDEM Small Business Regulatory Coordinator
MC 60-04 IGCS W041
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 232-8172 or (800) 988-7901
ctap@idem.in.gov
mailto:selyusuf@iden.IN.gov

For purposes of IC 4-22-2-28.1, the Small Business Ombudsman designated by IC 5-28-17-5 is:

Eric P. Shields
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204
(317) 234-3997
smallbizombudsman@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in IC 5-28-17-5, specifically IC 5-28-17-5(9), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Brad Baughn
IDEM Small Business Assistance Program Ombudsman
MC 50-01 IGCN 1301
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 234-3386 or (800) 451-6027
bbaughn@idem.in.gov