
Nonrule Policy Documents

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Title: Small Sources: Requirements for Construction Permitting.

Identification Number: Air-0008-NPD.

Date Originally Adopted: March 10, 1997.

Dates Revised: None.

Other Policies Repealed or Amended: None.

Brief Description of Subject Matter: Construction Permitting Requirements for Small Sources

Citations Affected: 326 IAC 2-1, 326 IAC 2-9, 326 IAC 2-10, and 326 IAC 2-11.

This nonrule policy document is intended solely as guidance and does not have the effect of law or represent formal Indiana Department of Environmental Management (IDEM) decisions or final actions. This nonrule policy document shall be used in conjunction with applicable laws. It does not replace applicable laws, and if it conflicts with these laws, the laws shall control. A revision to this nonrule policy document may be put into effect by IDEM once the revised nonrule policy document is made available for public inspection and copying. IDEM will submit revisions to the Indiana Register for publication.

Applicability

This nonrule policy addresses construction permitting requirements for small sources constructed prior to January 1, 1994. The policy applies to sources which are eligible to operate pursuant to operating permit programs contained in 326 IAC 2-9, 326 IAC 2-10, and 326 IAC 2-11.

Purpose

This nonrule policy is intended to encourage sources to come into compliance with state permitting requirements by applying for all necessary permits.

Background

In 1994, the Indiana General Assembly adopted statute, IC 13-10-4-1, establishing a compliance transition program for companies subject to the federal Title V air operating permit program and state air permitting programs. The statute limits the liability faced by companies that may have facilities that, in the past, did not obtain the proper air construction and/or operating permit. A cap is placed on the enforcement fines that can be levied for certain lesser air emitting facilities that were built but not properly permitted before 1994. The intent of this program was to encourage sources to come into compliance with state permitting requirements by applying for all necessary permits. The statute addresses sources subject to part 70 related permitting programs (ie, Title V, FESOP, and SSOA) and sources not subject to Title V. The development of permits by rule was not anticipated at the time the statute was developed.

On April 1, 1996, the Indiana Department of Environmental Management issued a "Policy Implementing and Supplementing Title 5 Compliance Transition Program Per IC 13-10-4-1," which was published in the April 1, 1996 Indiana Register (19 IR 1709). The purpose of this guidance was to implement the compliance transition program established by the statute. The guidance also extended the compliance transition period for sources subject to part 70 related programs (ie, Title V, FESOP, and SSOA) through the December 13, 1996 part 70 permit application deadline.

IDEM has been working to develop streamlined permitting mechanisms for use by small sources to limit their potential to emit in an enforceable manner, and thus, eliminate the need to apply for a part 70 operating permit. These mechanisms include Source Specific Operating Agreements (SSOA) and permits-by-rule. Both permitting mechanisms were developed to address operating permit requirements, and therefore, do not eliminate a source's requirement to apply for a registration or construction permit, as applicable. However, IDEM believes that there is no significant environmental benefit achieved by requiring sources of the type eligible for these streamlined permitting programs to undergo new source review.

IDEM has begun development of amendments to the permit review rules to streamline new source review requirements for situations where permit review does not result in any significant environmental benefit. Amendments are being developed to establish a permanent exemption from registration and construction permitting requirements

for sources eligible to operate pursuant to these streamlined permitting mechanisms.

Policy

This guidance applies to any source which is eligible to operate pursuant to a Source Specific Operating Agreement (SSOA) or permit by rule established in 326 IAC 2-9, 326 IAC 2-10 or 326 IAC 2-11.

IDEM through this guidance is establishing a policy that IDEM will not pursue an enforcement action against a source if it fails to submit an application for a registration or construction permit provided the following conditions are met:

1. The source was constructed before January 1, 1994; and
2. The owner or operator of the source voluntarily discloses any unpermitted source/facility as part of its SSOA application or, in the case of permit by rule, through written notification to the IDEM.

Written notification shall include the source name, location, description of any unpermitted facility, and specify whether the source will be operating under a SSOA or permit by rule.

This policy is consistent with IDEM's "Policy Implementing and Supplementing Title 5 Compliance Transition Program Per IC 13-10-4-1," which was published in the April 1, 1996 Indiana Register (19 IR 1709).

This policy does not relieve a source from the responsibility to apply for a permit as required by federal law or local ordinance.

Enforcement

For sources operating in accordance with this policy, IDEM will not seek an enforcement penalty and/or unpaid operating fees. In addition, IDEM will not pursue formal enforcement action except as indicated below.

IDEM *may* initiate formal enforcement action with a Notice of Violation pursuant to IC 13-7-11 if one or more of the following conditions applies:

- 1) the unpermitted source/facility required a federal new source review permit under 326 IAC 2-2 or 2-3;
- 2) the unpermitted source/facility does not comply with a significant applicable requirement;
- 3) the unpermitted source/facility poses a significant threat to public health or the environment or poses a major problem for the quality of life in the community.

Any source eligible to operate pursuant to this policy may elect to submit a construction permit and fees. IDEM will accept the fee and process the construction permit as expeditiously as practical.

Term of Policy

This policy will remain in effect until December 31, 1997, or until such time that the amendments to the new source review rules are completed, whichever occurs first.

Additional Information

If you have any questions concerning this policy, please contact Cheri Storms, Compliance and Technical Assistance Program, at 317-233-1041 or 800-451-6027 ext. 3-1041 (within Indiana).

Copies of this policy are available at the Office of Air Management, Indiana Department of Environmental Management, Indiana Government Center-North, Room N1001, 100 North Senate Avenue, Indianapolis, Indiana 46204.
