

OFFICIAL COMMENT

December 29, 2011

INDIANA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

LSA Document #08-764 (Antidegradation)

DEC 30 2011

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Rules Development Branch

Office of Legal Counsel

OFFICE OF WATER QUALITY

Indiana Department of Environmental Management

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OFFICIAL COMMENT

**RE: COMMENTS ON THIRD NOTICE DRAFT INDIANA ANTIDEGRADATION
RULE**

Dear Ms. Stevens,

Thank you for this opportunity to comment on IDEM's third-notice draft antidegradation rule. The Conservation Law Center is a not-for-profit public interest law firm located in Bloomington, Indiana. With these comments we are also representing the interests of the Alliance for the Great Lakes, Inc., an environmental organization dedicated to the health of the Great Lakes, including Lake Michigan, and with members who will be directly affected, and potentially injured, by implementation of Indiana's antidegradation rule.

The language of at least three of the Section 5 exemptions – 327 IAC 2-1.3-5(b)(5), 5(d)(1), and 5(d)(2) – in the draft antidegradation implementation rule as preliminarily adopted by the Indiana Water Pollution Control Board is inconsistent with federal regulations and antidegradation policy. These three Section 5 exemptions allow a non-de minimis new or increased loading of pollutants, including BCCs, into a waterbody without a demonstration that the new or increased loading is socially or economically important or beneficial. These exemptions should be brought into alignment with federal requirements pursuant to the Clean Water Act.

Our comments reference two attached appendices. Appendix A provides text from the three Section 5 exemptions discussed here, along with the analogous exemptions in the existing Indiana antidegradation implementation rules, which will be replaced by the new rule. Appendix B provides an excerpt from the January 29, 2010 letter sent by EPA Region 5 to IDEM commenting on a substantially similar previous draft of the pollution trading exemptions.

BACKGROUND

I. The Tier 2 Antidegradation Standard in 40 CFR § 131.12(a)(2) and 40 CFR Part 132, Appendix E—Great Lakes Water Quality Initiative (GLWQI) Antidegradation Policy.

Federal antidegradation policy requires that for high quality waters – *i.e.*, where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water – the existing water quality must be maintained and protected “unless the State finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the State’s continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located.” 40 CFR § 131.12(a)(2). This standard is repeated in the GLWQI, which states in relevant part as follows:

I. Antidegradation Standard

This antidegradation standard shall be applicable to any action or activity by any source, point or nonpoint, of pollutants that is anticipated to result in an increased loading of BCCs to surface waters of the Great Lakes System and for which independent regulatory authority exists requiring compliance with water quality standards. Pursuant to this standard:

* * * * *

B. Where, for any parameter, the quality of the waters exceed levels necessary to support the propagation of fish, shellfish, and wildlife and recreation in and on the waters, that water shall be considered high quality for that parameter consistent with the definition of high quality water found at section II.A of this appendix and that quality shall be maintained and protected unless the State or Tribe finds, after full satisfaction of intergovernmental coordination and public participation provisions of the State's or Tribe's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. . . . The State or Tribe shall utilize the Antidegradation Implementation Procedures adopted pursuant to the requirements of this regulation in determining if any lowering of water quality will be allowed[.]

II. Constraints on Exemptions from a Full Antidegradation Demonstration.

A. Exemptions from a Full Antidegradation Demonstration Must Be Justified by At Least One of Three Arguments.

An “exemption” from a full Tier 2 antidegradation demonstration for a new or increased loading of a pollutant, to be consistent with the perspectives of EPA and the courts, must be justified by at least one of the following arguments:

- (1) the change in loading will result in a de minimis decrease in water quality in the receiving waterbody over the range of likely loadings – that is, the decline in water quality is not large enough to worry about;
- (2) the state presents evidence that a procedure outside of the antidegradation implementation rule sufficiently substitutes for that part of the antidegradation demonstration that is omitted;
- (3) the state presents evidence that all of the circumstances that would qualify for the exemption are likely to be socially or economically important (or beneficial).

B. Indiana’s Antidegradation Rule Must Be “As Protective As” and “Consistent With” the GLWQI Guidance, 40 CFR Part 132, Which Sets Forth a Limited Set of Exemptions for a New or Increased Loading of a BCC Into Lake Michigan.

The GLWQI Guidance in 40 CFR Part 132 “identifies minimum water quality standards, antidegradation policies, and implementation procedures for the Great Lakes System to protect human health, aquatic life, and wildlife.” 40 CFR § 132.1(a). Indiana’s antidegradation program “do[es] not need to be identical to the Guidance in this part, but must contain provisions that are consistent with (*i.e.*, as protective as) the Guidance in this part. 40 CFR § 132.1(b). Also, Indiana “must adopt provisions consistent with the Guidance in this part applicable to waters in the Great Lakes System or be subject to EPA promulgation of its terms pursuant to this part,” 40 CFR § 132.1(c), and Indiana “shall adopt requirements applicable to waters of the Great Lakes System for the purposes of sections 118, 301, 303, and 402 of the Clean Water Act that are consistent with . . . (6) The Antidegradation Policy in appendix E of this part.” 40 CFR § 132.4(a)(6).

40 CFR Part 132, Appendix E contains a specific and limited set of exemptions from a full antidegradation demonstration for new or increased loadings of BCC’s into the Great Lakes. These exemptions appear in four locations within App. E. The four locations are as follows (specific exemptions are italicized):

- (1) In II.A., under the definition of “Significant Lowering of Water Quality”:

A significant lowering of water quality occurs when there is a new or increased loading of any BCC from any regulated existing or new facility, either point source or nonpoint source for which there is a control document or reviewable action, as a result of any activity including, but not limited to . . .

Notwithstanding the above, changes in loadings of any BCC within the existing capacity and processes, and that are covered by the existing applicable control document, are not subject to an antidegradation review. These changes include, but are not limited to:

- (1) Normal operational variability;*

- (2) Changes in intake water pollutants;*
- (3) Increasing the production hours of the facility, (e.g., adding a second shift); or*
- (4) Increasing the rate of production.*

Also, excluded from an antidegradation review are new effluent limits based on improved monitoring data or new water quality criteria or values that are not a result of changes in pollutant loading.

(2) In II.D.1., under the discussion of high quality waters:

D. For high quality waters, the Director shall ensure that no action resulting in a lowering of water quality occurs unless an antidegradation demonstration has been completed pursuant to section III of this appendix and the information thus provided is determined by the Director pursuant to section IV of this appendix to adequately support the lowering of water quality.

1. The Director shall establish conditions in the control document applicable to the regulated facility that prohibit the regulated facility from undertaking any deliberate action, such that there would be an increase in the rate of mass loading of any BCC, unless an antidegradation demonstration is provided to the Director and approved pursuant to section IV of this appendix prior to commencement of the action. *Imposition of limits due to improved monitoring data or new water quality criteria or values, or changes in loadings of any BCC within the existing capacity and processes, and that are covered by the existing applicable control document, are not subject to an antidegradation review.*

(3) In II.F., under the heading "Exemptions":

F. Exemptions. Except as the Director may determine on a case-by-case basis that the application of these procedures is required to adequately protect water quality, or as the affected waterbody is an Outstanding National Resource Water as defined in section II.A of this appendix, the procedures in this part do not apply to:

- 1. Short-term, temporary (i.e., weeks or months) lowering of water quality;*
- 2. Bypasses that are not prohibited at 40 CFR 122.41(m); and*
- 3. Response actions pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, or similar Federal, State or Tribal authorities, undertaken to alleviate a release into the environment of hazardous substances, pollutants or contaminants which may pose an imminent and substantial danger to public health or welfare.*

(4) In III.E., under the heading “Special Provision for Remedial Actions”:

E. Special Provision for Remedial Actions. Entities proposing remedial actions pursuant to the CERCLA, as amended, corrective actions pursuant to the Resource Conservation and Recovery Act, as amended, or similar actions pursuant to other Federal or State environmental statutes may submit information to the Director that demonstrates that the action utilizes the most cost effective pollution prevention and treatment techniques available, and minimizes the necessary lowering of water quality, in lieu of the information required by sections III.B through III.D of this appendix.

PROBLEMS WITH THE DRAFT RULE TRADING EXEMPTIONS

III. Because the Draft Section 5 Exemptions Apply to Discharges of BCCs, These Exemptions Make It Easier to Avoid the Requirement of a Full Antidegradation Demonstration Than Do the Exemptions in Part 132, App. E, and Thus the Indiana Draft Rule, as Applied to Lake Michigan, Is Less Stringent Than and Inconsistent With 40 CFR Part 132.

Draft Rule Sec. 5(b)(5) states as follows:

- (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.

Draft Rule Sec. 5(d)(2) states as follows:

- (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 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.
1. In the draft rule, these exemptions apply to non-de minimis new or increased loadings of BCCs.

2. Because these exemptions are not included in Part 132 App. E, they are inconsistent with the federal requirements because they make it easier for a facility to discharge BCC's into a high quality water without a full antidegradation demonstration than does Part 132 App. E.

IV. Because the Section 5 Exemptions Apply to Discharges of BCCs, They Are Significantly Different Than the Analogous Exemptions in the Existing Antidegradation Rule, and IDEM Has Not Justified This Change.

1. The pollution trading exemptions in the existing Indiana antidegradation rule expressly do not apply to BCCs, whereas the draft exemptions at Sec. 5(b)(5), Sec. 5(d)(1), and Sec. 5(d)(2) do exempt discharges of BCCs from a full antidegradation demonstration. See Appendix A.
2. Applying the exemptions to BCCs is a significant change from the existing rule.
3. Why did IDEM make this significant change in these exemptions?

V. Trading Across Communities Within Watersheds Should Presumptively Require a Demonstration of Social or Economic Importance.

Draft Rule Sec. 5(b)(5) states as follows:

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

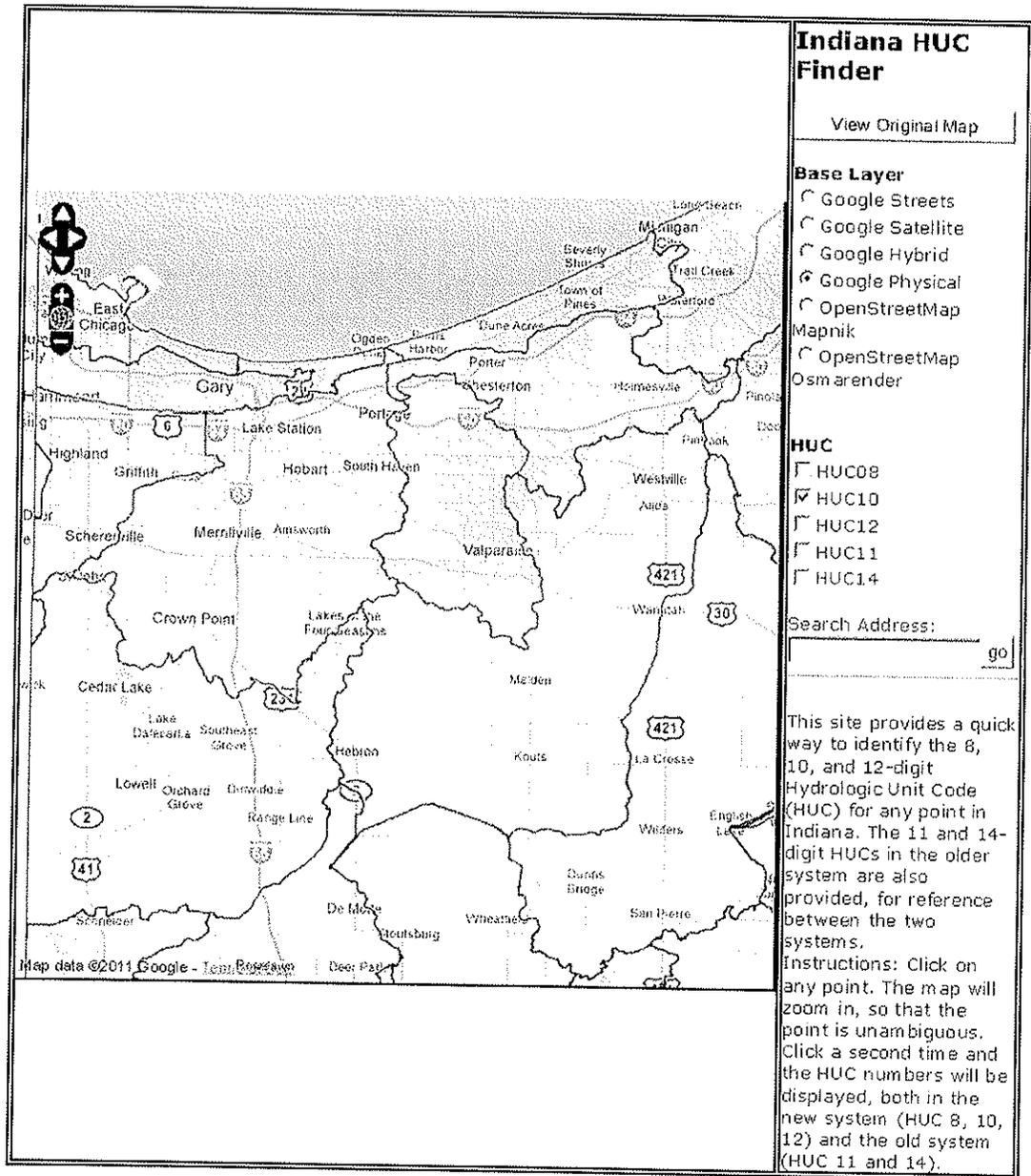
(A) where there is a voluntary, simultaneous, enforceable decrease in the actual loading of the regulated pollutant from sources contributing to the same ten (10) digit watershed; and

(B) with the result that there is a net decrease in the loading of the regulated pollutant to the same ten (10) digit watershed.

1. This exemption allows a significant increase in the loading of a pollutant in one community in exchange for a decreased loading of the pollutant in another community, without socio-economic review, so long as the two communities are in the same 10 digit HUC and there is a net decrease in the loading of the pollutant in the 10 digit HUC. (See also the Section 5(b)(1) exemption, which also allows watershed trading but is somewhat more narrowly tailored.)
2. The problem with this pollution trading scheme is that it does not meet any of the justifications set forth in section II.A. above. See also excerpt of EPA letter in Appendix B.
3. A 10 digit HUC almost certainly encompasses different communities as well as different tributaries and/or lakes. A typical example is shown in Figure 1 below, which shows the

boundaries of 10 digit HUCs overlaying a map of northwest Indiana. Figure 1 shows that Burns Harbor and Beverly Shores are contained within the same 10 digit HUC. Also, traveling south on I-65, the 10 digit HUC containing Orchard Grove also contains Cedar Lake, Lake of the Four Seasons, and Lake Dalecarlia.

4. The different communities located within a 10 digit HUC may have unique social or economic structures, values, and needs, and the different tributaries and lakes within a 10 digit HUC may be associated with different social or economic uses and values. How can IDEM presume that this is not true without an analysis of social and economic factors?
5. The antidegradation policy requires that the lowering of water quality be socially or economically important “in the area in which the water is located.” 40 CFR 131.12(b). If the “area in which the water is located” can be smaller than the size of a 10 digit HUC, then it cannot be presumed without evidence that an increased loading of a pollutant in one “area” is socially or economically important simply because it is offset by a decreased loading in another “area,” even though the two areas are located in the same 10 digit HUC. An analysis of the social and economic benefits and costs of such a trade would be required to answer the question of social and economic importance.
6. How can IDEM presume that an increased loading of a pollutant in one “area in which the water is located” is socially or economically important simply because it is offset by a decreased loading in another “area in which the water is located” just because the two “areas” occur within the same 10 digit HUC?
7. If the “area in which the water is located” cannot be smaller than the size of a 10 digit HUC, then one might expect, at least theoretically, that a pollution trade that results in a net decrease in the loading of the pollutant to the same 10 digit HUC may be socially or economically important. However, IDEM has never stated that “the area in which the water is located” is no smaller than a 10 digit HUC in all cases in which the trading exemptions would be applied, and such a statement does not appear to be justified.
8. Indiana has not offered publically any information or evidence showing that pollution trades at the spatial scale of a 10 digit HUC would produce a social or economic benefit “in the area in which the water is located.” Indiana cannot presume that a pollution trade would be socially or economically important at the spatial scale of a 10 digit HUC (see Figure 1).
9. How will IDEM apply this pollution trading exemption to direct discharges into Lake Michigan? Theoretically at least, this exemption would allow a significant reduction in water quality in one shore area of the Lake in exchange for increased quality in another shore area of the Lake, regardless of whether those two Lake areas intermix, and without any consideration of the social or economic effects of such a tradeoff.



<http://inwater.agriculture.purdue.edu/HUC/>

9/27/2011

Figure 1. A snapshot of an interactive webpage showing 10 digit HUCs overlaid onto a map of northwest Indiana. An interactive map is available at <http://inwater.agriculture.purdue.edu/HUC/>.

VI. Trading Across Media Should Presumptively Require a Demonstration of Social or Economic Importance.

Draft Rule Sec. 5(d)(2) states as follows:

- (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 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.
1. The existing rule exemption that trades a decrease in water quality for a reduction in an air pollutant expressly applies only when “the reduction in the discharge of the air pollutant is necessary to meet a state or federal air quality standard or will substantially reduce human exposure to hazardous air pollutants.”
 2. In contrast, the analogous draft exemption at Section 5(d)(2) applies when “the reduction in the loading of the air pollutant is necessary to meet a state or federal air quality standard or emission requirement, *or will substantially reduce human exposure to hazardous air pollutants or other air pollutants that are subject to state or federal air quality standards.*”
 3. The Section 5(d)(2) exemption thus contains a phrase that does not appear in the analogous exemption in the existing antidegradation rules (see Appendix A): “will substantially reduce human exposure to . . . *other air pollutants that are subject to state or federal air quality standards.*”
 4. This exemption now allows a significant decrease in water quality to be traded for an increase in any air pollutant for which there is a federal or state standard, even if the air pollutants subject to state or federal standards already meet those standards.
 5. The problem is that this exemption applies even where the traded air pollutant is meeting the standards. The question then arises: Where an air pollutant involved in the trade is meeting the applicable standards, what is the social or economic benefit (*e.g.*, to public health) of further reductions in that air pollutant? Because the air pollutants subject to state or federal standards may already meet those standards, the social or economic benefit of further reducing those pollutants is questionable.
 6. By exempting such trades from a social and economic analysis, Indiana is in essence claiming that such a trade is presumptively beneficial to the area in which the water is

located – that is, that any lowering of any regulated air pollutant is “important economic or social development” even if the air pollutant is not toxic or hazardous and is meeting applicable standards. How can IDEM presume that, where the traded air pollutant is meeting the applicable standards, such a trade provides a social or economic benefit?

7. Moreover, Indiana has not offered publically any information or evidence showing that cross-media pollution trades such as those covered by the Section 5(d)(2) exemption would clearly produce a social or economic benefit “in the area in which the water is located.” Without the proper showing by Indiana, EPA has no justification for approving the exemption.

Thank you for considering our comments.

Sincerely,



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APPENDIX A

Comparison of Pollution Trading Exemptions in Draft Rule With Analogous Exemptions in Existing Rule *Bolded and italicized text highlights key changes to rule language*

The pollutant trading exemptions in the DRAFT rule differ in at least three significant ways compared to the analogous exemptions in the EXISTING antidegradation rules 327 IAC §§ 5-2-11.3 and 11.7.

1. The EXISTING pollutant trading exemptions expressly do not apply to BCCs, whereas the analogous DRAFT exemptions apply to BCCs.
2. The EXISTING exemption that trades a decrease in water quality for a reduction in an air pollutant expressly applies only when “the reduction in the discharge of the air pollutant is necessary to meet a state or federal air quality standard or will substantially reduce human exposure to hazardous air pollutants,” whereas the analogous DRAFT exemption applies only when “the reduction in the loading of the air pollutant is necessary to meet a state or federal air quality standard or emission requirement, or will substantially reduce human exposure to hazardous air pollutants **or other air pollutants that are subject to state or federal air quality standards.**” Note that the air pollutants subject to state or federal standards may already meet those standards and thus the benefit of further reducing those pollutants is unclear.
3. The EXISTING pollutant trading exemptions, by using term “the **commissioner may approve,**” expressly allow for the Commissioner’s discretion in applying the exemption in any particular case, whereas the analogous DRAFT exemptions remove such discretion and mandate that the exemptions be applied if certain conditions occur.

DRAFT RULE Sec. 5(b)(5)

An antidegradation demonstration that includes the basic information required under subsection (a) and the necessary information required under subsection (c) shall be submitted for the following beneficial activities that result in a new or increased loading:

* * *

- (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.**

EXISTING RULE 327 IAC 5-2-11.3(b)(1)(C)

Notwithstanding clauses (A) and (B), the following do not constitute a significant lowering of water quality: * * * (iii) The following actions: . . .

* * *

- (DD) New or increased discharges of a pollutant **that is not a BCC,** where there is a contemporaneous enforceable decrease in the actual loading of the pollutant

from sources **contributing to the same body of water** such that there is no net increase in the loading of the pollutant **to the same body of water**.

EXISTING RULE 327 IAC 5-2-11.7(c)(2)

The commissioner may allow the following proposed new or increased discharges to occur if the applicant demonstrates that the increases are necessary and that they will result in a net environmental improvement:

(A) New or increased discharges of a pollutant or pollutant parameter **that is not a BCC** where there is a contemporaneous enforceable decrease in the actual loading of the pollutant or pollutant parameter from sources **contributing to the OSRW or to the tributaries to the OSRW** such that there is no net increase in the loading of the pollutant or pollutant parameter **to the OSRW**.

The **commissioner may approve** such an action only if:

- (i) the reduction in the discharge of the pollutant or pollutant parameter exceeds the new or increased discharge of the pollutant or pollutant parameter;
- (ii) the applicant demonstrates that all reasonable and cost-effective methods for avoiding the new or increased discharge have been taken; and
- (iii) the new or increased discharge complies with subdivision (4).

DRAFT RULE Sec. 5(d)(1)

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) shall be submitted 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.

EXISTING RULE 327 IAC 5-2-11.3(b)(1)(C)

Notwithstanding clauses (A) and (B), the following do not constitute a significant lowering of water quality: * * * (iii) The following actions: . . .

* * *

(JJ) An action that will result in a new or increased discharge of a pollutant or pollutant parameter **that is not a BCC**, if the new or increased discharge is necessary to accomplish a reduction in the discharge of another pollutant or pollutant parameter and the commissioner determines the action will result in a net improvement in water quality in the waterbody. The **commissioner may approve** such an action only if:

(aa) ***the reduction in the discharge of the reduced pollutant exceeds the increase in the discharge of the new or increased pollutant;***

(bb) the new or increased pollutant is determined to be significantly less bioaccumulative and toxic than the decreased pollutant; and

(cc) the applicant demonstrates that all reasonable and cost-effective methods for avoiding the new or increased discharge have been taken.

EXISTING RULE 327 IAC 5-2-11.7(c)(2)

The commissioner may allow the following proposed new or increased discharges to occur if the applicant demonstrates that the increases are necessary and that they will result in a net environmental improvement:

* * *

(B) An action that will result in a new or increased discharge of a pollutant or pollutant parameter ***that is not a BCC*** if the new or increased discharge is necessary to accomplish a reduction in the discharge of another pollutant or pollutant parameter. The ***commissioner may approve*** such an action only if:

(i) the new or increased discharge of the pollutant or pollutant parameter is determined to be either:

(AA) less toxic and no more bioaccumulative; or

(BB) less bioaccumulative and no more toxic;

(ii) the applicant demonstrates that all reasonable and cost-effective methods for avoiding the new or increased discharge have been taken; and

(iii) the new or increased discharge complies with subdivision (4).

DRAFT RULE Sec. 5(d)(2)

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) shall be submitted for the following beneficial activities that result in a new or increased loading:

* * *

(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 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.***

EXISTING RULE 327 IAC 5-2-11.3(b)(1)(C)

Notwithstanding clauses (A) and (B), the following do not constitute a significant lowering of water quality: * * * (iii) The following actions: . . .
* * *

(KK) An action that will result in a new or increased discharge of a pollutant or pollutant parameter **that is not a BCC**, if the new or increased discharge is necessary to accomplish a reduction in the release of an air pollutant and the commissioner determines the action will result in a net environmental improvement. The **commissioner may approve** such an action only if:

(aa) the reduction in the discharge of the air pollutant is necessary to meet a state or federal air quality standard or will substantially reduce human exposure to hazardous air pollutants;

(bb) **the reduction in the mass of air pollutant discharged represents a substantial reduction in the total mass released by the applicant**; and

(cc) the applicant demonstrates that all reasonable and cost-effective methods for avoiding the new or increased discharge to the waterbody have been taken.

EXISTING RULE 327 IAC 5-2-11.7(c)(2)

The commissioner may allow the following proposed new or increased discharges to occur if the applicant demonstrates that the increases are necessary and that they will result in a net environmental improvement.
* * *

(C) An action that will result in a new or increased discharge of a pollutant or pollutant parameter **that is not a BCC** if the new or increased discharge is necessary to accomplish a reduction in the release of an air pollutant. The **commissioner may approve** such an action only if:

(i) the reduction in the discharge of the air pollutant is necessary to meet a state or federal air quality standard or will substantially reduce human exposure to hazardous air pollutants;

(ii) the applicant demonstrates that all reasonable and cost-effective methods for avoiding the new or increased discharge have been taken; and

(iii) the new or increased discharge complies with subdivision (4).

APPENDIX B

Excerpt from January 29, 2010 Letter from Linda Holst, EPA Region 5, to Mary Ann Stevens, IDEM; EPA Comment for Indiana Antidegradation Rules, Second Notice

I. ELEMENTS OF INDIANA'S PROPOSED RULES THAT APPEAR TO BE INCONSISTENT WITH THE APPLICABLE FEDERAL REQUIREMENTS

* * * *

IV. Indiana's rules exempt certain actions that impact water quality from parts of the antidegradation requirement to demonstrate that a new or increased discharge is necessary to accommodate important social or economic development

The Federal regulations allow new or increased discharges to lower water quality in high quality waters only after the lowering of water quality is demonstrated to be necessary to accommodate important social and economic development in the area in which the waters are located. Indiana's draft rules contain exemptions from the demonstration requirements for a number of types of activities that may impact water quality. While the "exemption demonstration" in Indiana's rules might address the Federal requirement that any lowering of water quality be technologically necessary (no less degrading alternatives are available), it does not address the social and economic benefits component. To the extent that Indiana is finding, by rule, that the exempted actions are always socially and economically beneficial, Indiana must provide some factual information in the record supporting that assertion. Without such data and analysis in the record, the demonstration is incomplete and therefore inconsistent with the Federal regulations.

Also, [selected exemptions] contemplate offsetting new or increased discharges with other actions within the same 10 digit HUC. Offsetting provisions may be an acceptable basis for determining that antidegradation review is not triggered if it is clear that the offset results in no change in water quality at the point where the new or increased discharge will occur. It is not clear that the spatial relationship between such actions will be such as to ensure that this requirement will be met in all circumstances that would qualify for this exemption.