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**TITLE 326 AIR POLLUTION CONTROL BOARD**

**Proposed Rule**  
LSA Document #05-268

DIGEST

Amends [326 IAC 4-1-3](#) open burning exemptions. Effective 30 days after filing with the Publisher.

**HISTORY**

First Notice of Comment Period: October 1, 2005, Indiana Register (29 IR 151).  
Second Notice of Comment Period: May 1, 2006, Indiana Register (29 IR 2679).  
Notice of First Hearing: May 1, 2006, Indiana Register (29 IR 2683).  
Date of First Hearing: August 2, 2006.

**PUBLIC COMMENTS UNDER [IC 13-14-9-4.5](#)**

[IC 13-14-9-4.5](#) states that a board may not adopt a rule under [IC 13-14-9](#) that is substantively different from the draft rule published under [IC 13-14-9-4](#) until the board has conducted a third comment period that is at least twenty-one (21) days long.

**REQUEST FOR PUBLIC COMMENTS**

Portions of this proposed rule are substantively different from the draft rule published on May 1, 2006, at 29 IR 2679. The Indiana Department of Environmental Management (IDEM) is requesting comment on the following portions of the proposed (preliminarily adopted) rule that are substantively different from the language contained in the draft rule.

The following sections of the proposed rule are substantively different from the draft rule:

[326 IAC 4-1-3\(c\)\(8\)\(C\)](#)

This notice requests the submission of comments on the sections of the rule listed above, including suggestions for specific amendments to those sections. These comments and the department's responses thereto will be presented to the board for its consideration at final adoption under [IC 13-14-9-6](#). Comments on additional sections of the proposed rule that the commentator believes are substantively different from the draft rule may also be submitted for the consideration of the board. Mailed comments should be addressed to:

#05-268 Open burning for specified purposes  
Suzanne Whitmer Mail Code 61-50  
c/o Administrative Assistant  
Rule Development Section  
Office of Air Quality  
Indiana Department of Environmental Management  
100 North Senate Avenue  
Indianapolis, Indiana 46204.

Hand delivered comments will be accepted by the receptionist on duty at the Office of Air Quality, Tenth Floor East, 100 North Senate Avenue, Indianapolis, Indiana. Comments may also be submitted by facsimile to (317) 233-2342, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rule Development Section at (317) 233-0426.

**COMMENT PERIOD DEADLINE**

Comments must be postmarked, faxed, or hand delivered by September 13, 2006.

**SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD**

IDEM requested public comment from May 1, 2006, through May 31, 2006, on IDEM's draft rule language. No comments were received during the second comment period.

**SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING**

On August 2, 2006, the air pollution control board (board) conducted the first public hearing/board meeting concerning the development of amendments to [326 IAC 4-1-3](#). Comments were made by the following parties:

NiSource, Inc. (NS)

Following is a summary of the comments received and IDEM's responses thereto:

*Comment:* NiSource appreciates the opportunity to comment on this rule. We requested that IDEM amend [326 IAC 4-1-3](#) to provide that methane and propane could be used for fire extinguisher training as required for worker safety without obtaining an approval from IDEM prior to use. We support the changes being proposed to [326 IAC 4-1-3](#). (NS)

*Response:* IDEM agrees with the commentator and will recommend that the board final adopt the rule.

**326 IAC 4-1-3**

SECTION 1. **326 IAC 4-1-3** IS AMENDED TO READ AS FOLLOWS:

**326 IAC 4-1-3 Exemptions**

**Authority:** [IC 13-15-2-1](#); [IC 13-17-3-4](#)

**Affected:** [IC 13-12](#); [IC 13-17-9](#)

Sec. 3. (a) ~~[IC 13-1-1.2](#)~~ [IC 13-17-9](#) exempts certain types of open burning for maintenance purposes listed as follows:

(1) A person may open burn the following:

(A) Vegetation from **any of the following**:

- (i) A farm.
- (ii) An orchard.
- (iii) A nursery.
- (iv) A tree farm. ~~or~~

**(v) A cemetery.**

~~(vi)~~ **(vi) A drainage ditch.**

**(vii) Agricultural land, if the open burn occurs in an unincorporated area.**

(B) Wood products derived from **the following**:

**(i) Pruning or clearing a roadside by a county highway department.**

~~(C) Wood products derived from (ii)~~ **(ii) The initial clearing of a public utility right-of-way so long as the open burn occurs in an unincorporated area.**

~~(D)~~ **(C) Undesirable:**

- (i) wood structures on real property; or
- (ii) wood remnants of the demolition of a predominantly wooden structure originally located on real property;

located in an unincorporated area.

~~(E)~~ **(D) Clean petroleum products for the purpose of maintaining or repairing railroad tracks, including the railroad rights-of-way, but not including railroad ties.**

(2) All open burning that is allowed under this subsection must comply with the following conditions:

(A) A person who open burns shall extinguish the fire if the fire creates a nuisance or fire hazard.

(B) Burning may not be conducted during unfavorable meteorological conditions such as **any of the following**:

- (i) High winds.
- (ii) Temperature inversions. ~~or~~
- (iii) Air stagnation.

(C) All fires must be attended at all times during burning until completely extinguished.

(D) All asbestos-containing materials must be removed before the burning of a structure.

(E) Asbestos containing materials may not be burned.

(b) The types of fires identified in subsection (c) are allowed under this rule. Unless specified otherwise, the following conditions apply to any fire allowed by this subsection:

(1) Fires must be attended at all times and until completely extinguished.

(2) If at any time a fire creates a:

- (A) a pollution problem;
- (B) a threat to public health;
- (C) a nuisance; or
- (D) a fire hazard;

it shall be extinguished.

(3) No burning shall be conducted during unfavorable meteorological conditions such as **any of the following**:

- (A) High winds.
- (B) Temperature inversions. ~~or~~**
- (C) Air stagnation. ~~or~~**

~~(D)~~ **(D) When a pollution alert or ozone action day has been declared.**

(4) All burning shall comply with other federal, state, and local laws, rules, and ordinances.

(5) Adequate firefighting equipment shall be on-site for extinguishing purposes during burning times.

(6) Burning shall be conducted during daylight hours only, and all fires shall be extinguished ~~prior to~~ **before** sunset.

(c) The following types of fires are allowed:

(1) Recreational or ceremonial fires, such as fires for scouting activities, and fires used for cooking purposes, such as camp fires, subject to the conditions in subsection (b)(1) through (b)(5) and the following conditions:

(A) Only:

- (i) clean wood products;
- (ii) paper;
- (iii) charcoal; or
- (iv) clean petroleum products;

may be burned.

(B) The local fire department and health department must be notified at least twenty-four (24) hours ~~prior to~~ **before** any burning where the size of the pile being burned is more than one hundred twenty-five (125) cubic feet.

(C) Fires shall:

- (i) not be ignited ~~prior to~~ **more than** two (2) hours before the recreational activity is to take place; and shall
- (ii) be extinguished upon conclusion of the activity.

(D) The pile to be burned shall be less than or equal to one thousand (1,000) cubic feet and only one (1) pile may be burned at a time.

(E) The fires shall not be used for disposal purposes.

(F) Fires shall not take place within five hundred (500) feet of any fuel storage area or pipeline.

(2) Private residential burning, where the building contains four (4) or fewer dwelling units. Burning is prohibited in apartment and condominium complexes and mobile home parks. Beginning June 23, 1995, residential open burning is prohibited in the counties listed in section 4.1(c) of this rule. Burning shall be subject to the conditions in subsection (b) and the following conditions:

(A) Burning shall be in a noncombustible container that: ~~is:~~

- (i) **is** sufficiently vented to induce adequate primary combustion; and
- (ii) has enclosed sides and a bottom.

(B) Only clean wood products and paper may be burned.

(3) Waste oil burning where waste oil originates from spillage during testing of an oil well and has been collected in a properly constructed and located burn off pit as prescribed in ~~310 IAC 7-1-37(a)~~ **312 IAC 16-5-11** in the ~~department of natural resources (DNR) commission~~ **rules. oil and gas operations.** Burning shall be subject to the conditions in subsection (b) and the following conditions:

(A) Each oil pit may be burned once every two (2) months.

(B) The fire must be extinguished within thirty (30) minutes of ignition.

(4) **Department of natural resources (DNR)** burning, to facilitate prescribed burning on DNR controlled properties for wildlife habitat maintenance, forestry purposes, natural area management, and firefighting or prevention; United States Department of the Interior burning, to facilitate a National Park Service Fire Management Plan for the Indiana Dunes National Lakeshore, for example; and United States Department of Agriculture, Forest Service burning, to facilitate wildlife habitat maintenance, forestry purposes, natural area management, ecosystem management, and fire-fighting or prevention. Burning, shall be subject to conditions in subsection (b)(1) through (b)(5) and the following conditions:

(A) If the fire creates a:

- (i) nuisance;
- (ii) fire hazard; or
- (iii) pollution problem;

it shall be extinguished.

(B) No burning shall be conducted during unfavorable meteorological conditions, such as **any of the following:**

- (i) High winds.
- (ii) Temperature inversions. ~~or~~
- (iii) Air stagnation. ~~or~~
- (iv) When a pollution alert or ozone action day has been declared.

(C) Only vegetation and clean petroleum products may be burned.

Burning by the U.S. Forest Service for firefighting or prevention is not subject to the conditions in subsection (b) or this subdivision.

(5) Burning of marijuana by federal, state, and local law enforcement offices. Burning shall be subject to the conditions in subsection (b) and only clean petroleum products shall be used for ignition purposes.

(6) Burning, for the purpose of heating, using clean wood products or paper in a noncombustible container that

is sufficiently vented to induce adequate primary combustion, and has enclosed sides and a bottom. Burning shall be subject to the conditions in subsection (b)(1) through (b)(5) and the following conditions:

(A) Burning shall only occur between October 1 and May 15.

(B) Burning shall not be conducted for the purpose of disposal.

(7) Burning of vegetation by fire departments and firefighters to create fire breaks for purposes of extinguishing an existing fire. Such burning is not subject to the conditions in subsection (b).

(8) Burning of clean petroleum products, **natural gas, methane, or propane** for fire extinguisher training, subject to the conditions in subsection (b) and the following conditions:

(A) The local fire department and health department must be notified at least twenty-four (24) hours in advance of the date, time, and location of the burning.

**(B) Except as provided in clause (C), daily fuel volume amounts burned are limited to one (1) of the following:**

**(i) Fourteen (14) gallons of clean petroleum products.**

**(ii) Two hundred twelve (212) gallons of propane.**

**(iii) Twenty-nine thousand seven hundred (29,700) cubic feet of natural gas or methane.**

**(C) A combination of the fuels listed in clause (B) may be burned each day. The amount of each fuel that can be burned each day shall be determined as follows:**

**(i) The volume of each fuel to be burned each day shall be calculated as a percentage of the maximum volume allowed in clause (B) for that fuel.**

**(ii) The sum of the percentages for each fuel burned each day shall not exceed one hundred percent (100%).**

~~(B)~~ **(D) All burning of clean petroleum products shall take place in a noncombustible container or enclosure that has enclosed on all sides with and a bottom.**

~~(C) A total of no more than fourteen (14) gallons of fuel may be burned per day.~~

~~(D) Only one (1) fire may be allowed to burn at a time.~~

(E) All burning shall be conducted in such a manner so as to prevent any possibility of soil contamination **or uncontrolled spread of the fire.**

**(F) Only one (1) fire may be allowed to burn at a time.**

*(Air Pollution Control Board; [326 IAC 4-1-3](#); filed Mar 10, 1988, 1:20 p.m.: 11 IR 2419; filed May 24, 1995, 10:00 a.m.: 18 IR 2408; filed Jul 30, 1996, 2:00 p.m.: 19 IR 3341; readopted filed Jan 10, 2001, 3:20 p.m.: 24 IR 1477)*

### [Notice of Public Hearing](#)

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