INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
NONRULE POLICY DOCUMENT

Title: Policy on Implementation of Maximum Achievable Control Technology (MACT) Requirements
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Other Policies Repealed or Amended: Revises Existing Policy
Brief Description of Subject Matter: Extension of Expiration Date of Policy on Implementation of MACT Requirements
Rule Citations Affected: 326 IAC 2-1-3.3

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On December 13, 1995, IDEM issued a policy document concerning the implementation of 326 IAC 2-1-3.3 (State construction and operating permits: Maximum Achievable Control Technology). This is the state rule intended to implement section 112(g) of the 1990 Clean Air Act Amendments. A copy of that policy is attached hereto. The policy stated that it would expire on September 1, 1996 or whenever IDEM completed rulemaking to revise Section 2-1-3.3, whichever happened first.

Since the issuance of that policy, there have been a number of developments at the state and federal level that have lead IDEM to conclude that the effective date of the policy should be extended.

In March 1996, the United States Environmental Protection Agency issued a draft rule implementing Section 112(g), providing guidance that was not available at the time IDEM issued the initial policy. With the issuance of this draft rule, IDEM determined to incorporate the approach of the federal rule into state rules, instead of pursuing a separate state rule. On June 5, 1996, the Indiana Air Pollution Control Board preliminary adopted rule language that used the approach from the draft federal rule.

U.S. EPA has indicated its intent to issue a final federal rule in late 1996, at which time IDEM will ask the Air Board to final adopt the state rule. It is therefore necessary to extend the effective date of the attached policy.

The effective date of this policy is hereby extended to March 1, 1997 or such other time as IDEM may establish.

Attachment I

Indiana Department of Environmental Management

POLICY ON IMPLEMENTATION OF MAXIMUM
ACHIEVABLE CONTROL TECHNOLOGY REQUIREMENTS

December 13, 1995

BACKGROUND

The purpose of this Policy is to provide clarity to the public and regulated community on the implementation of Section 112(g) of Title III of the 1990 Clean Air Act Amendments (CAAA).

Title III established a comprehensive program for the reduction of hazardous air pollutants (HAPs) in the United States. The basic approach of Title III is the identification by the U. S. Environmental Protection Agency (U. S. EPA) of categories of sources that emit significant amounts of HAPs and the promulgation of technology based standards for their

control. The standards are to be based on the level of control achieved by the best controlled sources (for new source standards) or the average of the twelve percent of best controlled existing sources (for existing source standards).

Section 112(g) establishes requirements for new or modified major sources of air toxics prior to the promulgation by the U.S. EPA of the category-specific rules. It provides for interim control requirements for sources of air toxics determined on a case-by-case basis. It provides the following:

(A) After the effective date of a permit program under title V in any State, no person may modify a major source of hazardous air pollutants in such State, unless the Administrator (or the State) determines that the maximum achievable control technology emission limitation under this section for existing sources will be met. Such determination shall be made on a case-by-case basis where no applicable emissions limitations have been established by the Administrator.

(B) After the effective date of a permit program under title V in any State, no person may construct or reconstruct any major source of hazardous air pollutants, unless the Administrator (or the State) determines that the maximum achievable control technology emission limitation under this section for new sources will be met. Such determination shall be made on a case-by-case basis where no applicable emission limitations have been established by the Administrator.

The CAAA requires that states have an air toxics program at least as stringent as that provided in Title III. The CAAA contemplates that much of the air toxics program will be administered by the states through the Title V air operating permits program. The Title V Permit is a comprehensive permitting document for significant sources of air pollutants that sets forth requirements and conditions for operation of the source in compliance with all state and federal air quality requirements. Major sources of air toxics (those with emissions of a single HAP greater than 10 tons per year and emissions of a combination of HAPs greater than 25 tons per year) are required by the CAAA to obtain a Title V permit.

In March 1994, the Indiana Air Pollution Control Board adopted rules implementing the Title V Air Operating Permits Program. When the Indiana Department of Environmental Management (IDEM) developed the Title V rules, it used regulations promulgated by the U.S. EPA at 40 CFR Part 70, as well as proposed rules or other guidance where final rules were not available. In the case of Section 112(g), IDEM used the standards set forth in Section 112(d) of the CAAA, as no Section 112(g) rules had been issued.

Indiana's rules implement Section 112(g) through the requirement that sources obtain a construction permit and achieve a defined level of control of HAP emissions. Following are the requirements:

(1) Requirement for State Construction Permit

New Sources. The rules require that new sources of hazardous air pollutants that will emit 10 or more tons per year (TPY) of any single HAP or 25 or more TPY of a combination of HAPs, must obtain a state construction permit. 326 IAC 2-1-1(b)(1)(G).

Modified Sources. The rules require that any modification of a major source of hazardous air pollutants that will increase emissions of HAPs more than a specified amount, must obtain a state construction permit. *This requirement applies "[a]fter the date that approval by U.S. EPA of the Indiana Part 70 permit program becomes effective."* 326 IAC 2-1-1(b)(1)(H).

(2) Requirement that HAPs be Controlled

Since U.S. EPA had not issued final rules at the time of Indiana's rulemaking, Indiana's rules followed the requirements of Section 112(g) itself, and required that new and modified sources of hazardous air pollutants achieve the "maximum degree of reductions... that the commissioner determines is achievable..." 326 IAC 2-1-3.3(b). The rule articulates the factors the commissioner shall consider in making that case-by-case determination; these factors are taken directly from section 112(d) of the Act. *This requirement also applies "[a]fter the date that approval by the U.S. EPA of the Indiana Part 70 permit program becomes effective."*

It was IDEM's expectation that U.S. EPA's Section 112(g) rules would be final prior to federal approval of Indiana's Part 70 program. Moreover, Section 112(g) contemplates that U.S. EPA will provide assistance to the states in determining what the "maximum degree of reductions" of HAPs would be in any given case. This is because the information U.S. EPA is developing in order to promulgate a source specific rule for a category, is also the information that can be used to make the required case by case determinations.

The U.S. EPA has not issued final rules or guidance on how the provisions of Section 112(g) are to be implemented. Initially, U. S. EPA issued an interpretation that Section 112(g) takes effect upon approval of a state's Title V program regardless of whether a federal rule had been promulgated. A variety of substantive issues and comments were raised on the federal proposal, which the U.S. EPA felt warranted reconsideration of the proposed requirements and the effective date of Section 112(g). When it became clear that states could not effectively implement Section 112(g) as contemplated in the Act without final federal rules, the U.S. EPA issued a revised interpretation declaring that "section 112(g) not take effect before the EPA issues notice and comment guidance addressing implementation of that section," 60 Fed. Reg. 8333, and that states do not need to implement the provisions of Section 112(g) until final federal rules are promulgated. It is not clear when the U.S. EPA will conclude its rulemaking and promulgate final Section 112(g) rules.

The U.S. EPA issued final approval of Indiana's Title V program on November 14, 1995, effective on December 14, 1995. In its approval, the U.S. EPA acknowledges its determination that states are not required to have Section 112(g) rules in place prior to the issuance of final federal rules. It also recognized that Indiana might ultimately need to revise its Section 112(g) rules to be consistent with whatever the final federal rules provide. The U.S. EPA therefore approved Indiana's Section 112(g) rules "solely for the purpose of implementing section 112(g) during the transition period between promulgation of the section 112(g) regulation and adoption by Indiana of regulations implementing the provisions of section 112(g)." 60 FR 57189.

Given these and other considerations, there are several reasonable interpretations of the effectiveness of Indiana's Section 112(g) rules, including that the rules do not come into effect as a matter of state law until after the date that U.S. EPA's limited approval of these provisions would come into effect. IDEM believes that the best course of action is to develop and promulgate, in cooperation with any interested parties, amendments to Indiana's air permit program that are reasonable and effective and to exercise its enforcement discretion not to enforce the existing rule provisions during the development of those amendments.

At the time of the 1990 CAAA, many states had already developed and were implementing air toxics programs on the state level. Indiana had not developed its own program by the time of the 1990 CAAA and determined to incorporate the federal Title III program as its air toxics program. Consistent with that policy determination, the Indiana Air Pollution Control Board has been incorporating federal air toxics standards as they have been issued by the U.S. EPA and the Indiana Department of Environmental Management (IDEM) has been working with the U.S. EPA on the demonstration necessary for Indiana to obtain delegation of the federal Title III program.

Indiana had decided to use the provisions of Title III of the CAAA, including Section 112(g), to provide a reasonable level of control of air toxics for new and modified sources prior to the promulgation of MACT standards by U.S. EPA. Because U.S. EPA has not been able to complete its work, IDEM believes it is very reasonable to substitute a fair program that requires a reasonable level of control to safeguard the public and level the playing field for any significant new emission of an air toxic prior to the promulgation of an applicable MACT. Unlike many other states, Indiana had deferred putting such a requirement in place in deference to Section 112(g). Because the timing of the federal Section 112(g) regulations and the future promulgation of MACTs is uncertain at best, IDEM believes it is imperative that Indiana put an interim common sense air toxic requirement in place for otherwise unregulated new emissions. Similar to Indiana's VOC control program for new sources, in which all significant new emitters are required to meet reasonable standards prior to startup, IDEM believes that a comparable program is needed for air toxic sources.

Following are specific Findings of the department as well as a Policy consistent with those Findings and this discussion.

IDEM believes that:

(1) It is neither practical nor reasonable for IDEM and Indiana sources to attempt to implement the provisions of section 112(g) as currently set forth in Indiana's rules;

(2) Indiana does not currently have any specific regulatory program for significant new or modified sources of HAPs;

(3) Based on current level of effort and funding constraints at U.S. EPA, it is reasonable to believe that the federal MACT schedule will be delayed for many categories; and

(4) Until U.S. EPA finalizes its approach to new and modified sources of HAPs, it is appropriate for Indiana to act expeditiously in adopting rules that apply some level of review to significant new or increased emissions of HAPs, and that reasonable and effective standards can be established for appropriate controls through a process that provides adequate opportunity for public participation but is not overly burdensome for sources or for IDEM.

Therefore, IDEM has undertaken the following:

(1) Commenced a rulemaking to amend the provisions of Indiana rules that implement Section 112(g). Draft rules were published in the Indiana Register on September 1, 1995. IDEM intends to propose minimum requirements for certain new and modified sources of HAPs as a part of that rulemaking.

(2) Developed this Policy, which is set forth below, that will be in effect immediately and continue in effect until September 1, 1996 or the effective date of amendments to Indiana's rule for new and modified sources of HAPs, whichever is earlier. This Policy may be extended or modified at IDEM's discretion.

POLICY FOR NEW AND MODIFIED SOURCES OF HAPS

A. IDEM will not enforce the provisions of 326 IAC 2-1-1(b)(1)(H), as adopted by the Air Board on March 10, 1994. This means that modification of a major source of HAPs as described in that rule will not be required to obtain a state construction permit.

B. New sources or facilities with allowable emissions of 10 or more TPY of a single HAP or 25 or more TPY of a combination of HAPs will continue to be required to obtain a state construction permit, in accordance with 326 IAC 2-1-1(b)(1)(G).

C. IDEM will not enforce the provisions of 326 IAC 2-1-3.3, as adopted by the Air Board on March 10, 1994. This means that new or modified sources of HAPs will not be required to apply the maximum degree of reduction in emissions of hazardous air pollutants.

D. Any new or modified source of HAPs that is subject to the provisions of a National Emission Standard for Hazardous Air Pollutants (NESHAPs) promulgated by the U.S. EPA shall comply with the provisions of that NESHAP and the general provisions at 326 IAC 20, as appropriate.

E. During the effectiveness of this Policy, an official responsible for certifying compliance in a source's Title V permit application pursuant to 326 IAC 2-7-4(c)(11) may certify the source's compliance with this Policy. No liability shall exist for a source's failure to certify compliance with 326 IAC 2-1-1(b)(1)(H) or 326 IAC 2-1-3.3.