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**TITLE 326 AIR POLLUTION CONTROL BOARD****FIRST NOTICE OF COMMENT PERIOD**

LSA Document #06-436

**DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING THE PERMITTING AND OPERATION OF GRAIN ELEVATORS AND GRAIN PROCESSING OR MILLING OPERATIONS****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on repealing [326 IAC 2-9-6](#) and amending rules [326 IAC 2-11-3](#) and [326 IAC 2-11-4](#) concerning permits by rule for grain elevators and grain processing or milling operations. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

**CITATIONS AFFECTED:** [326 IAC 2-9-6](#); [326 IAC 2-11-3](#); [326 IAC 2-11-4](#); [326 IAC 6.5-1-2](#); [326 IAC 6.8-1-2](#).

**AUTHORITY:** [IC 13-14-8](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#).

**SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING****Basic Purpose and Background**

The basic purposes of this proposed rulemaking are to update and simplify the permitting process for grain elevators and grain processing or milling operations, to make permit requirements for that industry clearer and more predictable, and to amend or add mineral oil and soybean oil application limits to become consistent with Federal Drug Administration requirements.

Since the initial Title V rules were adopted ([326 IAC 2-7](#)), the department has continued to seek ways to eliminate the need for a Title V permit for certain categories of small sources. Two such mechanisms, a 'source specific operating agreement (SSOA)' and a 'permit by rule' have been used by small sources to limit their potential air emissions below the applicability threshold of [326 IAC 2-7](#). By limiting allowable emissions or potential to emit below the thresholds specified and otherwise complying with the requirements of the permit by rule, affected sources are no longer subject to the requirements of [326 IAC 2-6.1](#), [326 IAC 2-7](#), [236 IAC 2-8](#), or [326 IAC 2-9](#), unless otherwise required by federal law.

This rulemaking will consider repealing [326 IAC 2-9-6](#), grain elevators SSOA, and incorporating the particulate matter emission control measures from that rule into the grain elevators and grain processing or milling permit by rule language at [326 IAC 2-11-3](#) and [326 IAC 2-11-4](#). Updated emission factors from AP-42 (May, 2003 "Compilation of Air Pollution Emission Factors, Section 9.9.1, Grain Elevators and Grain Processes Plants") will be considered for recalculation of the throughput limits in the existing rules. Emission factors are used to estimate emissions from industry sources and can be used to assure compliance with emission limits. IDEM anticipates that the use of updated emission factors to recalculate throughput limits will result in additional grain elevators and milling operations meeting the applicability of [326 IAC 2-11-3](#) and [326 IAC 2-11-4](#) and avoiding possible applicability of [326 IAC 2-6.1](#), [326 IAC 2-5.1](#), or [326 IAC 2-7](#). Broadening the applicability of the permit by rule simplifies the permitting process for those affected operations. IDEM specifically requests comments on the quality and use of updated AP-42 emission factors to estimate particulate matter emissions from grain elevators and grain processing or milling operations.

Currently, the grain elevator SSOA at [326 IAC 2-9-6\(3\)\(B\)](#) states that particulate matter (PM) emissions shall be limited by the application of mineral oil or soybean oil to all grain received at a grain elevator at an application rate of 0.03% by weight of grain or greater. The application rate of 0.03% is cited in a study by the U.S. Department of Agriculture entitled "Examining the Use of Additives to Control Grain Dust". The Indiana Grain and Feed Association referred to this study, and its recommended application rate, while commenting on the draft language for [326 IAC 2-9-6](#). The application rate of 0.03% was included in [326 IAC 2-9-6\(3\)\(B\)](#)'s language, but the Food and Drug Administration's (FDA) rule at 21 CFR 172, which pertains to food additives permitted for direct addition to food for human consumption, limits the use of white mineral oil as a dust control agent for wheat, corn, soybean, barley, oats, rye, and sorghum to a level no more than 0.02% by weight. Since IDEM's minimum mineral oil application requirement is greater than FDA's maximum application requirement, this rulemaking is necessary to ensure that state standards are consistent with federal standards. Laboratory testing and industry experience have shown that oil additives applied at 0.02% by weight can provide effective dust control. IDEM has found that due to an odor issue and the prohibitive cost of using soybean oil as a dust control agent, grain elevator operators prefer to use mineral oil.

**Alternatives To Be Considered Within the Rulemaking**

Alternative 1. No Action.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No.

- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Alternative 2. Amend [326 IAC 2-9-6](#) to Make the Mineral Oil Application Rate Consistent With FDA Limits on White Mineral Oil Use as a Dust Control Agent.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? Yes, this alternative will make current rules consistent with federal requirements found at 21 CFR 172.
- If it is a federal requirement, is it different from federal law? No.
- If it is different, describe the differences. Not applicable.

Alternative 3. Repeal [326 IAC 2-9-6](#).

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Alternative 4. Amend Emission Limits in Permit By Rule [326 IAC 2-11-3](#) and [326 IAC 2-11-4](#) to Reflect Current AP-42 Emission Factors.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Alternative 5. A Combination of Alternatives 2-4.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

#### **Applicable Federal Law**

The Food and Drug Administration's (FDA) rule at 21 CFR 172 limits the use of white mineral oil as a dust control agent for wheat, corn, soybean, barley, oats, rye, and sorghum to a level no more than 0.02% by weight. The minimum mineral oil application rate in [326 IAC 2-9-6](#) of 0.03% by weight is greater than the maximum allowable rate permitted by the FDA.

Incorporation of the emission factors from AP-42 (May, 2003 "Compilation of Air Pollution Emission Factors, Section 9.9.1, Grain Elevators and Grain Processes Plants") is not required by federal law, but may allow for more accurate calculations of particulate matter emissions from grain elevators and milling operations.

#### **Potential Fiscal Impact**

Potential Fiscal Impact of Alternative 1. No Action. There is no anticipated fiscal impact associated with this alternative.

Potential Fiscal Impact of Alternative 2. Amendments to [326 IAC 2-9-6](#) to Make the Mineral Oil Application Rate Consistent With FDA Limits on Mineral Oil Use as a Dust Control Agent. There is no anticipated fiscal impact associated with this alternative.

Potential Fiscal Impact of Alternative 3. Repeal [326 IAC 2-9-6](#). There is a potential fiscal impact associated with this alternative due to the possible use of an alternative permitting program with different fee schedules.

Potential Fiscal Impact of Alternative 4. Amend Emission Limits in Permit By Rule [326 IAC 2-11-3](#) and [326 IAC 2-11-4](#) to Reflect Current AP-42 Emission Factors. There is no anticipated fiscal impact associated with this alternative.

Potential Fiscal Impact of Alternative 5. A Combination of Alternatives 2-4. There is a potential fiscal impact associated with this alternative due to the possible use of an alternative permitting program with different fee schedules.

#### **Small Business Assistance Information**

IDEM established a compliance and technical assistance (CTAP) program under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a Small Business Assistance Program Ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at [www.in.gov/idem/ctap](http://www.in.gov/idem/ctap).

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Sandra El-Yusuf  
IDEM Compliance and Technical Assistance Program  
OPPTA - MC60-04  
100 N. Senate Avenue, W-041  
Indianapolis, IN 46204-2251  
(317) 232-8578  
[selyusuf@idem.in.gov](mailto:selyusuf@idem.in.gov)

The Small Business Assistance Program Ombudsman is:  
Eric Levenhagen  
IDEM Small Business Assistance Program Ombudsman  
External Affairs - MC50-01  
100 N. Senate Avenue  
IGCN 1301  
Indianapolis, IN 46204-2251  
(317) 234-3386  
elevenha@idem.in.gov

### **Public Participation and Workgroup Information**

An external workgroup is planned to discuss issues involved in this rulemaking. The workgroup will consist of IDEM staff and a cross-section of stakeholders. If you wish to provide comments to the workgroup on the rulemaking, attend meetings, or have suggestions related to the workgroup process, please contact Sean Gorman, Rules Development Section, Office of Air Quality at (317) 234-3533 or (800) 451-6027 (in Indiana). Please provide your name, phone number, and e-mail address, if applicable, where you can be contacted. The public is also encouraged to submit comments and questions to members of the workgroup who represent their particular interests in the rulemaking.

### **STATUTORY AND REGULATORY REQUIREMENTS**

[IC 13-14-8-4](#) requires the board to consider the following factors in promulgating rules:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as the case may be.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

### **REQUEST FOR PUBLIC COMMENTS**

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.

Mailed comments should be addressed to:

#06-436(APCB) Grain Elevators and Milling Operations  
Sean Gorman Mail Code 61-50  
c/o Administrative Assistant  
Rules 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 IDEM receptionist on duty at the tenth floor reception desk, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (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 Rules Section at (317) 233-0426.

### **COMMENT PERIOD DEADLINE**

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

Additional information regarding this action may be obtained from Sean Gorman, Rules Development Section, Office of Air Quality, (317) 234-3533 or (800) 451-6027 (in Indiana).

Kathryn A. Watson, Chief  
Air Programs Branch  
Office of Air Quality

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