

**Summary of Environmental Coalition Proposals for IDEM's Proposed Section 4(b) Antidegradation Exemptions¹
October 15, 2008**

Section in IDEM Draft Rule	Summary Description of Exemption	Justification Required that Loading is Necessary?	Advance Public Notice &/or Comment?²	Simultaneous Guidance Document from IDEM?	Apply to BCCs?	Comments/Explanation
§4(b)(1)	Change in loading covered by existing permit	NO	NEITHER	NO	YES. See GLI II.D.1, 327 IAC - 11.3(b)(1)(C)(i), & 327 IAC - 11.7(b)(1).	Our proposal reflects agreement by entire working group on IDEM's proposed exemption. The rationale for no advance notice and comment is that pre-approval for discharge would be too burdensome.
§4(b)(2)	Bypass not prohibited by 327 IAC 5-2-8(11)	NO	NOTICE ONLY	NO	YES. See GLI II.F.2, 327 IAC - 11.3(b)(1)(C)(iii) (BB), & 327 IAC - 11.7(b)(3).	Our proposal reflects agreement by entire working group on IDEM's proposed exemption. Some bypasses for maintenance can be pre-noticed.
§4(b)(3)	New limit resulting from new monitoring or standards	NO	NEITHER	NO	YES. See GLI II.D.1, 327 IAC - 11.3(b)(1)(C)(ii), & 327 IAC - 11.7(b)(2).	Our proposal reflects agreement by entire working group on IDEM's proposed exemption. New dischargers, however, are held to updated monitoring and standards. The rationale for no advance notice and comment is that pre-approval for discharge would be too burdensome.
§4(b)(4)	Pollutant in intake water	YES	NOTICE ONLY	YES	YES. See 327 IAC - 11.3(b)(1)(C)(iii)(CC) & 327 IAC - 11.7(c)(1)(E).	Our proposal reflects agreement by entire working group on IDEM's proposed exemption. The rationale for this exemption is that the existing discharger not held responsible for quality of intake water.
§4(b)(5)	Control on wet weather flow or storm water	YES	NEITHER	YES	YES. See 327 IAC - 11.3(b)(1)(C)(iii)(GG) & 327 IAC - 11.7(c)(1)(C).	Our proposal reflects agreement by entire working group on IDEM's proposed exemption. The rationale for no advance notice and comment is that pre-approval for discharge would be too burdensome and public will have chance to comment on control permits.

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§4(b)(6)	Short term and limited loading and effect on water quality.	YES	BOTH	YES	YES. See GLI II.F.1, 327 IAC - 11.3(b)(1)(C)(iii)(AA), & 327 IAC - 11.7(c)(1)(A).	<p>Our proposal reflects agreement by entire working group that short-term should refer to both loading and effect; that both should be limited in time and magnitude.</p> <p>We propose the following language for this subsection (based partly on EPA Region VIII model procedure):</p> <p>“(6) A new or increased loading of a pollutant of concern only if: (A) The new or increased loading will last less than twelve (12) months; (B) The new or increased loading will result only in a short-term and temporary (not to exceed the time period of the new or increased loading) lowering of water quality; (C) The new or increased loading and its effect on water quality will be limited in magnitude; and (D) The applicant demonstrates that all reasonable and cost-effective methods for avoiding the new or increased loading have been taken.</p> <p>The commissioner’s decision regarding whether the loading and effects will be both temporary and limited will be handled on a case-by-case basis, and shall be based on the following information provided by the applicant: (a) length of time during which water quality will be lowered, (b) percent change in loadings and ambient concentrations, (c) parameters affected, (d) likelihood for long-term water quality benefits to the segment resulting from the proposed activity (e.g., as may result from dredging of contaminated sediments), (e) degree to which achieving applicable water quality standards during the proposed activity may be at risk, and (f) potential for any residual long-term influences on existing uses.”</p>

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§4(b)(7)	CERCLA/RCRA actions	YES. May be provided by other federal and state documentation.	NOTICE ONLY	YES	YES. See GLI II.F.3, 327 IAC - 11.3(b)(1)(C)(iii)(EE), & 327 IAC - 11.7(c)(1)(B).	Our proposal reflects agreement by entire working group on IDEM's proposed exemption. The rationale for no advance comment period is that such actions are already vetted in an alternative process.
§4(b)(8)	Increase in sewerage area within design flow of existing permit.	YES. May be provided by compliance with 327 IAC - 3.	NOTICE ONLY	YES	YES, but with qualification. See 327 IAC - 11.3(b)(1)(C)(iii)(FF) & 327 IAC - 11.7(b)(4).	We agree with IDEM's proposal only to the extent that the following language is added to the subsection “(8) . . . provided that there is no: (A) (B) (C); or (D) increased loading of BCCs from nondomestic wastes.” See 327 IAC - 11.3(b)(1)(C)(iii)(FF) and 327 IAC - 11.7(b)(4). Moreover, our proposal for no advance comment period and the possibility of replacement justification is based on discussion with working group member Dan Olson.
§4(b)(9a)	Simultaneous decrease of same pollutant from another outfall of same facility into same waterbody	YES	NOTICE ONLY	YES	NO. See 327 IAC - 11.3(b)(1)(C)(iii)(DD) & 327 IAC - 11.7(c)(2)(A).	We agree with IDEM's proposed exemption only in part. We have divided IDEM's proposed section (9) into subsections (9a) and (9b). Our proposed subsection (9a) reflects agreement by the entire working group that a voluntary, simultaneous, and enforceable decrease of a pollutant elsewhere in the facility resulting in a net decrease in loading of the pollutant to the waterbody segment can be exempted from antideg review.

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§4(b)(9b)	Simultaneous decrease of same pollutant from same or another facility in watershed	YES	BOTH	YES	NO. See 327 IAC - 11.3(b)(1)(C) (iii)(DD) & 327 IAC - 11.7(c)(2)(A).	We do not agree that this part of IDEM’s proposed exemption (9) – here renamed (9b) – should be an exemption. This situation may be granted a limited and fast-track antideg review, however, because of agreement on social or economic importance. If IDEM chooses to make (9b) an exemption, the watershed scale should be HUC-12 or 14, and it should not apply to BCCs (EPA guidance recommends trading should not apply to BCCs; analogous exemptions in 327 IAC - 11.3 and 11.7 do not apply to BCCs).
§4(b)(10)	Increase in pollutant A necessary to reduce more toxic pollutant B in same waterbody	YES	BOTH	YES	NO. See 327 IAC - 11.3(b)(1)(C) (iii)(JJ) & 327 IAC - 11.7(c)(2)(B).	<p>We do not agree that IDEM’s proposed exemption (10) should be an exemption. This situation may be granted a limited and fast-track antideg review, however. If IDEM chooses to make (10) an exemption, it should not apply to BCCs (see EPA guidance on trading; analogous exemptions in 327 IAC - 11.3 and 11.7 do not apply to BCCs; BCCs are only a subset of “bioaccumulative” pollutants).</p> <p>Regardless of whether or not subsection (10) is an exemption, we propose the following modification to provision (C), based partly on 327 IAC - 11.3(b)(1)(C) (iii)(JJ):</p> <p>“(10)(C). . . An improvement in water quality may be deemed to occur only if:</p> <ul style="list-style-type: none"> (i) the new or increased pollutant of concern is less bioaccumulative and less toxic than the reduced pollutant or pollutant parameter; (ii) the reduction in the loading of the reduced pollutant exceeds the increase in the loading of the new or increased pollutant or pollutant parameter; and (iii) the applicant demonstrates that all reasonable and cost-effective methods for avoiding the new or increased loading have been taken.”

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§4(b)(11)	Non-contact cooling water	YES	BOTH	YES	NO. 327 IAC - 11.3(b)(1)(C)(iii)(HH).	Our proposal reflects agreement by entire working group on IDEM's proposed exemption.
§4(b)(12)	Approved water treatment additives	YES. May be provided by documentation of approval.	BOTH	YES	NO. See 327 IAC - 11.3(b)(1)(C)(iii)(LL) & 327 IAC - 11.7(c)(1)(D).	Our proposal reflects agreement by entire working group on IDEM's proposed exemption. We assume that each additive will be vetted in a separate approval process.
§4(b)(13)	De minimis	-----	-----	-----	-----	Considered in another document.
§6(c)(4)	New or increased discharge necessary to accomplish reduction in air pollutant	YES if IDEM chooses as exemption.	BOTH if IDEM chooses as exemption.	YES if IDEM chooses as exemption.	NO if IDEM chooses as exemption. See 327 IAC - 11.3(b)(1)(C)(iii)(KK) & 327 IAC - 11.7(c)(2)(C).	This provision should not be an exemption because it does not qualify as a <i>de minimis</i> decrease in water quality or a situation where a procedure is in place that sufficiently substitutes for antidegradation review. The section should remain in Section 6 of the proposed rule, which requires information demonstrating that the action will minimize the lowering of water quality and that the most cost-effective pollution prevention and treatment techniques available will be employed.
§6(c)(5)	New or increased discharge from wastewater treatment plant to alleviate public health concern	YES if IDEM chooses as exemption.	BOTH if IDEM chooses as exemption.	YES if IDEM chooses as exemption.	NO if IDEM chooses as exemption.	This provision should not be an exemption because it does not qualify as a <i>de minimis</i> decrease in water quality or a situation where a procedure is in place that sufficiently substitutes for antidegradation review. The section should remain in Section 6 of the proposed rule, which requires information demonstrating that the action will minimize the lowering of water quality and that the most cost-effective pollution prevention and treatment techniques available will be employed.

FOOTNOTES

¹ An “exemption” from the antidegradation demonstration, to be consistent with the perspectives of EPA and the courts, must be associated with one of two types of situations: (1) a situation that will produce either no decrease in water quality or a *de minimis* decrease in water quality; (2) a situation where a procedure is in place that sufficiently substitutes for antidegradation review (*e.g.*, CERCLA cleanup). In contrast, situations that have the potential to improve overall water quality but that will require analysis of water quality impacts to ensure this potential is met are not properly included as “exemptions;” for example, the situations in §4(b)(9b) and §4(b)(10), as well as the situation in §6(c)(5). Such situations, however, may be granted a limited and fast-track antidegradation review because of general agreement about their potential benefits to water quality. The situation in §6(c)(4) is fundamentally different from these other situations because a net decrease in water quality is allowed.

² The term Advance Notice and Comment means additional public notice beyond the usual NPDES public notice and comment.